NHS BRIGHTON AND HOVE CLINICAL COMMISSIONING GROUP

CONSTITUTION

NHS Brighton and Hove Clinical Commissioning Group Constitution

Version	Effective Date	Changes
Version 1.1	**1 April 2020**	

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1 Introduction

1.1 Name

1.1.1 The name of this clinical commissioning group is **NHS Brighton and Hove Clinical Commissioning Group** ("the CCG"). The CCG was first authorised by NHS England on 1 April 2013.

1.2 Statutory Framework

1.2.1 Clinical Commissioning Groups are established under the National Health Service Act 2006 ("the 2006 Act"), as amended by the Health and Social Care Act 2012. The CCG is a statutory body with the function of commissioning health services in England and is treated as an NHS body for the purposes of the 2006 Act. The powers and duties of the CCG to commission certain health services are set out in sections 3 and 3A of the 2006 Act. These provisions are supplemented by other statutory powers and duties that apply to CCGs, as well as by regulations and directions (including, but not limited to, those issued under the 2006 Act).

1.2.2 When exercising its commissioning role, the CCG must act in a way that is consistent with its statutory functions. Many of these statutory functions are set out in the 2006 Act but there are also other specific pieces of legislation that apply to CCGs, including the Equality Act 2010 and the Children Acts. Some of the statutory functions that apply to CCGs take the form of statutory duties, which the CCG must comply with when exercising its functions. These duties include but are not limited to:

a) acting in a way that promotes the NHS Constitution (section 14P of the 2006 Act);

b) exercising its functions effectively, efficiently and economically (section 14Q of the 2006 Act);

c) financial duties (under sections 223G-K of the 2006 Act);

d) child safeguarding (under the Children Acts 1989, 2004) and adult safeguarding (under the Care Act 2014);

e) health services for children and young people with Special Educational Needs and Disability (SEND, under the Children and Families Act 2014 and associated guidance);

f) equality, including the public-sector equality duty (under the Equality Act 2010); and

g) information law, (for instance under data protection laws, such as the Data Protection Act 2018, the EU General Data Protection Regulation 2016/679, and the Freedom of Information Act 2000).

1.2.3 The CCG is subject to an annual assessment of its performance by NHS England, which has powers to provide support or to intervene where it is satisfied that a CCG is failing, or has failed, to discharge any of its functions or that there is a significant risk that it will fail to do so.

1.2.4 CCGs are clinically led membership organisations made up of general practices. The Members of the CCG are responsible for determining the governing arrangements for the CCG, including arrangements for clinical leadership, which are set out in this Constitution.

1.3 Status of this Constitution

1.3.1 All CCGs are required to have a constitution and to publish it.

1.3.2 Changes to this Constitution are effective from the date of approval by NHS England.

1.3.3 The Constitution is published on the CCG website at:

www.brightonandhoveccg.nhs.uk.

1.4 Amendment and Variation of this Constitution

1.4.1 This Constitution can only be varied in two circumstances:

a) where the CCG applies to NHS England and that application is granted; and

b) where in the circumstances set out in legislation NHS England varies the Constitution other than on application by the CCG.

1.4.2 The Chief Executive Officer may periodically propose amendments to the Constitution, which shall be considered and approved by the Governing Body unless:

a) Changes are thought to have a material impact; and/or

b) Changes are proposed to the reserved powers of the members; and/or

c) At least half (50%) of all the Governing Body Members formally request that the amendments be put before the Membership for approval.

1.4.3 The same process set out in paragraph 1.4.2 above shall apply in relation to the documents referred to below in clause 1.5.

1.5 Related documents

1.5.1 This Constitution is also informed by a number of documents, which provide further details on how the CCG will operate. With the exception of the Standing Orders and the extract from the Standing Financial Instructions setting out the delegated financial limits (which are set out in an annex to this Constitution), these documents do not form part of the Constitution for the purposes of paragraph 1.4.1 above.

1.5.2 These documents are the CCG's:

a) **Standing Orders –** which set out the arrangements for meetings and the selection and appointment processes for the CCG's Governing Body, and for committees established by the CCG and/or the Governing Body.

b) **The Scheme of Reservation and Delegation –** which sets out those decisions that are reserved for the membership as a whole and those decisions that have been delegated by the CCG or the Governing Body.

c) **Prime financial policies –** which set out the arrangements for managing the CCG's financial affairs.

d) **Standing Financial Instructions –** which are designed to ensure that the CCG's financial transactions are carried out in accordance with relevant statutory and policy requirements, so as to achieve probity, accuracy, economy, efficiency and effectiveness.

e) **The CCG Governance Handbook** ("**the Handbook**") – which includes:

- the documents mentioned in paragraphs 1.5.1(b)-(d) above;
- the transitional arrangements agreed for the period prior to and following the establishment of NHS West Sussex CCG and NHS East Sussex CCG, as set out in the Merger Transition Agreement;
- the Standards of Business Conduct Policy – which includes the arrangements the CCG has made for the management of conflicts of interest;
- terms of reference for committees and sub-committees;

- arrangements relating to the Members, including in relation to Locality Representatives;
- the governance structure organogram;
- other key policies and procedures; and
- collaborative and system-wide working arrangements.

1.6 Accountability and Transparency

1.6.1 The CCG will demonstrate its accountability to its members, local people, stakeholders and NHS England in a number of ways, including by being transparent. We will meet our statutory and best practice requirements to:

a) publish our Constitution and other key documents, including the Handbook;

b) appoint independent lay members and non-GP clinicians to our Governing Body;

c) manage actual or potential conflicts of interest in line with NHS England's statutory guidance Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017 and expected standards of good practice (see also part 6 of this Constitution);

d) hold Governing Body meetings in public (except where we believe that it would not be in the public interest);

e) publish an annual commissioning strategy that takes account of priorities in the health and wellbeing strategy, as well as other relevant policy objectives;

f) procure services in a manner that is open, transparent, non-discriminatory and fair to all potential providers and publish a Procurement Strategy;

g) involve the public, in accordance with the CCG's duties under section 14Z2 of the 2006 Act, and as set out in more detail in the CCG's policies and procedures, including those in the Handbook. In addition, the CCG will adopt the measures set out in paragraph 1.6.2 below;

h) when discharging its duties under section 14Z2, the CCG will ensure that it operates in an open, fair and transparent manner; will involve its stakeholders at an early stage and throughout change programmes, at varying degrees; and, by having due regard to its equalities duties;

i) comply with local authority health overview and scrutiny requirements;

j) meet annually in public to present an annual report which is then published;

k) produce annual accounts which are externally audited;

l) publish a clear complaints process;

m) comply with the Freedom of Information Act 2000 and with the Information Commissioner's Office's requirements regarding the publication of information relating to the CCG;

n) provide information to NHS England as required; and

o) be an active member of the local Health and Wellbeing Board.

1.6.2 In addition to these statutory requirements, the CCG will demonstrate its accountability by:

a) publishing its principal commissioning and operational policies on the CCG's website at www.brightonandhoveccg.nhs.uk/publications/our-policies-and-procedures;

b) holding engagement events (at such times and frequency as shall be determined by the CCG); and

c) identifying a named Lay Member with a lead role in assurance of patient and public engagement.

1.6.3 The Governing Body of the CCG will throughout each year have an on-going role in reviewing the CCG's governance arrangements to ensure that the CCG continues to reflect the principles of good governance.

1.7 Liability and Indemnity

1.7.1 The CCG is a body corporate established and existing under the 2006 Act. All financial or legal liability for decisions or actions of the CCG resides with the CCG as a public statutory body and not with its Member Practices.

1.7.2 No Member or former Member, nor any person who is at any time a proprietor, officer or employee of any Member or former Member, shall be liable (whether as a Member or as an individual) for the debts, liabilities, acts or omissions, howsoever caused by the CCG in discharging its statutory functions.

1.7.3 No Member or former Member, nor any person who is at any time a proprietor, officer or employee of any Member of former Member, shall be liable on any winding-up or dissolution of the CCG to contribute to the assets of the CCG, whether for the payment of its debts and liabilities or the expenses of its winding-up or otherwise.

1.7.4 The CCG may indemnify any Locality Representative or other officer or individual exercising powers or duties on behalf of the CCG in respect of any civil liability incurred in the exercise of the CCG's business, provided that the person indemnified shall not have acted recklessly or with gross negligence.

2 Area Covered by the CCG

2.1 Save for the three (3) Lower-layer Super Output Areas (LSOAs) in the Local Authority areas referred to in the table below, the geographical area covered by NHS Brighton and Hove Clinical Commissioning Group is co-terminus with Brighton and Hove City Council.

Local Authority	**Lower-layer Super Output Areas (LSOAs)**		
	LSOA Code	LSOA Name	Ward
East Sussex County Council	E01021030	Lewes 006D	East Saltdean and Telscombe Cliffs
East Sussex County Council	E01021027	Lewes 006A	East Saltdean and Telscombe Cliffs
West Sussex County Council	E01031348	Adur 004B	Eastbrook

2.2 The geographical area covered by the CCG is shown in the map below.

2.3 The Area of the CCG shall be divided into 'Localities.' Further information about the Localities is set out in the Handbook.

Brighton and Hove
SUSSEX

3 Membership Matters

3.1 Membership of the CCG

3.1.1 The CCG is a membership organisation.

3.1.2 All practices that provide primary medical services to a registered list of patients under a General Medical Services, Personal Medical Services or Alternative Provider Medical Services contract in our Area are eligible for membership of this CCG.

3.1.3 The practices which make up the membership of the CCG are listed below.

Practice Name	Address
Albion Street Surgery	9 Albion Street, Brighton, BN2 9PS
Arch Practice	Morley Street, Brighton, BN2 9DH
Ardingly Court Surgery	Brighton, BN2 1SS
Avenue Surgery	1 The Avenue, Moulsecoomb, Brighton, BN2 4GF
Beaconsfield Surgery	175 Preston Road, Brighton, BN1 6AG
Benfield Valley Healthcare Hub	Old Shoreham Road, Portslade, BN41 1XR
Brighton Health and Wellbeing Centre	18/19 Western Road, Hove, BN3 1AE
Broadway Surgery	179 Whitehawk Road, Brighton, BN2 5FL
Carden Surgery	County Oak Medical Centre, Carden Hill, Brighton, BN1 8DD
Charter Medical Centre	88 Davigdor Road, Hove, BN3 1RF
Haven Practice	100 Beaconsfield Villas, Brighton, BN1 6HE
Hove Medical Centre	West Way, Hove, BN3 8LD
Links Road Surgery	27-29 Links Road, Portslade, BN41 1XH
Matlock Road Surgery	10 Matlock Road, Brighton, BN1 5BF
Mile Oak Medical Centre	Chalky Road, Portslade, BN41 2WF
Montpelier Surgery	2 Victoria Road, Brighton, BN1 3FS
Park Crescent Health Centre	1 Lewes Road, Brighton, BN2 3HP

Practice Name	Address
Pavilion Surgery	2-3 Old Steine, Brighton, BN1 1EJ
Portslade Health Centre	Church Road, Portslade, BN41 1LX
Practice Plus – Brighton Station Health Centre	Aspect House, 84-87 Queens Road, Brighton, BN1 3XE
Preston Park Surgery	2a Florence Road, Brighton, BN1 6DJ
Regency Surgery	4 Old Steine, Brighton, BN1 1FZ
Saltdean and Rottingdean Medical Practice	20-21 Grand Ocean, Longridge Avenue, Brighton, BN2 8BU
School House Surgery	Hertford Road, Brighton, BN1 7GF
Seven Dials Medical Centre	24 Montpelier Crescent, Brighton, BN1 3JJ
Ship Street Surgery	65-67 Ship Street, Brighton, BN1 1AE
St Luke's Surgery	20 & 21 Grand Ocean, Longridge Avenue, Brighton, BN2 8SN
St Peter's Medical Centre	30-36 Oxford Street, Brighton, BN1 4LA
Stanford Medical Centre	175 Preston Road, Brighton, BN1 6AG
Trinity Medical Centre	1 Goldstone Villas, Hove, BN3 3AT
University of Sussex Health Centre	University of Sussex, Falmer, Brighton, BN1 9RW
Warmdene Surgery	County Oak Medical Centre, Carden Hill, Brighton, BN1 8DD
Wellsbourne Health Centre	179 Whitehawk Road, Brighton, BN2 5FL
Wish Park Surgery	191 Portland Road, Hove, BN3 5JA
Woodingdean Medical Centre	Warren Road, Woodingdean Brighton, BN2 6PE

3.2 Nature of Membership and Relationship with the CCG

3.2.1 The CCG's Members are integral to the functioning of the CCG. Those exercising delegated functions on behalf of the Membership, including the Governing Body, remain accountable to the Membership.

3.2.2 The CCG has established a system of Locality governance, through which the Membership provide strategic direction on commissioning and through which the Governing Body is accountable. Locality arrangements are set out in more detail in the Handbook.

3.3 Speaking, Writing or Acting in the Name of the CCG

3.3.1 Members are not restricted from giving personal views but it should be remembered that their views may be interpreted as the views of the CCG and Members should be clear that any personal view is not necessarily the view of the CCG.

3.3.2 Nothing in or referred to in this Constitution (including in relation to the issue of any press release or other public statement of disclosure) will prevent or inhibit the making of any protected disclosure (as defined in the Employment Rights Act 1996, as amended by the Public Interest Disclosure Act 1998) by any member of the CCG, any member of its Governing Body, any member of any of its Committees or Sub-Committees or the Committees or Sub-Committees of its Governing Body, or any employee of the CCG or of any of its members, nor will it affect the rights of any worker (as defined in that Act) under that Act.

3.4 Members' Rights

3.4.1 The Members' rights are contained in detail in the Standing Orders and the Handbook but include the following rights to:

a) call a general meeting of the Members;

b) submit a proposal for amendment of the Constitution to the Governing Body, which must then be duly considered by the Governing Body. Such a proposal must be submitted by at least half (50%) of all the Governing Body Locality Representatives (with the Chair of the Governing Body being considered as a Locality Representative for these purposes);

c) elect the Chair of the Governing Body and other elected members of the Governing Body;

d) remove the Chair of the Governing Body on the basis of the grounds for removal from office, as set out in this Constitution;

e) remove any elected Governing Body Member on the basis of the grounds for removal from office, as set out in this Constitution;

f) raise concerns regarding any appointed Governing Body Member on the basis of the grounds for removal from office that applies to that Member, as set out in this Constitution;

g) participate in the development of the Handbook and submit a proposal for amendment of the Handbook to the Governing Body. Such a proposal must be submitted by at least half (50%) of all the Governing Body Locality Representatives (with the Chair of the Governing Body being considered as a Locality Representative for these purposes); and

h) guide and oversee the CCG through the Sussex CCG's Transition Period, as set out in the Merger Transition Agreement.

3.5 Members' Meetings

3.5.1 Meetings of the Members shall be held at such times and in such manner as is provided in this Constitution, in the Standing Orders and/or in the Handbook.

3.6 Practice Representatives

3.6.1 Each Member Practice has a nominated lead healthcare professional who represents the practice in the dealings with the CCG. Information about the role of the representative and the arrangements the CCG has put in place to engage with them shall be set out in the Handbook.

4 Arrangements for the Exercise of our Functions

4.1 Good Governance

4.1.1 In accordance with section 14L(2)(b) of the 2006 Act, the CCG will at all times observe "such generally accepted principles of good governance" in the way it conducts its business. These include:

a) use of the governance toolkit for CCGs www.ccggovernance.org;

b) undertaking regular governance reviews, including a requirement that the Chief Executive Officer reviews the Constitution on an annual basis and presents the findings of that review to the Governing Body and, as appropriate, the Members of the CCG;

c) adoption of standards and procedures that facilitate speaking out and the raising of concerns, including a freedom to speak up guardian;

d) adopting CCG values that include standards of propriety in relation to the stewardship of public funds, impartiality, integrity and objectivity;

e) the Good Governance Standard for Public Services;

f) the standards of behaviour published by the Committee on Standards in Public Life (1995) known as the 'Nolan Principles';

g) the seven key principles of the NHS Constitution;

h) relevant legislation, including the Equality Act 2010; and

i) the standards set out in the Professional Standards Authority's guidance '*Standards for Members of NHS Boards and Clinical Commissioning Group Governing Bodies in England*'.

4.2 General

4.2.1 The CCG will:

a) comply with all relevant laws, including regulations;

b) comply with directions issued by the Secretary of State for Health and Social Care or NHS England;

c) have regard to statutory guidance including that issued by NHS England; and

d) take account, as appropriate, of other documents, advice and guidance.

4.2.2 The CCG will develop and implement the necessary systems and processes to comply with (a)-(d) above, documenting them as necessary in this Constitution, its Scheme of Reservation and Delegation and other relevant policies and procedures as appropriate.

4.3 Authority to Act: the CCG

4.3.1 The CCG is accountable for exercising its statutory functions. It may grant authority to act[1] on its behalf to:

a) any of its members or employees;

b) its Governing Body; and

c) a Committee or Sub-Committee of the CCG.

4.4 Authority to Act: the Governing Body

4.4.1 The Governing Body may grant authority[2] to act on its behalf to:

a) any Governing Body Member;

b) a Committee or Sub-Committee of the Governing Body;

c) a Member of the CCG who is an individual (but not a Governing Body Member); and

d) any other individual who may be from outside the organisation and who can provide assistance to the CCG in delivering its functions.

[1] The CCG also has the ability to enter into a range of collaborative arrangements, including where permitted through the formation of joint committees, and related powers in relation to the delegation of its statutory functions in the context of such arrangements. These powers are set out in clauses 5.11-.5.14 of this Constitution.

[2] As above, see also clauses 5.11-5.14 of this Constitution in relation to collaborative arrangements.

5 Procedures for Making Decisions

5.1 Scheme of Reservation and Delegation

5.1.1 The CCG has agreed a Scheme of Reservation and Delegation ("SoRD") which is published in full in the Handbook (available here: www.brightonandhoveccg.nhs.uk/publications/our-policies-and-procedures).

5.1.2 The CCG's SoRD sets out:

a) those decisions that are reserved for the membership as a whole; and

b) those decisions that have been delegated by the CCG, the Governing Body or other individuals.

5.1.3 The CCG remains accountable for all of its functions, including those that it has delegated. All those with delegated authority, including the Governing Body, are accountable to the Members for the exercise of their delegated functions.

5.1.4 The Chief Executive Officer may periodically propose amendments to the SoRD, which shall be considered and approved by the Governing Body unless:

a) changes are proposed to the reserved powers; or

b) at least half (50%) of all the Governing Body Locality Representatives (with the Chair of the Governing Body being considered as a Locality Representative for these purposes) formally request that the amendments be put before the Membership for approval.

5.2 Standing Orders

5.2.1 The CCG has agreed a set of Standing Orders which describe the processes that are employed to undertake its business. They include procedures for:

a) conducting the business of the CCG;

b) the appointments to key roles including Governing Body Members;

c) the procedures to be followed during meetings; and

d) the process to delegate powers.

5.2.2 A full copy of the Standing Orders is included in Appendix 3. The Standing Orders form part of this Constitution.

5.3 Standing Financial Instructions (SFIs)

5.3.1 The CCG has agreed a set of SFIs, which include the delegated limits of financial authority for decision-making.

5.3.2 These delegated limits are included in Appendix 4 and form part of this Constitution. The full SFIs are set out in the Handbook.

5.4 The Governing Body: its Role and Functions

5.4.1 The Governing Body has statutory responsibility for:

a) ensuring that the CCG has appropriate arrangements in place to exercise its functions effectively, efficiently and economically and in accordance with the CCG's principles of good governance (its main function); and for

b) determining the remuneration, fees and other allowances payable to employees or other persons providing services to the CCG and the allowances payable under any pension scheme established.

5.4.2 The CCG has also delegated the following additional functions to the Governing Body, which are also set out in the SoRD. Any delegated functions must be exercised within the procedural framework established by the CCG and primarily set out in the Standing Orders and SFIs:

a) leading the development of vision and strategy for the CCG;

b) overseeing and monitoring quality improvement;

c) approving the CCG's Commissioning Plans and its consultation arrangements;

d) approving the CCG's financial plan and ensuring that appropriate arrangements are in place to implement it;

e) stimulating innovation and modernisation;

f) overseeing and monitoring performance;

g) overseeing risk assessment and securing assurance actions to mitigate identified strategic risks;

h) promoting a culture of strong engagement with patients, their carers, Members, the public and other stakeholders about the activity and progress of the CCG; and

i) ensuring good governance and leading a culture of good governance throughout the CCG.

5.4.3 The detailed procedures for the Governing Body, including voting arrangements, are set out in the Standing Orders.

5.5 Composition of the Governing Body

5.5.1 This part of the Constitution describes the make-up of the Governing Body roles. Further information about the individuals who fulfil these roles can be found on our website: https://www.brightonandhoveccg.nhs.uk/publications/our-governing-body/governing-body-members.

5.5.2 The National Health Service (Clinical Commissioning Groups) Regulations 2012 ("the 2012 Regulations") set out a minimum membership requirement of the Governing Body of:

a) the Chair;

b) the Accountable Officer ("the Chief Executive Officer");

c) the Chief Finance Officer;

d) a Secondary Care Specialist ("the Independent Clinical Member - Secondary Care Clinician");

e) a registered nurse ("the Independent Clinical Member - Registered Nurse"); and

f) two Lay Members:

- one who has qualifications expertise or experience to enable them to lead on finance and audit matters; and another who
- has knowledge about the Area enabling them to express an informed view about discharge of the CCG functions. The role for this lay member will include leading on patient and public engagement and acting as the Equality and Diversity Champion.

5.5.3 The CCG has agreed the following additional members:

a) a Deputy Chief Executive Officer;

b) a Chief Nursing Officer;

c) a Chief Medical Officer;

d) two additional Lay Members:

- one of whom will be appointed as the Lay Vice Chair; and
- one to perform additional functions, as agreed by the CCG and detailed in the role description for the role.

e) an Independent Clinical Member – General Practitioner; and

f) No more than three (3) Locality Representatives, as agreed with the Members pursuant to the arrangements set out in the Standing Orders and the Handbook.

5.5.4 The division of roles and responsibilities between the Lay Members is set out in the Handbook.

5.6 Additional Attendees at the Governing Body Meetings

5.6.1 The CCG Governing Body may invite other person(s) to attend all or any of its meetings, or part(s) of a meeting, in order to assist it in its decision-making and in its discharge of its functions as it sees fit. Any such person may be invited by the chair to speak and participate in debate but may not vote.

5.6.2 The CCG Governing Body will regularly invite the following individuals to attend all of its meetings as attendees:

a) the Executive Director of Corporate Governance;

b) two representatives from Brighton and Hove City Council (depending on the matters under consideration, these representatives will be either the Director of Public Health; and/or the Director of Adult Social Care; and/or the Director of Children's Services); and

c) other CCG Executive Directors as requested in order to contribute to matters being considered by the Governing Body.

5.7 Appointments to the Governing Body

5.7.1 The process of appointing Locality Representatives to the Governing Body, the selection of the Chair of the Governing Body, and the appointment procedures for other Governing Body Members are set out in the Standing Orders. Further detail about Locality arrangements is contained within the Handbook.

5.7.2 Also set out in Standing Orders are the details regarding the tenure of office for each role and the procedures for resignation and removal from office.

5.7.3 Roles and responsibilities for each Governing Body Member are included within the Handbook.

5.8 Committees and Sub-Committees

5.8.1 The CCG may establish Committees and Sub-Committees of the CCG.

5.8.2 The Governing Body may establish Committees and Sub-Committees.

5.8.3 Each Committee and Sub-Committee established by either the CCG or the Governing Body operates under terms of reference and membership agreed by the CCG or Governing Body as relevant. Appropriate reporting and assurance mechanisms must be developed as part of agreeing terms of reference for Committees and Sub-Committees.

5.8.4 With the exception of the Remuneration and Nominations Committee, any Committee or Sub-Committee established in accordance with clause 5.8 may consist of or include persons other than Members or employees of the CCG.

5.8.5 All members of the Remuneration and Nominations Committee will be Governing Body Members.

5.9 Committees of the Governing Body

5.9.1 The Governing Body will maintain the following statutory or mandated Committees:

5.9.2 **Audit and Assurance Committee:** This Committee is accountable to the Governing Body and provides the Governing Body with an independent and objective view of the CCG's compliance with its statutory responsibilities. The Committee is responsible for arranging appropriate internal and external audit and ensuring that counter fraud arrangements are in place within the CCG.

5.9.3 The Audit and Assurance Committee will be chaired by a Lay Member who has qualifications, expertise or experience to enable them to lead on finance and audit matters and members of the Audit and Assurance Committee may include people who are not Governing Body Members.

5.9.4 **Remuneration and Nominations Committee:** This Committee is accountable to the Governing Body and makes recommendations to the Governing Body about the remuneration, fees and other allowances (including pension schemes) for employees and other individuals who provide services to the CCG. In addition, the Committee will discharge any additional functions delegated to it in accordance with the scope of such delegation, as set out in its terms of reference and the SoRD. Decisions on remuneration, fees and other allowances (including pension

schemes) for those Governing Body Members who are also members of the Remuneration Committee will be made by the Governing Body, minus those individuals whose remuneration is being considered.

5.9.5 The Remuneration and Nominations Committee will be chaired by a Lay Member other than the Audit and Assurance Committee Chair and only Governing Body Members may be members of the Remuneration and Nominations Committee.

5.9.6 **Primary Care Commissioning Committee:** This Committee is required by the terms of the delegation from NHS England in relation to primary care commissioning functions. The Primary Care Commissioning Committee reports to the Governing Body and to NHS England. Membership of the Committee is determined in accordance with the requirements of *Managing Conflicts of Interest: Revised statutory Guidance for CCGs 2017*. The Primary Care Commissioning Committee will be chaired by the Lay Vice Chair.

5.9.7 None of the above Committees may operate on a joint committee basis with another CCG(s) but each may operate on a committees-in-common basis with another CCG(s).

5.9.8 The terms of reference for each of the above named committees are included in Appendix 2 to this Constitution and form part of the Constitution.

5.9.9 The Governing Body has also established a number of other Committees and Sub-Committees to assist it with the discharge of its functions. Further information about these Committees and Sub-Committees, including terms of reference, are contained in the Handbook and delegations made to these Committees and Sub-Committees are set out in the SoRD.

5.10 Collaborative Commissioning Arrangements

5.10.1 The CCG wishes to work collaboratively with its partner organisations in order to assist it with meeting its statutory duties, particularly those relating to integration. The following provisions set out the framework that will apply to such arrangements. The details of current collaborative arrangements established by the CCG are set out in the Handbook.

5.10.2 In addition to the formal joint working mechanisms envisaged below, the CCG and the Governing Body may enter into strategic or other transformation discussions with its partner organisations, on behalf of the CCG.

5.10.3 The Governing Body must ensure that appropriate reporting and assurance mechanisms are developed as part of any partnership or other collaborative arrangements. This will include:

a) reporting arrangements to the Governing Body, or otherwise within the CCG at appropriate intervals;

b) engagement events or other review sessions to consider the aims, objectives, strategy and progress of the arrangements; and

c) progress reporting against identified objectives.

5.10.4 When delegated responsibilities are being discharged collaboratively, the collaborative arrangements, whether formal joint working or informal collaboration, must:

a) identify the roles and responsibilities of those CCGs or other partner organisations that have agreed to work together and, if formal joint working is being used, the legal basis for such arrangements;

b) specify how performance will be monitored and assurance provided to the Governing Body on the discharge of responsibilities, so as to enable the Governing Body to have appropriate oversight as to how system integration and strategic intentions are being implemented;

c) set out any financial arrangements that have been agreed in relation to the collaborative arrangements, including identifying any pooled budgets and how these will be managed and reported in annual accounts;

d) specify under which of the CCG's supporting policies the collaborative working arrangements will operate;

e) specify how the risks associated with the collaborative working arrangement will be managed and apportioned between the respective parties;

f) set out how contributions from the parties, including details around assets, employees and equipment to be used, will be agreed and managed;

g) identify how disputes will be resolved and the steps required to safely terminate the working arrangements; and

h) specify how decisions are communicated to the collaborative partners.

5.11 Joint Commissioning Arrangements with Local Authority Partners

5.11.1 The CCG will work in partnership with its Local Authority partners to reduce health and social inequalities and to promote greater integration of health and social care.

5.11.2 Partnership working between the CCG and its Local Authority partners might include collaborative commissioning arrangements, including joint commissioning under section 75 of the 2006 Act, where permitted by law. In this instance, and to the extent permitted by law, the CCG delegates to the Governing Body the ability to enter into arrangements with one or more relevant Local Authority in respect of:

a) delegating specified commissioning functions to the Local Authority;

b) exercising specified commissioning functions jointly with the Local Authority; and

c) exercising any specified health-related functions on behalf of the Local Authority.

5.11.3 For purposes of the arrangements described in paragraph 5.11.2, the Governing Body may:

a) agree formal and legal arrangements to make payments to, or receive payments from, the Local Authority, or pool funds for the purpose of joint commissioning;

b) make the services of its employees or any other resources available to the Local Authority; and

c) receive the services of the employees or the resources from the Local Authority.

5.11.4 Where the Governing Body makes an agreement with one or more Local Authority as described above, the agreement will set out the arrangements for joint working, including details of:

a) how the parties will work together to carry out their commissioning functions;

b) the duties and responsibilities of the parties, and the legal basis for such arrangements;

c) how risk will be managed and apportioned between the parties;

d) financial arrangements, including payments towards a pooled fund and management of that fund;

e) contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements; and

f) the liability of the CCG to carry out its functions, notwithstanding any joint arrangements entered into.

5.11.5 The liability of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 5.11.2 above.

5.12 Joint Commissioning Arrangements – Other CCGs

5.12.1 The CCG may work together with other CCGs in the exercise of its commissioning functions. The CCG and its neighbouring Sussex CCGs, NHS East Sussex CCG and NHS West Sussex CCG, have agreed a range of collaborative arrangements, including a Sussex CCGs Joint Committee; committees-in-common arrangements for key committees; and a shared leadership team. These arrangements are set out in more detail in the Handbook.

5.12.2 The CCG delegates its powers and duties under clause 5.12 to the Governing Body and where appropriate all references in this part to the CCG should be read as the Governing Body, except to the extent that they enable the establishment of a joint committee of the CCG and in so far as they relate to the continuing liability of the CCG under any joint arrangements.

5.12.3 The CCG may make arrangements with one or more other CCGs in respect of:

a) delegating any of the CCG's commissioning functions to another CCG;

b) exercising any of the commissioning functions of another CCG; or

c) exercising jointly the commissioning functions of the CCG and another CCG.

5.12.4 For the purposes of the arrangements described at paragraph 5.12.3, the CCG may:

a) make payments to another CCG;

b) receive payments from another CCG; or

c) make the services of its employees or any other resources available to another CCG; or

d) receive the services of the employees or the resources available to another CCG.

5.12.5 Where the CCG makes arrangements which involve all the CCGs exercising any of their commissioning functions jointly, a joint committee may be established to exercise those functions.

5.12.6 For the purposes of the arrangements described above, the CCG may establish and maintain a pooled fund made up of contributions by all of the CCGs working together jointly pursuant to paragraph 5.12.3 above. Any such pooled fund may be used to make payments towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.

5.12.7 Where the CCG makes arrangements with another CCG as described at paragraph 5.12.3 above, the CCG shall develop and agree with that CCG an agreement setting out the arrangements for joint working including details of:

a) how the parties will work together to carry out their commissioning functions;

b) the duties and responsibilities of the parties, and the legal basis for such arrangements;

c) how risk will be managed and apportioned between the parties;

d) financial arrangements, including payments towards a pooled fund and management of that fund; and

e) contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements.

5.12.8 The responsibility of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 5.12.1 above.

5.12.9 The liability of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 5.12.1 above.

5.12.10 Only arrangements that are safe and in the interests of persons for whom the CCG has commissioning responsibility will be approved by the Governing Body.

5.12.11 The Governing Body shall require, in all joint commissioning arrangements, that the lead Governing Body Member for the joint arrangements:

a) make a quarterly written report to the Governing Body;

b) hold at least one annual engagement event to review the aims, objectives, strategy and progress of the joint commissioning arrangements; and

c) publish an annual report on progress made against objectives.

5.12.12 Should a joint commissioning arrangement prove to be unsatisfactory the Governing Body of the CCG can decide to withdraw from the arrangement, but has to give six months' notice to partners to allow for credible alternative arrangements to be put in place, with new arrangements starting from the beginning of the next new financial year after the expiration of the six months' notice period.

5.13 Joint Commissioning Arrangements with NHS England

5.13.1 The CCG may work together with NHS England. This can take the form of joint working in relation to the CCG's functions or in relation to NHS England's functions.

5.13.2 The CCG delegates its powers and duties under clause 5.13 to the Governing Body and all references in this part to the CCG should be read as the Governing Body, except to the extent that they enable the establishment of a joint committee of the CCG and in so far as they relate to the continuing liability of the CCG under any joint arrangements.

5.13.3 In terms of either the CCG's functions or NHS England's functions, the CCG and NHS England may make arrangements to exercise any of their specified commissioning functions jointly.

5.13.4 The arrangements referred to in paragraph 5.13.3 above may include other CCGs, a combined authority or a local authority.

5.13.5 Where joint commissioning arrangements pursuant to paragraph 5.13.3 above are entered into, the parties may establish a Joint Committee to exercise the commissioning functions in question. For the avoidance of doubt, this provision does not apply to any functions fully delegated to the CCG by NHS England, including but not limited to those relating to primary care commissioning.

5.13.6 Arrangements made pursuant to paragraph 5.13.3 above may be on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the CCG.

5.13.7 Where the CCG makes arrangements with NHS England (and another CCG if relevant) as described at paragraph 5.13.3 above, the CCG shall

develop and agree with NHS England a framework setting out the arrangements for joint working, including details of:

a) how the parties will work together to carry out their commissioning functions;

b) the duties and responsibilities of the parties, and the legal basis for such arrangements;

c) how risk will be managed and apportioned between the parties;

d) financial arrangements, including, if applicable, payments towards a pooled fund and management of that fund; and

e) contributions from the parties, including details around assets, employees and equipment to be used under the joint working arrangements.

5.13.8 Where any joint arrangements entered into relate to the CCG's functions, the liability of the CCG to carry out its functions will not be affected where the CCG enters into arrangements pursuant to paragraph 5.13.3 above. Similarly, where the arrangements relate to NHS England's functions, the liability of NHS England to carry out its functions will not be affected where it and the CCG enter into joint arrangements pursuant to clause 5.13.

5.13.9 The CCG will act in accordance with any further guidance issued by NHS England on co-commissioning.

5.13.10 Only arrangements that are safe and in the interests of persons for whom the CCG has commissioning responsibility will be approved by the Governing Body.

5.13.11 The Governing Body of the CCG shall require, in all joint commissioning arrangements that the lead Governing Body Member for the joint arrangements:

a) make a quarterly written report to the Governing Body;

b) hold at least one annual engagement event to review the aims, objectives, strategy and progress of the joint commissioning arrangements; and

c) publish an annual report on progress made against objectives.

5.13.12 Should a joint commissioning arrangement prove to be unsatisfactory the Governing Body of the CCG can decide to withdraw from the arrangement but has to give six months' notice to partners to allow for credible alternative arrangements to be put in place, with new arrangements

starting from the beginning of the next new financial year after the expiration of the six months' notice period.

6 Provisions for Conflict of Interest Management and Standards of Business Conduct

6.1 Conflicts of Interest

6.1.1 As required by section 14O of the 2006 Act, the CCG has made arrangements to manage conflicts and potential conflicts of interest to ensure that decisions made by the CCG will be taken and seen to be taken without being unduly influenced by external or private interest.

6.1.2 The CCG has agreed policies and procedures for the identification and management of conflicts of interest.

6.1.3 Employees, Members, Committee and Sub-Committee members of the CCG and Governing Body Members (and its Committees, Sub-Committees, Joint Committees) will comply with the CCG policy on conflicts of interest. Where an individual, including any individual directly involved with the business or decision-making of the CCG and not otherwise covered by one of the categories above, has an interest, or becomes aware of an interest which could lead to a conflict of interests in the event of the CCG considering an action or decision in relation to that interest, that must be considered as a potential conflict, and is subject to the provisions of this Constitution and the Standards of Business Conduct Policy.

6.1.4 The CCG has appointed the Audit and Assurance Committee Chair to be the Conflicts of Interest Guardian. In collaboration with the CCG's governance lead, their role is to:

a) act as a conduit for GP practice staff, members of the public and healthcare professionals who have any concerns with regards to conflicts of interest;

b) be a safe point of contact for employees or workers of the CCG to raise any concerns in relation to conflicts of interest;

c) support the rigorous application of conflict of interest principles and policies;

d) provide independent advice and judgment to staff and members where there is any doubt about how to apply conflicts of interest policies and principles in an individual situation; and

e) provide advice on minimising the risks of conflicts of interest.

6.2 Declaring and Registering Interests

6.2.1 The CCG will maintain registers of the interests of those individuals listed in the CCG's policy.

6.2.2 The CCG will, as a minimum, publish the registers of conflicts of interest and gifts and hospitality of decision making staff at least annually on the CCG website and make them available at our headquarters upon request. The CCG's contact details are set out at the end of this Constitution.

6.2.3 All relevant persons for the purposes of NHS England's statutory guidance Managing Conflicts of Interest: Revised Statutory Guidance for CCGs 2017 must declare any interests. Declarations should be made as soon as reasonably practicable and by law within 28 days after the interest arises. This could include interests an individual is pursuing. Interests will also be declared on appointment and during relevant discussion in meetings.

6.2.4 The CCG will ensure that, as a matter of course, declarations of interest are made and confirmed, or updated at least annually. All persons required to, must declare any interests as soon as reasonably practicable and by law within 28 days after the interest arises.

6.2.5 Interests (including gifts and hospitality) of decision-making staff will remain on the public register for a minimum of six months. In addition, the CCG will retain a record of historic interests and offers/receipt of gifts and hospitality for a minimum of six years after the date on which it expired. The CCG's published register of interests states that historic interests are retained by the CCG for the specified timeframe and details of whom to contact to submit a request for this information.

6.2.6 Activities funded in whole or in part by third parties who may have an interest in CCG business such as sponsored events, posts and research will be managed in accordance with the CCG policy to ensure transparency and that any potential for conflicts of interest are well-managed.

6.3 Training in Relation to Conflicts of Interest

6.3.1 The CCG ensures that relevant staff and all Governing Body members receive training on the identification and management of conflicts of interest and that relevant staff undertake the NHS England mandatory training.

6.4 Standards of Business Conduct

6.4.1 Employees, Members, Committee and Sub-Committee members of the CCG and Governing Body Members (and its Committees, Sub-

Committees, Joint Committees) will at all times comply with this Constitution and be aware of their responsibilities as outlined in it. They should:

a) act in good faith and in the interests of the CCG;

b) follow the Seven Principles of Public Life; set out by the Committee on Standards in Public Life (the Nolan Principles);

c) comply with the standards set out in the Professional Standards Authority guidance 'Standards for Members of NHS Boards and Clinical Commissioning Group Governing Bodies in England'; and

d) comply with the CCG's Standards of Business Conduct policy, including the requirements set out in the policy for managing conflicts of interest, which is available on the CCG's website and will be made available on request.

6.4.2 Individuals contracted to work on behalf of the CCG or otherwise providing services or facilities to the CCG will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their contract for services and is also outlined in the CCG's Standards of Business Conduct policy.

Appendix 1: Definitions of Terms Used in This Constitution

2006 Act	National Health Service Act 2006, as amended by the Health and Social Care Act 2012.
2012 Regulations	The National Health Service (Clinical Commissioning Groups) Regulations 2012, issued under the 2006 Act and the Health and Social Care Act 2012 and which set out certain requirements about the composition of CCG Governing Bodies; restrictions on membership of the Governing Body; and requirements in terms of chairing and deputy chairing arrangements (among other matters).
Area	The geographical area that the CCG has responsibility for, as defined in Part 2 of this Constitution.
CCG Governance Handbook ("the Handbook")	The Handbook maintained and published by the CCG that collates key corporate governance documents and provides further information about its committees; roles and responsibilities for senior roles; and collaborative arrangements.
Chair of the Governing Body	The individual appointed by the CCG to act as chair of the Governing Body and who is usually either a GP member or a lay member of the Governing Body.
Chief Executive Officer	The Accountable Officer, who is an individual, as defined under paragraph 12 of Schedule 1A of the 2006 Act, appointed by NHS England, with responsibility for ensuring the CCG complies with its obligations under: • sections 14Q and 14R of the 2006 Act; • sections 223H to 223J of the 2006 Act; • paragraphs 17 to 19 of Schedule 1A of the NHS Act 2006; • any other provision of the 2006 Act specified in a document published by the Board for that purpose; and • exercises its functions in a way which provides good value for money.

Chief Finance Officer (CFO)	A qualified accountant employed by the group with responsibility for financial strategy, financial management and financial governance and who is a Governing Body Member.
Clinical Commissioning Groups (CCG)	A body corporate established by NHS England in accordance with Chapter A2 of Part 2 of the 2006 Act.
Clinical Directors	Clinical leads appointed to work on specific clinical programmes for the CCG.
Committee	A Committee created and appointed by the membership of the CCG or the Governing Body.
Governing Body	The body appointed under section 14L of the NHS Act 2006, with the main function of ensuring that a Clinical Commissioning Group has made appropriate arrangements for ensuring that it complies with its obligations under section 14Q under the NHS Act 2006, and such generally accepted principles of good governance as are relevant to it.
Governing Body Member	Any individual who is a member of the Governing Body of the CCG, whether appointed or required under the 2006 Act or 2012 Regulations.
Healthcare Professional	A Member of a profession that is regulated by one of the following bodies: the General Medical Council; the General Dental Council; the General Optical Council; the General Osteopathic Council; the General Chiropractic Council; the General Pharmaceutical Council; the Pharmaceutical Society of Northern Ireland; the Nursing and Midwifery Council; the Health and Care Professions Council;

	any other regulatory body established by an Order in Council under Section 60 of the Health Act 1999.
Independent Members	Collectively refers to the Lay Members and other independent roles appointed to the Governing Body, namely the Independent Clinical Member – Secondary Care Clinician; Independent Clinical Member – Registered Nurse; and the Independent Clinical Member – General Practitioner.
Joint Committee	Committees from two or more organisations that work together with delegated authority from both organisations to enable joint decision-making.
Lay Member	A lay member of the CCG Governing Body, appointed by the CCG. A Lay Member is an individual who is not a Member of the CCG or a healthcare professional (as defined above) or as otherwise defined in law.
Lay Member for Governance	The Lay Member appointed in accordance with the 2012 Regulations and who has qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.
Lay Member for Finance and Performance	The Lay Member appointed by the CCG whose primary role and responsibility is in relation to finance and performance, as set out in more detail in the role specification.
Lay Member for Patient and Public Engagement	The Lay Member appointed in accordance with the 2012 Regulations and who has knowledge about the CCG's area such as to enable the person to express informed views about the discharge of the CCG's functions.
Lay Vice Chair	The Lay Member appointed by the CCG to perform the statutory role of Deputy Chair on the Governing Body, pursuant to the requirements of Regulation 13 of the 2012 Regulations.
Locality Representative	Any individual appointed to the Governing Body of the CCG to represent a specific CCG Locality, pursuant to the Locality arrangements agreed between the Members and set out in the Standing Orders and the Handbook.

Member/ Member Practice	A provider of primary medical services to a registered patient list, who is a Member of this CCG.
Member Practice Representative	Member Practices appoint a healthcare professional to act as their practice representative in dealings between it and the CCG, under regulations made under section 89 or 94 of the 2006 Act or directions under section 98A of the 2006 Act.
Merger Transition Agreement ("the Agreement")	The agreement entered into between the Sussex CCGs and which sets out certain specific arrangements that will apply during the Transition Period. The Agreement forms part of the Handbook.
NHS England	The operational name for the National Health Service Commissioning Board.
Primary Care Commissioning Committee	A Committee required by the terms of the delegation from NHS England in relation to primary care commissioning functions. The Primary Care Commissioning Committee reports to NHS England and the Governing Body.
Professional Standards Authority	The Professional Standards Authority for Health and Social Care. An independent body accountable to the UK Parliament, which helps Parliament to monitor and improve the protection of the public. Published *Standards for Members of NHS Boards and Clinical Commissioning Group Governing Bodies in England* in 2013.
Registers of interests	Registers the CCG is required to maintain and make publicly available under section 14O of the 2006 Act and the statutory guidance issued by NHS England, including the following: • the Members of the CCG; • the Members of its CCG Governing Body; • the Members of its Committees or Sub-Committees and Committees or Sub-Committees of its CCG Governing Body; and • its employees.
STP	Sustainability and Transformation Partnerships – the framework within which the NHS and local authorities have

	come together to plan to improve health and social care over the next few years. STP can also refer to the formal proposals agreed between the NHS and local councils – a "Sustainability and Transformation Plan".
Sub-Committee	A Committee created by and reporting to a Committee.
Transition Period	The period following merger and as defined in the Agreement, during which the agreed transition arrangements will apply.

Appendix 2: Committee Terms of Reference

Audit and Assurance Committee

Remuneration and Nominations Committee

Primary Care Commissioning Committee

Audit and Assurance Committee

NHS Brighton and Hove CCG

Audit and Assurance Committee

Terms of Reference

1. **Authority**

1.1 These terms of reference are applicable to the NHS Brighton and Hove CCG ("the CCG") Audit and Assurance Committee ("the Committee"), whether it meets on an "in common" basis or when it is locally managed.

1.2 The Committee is constituted as a committee of the CCG's Governing Body. The Committee is established in accordance with the CCG Constitution, Standing Orders and Scheme of Reservation and Delegation. These terms of reference set out the membership, remit and responsibilities and reporting arrangements of the Committee and shall have effect as if incorporated into the CCG's Constitutions and Standing Orders.

1.3 The Committee is authorised by the Governing Body to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any Member, officer, employee or agent/consultant who is directed to co-operate with any request made by the Committee. All members of staff and members of the CCG are directed to co-operate with any request made by the Audit and Assurance Committee.

1.4 The Committee is authorised to obtain such internal information as is necessary and expedient to the fulfilment of its functions.

1.5 The Committee will undertake when required 'deep dives' into specific issues that will enable the Committee to gain a greater level of understanding and assurance into specific issues that fall within its remit.

1.6 These terms of reference and the composition of the Committee will accord with any published national guidance.

2. **Purpose of the Committee**

2.1 The Governing Body is responsible for ensuring effective internal control including:

- Exercising its functions effectively, efficiently and economically;

- Complying with such generally accepted principles of good governance as are relevant to it;

- Managing the CCG's activities in accordance with statute, regulations and guidance; and

- Establishing and maintaining a system of internal control to give reasonable assurance that assets are safeguarded, waste or inefficiency avoided and reliable financial information produced, and that value for money is continuously sought.

2.2 The Committee is responsible for providing assurance to the Governing Body on the CCG's system of internal control. It will do this by means of an independent and objective review of financial and corporate governance and risk management arrangements, including compliance with law, guidance, and regulations governing the NHS.

2.3 In addition the Committee shall:

- Assist the CCG in discharging its functions under paragraph 2.1 above;

- Provide assurance of independence for external and internal audit;

- Ensure that appropriate standards are set and compliance with them is monitored, in non- financial, non-clinical areas that fall within the remit of the Committee; and

- Monitor corporate governance (e.g. Compliance with the Constitution, Standing Orders, Prime Financial Policies, the Scheme of Reservation and Delegation and maintenance of Registers of Interests). This shall include reviewing the CCG Register of Interests, Register of Gifts and Hospitality and other corporate registers as deemed appropriate at each meeting of the Committee.

3. **Membership**

3.1 The Committee shall be appointed by the Governing Body as set out in the CCG's Constitution. Only Governing Body Members may be members of the Committee.

3.2 The Lay Member on the Governing Body, with a lead role in overseeing key elements of governance, namely the Lay Member for Governance, will chair the Committee and must have qualifications, expertise or experience such as to enable the person to express informed views about financial management and audit matters.

3.3 There will be two other Independent Members of the Governing Body on the Committee, namely the Lay Member for Finance and Performance (who will be the Deputy Chair of the Committee), and the Independent Clinical Member – GP.

4. Attendance and Quorum

4.1 In addition to the Committee members, the Chief Finance Officer and the Executive Director of Corporate Governance and any other relevant parties where appropriate shall generally attend routine meetings of the Committee.

4.2 The Executive Director of Corporate Governance will act as the lead director for the Committee.

4.3 A representative of each of the internal and external auditors may also be invited to attend meetings of the Committee.

4.4 A representative of the local counter fraud service may be invited to attend meetings of the Committee.

4.5 Governing Body Members and/or CCG senior employees shall be invited to attend those meetings in which the Committee will consider areas of risk or operation that are their responsibility.

4.6 The Chair of the Governing Body and the Chief Executive Officer may be invited to attend meetings of the Committee as required.

4.7 A quorum shall be the Chair of the Committee and one other member.

5. Frequency of Meetings

5.1 Meetings shall be held at least four times per year, with additional meetings where necessary.

5.2 The Committee members shall be afforded the opportunity to meet at least once per year with no others present.

5.3 Arrangements for calling meetings will be in writing to the Chair of the Committee with a minimum of ten days' notice.

6. Specific Duties and Responsibilities

6.1 The Committee shall critically review the CCG's financial reporting and internal control principles and ensure an appropriate relationship with both internal and external auditors is maintained.

Integrated Governance, Risk Management and Internal Control

6.2 The Committee shall review the establishment and maintenance of an effective system of integrated governance, risk management and internal control, across the whole of the CCG's activities that support the achievement of the CCG's objectives, including that:

- The Chief Executive Officer has ensured that proper constitutional, governance and development arrangements are put in place, and thus assure the organisation's ongoing capability and capacity to discharge its statutory duties and responsibilities effectively, efficiently and economically; and
- That robust processes are in place to review and manage patient safety and quality, and that appropriate and effective actions are being taken in relation to risks and issues raised in the patient safety and quality reporting.

6.3 In particular, the Committee will review the adequacy and effectiveness of:

- All risk and control related disclosure statements (in particular the annual governance statement or equivalent), together with any appropriate independent assurances, prior to endorsement by the Governing Body;
- The risk register and defined mitigating actions, particularly relating to the most significant risks, to assure that risks are being properly reviewed and effectively managed;
- The underlying assurance processes that indicate the degree of achievement of the CCG's objectives, the effectiveness of the management of principal risks and the appropriateness of the above disclosure statements;
- The policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements and related reporting and self-certification; and
- The policies and procedures for all work related to fraud and corruption as set out in Secretary of State Directions and as required by NHS Counter Fraud Authority.

6.4 The Committee shall seek reports and assurances from Governing Body Members and senior employees as appropriate, concentrating on the over-arching systems of integrated governance, risk management and internal control, together with indicators of their effectiveness evidenced through the Committee's use of an effective Board Assurance Framework

to guide its work and that of the audit and assurance functions that report to it.

6.5 The Committee will review the adequacy of the CCG's arrangements by which staff may, in confidence, raise concerns about possible improprieties in matters of financial reporting and control, or related matters or other matters of concern.

6.6 The Committee will assure that the CCG meets the requirements for information governance.

Internal Audit

6.7 The Committee shall ensure that there is an effective internal audit function that meets mandatory Public Sector Internal Audit Standards (Department of Health, December 2012) and provides appropriate independent assurance to the Committee, Chief Executive Officer, the Governing Body and the CCG.

6.8 The Committee shall achieve an effective internal audit function by:

- Consideration of the provision of the internal audit service, the cost of the audit and any questions of resignation and dismissal of that service;
- Review and approval of the internal audit strategy, operational plan and more detailed programme of work, ensuring that this is consistent with the audit needs of the organisation, as identified in the Board Assurance Framework;
- Considering the major findings of internal audit work (and the senior team's response) and ensuring co-ordination between the internal and external auditors to optimise audit resources;
- Ensuring that the internal audit function is adequately resourced and has appropriate standing within the CCG; and
- An annual review of the effectiveness of internal audit.

External Audit

6.9 The Committee shall review the work and findings of the external auditors and consider the implications and the senior team's responses to their work.

6.10 The Committee shall achieve this by:

- Consideration of the performance of the external auditors, as far as the rules governing the appointment permit;

- Discussion and agreement with the external auditors, before the audit commences, on the nature and scope of the audit as set out in the annual plan, and ensuring co-ordination, as appropriate, with other external auditors in the local health economy;

- Discussion with the external auditors of their local evaluation of audit risks and assessment of the CCG and associated impact on the audit fee;

- Review of all external audit reports, including the report to those charged with governance, agreement of the annual audit letter before submission to the Governing Body and any work undertaken outside the annual audit plan, together with the appropriateness of management responses;

- Overseeing the conduct of a market testing exercise for the appointment of an auditor at least once every five years and, based on the outcome, make a recommendation to the Governing Body with respect to the appointment of the auditor;

- Developing and implementing a policy on the engagement of the external auditor to supply non-audit services; and

- Considering the provision of the external audit service, the cost of the audit and any questions of resignation and dismissal.

Other Assurance Functions

6.11 The Committee shall review the findings of other significant assurance functions, both internal and external, including but not limited to:

- Any reviews by Department of Health and Social Care arm's length bodies or regulators/inspectors (for example, the Care Quality Commission and NHS Resolution); and

- Professional bodies with responsibility for the performance of staff or functions (for example, Royal Colleges and accreditation bodies).

Counter Fraud

6.12 The Committee shall satisfy itself that the CCG has adequate arrangements in place for countering fraud and shall review the outcomes of counter fraud work. It shall also approve the counter fraud work programme.

Management

6.13 The Committee shall request and review reports and positive assurances from Governing Body Members and senior employees on the overall arrangements for governance, risk management and internal control.

6.14 The Committee may also request specific reports from individual functions within the CCG as they may be appropriate to the overall arrangements.

Financial Reporting

6.15 The Committee shall monitor the integrity of the financial statements of the CCG and any formal announcements relating to the CCG's financial performance.

6.16 The Committee shall ensure that the systems for financial reporting to the Governing Body, including those of budgetary control, are subject to review as to completeness and accuracy of the information provided to the Governing Body.

6.17 The Committee shall review the annual report and financial accounts before submission, focusing particularly on:

- The wording in the annual governance statement and other disclosures relevant to the terms of reference of the Committee;
- Changes in, and compliance with, accounting policies, practices and estimation techniques;
- Unadjusted misstatements in the financial accounts;
- Significant judgements in preparing of the financial accounts;
- Significant adjustments resulting from the audit;
- Letter of representation; and
- Qualitative aspects of financial reporting.

7. Sub-Committees

7.1 The Information Governance Steering Group for the Sussex CCGs is a sub-committee of the Committee.

8. Administrative Support

8.1 The Executive Director of Corporate Governance will ensure the provision of suitable administrative support to the Committee and their role will include but not be limited to:

- Collation of all Committee papers and their circulation in a timely manner;
- Taking the minutes and keeping a record of matters arising and issues to be carried forward;
- Advising the Committee as appropriate on best practice, national guidance and other relevant documents.

8.2 The Executive Director of Corporate Governance will be responsible for supporting the chair in forward planning, agenda-setting, follow up of actions and circulation of minutes.

9. Accountability and Reporting Arrangements

9.1 The Committee shall be directly accountable to the Governing Body.

9.2 A summary report from the Committee shall be formally submitted, together with recommendations where appropriate, to the Governing Body. The submission to the Governing Body shall include details of any matters in respect of which actions or improvements are needed. This will include details of any evidence of potentially ultra vires, otherwise unlawful or improper transactions, acts, omissions or practices or any other important matters. To the extent that such matters arise, the Chair of the Committee shall present details to a meeting of the Governing Body.

9.3 The approved minutes of each Committee meeting will also be provided to the Governing Body.

9.4 The Committee will review the work of the other Governing Body Committees annually by reviewing their formal report on their work over the past year.

9.5 There will be close links between the Committee, the Quality Committee, the Finance and Performance Committee and the Primary Care Commissioning Committee, with regular meetings between the Chair of the Committee and the chairs of the Quality Committee, the Finance and Performance Committee and the Primary Care Commissioning Committee to ensure that there are no assurance gaps.

10. Conduct of the Committee

10.1 At the beginning of each meeting, the chair will ask members whether they have any interests to declare, in accordance with the CCG's Gifts, Hospitality and Declarations of Interests Policy.

10.2 If any member has an interest, financial or otherwise, in any matter and is present at the meeting at which the matter is under discussion, he/she will declare that interest as early as possible and act in accordance with the

CCG's Conflicts of Interests Policy and Procedure. Subject to any previously agreed arrangements for managing a conflict of interest, the chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual must comply with these arrangements, which must be recorded in the minutes of the meeting.

10.3 Decision making will be by a simple majority of those present and voting at the relevant meeting. In the event that a vote is tied, the chair will have the casting vote.

10.4 Members of the Committee have a duty to demonstrate leadership in the observation of the NHS Code of Conduct and to work to the Nolan Principles, which are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

10.5 Committee papers will be stored and archived.

10.6 When there is an urgent matter where a decision is required outside of the meeting, the chair may make a decision after conferring with at least one other member ("chair's action"). When chair's action has been taken then it must be ratified by the next quorate meeting of the Committee. Urgent decisions will only be taken when there is insufficient time available for the decision to be delayed until the next meeting.

10.7 The Committee will apply best practice in its deliberations and in the decision making processes. It will conduct its business in accordance with national guidance and relevant codes of conduct and good governance practice.

10.8 All members of the Committee are expected to comply with all relevant policies and procedures relating to confidentiality and information governance, noting the sensitivity of the information that will be considered by the Committee.

11. Monitoring Effectiveness and Compliance with Terms of Reference

11.1 The Committee will carry out an annual review of its functioning and provide an annual report to the Governing Body on its work in discharging its responsibilities, delivering its objectives and complying with its terms of reference, specifically commenting on relevant aspects of the Board Assurance Framework and relevant regulatory frameworks.

12. Review of Terms of Reference

12.1 The terms of reference of the Committee shall be reviewed by the Governing Body at least annually.

Version Control:

Version: 1.1
Review frequency: Annual
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Remuneration and Nominations Committee

NHS Brighton and Hove CCG

Remuneration and Nominations Committee

Terms of Reference

1. **Authority**

1.1 These terms of reference are applicable to the NHS Brighton and Hove CCG ("the CCG") Remuneration and Nominations Committee ("the Committee"), whether it meets on an "in common" basis or when it is locally managed.

1.2 The Committee is constituted as a committee of the CCG's Governing Body. The Committee is established in accordance with the CCG Constitution, Standing Orders and Scheme of Reservation and Delegation. These terms of reference set out the membership, remit and responsibilities and reporting arrangements of the Committee and shall have effect as if incorporated into the CCGs' Constitutions and Standing Orders.

1.3 The Committee is authorised by the Governing Body to act within its terms of reference. All Members and employees of the CCG are directed to co-operate with any request made by the Committee.

1.4 The Committee can require the Lead Director for the Committee to instruct professional advisors and request the attendance of individuals and authorities from outside the CCG with relevant experience and expertise if it considers this necessary for or expedient to the exercise of its functions.

1.5 The Committee is authorised to obtain such internal information as is necessary and expedient to the fulfilment of its functions.

2. **Purpose of the Committee**

2.1 The Committee shall make recommendations to the Governing Body on determinations about remuneration, benefits and allowances under any pension scheme it might establish as an alternative to the NHS pension scheme for employees of the CCG. This includes any employee who is also a Governing Body Member. Where any alternative pension scheme has been established for Locality Representatives and any other Member Practice representatives, the Committee shall make recommendations to the Governing Body in relation to any remuneration, benefits and allowances under such a scheme.

2.2 The Committee shall make decisions on determinations about remuneration, benefits and allowances under any pension scheme it might establish as an alternative to the NHS pension scheme for all Governing Body Members except in relation to:

- those members who are also employees, in respect of which paragraph 2.1, above, will apply;
- any alternative pension schemes that fall within the scope of paragraph 2.1, above.

2.3 Remuneration, benefits and allowances for those Governing Body Members who are also members of the Committee and whose remuneration, benefits and allowances shall be determined by the Governing Body (as provided for in the CCG's Constitution and Scheme of Reservation and Delegation).

3. **Membership**

3.1 The Committee shall be appointed by the Governing Body as set out in the CCG's Constitution. Only Governing Body Members may be members of the Committee.

3.2 Paragraph 2.3 above sets out the arrangements made by the CCG for the determination of remuneration and other terms of service for the members of the Committee. Where any other conflict of interest issue arises in relation to the members of the Committee, the Committee may co-opt another non-conflicted Governing Body Member onto the Committee, in order to manage the conflict(s) of interest. The ability to co-opt an additional member in this situation is subject always to the requirement that the Committee must be chaired by a Lay Member.

3.3 The Lay Vice Chair will chair the Committee.

3.4 The membership of the Committee shall consist of:

- The Lay Vice Chair, (who will chair the Committee) as referred to in paragraph 3.2 above; and
- The Chair of the Governing Body.

4. **Attendance and Quorum**

4.1 The Chief Executive Officer will attend the meeting but should leave the meeting during any discussions about their own remuneration.

4.2 The Executive Director of Communications, People and Public Involvement will attend the meeting and provide support to ensure the

Committee functions effectively but should leave the meeting during any discussions about their own remuneration.

4.3 Other Directors, CCG members or external advisors (such as HR) may be invited to attend the meeting for the purpose of providing advice and/or clarification to the Committee. No individual should be in attendance for discussion of their own remuneration.

4.4 A quorum shall be all members of the Committee.

5. **Frequency of Meetings**

5.1 Meetings shall be held at least every six months and additional meetings shall be held as and when required, including to give consideration to nominations and confirming changes to the membership of the Governing Body.

5.2 Arrangements for calling meetings will be in writing to the Chair of the Committee with a minimum of ten days' notice.

6. **Specific Duties and Responsibilities**

6.1 The Committee shall:

- Make recommendations on determinations of the remuneration and conditions of service of employees of the CCG and Clinical Directors, including:
  - Salary, including any performance-related pay or bonus;
  - Provisions for other benefits, including pensions and cars;
  - Allowances under any pension scheme it might establish as an alternative to the NHS pension scheme;
  - Other allowances;
- In considering the remuneration and conditions of service of the CCG's Executive Directors and senior managers, the Committee will be guided by the recommendations of the Chief Executive Officer;
- Make decisions on the remuneration and conditions of service of Governing Body Members, subject to the exclusions set out above at paragraph 2.2;
- Apply best practice to the decision making process. When considering remuneration the Committee will:

- Adhere to the CCG Standards for Business Conduct Policy;
- Where necessary seek independent advice about remuneration for individuals, including the use of benchmarking data;
- Ensure that decisions are based on clear and transparent procedures;
- Consider and make recommendations on the severance payments of senior employees, seeking HM Treasury approval as appropriate in accordance with HM Treasury guidance;
- Consider and make recommendations on the terms of compromise agreements for employees, and which fall outside the provisions of the contract of employment, before submission through the necessary approval process;
- Make decisions on the severance payments and any compromise agreements relating to non-employed Governing Body Members, seeking HM Treasury approval as appropriate in accordance with HM Treasury guidance and subject to the arrangements for members of the Committee, which will be dealt with in accordance with paragraph 2.2 above;
- Ensure processes are in place to monitor and evaluate the performance of Governing Body Members;
- Adhere to all relevant laws, regulations and policy in all respects, including:
  - National guidance;
  - The management cost cap;
  - Benchmarked information of other CCGs' costs;
  - The competing earnings potential in primary care;
- To determine levels of remuneration that are sufficient to attract, retain and motivate Governing Body Members and senior employees whilst remaining cost effective;
- Ensure proper calculation and scrutiny of termination payments taking account of appropriate national guidance, advise on and oversee appropriate contractual arrangements for such staff;
- Advise on and oversee appropriate contractual arrangements for staff, including redundancy arrangements in line with national or

local contracts of employment and appropriate guidance or legislation;

- Ensure that the Governing Body has the right balance of skills, knowledge and perspectives required for the Governing Body to function effectively;
- Oversee the appointment or election process for Governing Body Members, and consider nominations and confirm changes to the membership of the Governing Body;
- Develop an approach to succession planning for key Governing Body Members;
- Set the terms of office for Governing Body Members, ensuring that they are consistent with the provisions set out in the CCG's Constitution;
- Oversee the performance review process for all Governing Body Members including the Chair of the Governing Body; and
- Undertake any other appropriate duties as directed by the CCG Governing Body.

7. **Sub-Committees**

7.1 The Committee has no established sub-committees.

8. **Administrative Support**

8.1 The Executive Director of Communications, People and Public Involvement will ensure that a suitably appointed person, shall record the minutes of all meetings of the Committee. These will be retained by the chair and will be shared with members of the Committee and relevant attendees as determined by the chair.

8.2 The Chief Executive Officer and the Executive Director of Communications, People and Public Involvement will be responsible for supporting the chair in forward planning, agenda-setting, follow up of actions and circulation of minutes.

9. **Accountability and Reporting Arrangements**

9.1 The Committee will report to the Governing Body after each meeting, setting out its recommendations for Governing Body approval and determination on those matters where this is required. On matters where the Committee has delegated decision-making, it shall report to the Governing Body on its decision-making and note any matters arising for consideration by the Governing Body.

9.2 The approved minutes of each Committee meeting will also be provided to the Governing Body.

10. **Conduct of the Committee**

10.1 At the beginning of each meeting, the chair will ask members whether they have any interests to declare, in accordance with the CCG's Gifts, Hospitality and Declarations of Interests Policy.

10.2 If any member has an interest, financial or otherwise, in any matter and is present at the meeting at which the matter is under discussion, he/she will declare that interest as early as possible and act in accordance with the CCG's Conflicts of Interests Policy and Procedure. Subject to any previously agreed arrangements for managing a conflict of interest, the chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual must comply with these arrangements, which must be recorded in the minutes of the meeting.

10.3 Decision making will be by a simple majority of those present and voting at the relevant meeting. In the event that a vote is tied, the chair will have the casting vote.

10.4 Members of the Committee have a duty to demonstrate leadership in the observation of the NHS Code of Conduct and to work to the Nolan Principles, which are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

10.5 Committee papers will be stored and archived.

10.6 When there is an urgent matter where a decision is required outside of the meeting, the Committee may convene virtually in order to enable a decision to be made. Any decisions taken in this way must be properly minuted and reported, in accordance with the requirements set out in paragraph 9 above. Urgent decisions will only be taken when there is insufficient time available for the decision to be delayed until the next in-person meeting.

10.7 The Committee will apply best practice in its deliberations and in the decision making processes. It will conduct its business in accordance with national guidance and relevant codes of conduct and good governance practice.

10.8 All members of the Committee are expected to comply with all relevant policies and procedures relating to confidentiality and information governance, noting the sensitivity of the information that will be considered by the Committee.

11. **Monitoring Effectiveness and Compliance with Terms of Reference**

11.1 The Committee will carry out an annual review of its functioning and provide an annual report to the Audit and Risk Committee on its work in discharging its responsibilities, delivering its objectives and complying with its terms of reference.

12. **Review of Terms of Reference**

12.1 The terms of reference of the Committee shall be reviewed by the Governing Body at least annually.

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Review frequency: Annual
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Primary Care Commissioning Committee

NHS Brighton and Hove CCG

Primary Care Commissioning Committee

Terms of Reference

1. **Introduction**

1.1 Simon Stevens, the Chief Executive of NHS England, announced on 1 May 2014 that NHS England was inviting CCGs to expand their role in primary care commissioning and to submit expressions of interest setting out the CCG's preference for how it would like to exercise expanded primary medical care commissioning functions. One option available was that NHS England would delegate the exercise of certain specified primary care commissioning functions to a CCG.

1.2 In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended), NHS England has delegated the exercise of the functions specified in the delegation agreement to NHS Brighton and Hove CCG ("the Delegation Agreement"). The Delegation Agreement is set out in Schedule 1 to these terms of reference.

1.3 The NHS Brighton and Hove CCG has established the Primary Care Commissioning Committee ("Committee"). The Committee will function as a corporate decision-making body for the management of the delegated functions and the exercise of the delegated powers.

1.4 It is a Committee comprising representatives of NHS Brighton and Hove CCG.

2. **Statutory Framework**

2.1 NHS England has delegated to the CCG authority to exercise the primary care commissioning functions set out in Schedule 2 (of the Delegation Agreement) in accordance with section 13Z of the NHS Act 2006.

2.2 Arrangements made under section 13Z may be on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the CCG.

2.3 Arrangements made under section 13Z do not affect the liability of NHS England for the exercise of any of its functions. However, the CCG acknowledges that in exercising its functions (including those delegated to it), it must comply with the statutory duties set out in Chapter A2 of the NHS Act 2006 and including:

- Management of conflicts of interest (section 14O);
- Duty to promote the NHS Constitution (section 14P);
- Duty to exercise its functions effectively, efficiently, and economically (section 14Q);
- Duty as to improvement in quality of services (section 14R);
- Duty in relation to quality of primary medical services (section 14S);
- Duties as to reducing inequalities (section 14T);
- Duty to promote the involvement of each patient (section 14U);
- Duty as to patient choice (section 14V);
- Duty as to promoting integration (section 14Z1);
- Public involvement and consultation (section 14Z2).

2.4 The CCG will also need to specifically, in respect of the delegated functions from NHS England, exercise those in accordance with the relevant provisions of section 13 of the NHS Act 2006:

- Duty to have regard to impact on services in certain areas (section 13O);
- Duty as respects variation in provision of health services (section 13P).

2.5 The Committee is established as a committee of the Governing Body of NHS Brighton and Hove CCG in accordance with Schedule 1A of the NHS Act 2006.

2.6 The members acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State for Health and Social Care.

3. **Authority**

3.1 These terms of reference are applicable to the NHS Brighton and Hove CCG ("the CCG") Primary Care Commissioning Committee ("the Committee"), whether it meets on an "in common" basis or when it is locally managed.

3.2 The Committee is constituted as a committee of the CCG's Governing Body. The Committee is established in accordance with the CCG Constitution, Standing Orders and Scheme of Reservation and Delegation

Agreement. These terms of reference set out the membership, remit and responsibilities and reporting arrangements of the Committee and shall have effect as if incorporated into the CCG's Constitution and Standing Orders.

3.3 The Committee is authorised by the Governing Body to investigate any activity within its terms of reference. It is authorised to seek any information it requires from any member, officer, employee or agent/consultant who is directed to co-operate with any request made by the Committee. All members of staff and members of the CCG are directed to co-operate with any request made by the Committee.

3.4 The Committee is authorised to obtain such internal information as is necessary and expedient to the fulfilment of its functions.

3.5 The Committee will undertake when required 'deep dives' into specific issues that will enable the Committee to gain a greater level of understanding and assurance into specific issues that fall within its remit.

3.6 These terms of reference and the composition of the Committee will accord with any published national guidance.

4. Purpose and Specific Duties and Responsibilities

4.1 The Committee has been established in accordance with the above statutory provisions to enable the members to make collective decisions on the review, planning, and procurement of primary care services in the Brighton and Hove area under delegated authority from NHS England.

4.2 In performing its role the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and NHS Brighton and Hove CCG which will sit alongside the delegation and terms of reference.

4.3 The Committee's principal function is to ensure that the local arrangements for the commissioning of primary care services are undertaken with the utmost regard to the effective management of any actual or potential conflicts of interest. It also provides assurance to the Governing Body as to the development of the Primary Care strategy with specific focus upon Primary Care Networks. The Committee will at all times operate within the scope of these terms of reference and will have due regard to the Delegation Agreement between the CCG and NHS England.

4.4 The Committee will oversee all aspects of the provision and performance of primary care in a holistic manner. It is not intended that the work of the Committee will duplicate the work of any of the other committees of the Governing Body. However it is recognised that it is prudent for the

Committee to operate in conjunction with the other committees on cross-cutting matters. For example, it is therefore expected that the Committee will seek approval from the Finance and Performance Committee in financial matters that have implications beyond the primary care budget such as, but not limited to, future years' revenue implications of estates matters. Likewise, the Finance and Performance Committee will keep under review the CCG's achievement of national and local targets while the Committee will consider the performance of individual practices in these areas. It is also anticipated that the Quality Committee would be providing the Governing Body with assurance regarding the quality and safety of the services being provided within the whole of primary care while the Committee will consider practice-specific matters including inspection reports and support requirements.

4.5 The matters referred to at paragraph 4.4 are not an exhaustive list but are provided as illustrations of the collaborative manner in which the committees of the Governing Body can work together to provide comprehensive assurance.

4.6 The functions of the Committee are undertaken in the context of a desire to promote increased co-commissioning to increase quality, efficiency, productivity, and value for money; to remove administrative barriers and promote the stability of primary care.

4.7 The role of the Committee shall be to carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act 2006. This includes the following:

- GMS, PMS, and APMS contracts (including the design of PMS and APMS contracts, monitoring of contracts, taking contractual action such as issuing breach/remedial notices, and removing a contract);
- Newly designed enhanced services ("Local Enhanced Services" and "Directed Enhanced Services");
- Design of local incentive schemes as an alternative to the Quality Outcomes Framework ("QOF");
- Decision-making on whether to establish new GP practices in an area;
- Approving practice mergers;
- Making decisions on 'discretionary' payment (e.g., returner/retainer schemes).

4.8 The CCG will also carry out the following activities:

- To plan, including needs assessment of, primary medical care services in the Brighton and Hove area;
- To undertake reviews of primary medical care services in the Brighton and Hove area;
- To co-ordinate a common approach to the commissioning of primary care services generally;
- To manage the budget for commissioning of primary medical care services in the Brighton and Hove area;
- To support the development and ongoing effectiveness of Primary Care Networks.

5. **Geographical Coverage**

5.1 The Committee's responsibilities will cover the same geographical area as for NHS Brighton and Hove CCG as identified in the CCG's Constitution.

6. **The Membership**

6.1 The Committee shall be appointed by the NHS Brighton and Hove CCG as set out in the CCG's Constitution. Only Governing Body Members may be members of the Committee.

6.2 The Chair of the Committee shall be the Lay Vice Chair.

6.3 The membership of the Committee shall consist of:

- The Lay Vice Chair (who will chair the Committee) as referred to in paragraph 6.2 above;
- The Lay Member for Patient and Public Engagement, who will be the Deputy Chair of the Committee;
- The Independent Clinical Member - Secondary Care Clinician;
- The Independent Clinical Member - GP;
- The Executive Director of Primary Care (or nominated deputy);
- The Deputy Chief Executive Officer (or nominated deputy);
- The Chief Finance Officer (or nominated deputy);
- The Chief Nurse (or nominated deputy).

7. **Attendees and Quorum**

7.1 The Committee will extend a standing invitation to the following (who will be attendees at the meetings and not voting members of the Committee):

- All Locality Representatives on the Governing Body;
- A local Healthwatch representative;
- A representative of the local Health and Wellbeing Board;
- The Director of Public Health, Brighton and Hove City Council;
- A representative of Adult Social Care, Brighton and Hove City Council;
- A representative of the Local Medical Committee;
- A representative of NHS England.

7.2 The quorum for the meetings will be no fewer than three members of the Committee comprising:

- At least one Lay Member of the Governing Body;
- At least one clinical member of the Committee (Independent Clinical Member: Secondary Care Clinician, Independent Clinical Member - GP or Independent Clinical Member - Registered Nurse);
- At least one CCG officer (Executive Director of Primary Care, Chief Finance Officer or nominated deputy, Chief Nurse, and/or Deputy Chief Executive Officer).

8. **Meetings and Voting**

8.1 The Committee will operate in accordance with the CCG's Standing Orders. The Secretary to the Committee will be responsible for giving notice of meetings. This notice will be accompanied by an agenda and supporting papers and sent to each member representative no later than five days before the date of the meeting. When the Chair of the Committee deems it necessary in light of urgent circumstances to call a meeting at short notice the notice period shall be such as s/he shall specify.

8.2 Each member of the Committee shall have one vote. The Committee shall reach decisions by a simple majority vote of members present but with the Chair having a second and deciding vote if necessary. However, the aim of the Committee will be to achieve consensus decision-making wherever possible.

9. **Frequency of Meetings**

9.1 The meetings will be held on a bi-monthly basis.

9.2 The meetings of the Committee shall be held in public, unless the Committee resolves to meet in private as follows:

- The Committee may resolve to exclude the public from a meeting that is open to the public (whether during the whole or a part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

10. **Administrative Support**

10.1 The Executive Director of Corporate Governance shall ensure arrangements are put in place to record the minutes of all meetings of the Committee.

10.2 The Executive Director of Primary Care will be responsible for supporting the chair in forward planning, agenda-setting, follow up of actions and circulation of minutes.

11. **Accountability and Reporting Arrangements**

11.1 The Committee is accountable for making decisions on the review, planning, and procurement of primary care services in Brighton and Hove under authority delegated to the CCG from NHS England.

11.2 For the avoidance of doubt in the event of any conflict between the terms of the Delegation Agreement and these terms of reference, the CCG's Standing Orders or its Standing Financial Instructions, the Delegation Agreement will prevail.

11.3 The Committee will present a report to the South East area team of NHS England following each meeting for information, including details of the activities of any sub-committees to which responsibilities are delegated.

11.4 In addition, a summary report from the Committee shall be formally submitted, together with recommendations where appropriate, to the Governing Body.

11.5 The approved minutes of each Committee meeting will also be provided to the Governing Body.

12. Conduct of the Committee

12.1 At the beginning of each meeting, the Chair of the Committee will ask members whether they have any interests to declare, in accordance with the CCG's Conflicts of Interests Policy and Procedure.

12.2 If any member has an interest, pecuniary or otherwise, in any matter and is present at the meeting at which the matter is under discussion, he/she will declare that interest as early as possible and act in accordance with the CCG's Conflicts of Interests Policy and Procedure. Subject to any previously agreed arrangements for managing a conflict of interest, the Chair of the Committee may require the individual to withdraw from the meeting or part of it. The individual must comply with these arrangements, which must be recorded in the minutes of the meeting.

12.3 Decision for each CCG will be by a simple majority of those present and voting at the relevant meeting. In the event that a vote is tied, the Chair of the Committee will have the casting vote.

12.4 Members of the Committee have a duty to demonstrate leadership in the observation of the NHS Code of Conduct and to work to the Nolan Principles, which are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

12.5 The members of the Committee have a collective responsibility for the operation of the Committee. They will participate in discussions, review evidence, and provide objective expert input to the best of their knowledge and ability and endeavour to reach a collective view.

12.6 The Committee may delegate tasks to such individuals, sub-committees, or individual members as it shall see fit provided that any such delegations are consistent with the parties' relevant governance arrangements, are recorded in a scheme of delegation, are governed by terms of reference as appropriate, and reflect appropriate arrangements for the management of conflicts of interest.

12.7 The Committee may call additional experts to attend meetings on an ad hoc basis to inform discussions.

12.8 All members of the Committee are expected to comply with all relevant policies and procedures relating to confidentiality and information governance, noting the sensitivity of the information that will be considered by the Committee.

12.9 The CCG will also comply with any reporting requirements set out in its Constitution.

12.10 These terms of reference will be reviewed from time to time reflecting the experience of the Committee in fulfilling its functions. NHS England may also issue revised model terms of reference from time to time.

13. Procurement of Agreed Services

13.1 The general obligations regarding procurement are set out in Schedule 2 Part 2 of the Delegation Agreement. The CCG must comply at all times with procurement law and any other relevant statutory provisions and have regard to any relevant guidance/protocol issued and updated by NHS England from time to time.

14. Decisions

14.1 The Committee will make decisions within the bounds of its remit.

14.2 The decisions of the Committee shall be binding on NHS Brighton and Hove CCG and NHS England.

15. Monitoring Effectiveness and Compliance with Terms of Reference

15.1 The Committee will carry out an annual review of its functioning and provide an annual report to the Audit and Assurance Committee on its work in discharging its responsibilities, delivering its objectives and complying with its terms of reference, specifically commenting on relevant aspects of the Board Assurance Framework and relevant regulatory frameworks.

16. Review of Terms of Reference

16.1 The terms of reference of the Committee shall be reviewed by the Governing Body at least annually.

Version Control:

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<u>Schedule 1</u> – Delegation to the Primary Care Commissioning Committee

"The Delegation Agreement"

1718 Delegation
Agreement Brighton a

Delegation Agreement

1. Particulars

1.1. This Agreement records the particulars of the agreement made between NHS England and the Clinical Commissioning Group named below.

Area	**City of Brighton and Hove**
Clinical Commissioning Group	**Brighton & Hove Clinical Commissioning Group**
CCG Representative	**Adam Doyle**
CCG Address for Notices	**Hove Town Hall Norton Road Hove East Sussex BN3 3BQ**
Date of Agreement	
Delegation	**means the delegation made by NHS England to the CCG of certain functions relating to primary medical services under section 13Z of the NHS Act and effective from 1 April 2015 (as amended pursuant to the Delegation)**
NHS England Representative	**Felicity Cox, Director of Commissioning Operations**
Local NHS England Team	**South (South East)**
NHS England Address for Notices	**York House 18-20 Massett Road Horley Surrey RH6 7DE**

1.2. This Agreement comprises:

1.2.1. the Particulars (Clause 1);

1.2.2. the Terms and Conditions (Clauses 2 to 24 and Schedule 1 to Schedule 6 and Schedule 8 to this Agreement); and

1.2.3. the Local Terms (Schedule 7).

Signed by **NHS England**
Paul Bauman (for and on behalf of NHS England)

Brighton and Hove CCG
Adam Doyle, Chief Accountable Officer

Signed by

Terms and Conditions

A. Introduction

2. Interpretation

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

2.2. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Delegation, the provisions of the Delegation will prevail.

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

2.3.1. the Particulars and Terms and Conditions (Clauses 1 to 24 and, in particular, clause 8.7);
2.3.2. Schedule 1 to Schedule 6 and Schedule 8 to this Agreement; and
2.3.3. Schedule 7 *(Local Terms)*.

2.4. This Agreement and any ancillary agreements it refers to constitute the entire agreement and understanding between the Parties relating to the Delegation and supersedes all previous agreements, promises and understandings between them, whether written or oral, relating to its subject matter.

3. Background

3.1. NHS England has delegated the Delegated Functions to the CCG under section 13Z of the NHS Act and as set out in the Delegation.

3.2. Arrangements made under section 13Z of the NHS Act may be made on such terms and conditions (including terms as to payment) as may be agreed between NHS England and the CCG.

3.3. This Agreement sets out the arrangements that apply in relation to the exercise of the Delegated Functions by the CCG.

3.4. For the avoidance of doubt, functions relating to the commissioning of primary care pharmacy, dental and optical contracts are not delegated to the CCG under the Delegation. The Delegation relates only to the delegation and reservation of primary medical services commissioning functions as set out in this Agreement.

4. Term

4.1. This Agreement has effect from the date set out in paragraph 5 of the Delegation and will remain in force unless terminated in accordance with clause 17 *(Termination)* below.

5. Principles

5.1. In performing their obligations under this Agreement, NHS England and the CCG must:

5.1.1. at all times act in good faith towards each other;
5.1.2. at all times exercise functions effectively, efficiently and economically;
5.1.3. act in a timely manner;
5.1.4. share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
5.1.5. at all times observe relevant statutory powers, requirements and best practice to ensure compliance with applicable laws and standards including those governing procurement, and Information Law; and
5.1.6. have regard to the needs and views of the other Party and as far as is lawful and reasonably practicable, take such needs and views into account.

B. Role of the CCG

6. Performance of the Delegated Functions

6.1. The role of the CCG will be to exercise the Delegated Functions in the Area.

6.2. The Delegated Functions are the functions set out in Schedule 1of the Delegation and being:

6.2.1. decisions in relation to the commissioning, procurement and management of Primary Medical Services Contracts, including but not limited to the following activities:

6.2.1.1. decisions in relation to Enhanced Services;
6.2.1.2. decisions in relation to Local Incentive Schemes (including the design of such schemes);
6.2.1.3. decisions in relation to the establishment of new GP practices (including branch surgeries) and closure of GP practices;
6.2.1.4. decisions about 'discretionary' payments;
6.2.1.5. decisions about commissioning urgent care (including home visits as required) for out of area registered patients;

6.2.2. the approval of practice mergers;
6.2.3. planning primary medical care services in the Area, including carrying out needs assessments;
6.2.4. undertaking reviews of primary medical care services in the Area;
6.2.5. decisions in relation to the management of poorly performing GP practices and including, without limitation, decisions and liaison with the CQC where the CQC has reported non-compliance with standards (but excluding any decisions in relation to the performers list);
6.2.6. management of the Delegated Funds in the Area;
6.2.7. Premises Costs Directions Functions;
6.2.8. co-ordinating a common approach to the commissioning of primary care services with other commissioners in the Area where appropriate; and
6.2.9. such other ancillary activities that are necessary in order to exercise the Delegated Functions.

6.3. Schedule 2 *(Delegated Functions)* sets out further detail in relation to the Delegated Functions and the exercise of such Delegated Functions.

6.4. The CCG agrees that it must perform the Delegated Functions in accordance with:

6.4.1. the Delegation;
6.4.2. the terms of this Agreement;
6.4.3. all applicable Law;
6.4.4. the CCG's constitution;
6.4.5. Statutory Guidance; and
6.4.6. Good Practice.

6.4A The CCG must have due regard to Guidance and Contractual Notices.

6.5. Without prejudice to clause 6.4, the CCG agrees that it must perform the Delegated Functions in such a manner as to ensure NHS England's compliance with NHS England's statutory duties in respect of the Delegated Functions and to enable NHS England to fulfil its Reserved Functions.

6.6. When performing the Delegated Functions, the CCG will not do anything, take any step or make any decision outside of its delegated authority as set out in the Delegation.

6.7. Without prejudice to any other provision in this Agreement, the CCG must comply with the NHS England central finance team's operational process (as such process is updated from time to time) for the reporting and accounting of the Delegated Funds. In particular, the CCG will be required to permit the NHS England central finance team and/or their agents and contractors authorised by them to have the ability to access the CCG ledger to provide the services required to deliver financial support and assistance to the CCG necessary to enable them to manage the Delegated Funds and exercise the Delegated Functions. NHS England and the CCG will agree any accruals to be made including any adjustments related to the relevant Financial Year expenditure to ensure no net financial impact or gain on the CCG.

6.8. The decisions of the CCG in exercising the Delegated Functions will be binding on the CCG and NHS England.

7. Committee

7.1. The CCG must establish a committee to exercise its Delegated Functions.

7.2. The structure and operation of the committee must be constituted so as to take into account Guidance issued by NHS England including the *revised statutory guidance on managing conflicts of interest for CCGs* https://www.england.nhs.uk/commissioning/pc-co-comms/coi/

C. Functions reserved to NHS England

8. Performance of the Reserved Functions

8.1. The role of NHS England will be to exercise the Reserved Functions.

8.2. Subject to clause 8.3, the Reserved Functions are all of NHS England's functions relating to primary medical services other than the Delegated Functions and including those functions set out in Schedule 2of the Delegation and being:

8.2.1. management of the national performers list;
8.2.2. management of the revalidation and appraisal process;
8.2.3. administration of payments in circumstances where a performer is suspended and related performers list management activities;
8.2.4. Capital Expenditure Functions;
8.2.5. Section 7A Functions;
8.2.6. functions in relation to complaints management;
8.2.7. decisions in relation to the GP Access Fund; and
8.2.8. such other ancillary activities that are necessary in order to exercise the Reserved Functions.

8.3. For the avoidance of doubt, the Parties acknowledge that the Delegation may be amended and additional functions may be delegated to the CCG, in which event consequential changes to this Agreement shall be agreed with the CCG pursuant to clause 22 *(Variations)* of this Agreement.

8.4. Schedule 3 *(Reserved Functions)* sets out further detail in relation to the Reserved Functions.

8.5. To support and assist NHS England in carrying out the Reserved Functions, the CCG will share information with NHS England in accordance with section E *(Information)* below.

8.6. NHS England will work collaboratively with the CCG when exercising the Reserved Functions, including discussing with the CCG how it proposes to address GP performance issues.

8.7. If there is any conflict or inconsistency between functions that are named as Delegated Functions and functions that are named as Reserved Functions then such functions shall be interpreted as Reserved Functions.

8.8. The Parties acknowledge that, as at the date of this Agreement, the CCG shall provide administrative and management services to NHS England in relation to certain Reserved Functions and that such administrative and management services are as follows:

8.8.1. the administrative and management services in relation to the Capital Expenditure Functions and the Capital Expenditure Funds as more particularly set out in clauses 13.13 to 13.16; and

8.8.2. the administrative and management services in relation to the Section 7A Functions and Section 7A Funds as more particularly set out in clauses 13.17 to 13.20.

8.9. The Parties further acknowledge that NHS England may ask the CCG to provide certain administrative and management services to NHS England in relation to other Reserved Functions as more particularly set out in clauses 13.21 to 13.23. Such administrative and management

services shall only be provided by the CCG following agreement by the CCG.

8.10. Notwithstanding any arrangement for or provision of administrative or management services in respect of certain Reserved Functions, NHS England shall retain and be accountable for the exercise of such Reserved Functions.

D. Commissioning

9. Monitoring and Reporting – General Requirements

9.1. The CCG must comply with any reporting requirements under:

9.1.1. this Agreement (including, without limitation, as required by clause 9 *(Monitoring and Reporting – General Requirements)*, clause 12 *(Public Information and Access Targets)*, clause 13 *(Financial Provisions and Liability)*, clause 14 *(Claims and Litigation)* and Schedule 2 Part 1 paragraph 2 *(Primary Medical Services Contract Management)* and paragraph 5 *(Information Sharing with NHS England))*;

9.1.2. the CCG Assurance Framework; and

9.1.3. the CCG's constitution.

9.2. NHS England shall monitor the exercise and carrying out of the Delegated Functions by the CCG under the terms of this Agreement and as part of the CCG Assurance Framework.

9.3. The CCG will notify NHS England of all primary medical services commissioning committee meetings at least seven (7) days in advance of such meetings and NHS England will be entitled to attend such meetings at its discretion.

9.4. The CCG must provide to NHS England:

9.4.1. all information in relation to the exercise of the Delegated Functions (including in relation to the Delegation or this Agreement), (and in such form) as requested by NHS England from time to time; and

9.4.2. all such information (and in such form), that may be relevant to NHS England in relation to the exercise by NHS England of its other duties or functions including, without limitation, the Reserved Functions.

9.5. Nothing in this Agreement shall affect NHS England's power to require information from the CCG under sections 14Z17, 14Z18, 14Z19 and 14Z20 of the NHS Act.

E. Information

10. Information Sharing and Information Governance

10.1. Schedule 4 *(Further Information Sharing Provisions)* makes further provision about information sharing and information governance.

10.2. NHS England and the CCG will enter into a Personal Data Agreement that will govern the processing of Relevant Information that identifies individuals under this Agreement. A template Personal Data Agreement is set out in Schedule 4 *(Further Information Sharing Provisions)*.

10.3. The Personal Data Agreement:

10.3.1. sets out the relevant Information Law and best practice, including the requirements of the NHS Digital IG Toolkit;

10.3.2. sets out how that law and best practice will be implemented, including responsibilities of the Parties to co-operate properly and fully with each other;

10.3.3. identifies the Relevant Information that may be processed, including what may be shared, under this Agreement;

10.3.4. identifies the purposes for which the Relevant Information may be so processed and states the legal basis for the processing in each case;

10.3.5. states who is/are the data controller/s and, if appropriate, the data processor/s of Personal Data;

10.3.6. sets out what will happen to the Personal Data on the termination of this Agreement (with due regard to clause 17 (*Termination)* of the Agreement); and

10.3.7. sets out such other provisions as are necessary for the sharing of Relevant Information to be fair, lawful and meet best practice.

10.4. NHS England and the CCG will share all Non-Personal Data in accordance with Information Law and their statutory powers as set out in section 13Z3 (for NHS England) and section 14Z23 (for the CCG) of the NHS Act.

10.5. The Parties agree that, in relation to information sharing and the processing of Relevant Information under the Delegation and this Agreement, they must comply with:

10.5.1. all relevant Information Law requirements including the common law duty of confidence (unless disapplied by statute) and other legal obligations in relation to information sharing including those set out in the NHS Act and the Human Rights Act 1998;

10.5.2. Good Practice; and

10.5.3. relevant guidance (including guidance given by the Information Commissioner, the Caldicott Principles, the requirements of the NHS Information Governance Toolkit to level 2, and guidance issued further to sections 263 and 265 of the HSCA) and consistent with guidance issued under section 13S of the NHS Act to providers.

11. IT inter-operability

11.1. NHS England and the CCG will work together to ensure that all relevant IT systems operated by NHS England and the CCG in respect of the Delegated Functions and the Reserved Functions are inter-operable and that data may be transferred between systems securely, easily and efficiently.

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

12. Public Information and Access Targets

12.1. The CCG must promptly make available to NHS England such information as is required in respect of the Delegated Functions to ensure NHS England's discharge of its statutory duties.

12.2. The CCG must ensure that all new Primary Medical Services Contracts contain appropriate provisions such that the CCG is able to discharge its obligations in clause 12.1.

12.3. The CCG must ensure that any information provided under this Agreement complies with all relevant national data sets issued by NHS England and NHS Digital.

F. General

13. Financial Provisions and Liability

Notification of the Delegated Funds and Adjustments to the Delegated Funds

13.1. NHS England will, in respect of each Financial Year, notify the CCG of the proportion of the funds allocated to NHS England by the Secretary of State pursuant to Chapter 6 of the NHS Act and which are to be paid to the CCG for the purpose of meeting expenditure in respect of the Delegated Functions for that Financial Year (the **"Delegated Funds"**).

13.2. Except in relation to pooled funds and subject to the terms of this clause 13 *(Financial Provisions and Liability)* and, in particular, clause 13.4, the CCG must use the Delegated Funds to meet expenditure in respect of the exercise of the Delegated Functions. Without prejudice to the generality of the foregoing, the CCG must make:

13.2.1. all payments in relation to the Primary Medical Services Contracts including payments in relation to QOF and implementing financial adjustments or sanctions (including in relation to breaches of provider obligations); and

13.2.2. all payments under the Premises Costs Directions.

13.3. NHS England may, in any Financial Year by sending a notice to the CCG of such increase or decrease, increase or reduce the Delegated Funds:

13.3.1. in order to take into account any monthly adjustments or corrections to the Delegated Funds that NHS England considers appropriate (following discussions with the CCG), including without limitation adjustments following any changes to the Delegation or Delegated Functions (including changes pursuant to paragraph 6 or paragraph 16 of the Delegation), changes in allocations, changes in contracts or otherwise;

13.3.2. in order to comply with a change in the amount allocated to NHS England by the Secretary of State pursuant to section 223B of the NHS Act;

13.3.3. to take into account any Losses arising under clause 13.35;

13.3.4. to take into account any Claim Losses;

13.3.5. to take into account any adjustments that NHS England considers appropriate (including without limitation in order to make corrections or otherwise to reflect notional budgets) to reflect funds transferred (or that should have been transferred) to the CCG in respect of the Delegated Funds and/or funds transferred (or that should have been transferred) to the CCG and in respect of which the CCG has management or administrative responsibility under clauses 13.13 to 13.23 of this Agreement; or

13.3.6. in order to ensure compliance by NHS England of its obligations under the NHS Act (including without limitation, Chapter 6 of the NHS Act) or the HSCA or any action taken or direction made by the Secretary of State under the NHS Act or the HSCA.

13.3A NHS England acknowledges that the intention of clause 13.3 is to reflect genuine corrections and adjustments to the Delegated Funds and may not be used to change the allocation of the Delegated Funds unless there are significant or exceptional circumstances that would require such corrections or adjustments (including but not limited to a change in the mandate published by the Department of Health or other external factors).

13.4. The CCG acknowledges that it must comply with its statutory financial duties, including those under sections 223H and 223I of the NHS Act to the extent that these sections apply in relation to the receipt of the Delegated Funds.

13.5. The CCG acknowledges its duty under section 14S of the NHS Act to assist and support NHS England in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services and agrees that it shall take this duty into account in relation to the exercise of the Delegated Functions and the use of the Delegated Funds.

13.6. The CCG must ensure that it uses the Delegated Funds in such a way as to ensure that NHS England is able to fulfil its functions, including without limitation the Reserved Functions, effectively and efficiently in accordance with this Agreement.

13.7. NHS England may in respect of the Delegated Funds:

13.7.1. notify the CCG of the capital resource limit and revenue resource limit that will apply in any Financial Year;

13.7.2. notify the CCG regarding the payment of sums by the CCG to NHS England in respect of charges referable to the valuation or disposal of assets and such conditions as to records, certificates or otherwise;

13.7.3. by notice, require the CCG to take such action or step in respect of the Delegated Funds, in order to ensure compliance by NHS England of its duties or functions under the NHS Act or the HSCA (including without limitation, Chapter 6 of the NHS Act) or any action taken or direction made by the Secretary of State under the NHS Act or the HSCA (including, without limitation, Chapter 6 of the NHS Act).

13.8. Schedule 5 *(Financial Provisions and Decision Making Limits)* sets out further financial provisions in respect of the exercise of the Delegated Functions and, in particular, Table 1 in Schedule 5 *(Financial Provisions and Decision Making Limits)* sets out certain financial limits and approvals required in relation to the exercise of the Delegated Functions. NHS England's Standing Financial Instructions shall be updated accordingly.

Payment and Transfer

13.9. The CCG acknowledges that the Delegated Funds do not form part of and are separate to the funds allocated annually under section 223G of the NHS Act (the **"Annual Allocation"**).

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

13.11. Without prejudice to any other obligation upon the CCG, the CCG agrees that it must deal with the Delegated Funds in accordance with:

13.11.1. the terms and conditions of this Agreement;

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

13.11.3. any Capital Investment Guidance or Primary Medical Care Infrastructure Guidance;

13.11.4. any Guidance or Contractual Notice issued by NHS England from time to time in relation to the Delegated Funds (including in relation to the form or contents of any accounts in relation to the Delegated Funds); and

13.11.5. the HM Treasury guidance *Managing Public Money* (dated July 2013 and found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf).

13.12. Without prejudice to any other obligation upon the CCG, the CCG agrees that it must provide all information, assistance and support to NHS England in relation to the audit and/or investigation (whether internal or external and whether under Law or otherwise) in relation to the use of or payment of the Delegated Funds and the discharge of the Delegated Functions.

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

13.13. The Parties acknowledge that the Capital Expenditure Functions are a Reserved Function.

13.14. The Parties further acknowledge that:

13.14.1. accordingly, the Delegated Funds do not include any funds in respect of amounts payable in relation to the Capital Expenditure Functions (**"Capital Expenditure Funds"**); and

13.14.2. NHS England remains responsible and accountable for the discharge of the Capital Expenditure Functions and nothing in clauses 13.13 to 13.16 shall be construed as a divestment or delegation of NHS England's Capital Expenditure Functions.

13.15. Without prejudice to clause 13.14 above, the CCG will comply with any Guidance issued in relation to the Capital Expenditure Functions and shall (on request from NHS England) provide the following administrative services to NHS England in respect of the Capital Expenditure Funds:

13.15.1. the administration and payment of sums that NHS England has approved as payable in relation to the Capital Expenditure Functions;

13.15.2. if requested by NHS England and taking into account (i) any other support or services provided to NHS England by NHS Property Services Limited or otherwise and (ii) any Guidance issued in respect of the Capital Expenditure Functions, the provision of advice and/or recommendations to NHS England in respect of expenditure to be made under the Capital Expenditure Functions; and

13.15.3. such other support or administrative assistance to NHS England that NHS England may reasonably request in order to facilitate the discharge by NHS England of its responsibilities under or in respect of the Capital Expenditure Functions.

13.16. NHS England may, at the same time as it transfers the Delegated Funds to the CCG under clause 13.10, transfer to the CCG such amounts as are necessary to enable the discharge of the CCG's obligations under this clause 13 *(Financial Provisions and Liability)* in respect of the Capital Expenditure Functions.

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

13.17. The Parties acknowledge that the Section 7A Functions are part of the Reserved Functions.

13.18. The Parties further acknowledge that:

13.18.1. accordingly, the Delegated Funds do not include any funds in respect of amounts payable in relation to the Section 7A Functions (whether such arrangements are included in or under Primary Medical Services Contracts or not) (**"Section 7A Funds"**); and

13.18.2. NHS England remains responsible and accountable for the discharge of the Section 7A Functions and nothing in this clause 13 *(Financial Provisions and Liability)* shall be construed as a divestment or delegation of the Section 7A Functions.

13.19. The CCG will provide the following services to NHS England in respect of the Section 7A Funds:

13.19.1. the administration and payment of sums that NHS England has approved as payable under or in respect of arrangements for the Section 7A Functions; and

13.19.2. such other support or administrative assistance to NHS England that NHS England may reasonably request in order to facilitate the discharge by NHS England of its responsibilities under or in respect of the Section 7A Funds.

13.20. NHS England shall, at the same time as it transfers the Delegated Funds to the CCG under clause 13.10, transfer to the CCG such amounts as are necessary to enable the discharge of the CCG's obligations under this clause 13 *(Financial Provisions and Liability)* in respect of the Section 7A Funds.

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

13.21. NHS England may ask the CCG to provide certain management and/or administrative services to NHS England (from a date to be notified by NHS England to the CCG) in relation to:

13.21.1. the carrying out of any of the Reserved Functions; and/or

13.21.2. without prejudice to the generality of clause 13.21.1, the handling and consideration of complaints.

13.22. If NHS England makes such a request to the CCG, then the CCG will, but only if the CCG agrees to provide such services, from the date requested by NHS England, comply with:

13.22.1. provisions equivalent to those set out above in relation to the Capital Expenditure Functions (clauses 13.13 to 13.16) and the Section 7A Functions (clauses 13.17 to 13.20) including in relation to the administration of any funds for such functions but only to the extent that such provisions are relevant to the management or administrative services to be provided; and

13.22.2. such other provisions in respect of the carrying out of such management and administrative services as agreed between NHS England and the CCG.

13.23. If NHS England asks the CCG to provide certain management and administrative services in relation to the handling and consideration of complaints and if the CCG agrees to provide such management and administrative services (with such agreement to be recorded as a variation pursuant to clause 22 *(Variations)*) then:

13.23.1. NHS England may, in any Contractual Notice issued by NHS England in respect of such service (and as referred to in clause 13.22.2), specify procedures and responsibilities of the CCG and NHS England in relation to such complaints under the Complaints Regulations and all other Law; and

13.23.2. such Contractual Notice may specify procedures in relation to the provision of an annual report to the Chief Executive of NHS England, procedures in relation to the approval of decisions in relation to complaints and/or the appointment of

a responsible person by NHS England pursuant to the Complaints Regulations;

13.23.3. such services shall be arrangements made under the provisions of Regulation 3 of the Complaints Regulations; and

13.23.4. provided that any Contractual Notice issued pursuant to this clause shall be discussed and agreed with the CCG prior to the issue of the Contractual Notice by NHS England.

Pooled Funds

13.24. The CCG may, for the purposes of exercising the Delegated Functions under this Agreement, establish and maintain a pooled fund in respect of any part of the Delegated Funds with NHS England in accordance with section 13V of the NHS Act except that the CCG may only do so if NHS England (at its absolute discretion) consents in writing to the establishment of the pooled fund (including any terms as to the governance and payments out of such pooled fund).

13.25. At the date of this agreement, details of the pooled funds (including any terms as to the governance and payments out of such pooled fund) of NHS England and the CCG are set out in the Local Terms.

Business Plan, Commissioning Plan and Annual Report

13.26. Within two (2) months of the date of the Delegation and thereafter three (3) months before the start of each Financial Year, the CCG must prepare a plan setting out how it proposes to exercise the Delegated Functions in that Financial Year and in each of the next two (2) Financial Years (or over such longer period as NHS England may require).

13.27. The plan must, in particular, explain how the CCG proposes to ensure NHS England's compliance with its duties in relation to the Delegated Functions under the NHS Act, including without limitation:

13.27.1. sections 223C *(expenditure)*, 223D *(controls on total resource use)* and 223E *(additional controls on resource use)* of the NHS Act; and

13.27.2. sections 13E *(duty as to improvement in quality of services)*, 13G *(duty as to reducing inequalities)* and 13Q *(public involvement and consultation)* of the NHS Act.

13.28. The plan must include the following:

13.28.1. details of how the CCG proposes to exercise the Delegated Functions in that Financial Year and in each of the next two (2) Financial Years; and

13.28.2. details of how the CCG proposes to ensure NHS England's compliance with its duties to achieve any objectives and requirements relating to the Delegated Functions which are specified in the mandate published by the Department of Health to NHS England for the first Financial Year to which the plan relates; and

13.28.3. any other information or detail that NHS England considers necessary to ensure NHS England's compliance with its obligations under section 13T of the NHS Act or any other provision of the NHS Act or other Law.

13.29. The CCG must revise the plan at the request of NHS England and submit a revised plan to NHS England before the date specified by NHS England from time to time.

13.30. As soon as practicable after the end of each Financial Year (and in any event within two (2) months of the end of each Financial Year or such longer period as NHS England may specify), the CCG must provide to NHS England a report on how the CCG has exercised the Delegated Functions during the previous Financial Year.

13.31. The report referred to in clause 13.30 above must include sufficient detail to ensure NHS England's compliance with its statutory obligations under section 13U of the NHS Act.

13.32. Following receipt of the report referred to in clause 13.30 above, NHS England may (at its absolute discretion) require such further information from the CCG as NHS England considers necessary to ensure NHS England's compliance with its obligations under section 13U of the NHS Act.

13.33. The CCG shall comply with any Contractual Notices issued from time to time by NHS England in relation to the inclusion of information in relation to the Delegated Functions in any plan prepared by the CCG under section 14Z11 of the NHS Act or in any report prepared under section 14Z15 of the NHS Act.

Risk sharing

13.34. In accordance with section 13Z(6) of the NHS Act, NHS England retains liability in relation to the exercise of the Delegated Functions and nothing in this Agreement affects the liability of NHS England in relation to the Delegated Functions.

13.34A For the avoidance of doubt, NHS England retains liability in respect of any Losses arising in respect of NHS England's negligence, fraud, recklessness or deliberate breach in respect of the Delegated Functions and, if the CCG suffers any Losses in respect of such actions by NHS England, NHS England shall make such adjustments to the Delegated Funds (or other amounts payable to the CCG) in order to reflect any Losses suffered by the CCG (except to the extent that the CCG is liable for such Loss pursuant to clause 13.35).

13.35. The CCG is liable (and shall pay) to NHS England for any Losses suffered by NHS England that result from or arise out of the CCG's negligence, fraud, recklessness or deliberate breach of the Delegation (including any actions that are taken that exceed the authority conferred by the Delegation) or this Agreement and, in respect of such Losses, NHS England may, at its discretion and without prejudice to any other rights, either require payment from the CCG or make such adjustments to the Delegated Funds pursuant to clause 13.3. The CCG shall not be liable to the extent that the Losses arose prior to the date of this Agreement.

13.36. Nothing in this clause 13 *(Financial Provisions and Liability)* or this Agreement shall affect or prejudice NHS England's right to exercise its rights (whether arising under administrative law, common law or statute) in relation to actions or steps of the CCG, including any actions or steps

that exceed the authority conferred by the Delegation or are a breach of the terms and conditions of this Agreement.

14. Claims and Litigation

14.1. Schedule 2 *(Delegated Functions)* sets out further detail in relation to the performance management of the Primary Medical Services Contracts.

14.2. Nothing in this clause 14 *(Claims and Litigation)* shall be interpreted as affecting the reservation to NHS England of the Reserved Functions (including the reservation to NHS England of all functions in relation to the performers list activities).

14.3. Except in the circumstances set out in clause 14.7 and subject always to compliance with this clause 14 *(Claims and Litigation)*, the CCG shall be responsible for and shall retain the conduct of any Claim.

14.4. The CCG must:

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

14.4.2. without prejudice to clause 14.4.1, in respect of legal advice or assistance in relation to a Claim, comply with any requirements of NHS England from time to time (whether set out in a policy issued pursuant to clause 14.4.1 or otherwise) in relation to the use of solicitors or barristers and, at the date of this Agreement, NHS England's requirement is that a CCG must obtain prior approval from NHS England in respect of the firm of solicitors instructed to provide legal advice or assistance in relation to a Claim;

14.4.3. 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;

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

14.4.5. 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

14.4.6. 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 NHSLA or any insurer in relation to such Claim.

14.5. NHS England shall use its reasonable endeavours to keep the CCG informed in respect of the conduct and/or outcome of the Claim except that NHS England shall have no obligation to do so due to any administrative or regulatory requirement, the requirement of any insurer or the NHSLA or for any other reason that NHS England may consider necessary or appropriate, at its absolute discretion, in relation to the conduct of that Claim or related matter.

14.6. Subject to clause 14.4 and Schedule 5 *(Financial Provisions and Decision Making Limits)* the CCG is entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit.

NHS England Stepping into Claims

14.7. NHS England may, at any time following discussion with the CCG, send a notice to the CCG stating that NHS England will take over the conduct of the Claim and the CCG must immediately take all steps necessary to transfer the conduct of such Claim to NHS England. In such cases, NHS England shall be entitled to conduct the Claim in the manner it considers appropriate and is also entitled to pay or settle any Claim on such terms as it thinks fit.

NHS England Stepping out of Claims

14.8. NHS England may, at any time after it has exercised its rights set out in clause 14.7 above and following discussion with the CCG, send a notice

to the CCG stating that the CCG will be required to take over the conduct of the Claim from NHS England and NHS England must immediately take all steps necessary to transfer the conduct of such Claim to the CCG. In such cases, the CCG shall be entitled to conduct the Claim in the manner it considers appropriate in accordance with its obligations under this clause 14 *(Claims and Litigation)* and subject to Schedule 4 *(Further Information Sharing Provisions)* and Schedule 5 *(Financial Provisions and Decision Making Limits)*.

Claim Losses

14.9. The CCG and NHS England shall notify each other within a reasonable time period of becoming aware of any Claim Losses.

14.10. If the CCG considers that, as a result of a Claim Loss, the Delegated Funds will be insufficient to meet the Claim Loss as well as discharge the Delegated Functions, then the CCG shall immediately notify NHS England and the Parties shall meet to discuss and agree any adjustment that may be needed pursuant to clause 13.3 (and taking into account any funds, provisions or other resources retained by NHS England in respect of such Claim Losses).

14.11. The CCG acknowledges that NHS England will pay to the CCG the funds that are attributable to the Delegated Functions. Accordingly, the CCG acknowledges that the Delegated Funds are required to be used to discharge and/or pay any Claim Losses. NHS England may, in respect of any Claim Losses, at its discretion and without prejudice to any other rights, either require payment from the CCG for such Claim Losses or pursuant to clause 13.3 make such adjustments to the Delegated Funds to take into account the amount of any Claim Losses (other than any Claim Losses in respect of which NHS England has retained any funds, provisions or other resources to discharge such Claim Losses). For the avoidance of doubt, in circumstances where NHS England suffers any Claim Losses, then NHS England shall be entitled to recoup such Claim Losses pursuant to clause 13.3. If and to the extent that NHS England has retained any funds, provisions or other resources to discharge such Claim Losses, then NHS England may either use such funds to discharge the Claim Loss or make an upward adjustment to the amounts paid to the CCG pursuant to clause 13.3.

15. Breach

15.1. If the CCG does not comply with the Delegation or the terms of this Agreement, then NHS England may:

15.1.1. exercise its rights under this Agreement; and/or

15.1.2. take such steps as it considers appropriate under the CCG Assurance Framework.

15.2. Without prejudice to clause 15.1, if the CCG does not comply with the Delegation or the terms of this Agreement (including if the CCG exceeds its delegated authority under the Delegation), NHS England may (at its sole discretion):

15.2.1. waive such non-compliance in accordance with clause 15.3 and the Delegation;

15.2.2. ratify any decision in accordance with paragraph 15 of the Delegation;

15.2.3. revoke the Delegation and terminate this Agreement in accordance with clause 17 *(Termination)* below;

15.2.4. exercise the Escalation Rights in accordance with clause 16 *(Escalation Rights)*; and/or

15.2.5. exercise its rights under common law.

15.3. NHS England may waive any non-compliance by the CCG with the terms of this Agreement provided that the CCG provides a written report to NHS England pursuant to clause 15.4 and, after considering the CCG's written report, NHS England is satisfied that the waiver is justified.

15.4. If:

15.4.1. the CCG does not comply (or the CCG considers that it may not be able to comply) with this Agreement and/or the Delegation; or

15.4.2. NHS England notifies the CCG that it considers the CCG has not complied, or may not be able to comply with, this Agreement and/or the Delegation,

then the CCG must provide a written report to NHS England within ten (10) days of the non-compliance (or the date on which the CCG considers that it may not be able to comply with this Agreement) or such notification pursuant to clause 15.4.2 setting out:

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

15.4.4. a plan for how the CCG proposes to remedy the non-compliance.

16. Escalation Rights

16.1. If the CCG does not comply with this Agreement and/or the Delegation, NHS England may exercise the following Escalation Rights:

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

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

16.2. Nothing in clause 16 *(Escalation Rights)* will affect NHS England's right to revoke the Delegation and/or terminate this Agreement in accordance with clause 17 *(Termination)* below.

17. Termination

17.1. The CCG may:

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

17.1.2. terminate this Agreement

with effect from midnight on 31 March in any calendar year, provided that:

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

17.1.4. the CCG meets with NHS England within ten (10) Operational Days of NHS England receiving the notice set out at clause 17.1.3 above to discuss arrangements for termination and transition of the Delegated Functions to a successor commissioner,

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

17.2. NHS England may revoke the Delegation at midnight on 31 March in any year, provided that it gives notice to the CCG of its intention to terminate the Delegation on or before 30 September in the year prior to the year in which the Delegation will terminate, and in which case clause 17.4 will apply.

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

17.3.1. the CCG acts outside of the scope of its delegated authority;

17.3.2. the CCG fails to perform any material obligation of the CCG owed to NHS England under the Delegation or this Agreement;

17.3.3. the CCG persistently commits non-material breaches of the Delegation or this Agreement;

17.3.4. NHS England is satisfied that its intervention powers under section 14Z21 of the NHS Act apply;

17.3.5. to give effect to legislative changes;

17.3.6. failure to agree to a National Variation in accordance with clause 22 *(Variations)*;

17.3.7. NHS England and the CCG agree in writing that the Delegation shall be revoked and this Agreement shall terminate on such date as is agreed; and/or

17.3.8. the CCG merges with another CCG or other body.

17.4. This Agreement will terminate immediately upon revocation or termination of the Delegation (including revocation and termination in accordance with this clause 17 *(Termination)*) except that the Survival Clauses will continue in full force and effect. This Agreement shall not terminate immediately if the Delegation is amended by a revocation and re-issue of an amended Delegation.

17.5. Upon revocation or termination of the Delegation and this Agreement (including revocation and termination in accordance with this clause 17 *(Termination)*), the Parties must:

17.5.1. agree a plan for the transition of the Delegated Functions from the CCG to the successor commissioner, including details of the transition, the Parties' responsibilities in relation to the transition, the Parties' arrangements in respect of those staff engaged in the Delegated Functions and the date on which the successor commissioner will take responsibility for the Delegated Functions;

17.5.2. implement and comply with their respective obligations under the plan for transition agreed in accordance with clause 17.5.1 above; and

17.5.3. use all reasonable endeavours to minimise any inconvenience or disruption to the commissioning of healthcare in the Area.

17.6. Without prejudice to clause 15.3 and for the avoidance of doubt, NHS England may waive any right to terminate this Agreement under this clause 17 *(Termination)*.

18. Staffing

18.1. The Parties acknowledge and agree that the CCG may only engage staff to undertake the Delegated Functions under one of the following three staffing models:

18.1.1. "Model 1 – Assignment" under the terms of which the staff of NHS England remain in their current roles and locations and provide services to the CCG under a service level agreement;

18.1.2. "Model 2 – Secondment" under the terms of which certain staff of NHS England are seconded to the CCG (and, for the avoidance of doubt, such secondments will terminate on revocation or termination of the Delegation); or

18.1.3. "Model 3 – Employment" under the terms of which the CCG may create new posts within the CCG to undertake the Delegated Functions provided that the CCG may only do so if it first offers to existing staff of NHS England an opportunity to apply for such posts and such staff must be appointed if they are deemed appointable,

together, the **"Staffing Models"**.

18.2. The CCG and NHS England, must within six (6) months of the date of this Agreement, agree which of the Staffing Models (set out at clauses 18.1.1 to 18.1.3 above) will be adopted by the CCG and the date on which such Staffing Model shall take effect.

18.3. In the absence of any agreement under clause 18.2, and up until such date as the CCG's preferred Staffing Model shall take effect (as referred to in clause 18.2 above), Model 1 described in clause 18.1.1 above will apply. The terms on which Model 1 will apply are set out in Schedule 8 *(Assignment of NHS England Staff to the CCG)*.

18.4. The CCG must comply with any Guidance issued by NHS England from time to time in relation to the Staffing Models and such Guidance may make changes to the Staffing Models from time to time.

18.5. For the avoidance of doubt, any breach by the CCG of the terms of this clause 18 *(Staffing)*, including any breach of the Guidance issued in accordance with clause 18.4 above, will be a breach of the terms and conditions of this Agreement for the purposes of clauses 13.3 and 13.35.

18.6. Without prejudice to clause 18.7, it is the understanding of the Parties that the provisions of the Transfer Regulations will not operate to transfer the employment of any staff of NHS England or any other party to the CCG on the commencement of the Delegation and this Agreement.

18.7. The Parties acknowledge that if at any time before or after the revocation or termination of the Delegation and this Agreement the Transfer Regulations do apply, the Parties must co-operate and comply with their obligations under the Transfer Regulations.

19. Disputes

19.1. This clause does not affect NHS England's right to take action under the CCG Assurance Framework.

19.2. If a dispute arises out of or in connection with this Agreement or the Delegation (**"Dispute"**) then the Parties must follow the procedure set out in this clause:

19.2.1. either Party must give to the other written notice of the Dispute, setting out its nature and full particulars (**"Dispute Notice"**), together with relevant supporting documents. On service of the Dispute Notice, the Agreement Representatives must attempt in good faith to resolve the Dispute;

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

19.2.3. if the people referred to in clause 19.2.2 are for any reason unable to resolve the Dispute within twenty (20) days of it being referred to them, the Parties may attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator must be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (**"ADR notice"**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR

Solve. The mediation will start not later than ten (10) days after the date of the ADR notice.

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

20. Freedom of Information

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

20.2. Each Party 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:

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

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

20.2.3. subject only to clause 14 *(Claims and Litigation)*, each Party acknowledges that the final decision as to the form or content of the response to any request is a matter for the Party to whom the request is addressed.

20.3. 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 Delegated Functions. The CCG shall comply with such FOIA or EIR protocols.

21. Conflicts of Interest

21.1. The CCG must comply with its statutory duties set out in:

21.1.1. Chapter A2 of the NHS Act (including those statutory duties relating to the management of conflicts of interest as set out at section 14O of the NHS Act);

21.1.2. the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013/500; and

21.1.3. Regulation 24 of the Public Contracts Regulations 2015/102,

and must perform its obligations under this Agreement in such a way as to ensure NHS England's compliance with its statutory duties in relation to conflicts of interest.

21.2. The CCG must have regard to all relevant guidance published by NHS England in relation to conflicts of interest in the co-commissioning context.

22. Variations

22.1. The Parties acknowledge that, under paragraph 16 of the Delegation, the Delegation may be reviewed and amended from time to time and that such amendments may be effected by a revocation and re-issue of an amended Delegation.

22.2. The Parties acknowledge that, under paragraph 6 of the Delegation, certain additional functions may be delegated from time to time by NHS England to the CCG on a date or dates to be notified to the CCG by NHS England in accordance with clause 8.3. If NHS England amends the Delegation and/or delegates additional functions to the CCG, then NHS England and the CCG shall agree such consequential changes to this Agreement pursuant to this clause 22 *(Variations)*.

22.3. Subject to clauses 22.4 to 22.10 below, a variation of this Agreement will only be effective if:

22.3.1. it is materially in the form of the template variation agreement set out at Schedule 6 *(Template Variation Agreement)*; and

22.3.2. it is signed by NHS England and the CCG (by their Agreement Representatives or other duly authorised representatives).

22.4. The Parties may not vary any provision of this Agreement if the purported variation would contradict or conflict with the Delegation.

22.5. NHS England may notify the CCG of any proposed National Variation by issuing a National Variation Proposal by whatever means NHS England may consider appropriate from time to time.

22.6. The CCG will be deemed to have received a National Variation Proposal on the date that it is issued by NHS England.

22.7. The National Variation Proposal will set out the National Variation proposed and the date on which NHS England requires the National Variation to take effect.

22.8. The CCG must respond to a National Variation Proposal within thirty (30) Operational Days following the date that it is issued by serving a written notice on NHS England confirming either:

22.8.1. that it accepts the National Variation Proposal; or

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

22.9. If the CCG accepts the National Variation Proposal in accordance with clause 22.8.1, the CCG agrees (without delay) to take all necessary steps (including executing a variation agreement) in order to give effect to any National Variation by the date on which the proposed National Variation takes effect as set out in the National Variation Proposal.

22.10. If the CCG refuses to accept the National Variation Proposal in accordance with clause 22.8.2 or to take such steps as set out in clause 22.9, NHS England may terminate this Agreement and revoke the Delegation in accordance with clause 17.3.6.

23. Counterparts

23.1. This Agreement may be executed in counterparts, each of which shall be regarded as an original, but all of which together shall constitute one agreement binding on both of the Parties.

24. Notices

24.1. Any notices given under this Agreement must be in writing, must be marked for the appropriate department or person and must be served by hand, post or email to the following address:

24.1.1. in the case of NHS England, to NHS England's address for notices set out in the Particulars; or

24.1.2. in the case of the CCG, to the CCG's address for notices set out in the Particulars.

24.2. Notices sent:

24.2.1. by hand will be effective upon delivery;

24.2.2. by post will be effective upon the earlier of actual receipt or five (5) working days after mailing; or

24.2.3. by email will be effective when sent (subject to no automated response being received).

24.3. NHS England may, at its discretion, issue Contractual Notices from time to time relating to the manner in which the Delegated Functions should be exercised by the CCG.

24.4. NHS England may, at its discretion, issue Guidance from time to time, including any protocol, policy, guidance or manual relating to the exercise of the Delegated Functions under this Agreement. NHS England acknowledges that in considering the need and/or content of new Guidance it will engage appropriately with CCGs.

Schedule 1
Definitions and Interpretation

In this Agreement, the following words and phrases will bear the following meanings:

Agreement	means this agreement between NHS England and the CCG comprising the Particulars, the Terms and Conditions and the Schedules;
Agreement Representatives	means the CCG Representative and the NHS England Representative as set out in the Particulars;
APMS Contract	means an agreement made in accordance with section 92 of the NHS Act;
Assigned Staff	means those NHS England staff as agreed between NHS England and the CCG from time to time;
Caldicott Principles	means the patient confidentiality principles set out in the report of the Caldicott Committee (December 1997 as amended by the 2013 Report, The Information Governance Review – "*To Share or Not to Share?"*) and now included in the NHS Confidentiality Code of Practice, as may be amended from time to time;
Capital	shall have the meaning set out in the Capital Investment Guidance or such other replacement Guidance as issued by NHS England from time to time;
Capital Expenditure Functions	means those functions of NHS England in relation to the use and expenditure of Capital funds (but excluding the Premises Costs Directions Functions);
Capital Investment Guidance	means any Guidance issued by NHS England from time to time in relation to the development, assurance and approvals process for proposals in relation to: • the expenditure of Capital, or investment in property, infrastructure or information and technology; or • the revenue consequences for commissioners or

third parties making such investment;

CCG Assurance Framework	means the assurance framework that applies to CCGs pursuant to the NHS Act;
Claims	means, for or in relation to the Primary Medical Services Contracts (a) any litigation or administrative, mediation, arbitration or other proceedings, or any claims, actions or hearings before any court, tribunal or any governmental, regulatory or similar body, or any department, board or agency or (b) any dispute with, or any investigation, inquiry or enforcement proceedings by, any governmental, regulatory or similar body or agency;
Claim Losses	means all Losses arising in relation to any Claim;
Complaints Regulations	means the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009/309;
Contractual Notice	means a contractual notice issued by NHS England to the CCG or all CCGs (as the case may be) from time to time and relating to the manner in which the Delegated Functions should be exercised by the CCG, in accordance with clause 24.3;
CQC	means the Care Quality Commission;
Data Controller	shall have the same meaning as set out in the DPA;
Data Subject	shall have the same meaning as set out in the DPA;
Delegated Functions	means the functions delegated by NHS England to the CCG under the Delegation and as set out in detail in this Agreement;
Delegated Funds	shall have the meaning in clause 13.1;
DPA	means the Data Protection Act 1998;

Enhanced Services	means the nationally defined enhanced services, as set out in the Primary Medical Services (Directed Enhanced Services) Directions 2014 or as amended from time to time, and any other enhanced services schemes locally developed by the CCG in the exercise of its Delegated Functions (and excluding, for the avoidance of doubt, any enhanced services arranged or provided pursuant to the Section 7A Functions);
Escalation Rights	means the escalation rights as defined in clause 16 *(Escalation Rights)*;
Financial Year	shall bear the same meaning as in section 275 of the NHS Act;
GMS Contract	means a general medical services contract made under section 84(1) of the NHS Act;
Good Practice	means using standards, practices, methods and procedures conforming to the law, reflecting up-to-date published evidence and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced commissioner;
Guidance	means any protocol, policy, guidance or manual (issued by NHS England whether under this Agreement or otherwise) and/or any policy or guidance relating to the exercise of the Delegated Functions issued by NHS England from time to time, in accordance with clause 24.4;
HSCA	means the Health and Social Care Act 2012;
Information Law	the DPA, the EU Data Protection Directive 95/46/EC; regulations and guidance made under section 13S and section 251 of the NHS Act; guidance made or given under sections 263 and 265 of the HSCA; the Freedom of Information Act 2000; the common law duty of confidentiality; the Human Rights Act 1998 and all other

	applicable laws and regulations relating to processing of Personal Data and privacy;
Law	means any applicable law, statute, bye-law, regulation, direction, order, regulatory policy, guidance or code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (including, for the avoidance of doubt, the Premises Costs Directions, the Statement of Financial Entitlements Directions and the Primary Medical Services (Directed Enhanced Services) Directions 2014 as amended from time to time);
Local Incentive Schemes	means an incentive scheme developed by the CCG in the exercise of its Delegated Functions including (without limitation) as an alternative to QOF;
Local Terms	means the terms set out in Schedule 7 *(Local Terms)*;
Losses	means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges;
National Variation	an addition, deletion or amendment to the provisions of this Agreement mandated by NHS England (whether in respect of the CCG or all or some of other Clinical Commissioning Groups) including any addition, deletion or amendment to reflect changes to the Delegation, changes in Law, changes in policy and notified to the CCG in accordance with clause 22 *(Variations)*;
National Variation Proposal	a written proposal for a National Variation, which complies with the requirements of clause 22.7;
Need to Know	has the meaning set out in paragraph 6.2 of Schedule 4 *(Further Information Sharing Provisions)*;
NHS Act	means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 or other legislation from time to time);

NHS England	means the National Health Service Commissioning Board established by section 1H of the NHS Act, also known as NHS England;
Non-Personal Data	means data which is not Personal Data;
Operational Days	a day other than a Saturday, Sunday or bank holiday in England;
Particulars	means the Particulars of this Agreement as set out in clause 1 *(Particulars)*;
Party/Parties	means a party or both parties to this Agreement;
Personal Data	shall have the same meaning as set out in the DPA and shall include references to Sensitive Personal Data where appropriate;
Personal Data Agreement	means the agreement governing Information Law issues completed further to Schedule 4 *(Further Information Sharing Provisions)*;
Personnel	means the Parties' employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of either Party (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors' and their sub-contractors' personnel;
PMS Contract	means an arrangement or contract for the provision of primary medical services made under section 83(2) of the NHS Act (including any arrangements which are made in reliance on a combination of that section and other powers to arrange for primary medical services);
Premises Agreements	means tenancies, leases and other arrangements in relation to the occupation of land for the delivery of services under the Primary Medical Services Contracts;
Premises Costs	means the National Health Service (General Medical

Directions	Services Premises Costs) Directions 2013, as amended;
Premises Costs Directions Functions	means NHS England's functions in relation to the Premises Costs Directions;
Primary Medical Care Infrastructure Guidance	means any Guidance issued by NHS England from time to time in relation to the procurement, development and management of primary medical care infrastructure and which may include principles of best practice;
Primary Medical Services Contracts	means: • PMS Contracts; • GMS Contracts; and • APMS Contracts, in each case as amended or replaced from time to time and including all ancillary or related agreements directly relating to the subject matter of such agreements, contracts or arrangements but excluding any Premises Agreements;
GP Access Fund	Means the former Prime Minister's challenge fund, announced in October 2013 to help improve access to general practice and stimulate innovative ways of providing primary care services;
Principles of Best Practice	means the Guidance in relation to property and investment which is to be published either before or after the date of this Agreement;
QOF	means the quality and outcomes framework;
Relevant Information	means the Personal Data and Non-Personal Data processed under the Delegation and this Agreement, and includes, where appropriate, "confidential patient information" (as defined under section 251 of the NHS Act), and "patient confidential information" as defined in the 2013 Report, The Information Governance Review – "*To Share or Not to Share?"*);

Reserved Functions	means the functions relating to the commissioning of primary medical services which are reserved to NHS England (and are therefore not delegated to the CCG under the Delegation) and as set out in detail in clause 8.2 and Schedule 3 *(Reserved Functions)* of this Agreement;
Secretary of State	means the Secretary of State for Health from time to time;
Section 7A Functions	means those functions of NHS England exercised pursuant to section 7A of the NHS Act relating to primary medical services;
Section 7A Funds	shall have the meaning in clause 13.18.1;
Sensitive Personal Data	shall have the same meaning as in the DPA;
Specified Purpose	means the purpose for which the Relevant Information is shared and processed, being to facilitate the exercise of the CCG's Delegated Functions and NHS England's Reserved Functions as specified in paragraph 2.1 of Schedule 4 *(Further Information Sharing Provisions)* to this Agreement;
Statement of Financial Entitlements Directions	means the General Medical Services Statement of Financial Entitlements Directions 2013, as amended or updated from time to time;
Statutory Guidance	means any applicable health and social care guidance, guidelines, direction or determination, framework, standard or requirement to which the CCG and/or NHS England have a duty to have regard, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the CCG by NHS England from time to time;
Survival Clauses	means clauses 10 *(Information Sharing and Information Governance),* 13 *(Financial Provisions and Liability),* 14 *(Claims and Litigation)* 17 *(Termination),* 18 *(Staffing),*

	19 *(Disputes)* and 20 *(Freedom of Information)*, together with such other provisions as are required to interpret these clauses (including the Schedules to this Agreement); and
Transfer Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

Schedule 2
Delegated Functions

Part 1: Delegated Functions: Specific Obligations

1. Introduction

1.1. This Part 1 of Schedule 2 *(Delegated Functions)* sets out further provision regarding the carrying out of each of the Delegated Functions.

2. Primary Medical Services Contract Management

2.1. The CCG must:

2.1.1. manage the Primary Medical Services Contracts on behalf of NHS England and perform all of NHS England's obligations under each of the Primary Medical Services Contracts in accordance with the terms of the Primary Medical Services Contracts as if it were named in the contract in place of NHS England;

2.1.2. actively manage the performance of the counter-party to the Primary Medical Services Contracts 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 by taking timely action to enforce contractual breaches and serve notice;

2.1.3. ensure that it obtains value for money under the Primary Medical Services Contracts on behalf of NHS England and avoids making any double payments under any Primary Medical Services Contracts;

2.1.4. comply with all current and future relevant national Guidance regarding PMS reviews and the management of practices receiving Minimum Practice Income Guarantee (MPIG) (including without limitation the *Framework for Personal Medical Services (PMS) Contracts Review* guidance published by NHS England in September 2014 (http://www.england.nhs.uk/wp-content/uploads/2014/09/pms-review-guidance-sept14.pdf));

2.1.5. notify NHS England immediately (or in any event within two (2) Operational Days) of any breach by the CCG of its obligations to perform any of NHS England's obligations under the Primary Medical Services Contracts;

2.1.6. keep a record of all of the Primary Medical Services Contracts that the CCG manages on behalf of NHS England setting out the following details in relation to each Primary Medical Services Contract:

2.1.6.1. name of counter-party;

2.1.6.2. location of provision of services; and

2.1.6.3. amounts payable under the contract (if a contract sum is payable) or amount payable in respect of each patient (if there is no contract sum).

2.2. For the avoidance of doubt, all Primary Medical Services Contracts will be in the name of NHS England.

2.3. The CCG must comply with any Guidance in relation to the issuing and signing of Primary Medical Services Contracts in the name of NHS England.

2.4. Without prejudice to clause 13 *(Financial Provisions and Liability)* or paragraph 2.1 above, the CCG must actively manage each of the relevant Primary Medical Services Contracts including by:

2.4.1. managing the relevant Primary Medical Services Contract, including in respect of quality standards, incentives and the QOF, observance of service specifications, and monitoring of activity and finance;

2.4.2. assessing quality and outcomes (including clinical effectiveness, patient experience and patient safety);

2.4.3. managing variations to the relevant Primary Medical Services Contract or services in accordance with national policy, service user needs and clinical developments;

2.4.4. agreeing information and reporting requirements and managing information breaches (which will include use of the NHS Digital IG Toolkit SIRI system);

2.4.5. agreeing local prices, managing agreements or proposals for local variations and local modifications;

2.4.6. conducting review meetings and undertaking contract management including the issuing of contract queries and agreeing any remedial action plan or related contract management processes; and

2.4.7. complying with and implementing any relevant Guidance issued from time to time.

Enhanced Services

2.5. The CCG must manage the design and commissioning of Enhanced Services, including re-commissioning these services annually where appropriate.

2.6. The CCG must ensure that it complies with any Guidance in relation to the design and commissioning of Enhanced Services.

2.7. When commissioning newly designed Enhanced Services, the CCG must:

2.7.1. consider the needs of the local population in the Area;

2.7.2. support Data Controllers in providing 'fair processing' information as required by the DPA;

2.7.3. develop the necessary specifications and templates for the Enhanced Services, as required to meet the needs of the local population in the Area;

2.7.4. when developing the necessary specifications and templates for the Enhanced Services, ensure that value for money will be obtained;

2.7.5. consult with Local Medical Committees, each relevant Health and Wellbeing Board and other stakeholders in accordance with the duty of public involvement and consultation under section 14Z2 of the NHS Act;

2.7.6. obtain the appropriate read codes, to be maintained by NHS Digital;

2.7.7. liaise with system providers and representative bodies to ensure that the system in relation to the Enhanced Services will be functional and secure; and

2.7.8. support GPs in entering into data processing agreements with data processors in the terms required by the DPA.

Design of Local Incentive Schemes

2.8. The CCG may design and offer Local Incentive Schemes for GP practices, sensitive to the needs of their particular communities, in addition to or as an alternative to the national framework (including as an alternative to QOF or directed Enhanced Services), provided that such schemes are voluntary and the CCG continues to offer the national schemes.

2.9. There is no formal approvals process that the CCG must follow to develop a Local Incentive Scheme, although any proposed new Local Incentive Scheme:

2.9.1. is subject to consultation with the Local Medical Committee;
2.9.2. must be able to demonstrate improved outcomes, reduced inequalities and value for money; and
2.9.3. must reflect the changes agreed as part of the national PMS reviews.

2.10. The ongoing assurance of any new Local Incentive Schemes will form part of the CCG's assurance process under the CCG Assurance Framework.

2.11. Any new Local Incentive Scheme must be implemented without prejudice to the right of GP practices operating under a GMS Contract to obtain their entitlements which are negotiated and set nationally.

2.12. NHS England will continue to set national standing rules, to be reviewed annually, and the CCG must comply with these rules which shall for the purposes of this Agreement be Guidance.

Making Decisions on Discretionary Payments

2.13. The CCG must manage and make decisions in relation to the discretionary payments to be made to GP practices in a consistent, open and transparent way.

2.14. The CCG must exercise its discretion to determine the level of payment to GP practices of discretionary payments, in accordance with the Statement of Financial Entitlements Directions.

Making Decisions about Commissioning Urgent Care for Out of Area Registered Patients

2.15. The CCG must manage the design and commissioning of urgent care services (including home visits as required) for its patients registered out of area (including re-commissioning these services annually where appropriate).

2.16. The CCG must ensure that it complies with any Guidance in relation to the design and commissioning of these services.

3. Planning the Provider Landscape

3.1. The CCG must plan the primary medical services provider landscape in the Area, including considering and taking decisions in relation to:

3.1.1. establishing new GP practices in the Area;
3.1.2. managing GP practices providing inadequate standards of patient care;
3.1.3. the procurement of new Primary Medical Services Contracts (in accordance with any procurement protocol issued by NHS England from time to time);
3.1.4. closure of practices and branch surgeries;
3.1.5. dispersing the lists of GP practices;
3.1.6. agreeing variations to the boundaries of GP practices; and
3.1.7. coordinating and carrying out the process of list cleansing in relation to GP practices, according to any policy or Guidance issued by NHS England from time to time.

3.2. In relation to any new Primary Medical Services Contract to be entered into, the CCG must, without prejudice to any obligation in Schedule 2, Part 2, paragraph 3 *(Procurement and New Contracts)* and Schedule 2, Part 1, paragraph 2.3:

3.2.1. consider and use the form of Primary Medical Services Contract that will ensure compliance with NHS England's obligations under Law including the Public Contracts Regulations 2015/102 and the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013/500 taking into account the persons to whom such Primary Medical Services Contracts may be awarded;

3.2.2. provide to NHS England confirmation as required from time to time that it has considered and complied with its obligations under this Agreement and the Law; and

3.2.3. for the avoidance of doubt, Schedule 5 *(Financial Provisions and Decision Making Limits)* deals with the sign off requirements for Primary Medical Services Contracts.

4. Approving GP Practice Mergers and Closures

4.1. The CCG is responsible for approving GP practice mergers and GP practice closures in the Area.

4.2. The CCG must undertake all necessary consultation when taking any decision in relation to GP practice mergers or GP practice closures in the Area, including those set out under section 14Z2 of the NHS Act (duty for public involvement and consultation). The consultation undertaken must be appropriate and proportionate in the circumstances and should include consulting with the Local Medical Committee.

4.3. Prior to making any decision in accordance with this paragraph 4 *(Approving GP Practice Mergers and Closures)*, the CCG must be able to clearly demonstrate the grounds for such a decision and must have fully considered any impact on the GP practice's registered population and that of surrounding practices. The CCG must be able to clearly demonstrate that it has considered other options and has entered into dialogue with the GP contractor as to how any closure or merger will be managed.

4.4. In making any decisions pursuant to paragraph 4 *(Approving GP Practice Mergers and Closures)*, the CCG shall also take account of its obligations as set out in Schedule 2, part 2, paragraph 3 *(Procurement and New Contracts)*, where applicable.

5. Information Sharing with NHS England in relation to the Delegated Functions

5.1. This paragraph 5 *(Information Sharing with NHS England)* is without prejudice to clause 9.4 or any other provision in this Agreement. The CCG must provide NHS England with:

5.1.1. such information relating to individual GP practices in the Area as NHS England may reasonably request, to ensure that NHS England is able to continue to gather national data regarding the performances of GP practices;

5.1.2. such data/data sets as required by NHS England to ensure population of the primary medical services dashboard;

5.1.3. any other data/data sets as required by NHS England; and

5.1.4. the CCG shall procure that providers accurately record and report information so as to allow NHS England and other agencies to discharge their functions.

5.2. The CCG must use the NHS England approved primary medical services dashboard, as updated from time to time, for the collection and dissemination of information relating to GP practices.

5.3. The CCG must (where appropriate) use the NHS England approved GP exception reporting service (as notified to the CCGs by NHS England from time to time).

5.4. The CCG must provide any other information, and in any such form, as NHS England considers necessary and relevant.

5.5. NHS England reserves the right to set national standing rules (which may be considered Guidance for the purpose of this Agreement), as needed, to be reviewed annually. NHS England will work with CCGs to agree rules for, without limitation, areas such as the collection of data for national data sets and IT intra-operability. Such national standing rules set from time to time shall be deemed to be part of this Agreement.

6. Making Decisions in relation to Management of Poorly Performing GP Practices

6.1. The CCG must make decisions in relation to the management of poorly performing GP practices and including, without limitation, decisions and liaison with the CQC where the CQC has reported non-compliance with standards (but excluding any decisions in relation to the performers list).

6.2. In accordance with paragraph 6.1 above, the CCG must:

6.2.1. ensure regular and effective collaboration with the CQC to ensure that information on general practice is shared and discussed in an appropriate and timely manner;

6.2.2. ensure that any risks identified are managed and escalated where necessary;

6.2.3. respond to CQC assessments of GP practices where improvement is required;

6.2.4. where a GP practice is placed into special measures, lead a quality summit to ensure the development and monitoring of an appropriate improvement plan (including a communications plan and actions to manage primary care resilience in the locality); and

6.2.5. take appropriate contractual action in response to CQC findings.

7. Premises Costs Directions Functions

7.1. The CCG must comply with the Premises Costs Directions and will be responsible for making decisions in relation to the Premises Costs Directions Functions.

7.2. In particular, but without limiting the generality of paragraph 7.1, the CCG shall make decisions concerning:

7.2.1. applications for new payments under the Premises Costs Directions (whether such payments are to be made by way of grants or in respect of recurring premises costs); and

7.2.2. revisions to existing payments being made under the Premises Costs Directions.

7.3. The CCG must comply with any decision-making limits set out in Schedule 5 *(Financial Provisions and Decision Making Limits)* when taking decisions in relation to the Premises Costs Directions Functions.

7.4. The CCG will comply with any guidance issued by the Secretary of State or NHS England in relation to the Premises Costs Directions, including the Principles of Best Practice, and any other Guidance in relation to the Premises Costs Directions.

7.5. The CCG must work cooperatively with other CCGs to manage premises and strategic estates planning.

7.6. The CCG must liaise where appropriate with NHS Property Services Limited and Community Health Partnerships Limited in relation to the Premises Costs Directions Functions.

Schedule 2
Part 2 – Delegated Functions: General Obligations

1. Introduction

1.1. This Part 2 of Schedule 2 *(Delegated Functions)* sets out general provisions regarding the carrying out of the Delegated Functions.

2. Planning and reviews

2.1. The CCG is responsible for planning the commissioning of primary medical services.

2.2. The role of the CCG includes:

2.2.1. carrying out primary medical health needs assessments (to be developed by the CCG) to help determine the needs of the local population in the Area;

2.2.2. recommending and implementing changes to meet any unmet primary medical services needs; and

2.2.3. undertaking regular reviews of the primary medical health needs of the local population in the Area.

3. Procurement and New Contracts

3.1. The CCG will make procurement decisions relevant to the exercise of the Delegated Functions and in accordance with the detailed arrangements regarding procurement set out in the procurement protocol issued and updated by NHS England from time to time.

3.2. In discharging its responsibilities set out in clause 6 *(Performance of the Delegated Functions)* of this Agreement and paragraph 1 of this Schedule 2 *(Delegated Functions)*, the CCG must comply at all times with Law including its obligations set out in the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013/500 and any other relevant statutory provisions. The CCG must have regard to any relevant guidance, particularly Monitor's guidance *Substantive guidance on the Procurement, Patient Choice and Competition Regulations*

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/283505/SubstantiveGuidanceDec2013_0.pdf).

3.3. Where the CCG wishes to develop and offer a locally designed contract, it must ensure that it has consulted with its Local Medical Committee in relation to the proposal and that it can demonstrate that the scheme will:

3.3.1. improve outcomes;
3.3.2. reduce inequalities; and
3.3.3. provide value for money.

4. Integrated working

4.1. The CCG must take an integrated approach to working and co-ordinating with stakeholders including NHS England, Local Professional Networks, local authorities, Healthwatch, acute and community providers, the Local Medical Committee, Public Health England and other stakeholders.

4.2. The CCG must work with NHS England and other CCGs to co-ordinate a common approach to the commissioning of primary medical services generally.

4.3. The CCG and NHS England will work together to coordinate the exercise of their respective performance management functions.

5. Resourcing

5.1. NHS England may, at its discretion provide support or staff to the CCG. NHS England may, when exercising such discretion, take into account, any relevant factors (including without limitation the size of the CCG, the number of Primary Medical Services Contracts held and the need for the Local NHS England Team to continue to deliver the Reserved Functions).

Schedule 3
Reserved Functions

1. Introduction

1.1. This Schedule 3 *(Reserved Functions)* sets out further provision regarding the carrying out of the Reserved Functions.

1.2. The CCG will work collaboratively with NHS England and will support and assist NHS England to carry out the Reserved Functions.

2. Management of the national performers list

2.1. NHS England will continue to perform its primary medical care functions under the National Health Service (Performers Lists) (England) Regulations 2013.

2.2. NHS England's functions in relation to the management of the national performers list include:

2.2.1. considering applications and decision-making in relation to inclusion on the national performers list, inclusion with conditions and refusals;
2.2.2. identifying, managing and supporting primary care performers where concerns arise; and
2.2.3. managing suspension, imposition of conditions and removal from the national performers list.

2.3. NHS England may hold local Performance Advisory Group (**"PAG"**) meetings to consider all complaints or concerns that are reported to NHS England in relation to a named performer and NHS England will determine whether an initial investigation is to be carried out.

2.4. NHS England may notify the CCG of all relevant PAG meetings at least seven (7) days in advance of such meetings. NHS England may require a representative of the CCG to attend such meetings to discuss any performer concerns and/or quality issues that may impact on individual performer cases.

2.5. The CCG must develop a mechanism to ensure that all complaints regarding any named performer are escalated to the Local NHS England Team for review. The CCG will comply with any Guidance issued by NHS England in relation to the escalation of complaints about a named performer.

3. Management of the revalidation and appraisal process

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

3.2. All functions in relation to GP appraisal and revalidation will remain the responsibility of NHS England, including:

3.2.1. the funding of GP appraisers;
3.2.2. quality assurance of the GP appraisal process; and
3.2.3. the responsible officer network.

3.3. Funding to support the GP appraisal is incorporated within the global sum payment to GP practices.

3.4. The CCG must not remove or restrict the payments made to GP practices in respect of GP appraisal.

4. Administration of payments and related performers list management activities

4.1. NHS England reserves its functions in relation to the administration of payments to individual performers and related performers list management activities under the National Health Service (Performers Lists) (England) Regulations 2013 and other relevant legislation.

4.2. NHS England may continue to pay GPs who are suspended from the national performers list under the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List (1 April 2013).

4.3. For the avoidance of doubt, the CCG is responsible for any ad hoc or discretionary payments to GP practices (including those under section 96 of the NHS Act) in accordance with clause 6.2.1.4 and Schedule 2 *(Delegated Functions)* Part 1 paragraphs 2.13 and 2.14 of this Agreement, including where such payments may be considered a consequence of actions taken under the National Health Service (Performers Lists) (England) Regulations 2013.

5. Section 7A Functions

5.1. In accordance with clauses 13.17 to 13.20, NHS England retains the Section 7A Functions and will be responsible for taking decisions in relation to the Section 7A Functions.

5.2. In accordance with clauses 13.17 to 13.20, the CCG will provide certain management and/or administrative services to NHS England in relation to the Section 7A Functions.

6. Capital Expenditure Functions

6.1. In accordance with clauses 13.13 to 13.16, NHS England retains the Capital Expenditure Functions and will be responsible for taking decisions in relation to the Capital Expenditure Functions.

7. Functions in relation to complaints management

7.1. NHS England retains its functions in relation to complaints management and will be responsible for taking decisions in relation to the management of complaints. Such complaints include (but are not limited to):

7.1.1. complaints about GP practices and individual named performers;
7.1.2. controlled drugs; and
7.1.3. whistleblowing in relation to a GP practice or individual performer.

7.2. The CCG must immediately notify the Local NHS England Team of all complaints received by or notified to the CCG and must send to the Local NHS England Team copies of any relevant correspondence.

7.3. The CCG must co-operate fully with NHS England in relation to any complaint and any response to such complaint.

7.4. In accordance with clauses 13.21 to 13.23, NHS England may ask the CCG to provide certain management and/or administrative services to NHS England (from a date to be notified by NHS England to the CCG) in relation to the handling and consideration of complaints.

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

8.1. NHS England will carry out such other ancillary activities that are necessary in order for NHS England to exercise the Reserved Functions.

8.2. NHS England will continue to comply with its obligations under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.3. The CCG must assist NHS England's controlled drug accountable officer (**"CDAO"**) to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.4. The CCG must nominate a relevant senior individual within the CCG (the **"CCG CD Lead"**) to liaise with and assist NHS England to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.5. The CCG CD Lead must, in relation to the Delegated Functions:

8.5.1. on request provide NHS England's CDAO with all reasonable assistance in any investigation involving primary medical care services;

8.5.2. report all complaints involving controlled drugs to NHS England's CDAO;

8.5.3. report all incidents or other concerns involving the safe use and management of controlled drugs to NHS England's CDAO;

8.5.4. analyse the controlled drug prescribing data available; and

8.5.5. on request supply (or ensure organisations from whom the CCG commissions services involving the regular use of controlled drugs supply) periodic self–declaration and/or self-assessments to NHS England's CDAO.

Schedule 4
Further Information Sharing Provisions

1. Introduction

1.1. The purpose of this Schedule 4 *(Further Information Sharing Provisions)* and the associated Personal Data Agreement is to set out the scope for the secure and confidential sharing of information between the Parties on a **Need To Know** basis between individual Personnel in order to enable the Parties to exercise their primary medical care commissioning functions in accordance with the law. This Schedule and the associated Personal Data Agreement is designed to:

1.1.1. inform about the reasons why Relevant Information may need to be shared and how this will be managed and controlled by the organisations involved;
1.1.2. describe the purposes for which the Parties have agreed to share Relevant Information;
1.1.3. set out the lawful basis for the sharing of information between the Parties, and the principles that underpin the exchange of Relevant Information;
1.1.4. describe roles and structures to support the exchange of Relevant Information between the Parties;
1.1.5. apply to the sharing of Relevant Information relating to GPs where necessary;
1.1.6. apply to the sharing of Relevant Information whatever the medium in which it is held and however it is transmitted;
1.1.7. 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;
1.1.8. apply to the activities of the Parties' Personnel; and
1.1.9. describe how complaints relating to Personal Data sharing between the Parties will be investigated and resolved, and how the information sharing will be monitored and reviewed.

2. Purpose

2.1. The Specified Purpose(s) of the data sharing initiative is to facilitate the exercise of the CCG's Delegated Functions and NHS England's Reserved Functions:

2.1.1. the management of the primary medical service performers' list in accordance with section 91 of the NHS Act;
2.1.2. management of GP revalidation and appraisal;
2.1.3. administration of payments and related performers list management activities;
2.1.4. planning and delivering the provision of appropriate care services;
2.1.5. improving the health of the local population;
2.1.6. performance management of GP providers;
2.1.7. investigating and responding to incidents and complaints; and
2.1.8. reducing risk to individuals, service providers and the public as a whole.

2.2. Specific and detailed purposes are set out in the Personal Data Agreement appended to this Schedule.

3. Benefits of information sharing

3.1. The benefits of sharing information are the achievement of the Specified Purposes set out above, with benefits for service users and other stakeholders in terms of the improved local delivery of primary healthcare services.

4. Legal basis for Sharing

4.1. Each Party shall comply with all relevant Information Law requirements and good practice in relation to the processing of Relevant Information shared further to this Agreement.

4.2. The Parties shall identify the lawful basis for sharing Relevant Information for each purpose and data flow, and document these in the attached Personal Data Agreement.

5. Relevant Information to be shared

5.1. The Relevant Information to be shared is set out in the attached Personal Data Agreement.

6. Restrictions on use of the Shared Information

6.1. Each Party shall only process the Relevant Information as is necessary to achieve the Specified Purpose, and, in particular, shall not use or process Relevant Information for any other purpose unless agreed in writing by the Data Controller that released the information to the other. There shall be no other use or onward transmission of the Relevant Information to any third party without a lawful basis first being determined, and the originating Data Controller being notified.

6.2. Access to, and processing of, the Relevant Information provided by a Party must be the minimum necessary to achieve the Specified Purpose. Information and Sensitive Personal Data will be handled at all times on a restricted basis, in compliance with Information Law requirements, and Personnel should only have access to Personal Data on a justifiable **Need to Know** basis for the purpose of performing their duties in connection with the services they are there to deliver. The **Need to Know** requirement means that the Data Controllers' Personnel will only have access to Personal Data or Sensitive Personal Data if it is lawful for such Personnel to have access to such data for the Specified Purpose 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 Sensitive Personal Data specified.

6.3. Having this Agreement in place does not give licence for unrestricted access to data that the other Data Controller may hold. It lays the parameters for the safe and secure sharing and processing of information for a justifiable **Need to Know** purpose.

6.4. Neither Party shall subcontract any processing of the Relevant Information without the prior written consent of the other Party. Where a Party subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same

obligations as are imposed on the Data Controllers under this Agreement.

6.5. Neither Party shall cause or allow Data to be transferred to any territory outside the European Economic Area without the prior written permission of the responsible Data Controller.

6.6. Any particular restrictions on use of certain Relevant Information are included in the attached Personal Data Agreement.

7. Ensuring fairness to the Data Subject

7.1. In addition to having a lawful basis for sharing information, the DPA generally requires that the sharing must be fair. In order to achieve fairness to the Data Subjects, the Parties will put in place the following arrangements:

7.1.1. amendment of internal guidance to improve awareness and understanding among Personnel;
7.1.2. amendment of privacy notices and policies; and
7.1.3. consideration given to further activities to promote public understanding where appropriate.

7.2. Each Party shall procure that its notification to the Information Commissioner's Office reflects the flows of information under this Agreement.

7.3. Further provision in relation to specific data flows is included in the attached Personal Data Agreement.

8. Governance: Personnel

8.1. Each Party must take reasonable steps to ensure the suitability, reliability, training and competence, of any Personnel who have access to the Personal Data (and Sensitive Personal Data) including reasonable background checks and evidence of completeness should be available on request by each Party.

8.2. The Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where the Personnel are not healthcare professionals (for the purposes of the DPA) the employing Parties must procure that its Personnel operate under a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

8.3. Each Party shall ensure that all Personnel required to access the Personal Data (including Sensitive Personal Data) are informed of the confidential nature of the Personal Data and each Party shall include appropriate confidentiality clauses in employment/service contracts of all Personnel that have any access whatsoever to the Relevant Information, including details of sanctions against any employee acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Information Law requirements, or causes damage to or loss of the Relevant Information.

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

8.5. Each Party shall ensure that:

8.5.1. only those employees involved in delivery of the Agreement use or have access to the Relevant Information; and

8.5.2. that such access is granted on a strict **Need to Know** basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller. These access controls are set out in the attached Personal Data Agreement; and

8.5.3. specific limitations on the Personnel who may have access to the Information are set out in the attached Personal Data Agreement.

9. Governance: Protection of Personal Data

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

9.2. Wherever possible (in descending order of preference), only anonymised information, or strongly or weakly pseudonymised information will be shared and processed by Parties, without the need to share easily identifiable Personal Data. The Parties shall cooperate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data/Sensitive Personal Data.

9.3. Processing of any Personal Data or Sensitive Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a **Need to Know** basis. If either Party:

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

9.3.2. becomes aware of any security breach,

in respect of the Relevant Information it shall promptly notify the other Party. The Parties shall fully cooperate with one another to remedy the issue as soon as reasonably practicable.

9.4. In processing any Relevant Information further to this Agreement, each Party shall:

9.4.1. process the Personal Data (including Sensitive Personal Data) only in accordance with the terms of this Agreement and otherwise only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information;

9.4.2. process the Personal Data (including Sensitive Personal Data) only to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body;

9.4.3. process the Personal Data (including Sensitive Personal Data) only in accordance with Information Law requirements

and shall not perform its obligations under this Agreement in such a way as to cause any other Data Controller to breach any of their applicable obligations under Information Law; and

9.4.4. process the Personal Data in accordance with the eight data protection principles (the **"Data Protection Principles"**) in Schedule 1 to the DPA.

9.5. Each Party shall act generally in accordance with the Seventh Data Protection Principle, and in particular shall implement and maintain appropriate technical and organisational measures to protect the Personal Data (and Sensitive Personal Data) against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data (and Sensitive Personal Data) and having regard to the nature of the Personal Data (and Sensitive Personal Data) which is to be protected. In particular, each Data Controller shall:

9.5.1. ensure that only Personnel authorised under this Agreement have access to the Personal Data (and Sensitive Personal Data);

9.5.2. ensure that the Relevant Information is kept secure and in an encrypted form, and shall use all reasonable security practices and systems applicable to the use of the Relevant Information to prevent and to take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution, of the Relevant Information;

9.5.3. obtain prior written consent from the originating Data Controller in order to transfer the Relevant Information to any third party;

9.5.4. permit the other Data Controllers or the Data Controllers' 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

the Data Controllers to verify and/or procure that the other Data Controller is in full compliance with its obligations under this Agreement; and

9.5.5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

9.5.6. Specific requirements as to information security are set out in the Schedule.

9.5.7. Each Party shall use best endeavours to achieve and adhere to the requirements of the NHS Information Governance Toolkit, particularly in relation to Confidentiality and Data Protection Assurance, Information Security Assurance and Clinical Information Assurance.

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

10. Governance: Transmission of Information between the Parties

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

10.2. Transfer of Personal Data between the Parties shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net / gcsx) email.

10.3. Faxes shall only be used to transmit Personal Data in an emergency.

10.4. Wherever possible, Personal Data should be transmitted in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record / data is identified.

10.5. Any other special measures relating to security of transfer are specified in the attached Personal Data Agreement.

10.6. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.

10.7. The Parties' Single Point of Contact notified pursuant to paragraph 14 *(Governance: Single Points of Contact)* will be the persons who, in the first instance, will have oversight of the transmission of information between the Parties.

11. Governance: Quality of Information

11.1. The Parties will take steps to ensure the quality of the Relevant Information and to comply with the fourth Data Protection Principle.

11.2. Special measures relating to ensuring quality are set out in the attached Personal Data Agreement.

12. Governance: Retention and Disposal of Shared Information

12.1. The non-originating Party shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically the Relevant Information will be deleted and formal notice of the deletion sent to the Party that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Party they came from.

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

12.3. If either Party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under this paragraph 12

(Governance: Retention and Disposal of Shared Information), it shall notify the other Party in writing of that retention, giving details of the documents or materials that it must retain.

12.4. Retention of any data shall comply with the Fifth Data Protection Principle and with all good practice including the Records Management NHS Code of Practice, as updated or amended from time to time.

12.5. Any special retention periods are set out in attached Personal Data Agreement.

12.6. Each Party shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.

12.7. Each Party shall ensure that, when no longer required, electronic storage media used to hold or process Personal Data are destroyed or overwritten to current policy requirements.

12.8. Electronic records will be considered for deletion once the relevant retention period has ended.

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

13. Governance: Complaints and Access to Personal Data

13.1. Each Party shall assist the other in responding to any request made under Information Law made by persons who wish to access copies of information held about them ("**Subject Access Requests**").

13.2. Complaints about information sharing shall be routed through each Party's own complaints procedure but reported to the Single Points of Contact set out in paragraph 14 *(Governance: Single Points of Contact)* below.

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

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

14. Governance: Single Points of Contact

14.1. The Parties each shall appoint a single point of contact to whom all queries relating to the particular information sharing should be directed in the first instance. Details of the single points of contact shall be set out in the attached Personal Data Agreement.

15. Monitoring and review

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

Template Personal Data Agreement

Data flow : [Description]

Description of information flow and single points of contact for parties involved

Originating Data Controller	[Insert:]			
Contact details for single point of contact for Originating Data Controller	**Name of point of contact**	**Title**	**Contact (email)**	**Contact (phone)**
Recipient Data Controller	[Insert:]			
Contact details for single point of contact of Recipient Data Controller	**Name of point of contact**	**Title**	**Contact (email)**	**Contact (phone)**

Description of information to be shared

Comprehensive description of Relevant Information to be shared	[Insert:]
Anonymised / not information about individual persons	**Yes / No**
Strongly pseudonyimsed	**Yes / No**
Weakly pseudonymised	**Yes / No**
Person - identifiable data	**Yes / No**

Justification for the level of identifiability required	[Insert or N/A:]

Legal basis for disclosure and use

DPA Schedule 2 condition/s	[Insert or N/A:]	
DPA Schedule 3 condition/s	[Insert or N/A:]	
Confidentiality	**Explicit consent**	Yes / No [If yes, how documented?:]
	Implied Consent	Yes / No [If yes, how have you implied consent?:]
	Statutory required/permitted disclosure	[Insert statutory basis:]
	Public interest disclosure	[Insert how the public interest favours use/disclosure of the information:]
	Other legal basis	[Insert:]
s. 13Z3 / 14Z23 NHS Act 2006 justification	**S. 13Z3 condition(s) to permit disclosure**	[Insert:]
	S. 14Z23 condition(s) to permit disclosure	[Insert:]

Other specific legal considerations	

Restrictions on use of information

[Insert:]

Governance arrangements

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

Schedule 5
Financial Provisions and Decision Making Limits

Financial Limits and Approvals

1. The CCG shall ensure that any decisions in respect of the Delegated Functions and which exceed the financial limits set out below are only taken:

    1.1. by the following persons and/or individuals set out in column 2 of Table 1 below; and

    1.2. following the approval of NHS England (if any) as set out in column 3 of the Table 1 below.

2. NHS England may, from time to time, update Table 1 by sending a notice to the CCG of amendments to Table 1.

Table 1 – Financial Limits		
Decision	**Person/Individual**	**NHS England Approval**
General		
Taking any step or action in relation to the settlement of a Claim, where the value of the settlement exceeds £100,000	CCG Accountable Officer or Chief Finance Officer or Chair	NHS England Head of Legal Services and Local NHS England Team Director or Director of Finance
Any matter in relation to the Delegated Functions which is novel, contentious or repercussive	CCG Accountable Officer or Chief Finance Officer or Chair	Local NHS England Team Director or Director of Finance or NHS England Region Director or Director of Finance or NHS England Chief Executive or Chief Financial Officer
Revenue Contracts		
The entering into of any Primary Medical Services Contract which has or is capable of having a term which	CCG Accountable Officer or Chief Finance Officer or Chair	Local NHS England Team Director or Director of Finance

exceeds five (5) years		
Capital Note: As at the date of this Agreement, the CCG will not have delegated or directed responsibility for decisions in relation to Capital expenditure (and these decisions are retained by NHS England) but the CCG may be required to carry out certain administrative services in relation to Capital expenditure under clause 13 *(Financial Provisions and Liability).*		

Schedule 6

Template Variation Agreement

Variation Reference:	[insert reference]
Proposed by:	[insert party] [Note – only NHS England may propose National Variations]
Date of Proposal:	[insert date]
Date of Variation Agreement:	[insert date]

Capitalised words and phrases in this Variation Agreement have the meanings given to them in the Agreement referred to above.

1. The Parties have agreed the [National] Variation summarised below:

2. The [National] Variation is reflected in the attached Schedule and the Parties agree that the Agreement is varied accordingly.

3. The Variation takes effect on [insert date].

IN WITNESS OF WHICH the Parties have signed this Variation Agreement on the date(s) shown below

Signed by	**NHS England** **[Insert name of Authorised Signatory] [for and on behalf of] [ ]**
Signed by	**[Insert name] Clinical Commissioning Group** **[Insert name of Authorised Signatory][for and on behalf of] [ ]**

Schedule to Variation Agreement

[Insert details of variation]

Schedule 7
Local Terms

The CCG will be developing its own directly employed staffing model during 2017-18. However in its first year of delegated co-commissioning the CCG will be supported by NHS England's Local Regional Office with regards to the delivery of a number of specific functions that the CGC is responsible for under the Delegation. The support for these functions will be underpinned by a Memorandum of Understanding (MoU) with NHS England South (South East) which will be finalised by no later than 31st March 2017 for the period 1st April 2017 to 31st March 2018.

Schedule 8
Assignment of NHS England Staff to the CCG

1. Introduction

1.1. The purpose of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* is to give clarity to the CCG and NHS England, in circumstances where NHS England staff are assigned to the CCG under Model 1 of the Staffing Models.

1.2. In accordance with clause 18 of this Agreement, the Parties have agreed that the CCG may only engage staff to undertake the Delegated Functions under one of the three Staffing Models referred to in that clause.

1.3. The Parties agree and acknowledge that until such time as the CCG's preferred Staffing Model takes effect, the engagement of staff to undertake the Delegated Functions shall be in accordance with the terms of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* (the **"Arrangements"**).

2. Duration

2.1. The Arrangements shall commence on the date of this Agreement and shall continue until the date on which the Parties agree which of the Staffing Models (set out at clauses 18.1.1 to 18.1.3) will be adopted by the CCG and the date on which such Staffing Model shall take effect.

3. Services

3.1. NHS England agrees to make available the Assigned Staff to the CCG to perform administrative and management support services together with such other services specified in Schedule 7 *(Local Terms)* (the **"Services"**) so as to facilitate the CCG in undertaking the Delegated Functions pursuant to the terms of this Agreement.

3.2. NHS England shall take all reasonable steps to ensure that the Assigned Staff shall:

3.2.1. faithfully and diligently perform duties and exercise such powers as may from time to time be reasonably assigned to or vested in them; and

3.2.2. perform all duties assigned to them pursuant to this Schedule 8 *(Assignment of NHS England Staff to the CCG)*.

3.3. The CCG shall notify NHS England if the CCG becomes aware of any act or omission by any Assigned Staff which may have a material adverse impact on the provision of the Services or constitute a material breach of the terms and conditions of employment of the Assigned Staff.

3.4. NHS England shall be released from its obligations to make the Assigned Staff available for the purposes of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* whilst the Assigned Staff are absent:

3.4.1. by reason of industrial action taken in contemplation of a trade dispute;

3.4.2. as a result of the suspension or exclusion of employment or secondment of any Assigned Staff by NHS England;

3.4.3. in accordance with the Assigned Staff's respective terms and conditions of employment and policies, including, but not limited to, by reason of training, holidays, sickness, injury, trade union duties, paternity leave or maternity or where absence is permitted by Law;

3.4.4. if making the Assigned Staff available would breach or contravene any Law;

3.4.5. as a result of the cessation of employment of any individual Assigned Staff; and/or

3.4.6. at such other times as may be agreed between NHS England and the CCG.

4. Employment of the Assigned Staff

4.1. NHS England shall employ the Assigned Staff and shall be responsible for the employment of the Assigned Staff at all times on whatever terms and conditions as NHS England and the Assigned Staff may agree from time to time.

4.2. NHS England shall pay the Assigned Staff their salaries and benefits and make any deductions for income tax liability and national insurance or similar contributions it is required to make from the Assigned Staff's salaries and other payments.

4.3. The Assigned Staff shall carry out the Services from NHS England's places of work and may be required to attend the offices of the CCG from time to time in the course of carrying out the Services. Nothing in this Schedule 8 *(Assignment of NHS England Staff to the CCG)* shall be construed or have effect as constituting any relationship of employer and employee between the CCG and the Assigned Staff.

4.4. NHS England shall not, and shall procure that the Assigned Staff shall not, hold themselves out as employees of the CCG.

5. Management

5.1. NHS England shall have day-to-day control of the activities of the Assigned Staff and deal with any management issues concerning the Assigned Staff including, without limitation, performance appraisal, discipline and leave requests.

5.2. The CCG agrees to provide all such assistance and co-operation that NHS England may reasonably request from time to time to resolve grievances raised by Assigned Staff and to deal with any disciplinary allegations made against Assigned Staff arising out of or in connection with the provision of the Services which shall include, without limitation, supplying NHS England with all information and the provision of access to all documentation and personnel as NHS England requires for the purposes of considering and dealing with such issues and participating promptly in any action which may be necessary.

6. Conduct of Claims

6.1. If the CCG becomes aware of any matter that may give rise to a claim by or against a member of Assigned Staff, notice of that fact shall be given as soon as possible to NHS England. NHS England and the CCG shall co-operate in relation to the investigation and resolution of any such claims or potential claims.

6.2. No admission of liability shall be made by or on behalf of the CCG and any such claim shall not be compromised, disposed of or settled without the consent of NHS England.

7. Confidential Information and Property

7.1. For the avoidance of doubt, this paragraph 8 *(Confidential Information and Property)* is without prejudice to any other provision of this Agreement in relation to confidential information.

7.2. It is acknowledged that to enable the Assigned Staff to provide the Services, the Parties may share information of a highly confidential nature being information or material which is the property of NHS England or the CCG or which NHS England or the CCG are obliged to hold confidential including, without limitation, all official secrets, information relating to the working of any project carried on or used by the relevant Party, research projects, strategy documents, tenders, financial information, reports, ideas and know-how, employee confidential information and patient confidential information and any proprietary party information (any and all of the foregoing being "**Confidential Information**").

7.3. The Parties agree to adopt all such procedures as the other party may reasonably require and to keep confidential all Confidential Information and that the Parties shall not (save as required by law) disclose the Confidential Information in whole or in part to anyone and agree not to disclose the Confidential Information other than in connection with the provision of the Services.

7.4. The obligations under this Agreement apply to all and any Confidential Information whether the Confidential Information was in or comes into the possession of the relevant person prior to or following this Agreement and such obligations shall continue at all times following the termination of the Arrangements but shall cease to apply to information which may come into the public domain otherwise than through unauthorised disclosure by NHS England or the CCG, as the case may be.

8. Intellectual Property

8.1. All Intellectual Property (meaning any invention, idea, improvement, discovery, development, innovation, patent, writing, concept design made, process information discovered, copyright work, trademark, trade name and/or domain name) made, written, designed, discovered or originated by the Assigned Staff shall be the property of NHS England to the fullest extent permitted by law and NHS England shall be the absolute beneficial owner of the copyright in any such Intellectual Property.

Appendix 3: Standing Orders

1. STATUTORY FRAMEWORK AND STATUS

1.1 Introduction

1.1.1 These Standing Orders have been drawn up to regulate the proceedings of the CCG so that it can fulfil its obligations, as set out largely in the 2006 Act and related regulations. They form part of the CCG's Constitution.

1.1.2 The statutory and regulatory framework that the CCG operates under is summarised in the Constitution.

1.2 Schedule of matters reserved to the CCG and the Scheme of Reservation and Delegation

1.2.1 As set out in Parts 4 and 5 of the CCG's Constitution, both the CCG and the Governing Body have the ability to delegate their functions to certain bodies (such as Committees) and individuals. Delegations made are contained in the CCG's Scheme of Reservation and Delegation, which is set out in the Handbook.

1.3 Interpretation

1.3.1 Except as otherwise provided, words and expressions used in these Standing Orders shall have the same meaning as those in the Constitution.

1.4 Amendment and review

1.4.1 These Standing Orders will be reviewed on an annual basis or as required.

1.4.2 Amendments to these Standing Orders will be made pursuant to the process for amendments to the Constitution, as set out in clause 1.4 of the Constitution.

1.5 Transitional arrangements post-merger

1.5.1 The Members and the Governing Body have agreed specific arrangements that will apply during the Transition Period. These are set out in the Merger Transition Agreement, which forms part of the Handbook and during the Transition Period these Standing Orders should be read alongside the Agreement.

2. THE CCG: COMPOSITION OF MEMBERSHIP, KEY ROLES AND APPOINTMENT PROCESS

2.1 Composition of membership

2.1.1 Part 3 of the CCG's Constitution provides details of the membership of the CCG.

2.1.2 Part 4 of the CCG's Constitution provides details of the governing structure used in the CCG's decision-making processes, whilst part 5 of the Constitution outlines certain key roles and responsibilities within the Governing Body.

2.2 Key Roles

2.2.1 The Constitution sets out the composition of the Governing Body and identifies certain key roles and responsibilities within the CCG and its Governing Body. These Standing Orders set out how the CCG appoints individuals to these key roles.

2.2.2 Where a role is elected to and voting is required, electronic methods of voting may be utilised, with the precise method of electronic voting to be determined depending on the nature of the vote and approved by the Executive Director of Corporate Governance. Unless otherwise provided, a majority vote means a simple majority (i.e. 51% or more) of votes cast, in order for a candidate to be successfully elected into post. Each Member Practice will have 1 (one) vote in all cases when Members are asked to vote.

2.2.3 The **Chair** is subject to the following election process:

a) **Nomination**

i. Nominations will be sought from CCG Member Practices. Interested candidates may apply for the role, demonstrating how they meet the essential requirements of the role specification and how they would undertake the role; and

ii. A panel, appointed by the Remuneration and Nominations Committee and including any individuals deemed appropriate by the Committee, will assess the candidates' suitability for the role of Chair by holding screening interviews and produce a shortlist of suitable candidates.

b) **Eligibility**

i. Any GP from one of the CCG's Member Practices may nominate themselves to stand for election as Chair;

ii. Nominees must comply with the General Eligibility requirements for all Governing Body roles, as set out at 2.3 below; and

iii. The Chair must not hold any other Governing Body or senior clinical leadership role within the CCG.

c) **Election process**

i. The Chair will be elected from eligible candidates by a simple majority of the votes cast by CCG Member Practices; and

ii. If only one individual is nominated, CCG Member Practices will be asked to endorse the candidate by way of a yes or no vote. As with (i) above, a simple majority approach will be adopted to determine whether the candidate is successfully elected into post.

d) **Term of office**

i. The term of office for the Chair will be three years; and

ii. The Chair will have a maximum of two consecutive terms.

e) **Eligibility for re-election**

i. Re-election as Chair of the Governing Body by the CCG membership will depend on:

(1) An expression of interest to re-apply following completion of the preceding term(s) to the satisfaction of the Governing Body, expressed by a majority vote of the Governing Body; and

(2) Satisfactory completion of the competency re-assessment for all Governing Body Members.

ii. Where both of these conditions are successfully met, a candidate for re-election will be put forward for election (along with any other eligible candidates), pursuant to the process set out in c) above.

f) **Grounds for removal from office**

i. The grounds for removal from office for appointed roles to the Governing Body are set out in Annex A of these Standing Orders; and

ii. Where the Members wish to exercise their right to remove the Chair or to raise concerns about the Chair, on the basis of the grounds set out in Annex A, this shall be done through an Extraordinary General Meeting, as set out in Standing Order 2.4.4 (below).

g) **Notice period**

i. A minimum of three months' notice in writing to the Chief Executive Officer and Lay Vice Chair is required, if the Chair wishes to terminate his/her role; and

ii. In the event of gross misconduct, disqualification from office, or loss of clinical registration, no such notice shall be required. Where any of the other grounds set out in Annex A apply, notice shall be as considered appropriate in the circumstances.

2.2.4 The **Lay Vice Chair**: an independent appointed by the Remuneration and Nominations Committee and including any individuals deemed appropriate by the Committee (appointed in accordance with the process set out below in Standing Order 2.2.5) will be appointed as Lay Vice Chair, with the following additional requirements applying in relation to the Lay Vice Chair:

a) **Term of office**

i. The general term of office shall be three years, but with the ability to appoint for shorter or longer terms as appropriate. The Lay Vice Chair will have a maximum of two consecutive terms, except where a third term is approved on an exceptional basis. The total length of service for the Lay Vice Chair shall include any term of office as another Lay Member role within the CCG.

b) **Eligibility for reappointment**

i. The Lay Vice Chair may nominate themselves to stand for re-appointment as Lay Vice Chair, subject to:

(1) Completion of the preceding term(s) to the satisfaction of the CCG Governing Body;

(2) Compliance with the General Eligibility requirements for all Governing Body roles, as set out at 2.3 below; and

(3) Not exceeding the maximum number of terms, as set out in a) above.

c) **Grounds for removal from office**

i. The grounds for removal from office for appointed roles to the Governing Body are set out in Annex A of these Standing Orders.

d) **Notice period**

i. A minimum of three months' notice in writing to the Chair and the Chief Executive Officer is required, if the Lay Vice Chair wishes to terminate his/her role; and

ii. In the event of gross misconduct, disqualification from office, or loss of clinical registration, no such notice shall be required. Where any of the other grounds set out in Annex A apply, notice shall be as considered appropriate in the circumstances.

2.2.5 The **Independent Members** are subject to the following appointment process:

a) **Eligibility**

i. Relevant experience and expertise, as detailed in the relevant role specification;

ii. Commitment to the NHS and personal development so as to contribute to the effective working of the Governing Body; and

iii. Ability to meet the competencies required of all Governing Body Members and compliance with the specific requirements of the National Health Service (Clinical Commissioning Groups) Regulations 2012 as they apply to Lay Members; the Secondary Care Specialist and the Registered Nurse.

b) **Appointment process**

i. Appointments to be made by a panel appointed by the Remuneration and Nominations Committee and including any individuals deemed appropriate by the Committee. The panel will assess suitability for the role by holding interviews and overseeing any other supporting assessment process.

c) **Term of office**

i. The ordinary term will be three years but a shorter or longer term may be agreed. The total number of terms shall be two consecutive terms, except where a third term is approved on an exceptional basis.

d) **Eligibility for reappointment**

i. Independent Members may nominate themselves to stand for reappointment, subject to meeting the following:

(1) Completion of the preceding term(s) to the satisfaction of the Governing Body;

(2) Satisfactory re-completion of the competency assessment for all Governing Body Members; and

(3) Not exceeding the maximum number of terms, as set out in c) above.

e) **Grounds for removal from office**

i. The grounds for removal from office for appointed roles to the Governing Body are set out in Annex A of these Standing Orders.

f) **Notice period**

i. A minimum of three months' notice in writing to the Chair and the Chief Executive Officer is required; and

ii. In the event of gross misconduct, disqualification from office, or loss of clinical registration (where relevant), no such notice shall be required. Where any of the other grounds set out in Annex A apply, notice shall be as considered appropriate in the circumstances.

2.2.6 The **Locality Representatives** are subject to the following election process to be a Governing Body Member:

a) **Nominations**

i. Nominations will be sought from all eligible candidates, as set out in the detailed Locality arrangements in the Handbook. Locality Representatives will ordinarily be a General Practitioner or other clinician working in primary care. By exception the role can be performed by a Practice Manager, where such an arrangement is agreed by the Locality and the Locality confirms that the Practice Manager is authorised to speak on the Members' behalf; and

ii. One representative will be sought for each Locality, except during the Transition Period, when the transition arrangements set out in the Merger Transition Agreement shall apply.

b) **Eligibility**

i. Any eligible candidate, as per 2.2.6(a)(i) above. Any person who does nominate themselves for election will be representing the Locality that their practice is currently located in and the practice will not be permitted to change their Locality at a later date;

ii. Not be a Member of another CCG Governing Body;

iii. Not hold any other senior clinical leadership role in the CCG that would compromise the candidate's ability to carry out the Locality Representative role; and

iv. Ability to meet the competencies required of all Governing Body Members, including complying with the General Eligibility requirements for all Governing Body roles, as set out at 2.3 below.

c) **Election process**

i. Self-nomination;

ii. Discussion with the Chair regarding the requirements of the role and the suitability of the individual for the role;

iii. Election by the Locality CCG Membership. Voting may take place 'virtually', depending on the process developed by the localities and detailed in the Handbook;

iv. If only one individual is nominated, CCG Member Practices will be asked to endorse the candidate by way of a yes or no vote; and

v. Where there is more than one candidate per Locality, the membership will be asked to vote for their preferred candidate.

d) **Term of office**

i. Terms will be on a staggered basis. The ordinary term will be for a three year period but a shorter or longer term may be agreed with the relevant Locality, where appropriate. Locality Representatives will have a maximum of two consecutive terms in the role of Locality Representative, except where a third term is approved on an exceptional basis.

e) **Eligibility for re-election**

i. Re-election as a Locality Representative by the CCG membership will depend on:

(1) Completion of the preceding term(s) to the satisfaction of the Governing Body and the relevant Locality;

(2) Satisfactory re-completion of the competency assessment for all Governing Body Members; and

(3) Not exceeding the total number of terms, as set out in d) above.

f) **Grounds for removal from office**

i. The grounds for removal from office for appointed roles to the Governing Body are set out in Annex A of these Standing Orders; and

ii. In addition to those grounds set out in Annex A, a Locality Representative can be removed from office if there has been a motion of no confidence, which has been proposed and seconded by two Member Practices from that Locality and which is subsequently carried by a simple majority (i.e. more than 50%) of the Member Practices of that Locality. The agreed notice period outlined in paragraph 2.2.6(g), below, will apply, unless an alternative shorter period is agreed between the Chair and the Governing Body at the time (with such agreement being by a majority of the Governing Body Members).

g) **Notice period**

i. A minimum of three months' notice in writing to the Chair is required, if the representative wishes to terminate his/her role; and

ii. In the event of gross misconduct, disqualification from office, or loss of clinical registration (where relevant), no such notice shall be required. Where any of the other grounds set out in Annex A apply, notice shall be as considered appropriate in the circumstances.

Employed Roles on the Governing Body

2.2.7 All formally appointed employees will be managed in line with Terms and Conditions of NHS Employment and therefore subject to performance management processes.

2.2.8 The **Chief Executive Officer** will be an employee of the CCG, appointed by NHS England, on the recommendation of the CCG, with the appointment process being otherwise as set out in 2.2.9, below.

2.2.9 The **Chief Finance Officer, and Chief Nursing Officer, Chief Medical Officer and Deputy Chief Executive Officer** are subject to the following appointment process:

a) **Nominations, Eligibility and Appointment process**

i. This appointment will be subject to NHS recruitment and selection policies and relevant national guidance. It is not subject to a fixed term appointment; and

ii. Ability to meet the competencies required of all Governing Body Members.

b) **Term of office**

i. Not applicable as is a substantive role.

c) **Eligibility for reappointment**

i. Not applicable as is a substantive role.

d) **Grounds for removal from office**

i. As a substantive post holder, this will be in accordance with NHS/CCG policies, other relevant guidance and employment law. The Members are not able to remove substantive post holders by passing a resolution.

e) **Notice period**

i. In accordance with the post-holder's contract of employment.

2.3 **General Eligibility Requirements for all Governing Body Roles**

2.3.1 The National Health Service (Clinical Commissioning Groups) Regulations 2012 sets out the individuals excluded from being Governing Body Members and/or holding specific roles on the Governing Body. All Governing Body Members are expected to be familiar with the statutory exclusions and to comply with them at all times. Each Governing Body Member is responsible for informing the Chief Executive Officer as soon as practicable if they become aware of an actual or potential exclusion on the basis of the Regulations. A copy of the CCG Regulations can be obtained from the Lay Member responsible for governance or from the Executive Director of Corporate Governance.

MEETINGS OF THE CLINICAL COMMISSIONING GROUP

2.4 Meetings of the Members

2.4.1 The CCG shall hold an Annual General Meeting ("AGM") in each calendar year. Not more than 15 months shall elapse between the date of one Annual General Meeting and the next. The AGM is a non-decision making meeting. The approved CCG Annual Accounts and Annual Report will be presented to the AGM. Papers will be uploaded to the CCG website in advance of the AGM. Locality Representatives are expected to encourage Member attendance at the AGM to enable the Members to be informed about the progress of the CCG in the previous year and to hear about the CCG's plans for the year ahead.

2.4.2 Subject to 2.4.1 above, the Annual General Meeting shall be held at such time and place as the Governing Body may appoint on giving not less than 14 days' notice to the Members. Notice may be given by email or other appropriate method of communication.

2.4.3 The Governing Body may also convene, at any such time as they consider appropriate in relation to the business to be considered, an extraordinary general meeting of the Members.

2.4.4 The Members may requisition a general meeting of the Members by notice in writing to the Chair and the Executive Director of Corporate Governance, as follows:

a) where notice of an Annual General Meeting has not been given by the Governing Body by the date falling 15 calendar months after the date of the last Annual General Meeting, the calling of the Annual General Meeting may be requisitioned by notice signed by one Member from each Locality, acting on behalf of the Locality, and after agreement within the Locality to sign the notice;

b) an Extraordinary General Meeting ("EGM") to consider the filling of any vacancy for, or the removal of, the Chair or any Governing Body Member may be requisitioned by notice signed by at least half (50%) of the Governing Body Locality Representatives (with the Chair of the Governing Body being considered as a Locality Representative for these purposes), acting on behalf of the Locality, and after agreement within the Locality to sign the notice. Where the issue under consideration relates to the Chair, then the requirement is for at least half (50%) of the Governing Body Locality Representatives (not including the Chair) to sign the notice; and

c) an EGM to consider any other business may be requisitioned by notice signed by at least half (50%) of all the Governing Body Locality Representatives (not including the Chair), acting on behalf of

the Locality, and after agreement within the Locality to sign the notice.

2.4.5 The Governing Body shall promptly call any meeting validly requisitioned by the Members, subject to any applicable notice periods for the meeting or business in question. If the Governing Body fails to call any general meeting within 14 days of delivery of a valid requisition, then any Member who signed the relevant requisition may (subject to the requirements of this Constitution, and at the cost of the CCG) call the meeting.

2.4.6 Except where the Governing Body properly considers that the holding of any meeting of the Members in public would not be in the public interest, notice of the Annual General Meeting shall be advertised in such manner as the Governing Body considers appropriate no later than 14 days prior to the date of the meeting.

2.4.7 Notice of any EGM of the Members (whether called by the Governing Body or requisitioned by Members) shall also be advertised in such manner and on such notice as the Governing Body considers appropriate in the circumstances.

2.4.8 Where the Governing Body seeks the views of the Members on any issue and/or where Membership approval (including via a vote) is required, virtual mechanisms may be used. Where a vote is taken, a simple majority will be sufficient to pass the motion, unless a higher threshold has been agreed by the Governing Body. In the event of a tie, the Chair and the Locality Representatives will agree an appropriate course of action. Where Members are asked to vote, each Member Practice shall have 1 (one) vote.

2.4.9 Members will have the opportunity to engage on a regular basis via the Locality governance arrangements as set out in the Handbook.

2.5 **Meetings of the Governing Body**

2.5.1 The Chair of the Governing Body may call a meeting of the Governing Body at any time, giving notice to Governing Body Members of no less than seven working days, unless the matter is urgent in which case the procedure set out below under 2.12 shall apply. In this context “working day” means any day that is not a Saturday, Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England.

2.5.2 Meetings of the Governing Body will ordinarily take place on a bi-monthly basis.

2.5.3 One-third or more Members of the CCG Governing Body may requisition a meeting in writing to the Chair and the Executive Director of Corporate Governance. If the Chair refuses, or fails, to call a meeting within seven

days of a requisition being presented the Members signing the requisition may forthwith call a meeting of the CCG Governing Body.

2.6 **Agenda, supporting papers and business to be transacted**

2.6.1 Items of business to be transacted for inclusion on the agenda of a meeting need to be notified to the Chair (copied to the Executive Director of Corporate Governance) at least ten days before the meeting takes place. The agenda and supporting papers will be circulated to all Members of a meeting at least seven days before the date of the meeting.

2.6.2 By exception for urgent items for consideration by the Governing Body, and subject to 2.12.2, items of business may be submitted just three days before a meeting of the Governing Body and circulated just two days before a meeting.

2.6.3 Except where the provisions relating to confidentiality apply, agendas and papers for meetings of the Governing Body will be published on the CCG's website.

2.7 **Petitions**

2.7.1 Where a petition has been received by the CCG, the Chair shall include the petition as an item for the agenda of public part of the next appropriate meeting of the Governing Body, following consultation with the Chief Executive Officer and the Executive Director of Corporate Governance. The Governing Body may resolve into private session to discuss the details of the Petition, in accordance with 2.16 below.

2.8 **Chair of a meeting**

2.8.1 At any meeting of the Governing Body, the Chair shall preside. If the Chair is absent from the meeting, the Lay Vice Chair shall preside.

2.8.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Lay Vice Chair shall preside. If both the Chair and Lay Vice Chair are absent, or are disqualified from participating, another Governing Body Member shall be chosen to act as the Chair by the majority of Members present.

2.9 **Chair's ruling**

2.9.1 The decision of the chair of the meeting in question on questions of order, relevancy and regularity and their interpretation of the Constitution, Standing Orders, Scheme of Reservation and Delegation, Prime Financial Policies and other policies or procedures as relevant at the meeting, shall be final.

2.10 **Quorum**

2.10.1 The quorum necessary for the transaction of business by the Governing Body shall be at least half (50%) of the total number of Governing Body Members, and this must include at least one Lay Member, one executive (i.e. one of the employed Governing Body Members), one Locality Representative and one Independent Clinical Member. In addition, when making decisions the Chair will:

a) endeavour to ensure a clinical majority, unless such a clinical majority is not possible due to conflicts of interest or other exceptional circumstances, in which case the conflicts of interest provisions as set out in this Constitution and in the Standards of Business Conduct Policy shall be followed.

For this purpose, clinical majority includes the Independent Clinical Member - Registered Nurse; Independent Clinical Member - Secondary Care Clinician; and the Independent Clinical Member – General Practitioner (in addition to the Locality Representatives) but not the Chief Nursing Officer or the CCG Chief Medical Officer.

The Chair may resolve to use virtual decision-making in order to meet quorum requirements and enable appropriate clinical input; and

b) endeavour to ensure that the most relevant Locality Representative is part of the quorum, unless this is not possible due to conflicts of interest or other reasonable circumstances. The Chair may resolve to use virtual decision-making in order to meet quorum requirements and appropriate Locality representation.

2.10.2 A duly convened meeting of the Governing Body at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the CCG. This will include meetings convened virtually using teleconferencing or other live and uninterrupted methods of communication.

2.10.3 Executive Members of the Governing Body are, subject to agreement, able to nominate a deputy to attend in their place and count towards quorum should they exceptionally be unable to attend a meeting. Any deputy shall be subject to the agreement of the Chair, or in their absence the Lay Vice Chair; must declare their interests; and are permitted to vote in place of the relevant Governing Body Member.

2.10.4 In such an event when all elected Locality Representatives are conflicted, the Independent Clinical Member - Registered Nurse; Independent Clinical Member - Secondary Care Clinician; and the Independent Clinical Member - General Practitioner may provide clinical input and count towards quorum, with the approval of the Chair or Lay Vice Chair as

appropriate. Where any of these roles are ordinarily attendees and not Governing Body Members, he or she may be counted as a member (and therefore able to vote) in order to ensure that conflicts of interest can be managed.

2.10.5 For all other of the CCG or Governing Body's Committees or Sub-Committees, the details of the quorum for these meetings and status of representatives are set out in the appropriate terms of reference.

2.11 Decision making process of the Governing Body

2.11.1 Part 4 of the group's Constitution, together with the Scheme of Reservation and Delegation, sets out the governing structure for the exercise of the CCG's statutory functions. Generally it is expected that at all meetings of the Governing Body decisions will be reached by consensus (and the same approach applies to other meetings, including those of the Membership). In the case of meetings of the Governing Body, if it is not possible to reach a consensus decision then a vote of Governing Body Members will be required, the process for which is set out below:

a) **Eligibility**

i. Only Members of the CCG Governing Body, or their approved nominated deputy where this is permitted, are eligible to vote. Attendees are not eligible to vote except where under 2.10.4, above.

ii. The Chair or Lay Vice Chair must be present in the case of a vote. Should they be unavailable the vote should be held at the earliest practicable time, when they are available. Virtual decision-making may be utilised to enable a decision to be taken.

b) **Majority necessary to confirm a decision**

i. Decisions will be made on a majority of votes cast. Majority means a simple majority, i.e. 51% or more. Electronic voting may be used.

c) **Casting vote**

i. In case of a tie, the Chair will have a second and casting vote.

d) **Dissenting views**

i. Governing Body Members taking a dissenting view to the result of a vote may take the opportunity, should they choose, to have their dissent recorded in the minutes of the meeting. Should such request not be made, the minutes will record a statement

of the outcome of the vote, including the numbers of votes for and against.

2.11.2 Where a decision on materiality is required under clause 1.4 of the Constitution, the Chief Executive Officer will be required to reach a decision on materiality, subject to seeking advice from the Chair, the Lay Member with responsibility for Governance and the Executive Director of Corporate Governance and taking this into account.

2.11.3 When assessing materiality, the following factors shall be taken into account:

a) The impact of the proposed amendments on the way that the CCG discharges its functions and, in particular, the extent to which they amend the arrangements described in Part 5 of the Constitution and/or the detailed procedural framework set out in the Standing Orders;

b) Whether the proposed amendments materially change Part 3 of the Constitution (Membership Matters);

c) The views expressed on the proposed amendments by any Members involved in developing the proposals and the extent of any prior involvement and engagement with the Members on the proposed amendments.

2.11.4 All other of the CCG's and Governing Body's Committees will follow these same principles.

2.12 **Emergency powers and urgent decisions**

2.12.1 The powers which the Governing Body has reserved to itself within these Standing Orders, may in an emergency or for an urgent decision be exercised by the Chair having consulted, at least, the Chief Executive Officer and the Lay Vice Chair, or another Lay Member if the Lay Vice Chair cannot be reached.

2.12.2 Before exercising such emergency powers, the Chair should consider the extent to which virtual decision-making can be used to meet the standard decision-making requirements for Governing Body decisions, as set out above.

2.12.3 The exercise of such powers by the Chair will be reported to the next meeting of the Governing Body for formal ratification.

2.12.4 Should the Governing Body be unwilling to ratify a decision taken by the Chair using his or her emergency powers, this would trigger a vote on whether Governing Board Members have confidence in the Chair.

2.13 **Suspension of Standing Orders**

2.13.1 Except where it would contravene any statutory provision or any direction made by the Secretary of State for Health and Social Care or NHS England, any part of these Standing Orders may be suspended by the Chair (or Lay Vice Chair where acting in place of the Chair) at any meeting.

2.13.2 A decision to suspend Standing Orders together with the reasons for doing so shall be recorded in the minutes of the meeting.

2.13.3 A separate record of matters discussed during the suspension shall be kept. These records shall be made available to the Governing Body's Audit and Assurance Committee for review of the reasonableness of the decision to suspend Standing Orders at the next appropriate meeting.

2.14 **Record of Attendance**

2.14.1 The names of all Members present at a meeting of the Governing Body and of its Committees shall be recorded in the minutes of the respective meetings.

2.15 **Minutes**

2.15.1 The minutes of the preceding meeting shall be prepared and submitted for agreement at each meeting, where they will be subject to amendment and approval by any Members present at the preceding meeting. When agreed a copy of the agreed minutes will be signed by the Chair or Lay Vice Chair.

2.15.2 Minutes of public meetings will posted on the CCG website and thus be accessible to all Members of the CCG and the public.

2.16 **Admission of public and the press**

2.16.1 Subject to Standing Order 2.16.2, meetings of the Governing Body shall be open to the public.

2.16.2 The Governing Body may resolve to exclude the public from a meeting that is open to the public (whether during the whole or part of the proceedings) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

2.16.3 In the event the public could be excluded from a meeting of the Governing Body pursuant to Standing Order 2.16.2 above, the CCG shall consider

whether the subject matter of the meeting would in any event be subject to disclosure under the Freedom of Information Act 2000, and if so, whether the public should be excluded in such circumstances.

2.16.4 The Chair, Lay Vice Chair or other person presiding over the meeting shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Governing Body's business shall be conducted without interruption and disruption.

2.16.5 Without prejudice to the power to exclude the public pursuant to Standing Order 2.16.2 above the Governing Body may resolve (as permitted by Section 1(8) Public Bodies (Admissions to Meetings) Act 1960 as amended from time to time) to exclude the public from a meeting (whether during whole or part of the proceedings) to suppress or prevent disorderly conduct or behaviour.

2.16.6 Matters to be dealt with by the Governing Body following the exclusion of representatives of the press, and other members of the public shall be confidential to the Governing Body Members.

2.16.7 Members and officers or any employee of the CCG in attendance at a Governing Body meeting shall not reveal or disclose the contents of minutes or papers indicated as either 'Private' or 'In-Confidence' without the express permission of the Chair of the Governing Body. This prohibition shall apply equally to the content of any discussion during the Governing Body meeting which may take place on such reports or papers. Where a breach of confidentiality occurs, it will be dealt with in accordance with the CCG's relevant policies and procedures and may be a disciplinary matter and/or result in removal from office, on the basis of the grounds set out in Annex A.

3. APPOINTMENT OF COMMITTEES

3.1 Appointment of CCG Committees

3.1.1 The Constitution sets out the ability of the CCG to appoint Committees.

3.1.2 Where such a Committee is established by the CCG, it may determine the membership of such committee, subject to any statutory requirements, and agree appropriate terms of reference for the Committee.

3.2 Appointment of Governing Body Committees

3.2.1 The Constitution sets out the ability of the Governing Body to appoint Committees. Where the Governing Body appoints such a Committee it may determine the membership, subject to any statutory requirements, and agree appropriate terms of reference for the Committee.

3.2.2 The Governing Body will require, receive and consider reports of all its Committees at the next appropriate meeting of the Governing Body.

3.3 **Terms of Reference**

3.3.1 Terms of reference for all non-statutory or otherwise mandated Committees are set out in the CCG Governance Handbook.

3.4 **Meetings held "in common"**

3.4.1 The CCG and the Governing Body may hold meetings on a 'meetings in common' basis with other organisations. The same applies to Committees established by the CCG or the Governing Body. Where this approach is adopted, the requirements of the Constitution and the Standing Orders must still be complied with.

3.5 **Joint Committees**

3.5.1 Where Joint Committees are established pursuant to the powers set out in the Constitution, the requirements for such Committees set out in the Constitution must be complied with.

3.5.2 Joint committees may operate as committees-in-common with other partner organisations.

4. DUTY TO REPORT NON-COMPLIANCE WITH STANDING ORDERS

4.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Governing Body for action or ratification. All Members of the group and staff have a duty to disclose any non-compliance with these standing orders to the Chief Executive Officer and the Executive Director of Corporate Governance as soon as possible. Where the non-compliance relates to either of the named roles in this paragraph, the report should be made to the other individual and/or to the Freedom to Speak Up Guardian.

5. USE OF SEAL AND AUTHORISATION OF DOCUMENTS

5.1 **The Clinical Commissioning Group's seal**

5.1.1 The CCG may have a seal for executing documents where necessary.

5.1.2 The CCG's seal will be kept by the Executive Director of Corporate Governance or a nominated manager in a secure place.

5.1.3 Where it is necessary that a document be sealed, the seal shall be affixed in the presence of two of the following individuals or officers are authorised to authenticate its use by their signature:

a) The Chief Executive Officer;

b) The Chair of the Governing Body;

c) The Chief Finance Officer;

d) The Lay Vice Chair of the Governing Body;

e) The Executive Director of Corporate Governance.

5.1.4 Where two signatures are required one of the signatures should be that of the Chief Executive Officer or Chief Finance Officer.

5.1.5 The Executive Director of Corporate Governance shall keep a register that records the use of the seal with a record of all documents to which it is applied and shall report periodically on its use to the Audit and Assurance Committee.

5.2 **Execution of a document by signature**

5.2.1 The following individuals are authorised to execute a document on behalf of the CCG by their signature:

a) The Chief Executive Officer;

b) The Chair of the Governing Body;

c) The Chief Finance Officer;

d) The Lay Vice Chair of the Governing Body;

e) The Executive Director of Corporate Governance.

Annex A: Grounds for removal from office for appointed Governing Body roles

i. Gross misconduct, to be determined by the Governing Body, on the advice of the Remuneration and Nominations Committee;

ii. Being or becoming disqualified from office, which shall include no longer meeting the General Eligibility requirements set out in 2.3 of the Standing Orders;

iii. Not having or losing clinical registration;

iv. Not attending three consecutive Governing Body meetings, unless in extenuating circumstances;

v. Failing to disclose a relevant material interest;

vi. Where continuation in the role is not in the interests of either the public or the CCG.

Appendix 4: Extract from Standing Financial Instructions (Delegated Financial Limits)

Sign Off Level	Requisition/ Ordering	Invoice Approval	Credit Memos	Sales Orders	Tendering & Signing (Contracts)
Chief Executive Officer and Chief Finance Officer	unlimited	unlimited	unlimited	unlimited	Unlimited
Deputy Chief Executive Officer	£30m	£30m	£30m	£30m	£30m
Local Finance Director, Managing Director	£20m	£20m	£20m	£20m	£20m
Executive Director	£10m	£10m	£10m	£10m	£10m
Associate Director	£1m	£1m	£1m	£1m	No
Budget Managers at Bands 8B to 8D	£250k	£250k	£250k	£250k	No
Budget Managers at Bands 6 to 8A	£10k	£10k	£10k	£10k	no
System Administration responsibility no delegated budget	£0.01	£0.01	£0.01	£0.01	no