



# **NHS Standard Contract**

## **Template Alliance Agreement for Virtual MCP/ PACS models**

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**[PROVIDER B] (4)**

**[PROVIDER C] (5)**

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**TEMPLATE ALLIANCE AGREEMENT**

**FOR**

**VIRTUAL MCP/ PACS models**

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**GUIDANCE NOTES**

- 1. This Alliance Agreement is a template only for the purposes of facilitating discussions between Commissioners and Providers as to the terms which should be included in an Alliance Agreement. It needs to be developed further (i) between Commissioners before it is issued to Providers; and (ii) with the participation from Providers.*
- 2. This is not capable of execution in its current form.*
- 3. Particular care may be needed to avoid the creation of a relevant merger situation between the parties, if "enterprises" (which can be businesses of any kind and in the NHS include individual hospital services and specialities) are brought under common ownership or common control. Advice should be sought if shared ownership or control of Alliance Agreement services is intended or likely.*
- 4. It is also possible that an Alliance Agreement could create a strong or dominant local market position, and if so the prohibitions on abuse of a dominant position may apply. Examples could be long-term exclusive arrangements, or discriminatory behaviour towards competing providers. Further advice should be sought if necessary.*

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

**BETWEEN** the parties listed in Schedule 1.

### **BACKGROUND**

- (A) The Participants intend to ensure integrated, high quality, affordable and sustainable health and care services are delivered in the most appropriate way to ***[insert high level description of the population and the services in scope of the Alliance]***.
- (B) This Agreement is an integral part of the vision to promote integrated services that deliver personalised care, and it is anticipated that this Agreement will facilitate the objectives of ***[insert description of local programme/initiative supported by the Alliance]*** as more fully described in this Agreement.
- (C) ***[insert any relevant further background to the local programme/initiative]***
- (D) Over the period of this Agreement, We will work together positively and in good faith in accordance with the Alliance Principles to achieve the Alliance Objectives.
- (E) This Agreement supplements and operates in conjunction with existing Services Contracts between the one or more of the Commissioner Participants and each of the Provider Participants.
- (F) ***[The Commissioner Participants have appointed [insert relevant Commissioner] as the Representative Commissioner.]***

### **IT IS AGREED AS FOLLOWS:**

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The provisions of this Agreement are to be interpreted in accordance with Schedule 2 (Definitions and Interpretation).

#### **2. STATUS AND PURPOSE OF THIS AGREEMENT**

- 2.1 We each agree that:
  - (a) each one of Us is a sovereign persons or organisations;
  - (b) the Alliance is not a separate legal entity and as such is unable to take decisions separately from Us or bind Us;
  - (c) one or more of Us cannot 'overrule' any other of Us on any matter (although all of Us are obliged to comply with the terms of the Agreement); and
  - (d) each one of Us shall not be required to take any action pursuant to any provision of this Agreement that causes any one of Us to be in breach of Legislation or any regulatory obligation; and
  - (e) each one of Us shall not be required to take any action pursuant to any provision of this Agreement that causes any one of Us to act in a way that is contrary to our interests.
- 2.2 This Agreement is ***[not, as between [insert applicable Participants,]]*** an NHS Contract pursuant to section 9 of the National Health Service Act 2006.
- 2.3 We have agreed to form an Alliance to establish an improved financial, governance and contractual framework for the delivery of the Services.
- 2.4 We recognise that the successful implementation of the Alliance will require strong relationships and the creation of an environment of trust, collaboration and innovation.

2.5 This Agreement sets out the key terms We have agreed with each other including the agreed outcomes and indicators for the Services. This Agreement will supplement and operate in conjunction with:

- (a) the Services Contracts (see Section C below for more details);
- (b) ***[insert description of any relevant joint commissioning arrangements including any section 75 arrangements];*** and
- (c) ***[insert description of any relevant local partnering arrangements that will operate alongside this Alliance].***

2.6 This Agreement supplements and works alongside the Services Contracts. In other words, this Agreement is the overarching agreement that sets out how We will work together in a collaborative and integrated way and the Service Contracts set out how We will provide the Services.

2.7 Each of Us will perform Our respective obligations under Our respective Services Contract. We acknowledge that the overall quality of the Services will be determined by Our collective performance and We agree to work together as described more fully in Section B below. Our plans for delivering the Services and improving care are set out in Section C and Our agreed sharing of risks and rewards is described in Section D.

2.8 The terms of this Agreement are set out in the following sections:

- (a) **SECTION A:** sets out the objectives and principles of the Alliance.
- (b) **SECTION B:** sets out each of Our roles in the Alliance, and the governance of the Alliance.
- (c) **SECTION C:** sets out Our agreed arrangements relating to the Services Contracts for the delivery of the Services, ensuring improved coordination of care and greater collaboration between ***[primary, community], acute] and social care].***
- (d) **SECTION D:** sets out how We manage Our performance, financial risk and benefit sharing mechanisms.
- (e) **SECTION E:** sets out the remaining contractual terms.

### 3. **PRE-COMPLETION**

Each of Us acknowledges and confirms that as at the date of this Agreement we have obtained all necessary authorisations to enter into this Agreement.

### 4. **COMPLETION**

4.1 Completion is conditional upon the execution of a Service Contract between the relevant Commissioner Participant and the relevant Provider Participant. ***[Each Service Contract shall include a specification incorporating the Alliance Objectives.]***

### 5. **COMMENCEMENT AND TERM**

5.1 Clauses 1 (Definitions and Interpretation), 2 (Status and Purpose of this Agreement), 3 (Pre-completion), 4 (Completion) and 5 (Commencement and Term) will be effective from the Commencement Date.

5.2 The remainder of this Agreement will be effective from a date specified in a notice from the Commissioner Participants to the Provider Participants confirming that Service Contracts between each relevant Commissioner Participant and each relevant Provider Participant has been executed (the "**Completion Date**").

- 5.3 This Agreement shall, subject to Clauses 5.4 and 5.5 remain in force until the Initial Expiry Date unless terminated in accordance with this Agreement (the "**Initial Period**").
- 5.4 The Commissioner Participants may with the consent of the Provider Participants not less than **[six (6) months]** prior to the expiry of the Initial Period serve notice to extend this Agreement for period of **[insert number]** years from the expiry of the Initial Period.
- 5.5 Any extensions beyond the Initial Period will be on the same terms and conditions as this Agreement.

## **SECTION A: ALLIANCE PRINCIPLES, OBJECTIVES AND COMMITMENTS**

### **6. ALLIANCE OBJECTIVES**

- 6.1 The Alliance Objectives agreed by Us are to deliver sustainable, effective and efficient Services with significant improvements over the Term. In particular We have agreed the following:
- (a) ***[insert agreed Alliance Objectives]***
- 6.2 We acknowledge and accept that the Alliance Leadership Team is unable in law to bind any Participant so it will function as a forum for discussion of issues, including but not limited to discussing appropriate allocation of activity, in order to achieve the Alliance Objectives. We will utilise the provisions, mechanisms and flexibilities in the Services Contracts to effect the necessary changes in service specifications, activity plans, etc.
- 6.3 We acknowledge that We will have to make decisions together in order for Our Alliance to work effectively and, except for the Reserved Matters listed at Clause 9.1 below, We will work together on a Best for Service basis in order to achieve the Alliance Objectives.

### **7. ALLIANCE PRINCIPLES**

- 7.1 In consideration of the mutual benefits and obligations under this Agreement, We will work together to perform the obligations set out in this Agreement and, in particular, achieve the Alliance Objectives and, subject to and in accordance with the provisions of this Agreement, We will:
- (a) ***[work towards a shared vision of integrated service provision;***
- (b) ***commit to delivery of system outcomes in terms of clinical matters, Service User experience and financial matters;***
- (c) ***commit to common processes, protocols and other system inputs;***
- (d) ***commit to work together and to make system decisions on a Best for Service basis;***
- (e) ***[accommodate risk reward scheme where We all share in savings generated by reduction in acute activity.]***
- (f) ***take responsibility to make unanimous decisions on a Best for Service basis;***
- (g) ***always demonstrate the Service Users' best interests are at the heart of Our activities;***
- (h) ***adopt an uncompromising commitment to trust, honesty, collaboration, innovation and mutual support;***

- (i) ***establish an integrated collaborative team environment to encourage open, honest and efficient sharing of information, subject to competition law compliance;***
- (j) ***adopt collective ownership of risk and reward, including identifying, managing and mitigating all risks in performing our respective obligations in this Agreement; and***
- (k) ***co-produce with others, especially service users, families and carers, in designing and delivering the Service,]***

(together the “Alliance Principles”).

- 7.2 Over the life of the Alliance, the actual provision of Services will alter on the basis of the most effective utilisation of staff, premises and other resources (in terms of cost and quality) and whilst there will be co-operation as to the service design this will not:
- (a) preclude competition between Us in respect of service provision as is needed to achieve the Alliance Objectives and which will be reflected in the Services Contracts and changes to those Services Contracts; or
  - (b) restrict the Commissioner Participant's statutory obligations including obligations under procurement law to contract with provider(s) most capable of meeting the Commissioner Participants requirements, and obligations under Legislation (for example, the Public Contract Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013).

## **SECTION B: ALLIANCE GOVERNANCE**

### **8. ALLIANCE GOVERNANCE**

#### **Alliance Leadership Team**

- 8.1 We all agree to establish the Alliance Leadership Team. For the avoidance of doubt the Alliance Leadership Team shall not be a committee of any Participant or any combination of Participants.
- 8.2 The Alliance Leadership Team is the group responsible for leading the Alliance. The Alliance Leadership Team will hold to account the Alliance Management Team. It will have other duties and the authority and accountability defined in its Terms of Reference.
- 8.3 The terms of reference for the Alliance Leadership Team shall be as set out in Part 1 of Schedule 3 (Alliance Leadership Team – Terms of Reference).

#### **Alliance Management Team**

- 8.4 We agree to establish the Alliance Management Team which will be responsible for managing the Alliance and the delivery of the Services. For the avoidance of doubt the Alliance Leadership Team shall not be a committee of any Participant or any combination of Participants.
- 8.5 The terms of reference for the Alliance Leadership Team shall be as set out in Part 2 of Schedule 3 (Alliance Management Team – Terms of Reference).

#### **[Alliance Programme Manager**

- 8.6 ***We agree that the Provider Participants will engage an individual to undertake project management on behalf of Us (the "Alliance Programme Manager").***
- 8.7 ***We agree that the detailed responsibilities / job description for the Alliance Programme Manager shall be determined by the Alliance Leadership Team. The***

**Alliance Programme Manager will report regularly (no less than every month) to the Alliance Leadership Team.**

- 8.8 **We agree to work with the Alliance Programme Manager to enable him/her to carry out the actions required of him/her under this Agreement.]**

Admitting new Participants

- 8.9 New Participants shall be admitted on terms which are fair, reasonable and non-discriminatory. Where a Participant or Participants wish to admit a new person or organisation to be a Participant under this Agreement, such a proposal shall be considered at the next Alliance Leadership Team meeting.
- 8.10 The relevant Participant or Participants that wish to admit a new person or organisation shall serve a written notice on the Alliance Leadership Team setting out the details of:
- (a) the proposed new person or organisation (where known);
  - (b) reasons and rationale for the proposed admission of a new person or organisation;
  - (c) the likely impact on the Services; **[and**
  - (d) **the likely impact on the payments to be made under Schedule 4 (Risk/Reward Mechanism)].**
- 8.11 Following receipt of the notice referred to in Clause 8.10, the Alliance Leadership Team shall then consider the proposal and decide what actions (if any) need to be taken, in terms of varying this Agreement, for example.

9. **RESERVED MATTERS**

- 9.1 We acknowledge that each of the Commissioner Participants is required to comply with various statutory duties as commissioners. Therefore, notwithstanding any other provision of this Agreement or any Services Contract, each of the Commissioner Participants must be free to determine the following matters as they see fit. Each of the Commissioner Participants will strive to achieve a consensus and an alignment amongst Us, but We recognise that, ultimately, each of the Commissioner Participants must be free to determine the following "**Reserved Matters**":
- (a) any Mandatory Variation required to be implemented by the Commissioner Participants;
  - (b) any matter upon which the Commissioner Participants may be required to submit to public consultation or in relation to which the Commissioner Participants may be required to respond to or liaise with a Local Healthwatch organisation;
  - (c) any decision of the Commissioner Participants to exercise its rights in relation to Clause 17 (Force Majeure);
  - (d) any steps taken by the Commissioner Participants pursuant to Clause 18 (Rectification, Exclusion and Termination);
  - (e) any steps taken by the Commissioner Participants in relation to Clause 21 (Transfer to Third Parties); and
  - (f) any matter which requires the Commissioner Participants to invest further monies in respect of the Services, or under the Services Contracts or under this Agreement.
- 9.2 We agree that:

- (a) the Reserved Matters are limited to the express terms of Clause 9.1;
- (b) the Reserved Matters shall not be exercised so as to require a Provider Participant to breach any regulatory obligations (including for any Provider Participant that is an NHS Foundation Trust the terms of its NHS Provider Licence or for any Provider Participant any directions issued pursuant to direction 6(c) of the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016) or to breach any legislative requirements including the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010;
- (c) the Alliance Leadership Team may not make a final decision on any of the matters set out in Clause 9.1(a) and 9.1(b), which are reserved for determination by the Commissioner Participants only;
- (d) where exercising a Reserved Matter under Clause 9.1(c) to 9.1(f), and subject to any need for urgency because to act otherwise would result in the Commissioner Participants breaching their statutory obligations, the Commissioner Participants will first consult with the Alliance Leadership Team in respect of its proposed exercise of a Reserved Matter;
- (e) should the need arise, a Commissioner Participant will give a written notice to the Alliance Leadership Team that it is exercising a Reserved Matter; and
- (f) if a decision in respect of any Reserved Matter is notified to the Alliance Leadership Team, We will implement that decision as if it were a decision of the Alliance Leadership Team.

## 10. **TRANSPARENCY**

- 10.1 We will provide to each other all information that is reasonably required in order to achieve the Alliance Objectives and to design and implement changes to the ways in which Services are delivered (and where the Services are delivered from).
- 10.2 We will have responsibilities to comply with competition laws and We acknowledge that We will all comply with those obligations. We will therefore make sure that We share information, and in particular Competition Sensitive Information, in such a way that is compliant with competition law and, accordingly, the Alliance Leadership Team will ensure that the exchange of Competition Sensitive Information will be restricted to circumstances where:
  - 10.2.1 it is essential;
  - 10.2.2 it is not exchanged more widely than necessary;
  - 10.2.3 it is subject to suitable non-disclosure or confidentiality agreements which include a requirement for the recipient to destroy or return it on request or on termination of this Agreement; and
  - 10.2.4 it may not be used other than to achieve the Alliance Objectives,

and We acknowledge that Competition Sensitive Information is defined in Schedule 2. To assist in applying the definition to information to categorise it as Competition Sensitive Information, We acknowledge that it is for each Provider Participant to decide whether information is Competition Sensitive Information but We recognise that it is normally considered to include any internal commercial information which, if it is shared between Provider Participants, would allow Provider Participants to forecast or coordinate commercial strategy or behaviour in any market.
- 10.3 No matter what else is written in this Agreement, the Provider Participants will ensure that they provide the Commissioner Participants with all financial cost resourcing,

activity or other information as the Commissioner Participants may require so that the Commissioner Participants can be satisfied that the Alliance Objectives, in particular those of a financial nature, are being satisfied.

- 10.4 We will make sure the Alliance Leadership Team establishes appropriate non-disclosure or confidentiality agreements between and within the Provider Participants so as to ensure that Competition Sensitive Information and Confidential Information are only available to those members of the Provider Participants who need to see it for the purposes of the Alliance and for no other purpose whatsoever so We do not breach competition law.
- 10.5 It is accepted by the Alliance that the involvement of the Provider Participants in the Alliance is likely to give rise to situations where information will be generated and made available to the Provider Participants, which could give the Provider Participants an unfair advantage in competitions which may be capable of distorting such competitions (for example, disclosure of pricing information or approach to risk may provide one Provider Participant with a commercial advantage over a separate Provider Participant).
- 10.6 The Provider Participants therefore recognise the need to manage the information referred to in Clause 10.5 above in a way which maximises their opportunity to take part in competitions by putting in place appropriate procedures, such as appropriate non-disclosure or confidentiality agreements.
- 10.7 A Provider Participant will have the opportunity to demonstrate to the reasonable satisfaction of the Commissioner Participants in relation to any competitive procurements that the information it has acquired as a result of its participation in the Alliance, other than as a result of a breach of this Agreement, does not preclude the Commissioner Participants from running a fair competitive procurement in accordance with the Commissioner Participants' legal obligations.
- 10.8 Notwithstanding Clause 10.7 above, the Commissioner Participants reserve their rights to take such measures as they consider necessary in relation to such competitive procurements in order to comply with their obligations under Legislation (for example, the Public Contract Regulations 2015 and the National Health Service (Procurement, Patient Choice and Competition) (No 2) Regulations 2013) including, but not limited to, excluding any potential bidder from the competitive procurement in accordance with the laws governing that competitive procurement.
- 10.9 Nothing in this Agreement shall absolve any of the Provider Participants from their obligations under each Service Contract, particularly in relation to ensuring that the Services are provided in accordance with the requirements of the relevant Service Contract.
- 10.10 Where there are any Patient Safety Incidents or Information Governance Breaches relating to the Services, for example, the Provider Participants shall ensure that they each comply with their individual Service Contract and, where required by the Commissioner Participants, work collectively and share all relevant information to that Patient Safety Incident or Information Governance Breach (or other similar issue) for the purposes of any investigations and/or remedial plans to be put in place, as well as for the purposes of learning lessons in order to avoid such Patient Safety Incident or Information Governance Breach in the future.
- 10.11 Without prejudice to any obligations in the Service Contracts, the Provider Participants shall each notify the Alliance Leadership Team of any Serious Incident that has arisen in connection with the relevant Provider Participant's involvement in providing the Services set out in the Service Contract, without delay and no longer than two (2) Business Days of that Serious Incident taking place.

## **SECTION C: SERVICES CONTRACTS AND COORDINATION OF THE SERVICES**

## 11. SERVICES CONTRACTS

- 11.1 Each of Us must perform Our respective obligations under, and observe the provisions of, any Services Contract to which We are a party.
- 11.2 Nothing in this Agreement relaxes or waives any of Our obligations pursuant to any Services Contract. As stated in Clause 6.2, We acknowledge and accept that the Alliance Leadership Team may decide that activity is shifted and that service specifications under the respective Services Contracts are varied in order to achieve the Alliance Objectives. Where proposed changes are approved by the Alliance Leadership Team, We must not refuse to record and implement the agreed change under the relevant Services Contract.
- 11.3 Save as set out in Clause 16 (Liability and Indemnity) each Provider Participant will be responsible for the acts, omissions, defaults or negligence of its directors, officers, employees and agents in respect of its obligations under the Services Contracts as fully as if they were acts, omissions, defaults or negligence of itself.
- 11.4 Where any Provider Participant has any other contract for services with any of the Commissioning Participants, the Provider Participant concerned will ensure that there is no duplicated recovery of charges for the same service or resource, nor is any activity moved between contracts to provide a financial advantage to that Provider Participant.

## **SECTION D: PERFORMANCE MANAGEMENT, FINANCIAL RISK AND BENEFIT SHARING OF THE ALLIANCE**

### 12. KEY PERFORMANCE INDICATORS AND RISK/REWARD MECHANISM

- 12.1 We agree that the provisions of Schedule 5 (Key Performance Indicators) will apply to the performance and monitoring of the Services.
- 12.2 We agree that the provisions of Schedule 4 (Risk/Reward Mechanism) will apply.

## **SECTION E: REMAINING CLAUSES**

### 13. INTELLECTUAL PROPERTY RIGHTS

#### *Our existing Intellectual Property*

- 13.1 Each of Us has Our own existing Intellectual Property and We have agreed that We will be able to protect Our respective existing Intellectual Property as set out in this Agreement.
- 13.2 We also agree that, in the interests of achieving the Alliance Objectives, We should share Our own existing Intellectual Property but, and except as set out in this Clause 13, none of Us will acquire the Intellectual Property of any other Participant to this Agreement.
- 13.3 Each Provider Participant grants each Commissioner Participant and each of the other Provider Participants a fully paid up non-exclusive licence to use its existing Intellectual Property for the purposes of the exercise of the Commissioner Participants' functions and obtaining the full benefit and utilisation of the Services under this Agreement and/or the fulfilment of the Provider Participants' obligations under this Agreement.
- 13.4 The Commissioner Participants grant the Provider Participants a fully paid up non-exclusive licence to use the Commissioner Participants' Intellectual Property under this Agreement for the sole purpose of providing the Services pursuant to this Agreement.

- 13.5 In the event that any Provider Participant at any time devises, discovers or acquires rights in any Improvement it must:
- (a) promptly notify the owner of the Intellectual Property to which that Improvement relates, giving full details of the Improvement and whatever information or explanations as the rest of Us may reasonably require to be able to use the Improvement effectively; and
  - (b) assign to the ***[insert name of appropriate Commissioner] OR [Representative Commissioner]*** all rights and title in any such Improvement without charge.
- 13.6 We agree that any Improvement as described in Clause 13.5 will be treated as Alliance Intellectual Property and therefore be dealt with in accordance with Clauses 13.7 and 13.8 below.

*Alliance Intellectual Property*

- 13.7 If any of Us create any Alliance Intellectual Property, the Participant which creates the Alliance Intellectual Property will assign to the ***[insert name of appropriate Commissioner] OR [Representative Commissioner]***, with full title guarantee, title to and all rights and interest in the Alliance Intellectual Property so created.
- 13.8 In turn, the ***[insert name of appropriate Commissioner] OR [Representative Commissioner]*** will grant to the rest of Us a fully paid up non-exclusive licence to use the Alliance Intellectual Property for the purposes of the achievement of the Alliance Objectives under this Agreement.

14. **CONFIDENTIALITY, FREEDOM OF INFORMATION AND INFORMATION GOVERNANCE**

- 14.1 We agree that We will comply with the Data Protection Laws and that nothing in this Agreement shall require us to breach the Data Protection Laws. We agree that we will co-operate with one another regarding compliance with the Data Protection Laws, in particular with regard to communications with Service Users.
- 14.2 We agree that We shall comply with Schedule 6 (Confidential Information of the Parties) and Schedule 7 (Freedom of Information and Transparency).

15. **PERSONNEL**

- 15.1 We all understand that We have certain responsibilities to each other in the way We deal with staff and employment law issues. For example, We need to manage the risk that some staff could transfer from one Participant to another under the Transfer Regulations.
- 15.2 We agree that We will each have responsibility for Our own staff and that, where internal reorganisation or redeployment of staff is needed, [We shall be individually responsible for any costs of that reorganisation or redeployment.] We do not expect staff to transfer from one Participant to another as a result of the Transfer Regulations but where that does happen then:
- (a) in respect of staff that deliver the Services, the provisions that deal with a transfer of staff as a result of the Transfer Regulations contained in the relevant Service Contract shall apply; and
  - (b) in respect of staff that manage and run Our Alliance pursuant to this Agreement, each of Us commits to each of the others that We shall, in order to fulfil the Alliance Objectives and in accordance with the Alliance Principles, co-operate and negotiate, acting reasonably and in good faith, to determine

and agree how all financial, operational, legal and other consequences of such staff transfers are shared between Us.

## 16. LIABILITY AND INDEMNITY

- 16.1 In the majority of cases, Our respective responsibilities and liabilities in the event that things go wrong with the Services will be allocated under Our respective Services Contracts.
- 16.2 Where responsibilities and liabilities arise that are not covered by a Services Contract, We agree that, in relation to the matters set out in this Agreement, We shall have no liability to each other in respect of any losses, liabilities, damages, costs, fees and expenses (howsoever caused or arising) except as set out in this Clause 16 and Clause 18 (Rectification, Exclusion and Termination).
- 16.3 The Commissioner Participants may bring a claim against the Provider Participants (or such Provider Participant as it reasonably considers relevant) in respect of or arising from:
- 16.3.1 [any overpayment;**
- 16.3.2 any Misappropriation; or]**
- 16.3.3 any loss or damage suffered by the Commissioner Participants from breach of the provisions of Clauses 13 (Intellectual Property Rights), 14 (Confidentiality, Freedom of Information and Information Governance) and 16.7.
- 16.4 ***[The Fund Holder may bring a claim against the Commissioner Participants in respect of or arising from any breach of the provisions of Schedule 4.]***
- 16.5 Any Provider Participant may bring a claim against the Commissioner Participants in respect of or arising from any loss or damage suffered by the Provider from breach of the provisions of Clause 13 (Intellectual Property Rights) or Clause 14 (Confidentiality, Freedom of Information and Information Governance).
- 16.6 ***[Any Provider Participant may bring a claim against the Fund Holder in respect of or arising from any breach of the provisions of Schedule 4.]***
- 16.7 Each Provider Participant agrees to ensure that it shall, at all times, have in place adequate Indemnity Arrangements for the purposes of the Services that it is providing at any relevant time, and shall provide details of the same to the Commissioner Participants in accordance with the terms of the relevant Service Contract.
- 16.8 Each Provider Participant is responsible for ensuring their regulatory compliance of the Services that they provide. Each Provider Participant will deal directly with the relevant regulatory body in relation to the Services performed by that Provider Participant organisation and it is not intended that there will be any collective responsibility or liability for any regulatory breaches or enforcement actions.

## 17. FORCE MAJEURE

- 17.1 Sometimes certain events outside of Our reasonable control (an "**Event of Force Majeure**") might prevent one or more of Us (each being an "**Affected Participant**") from complying with Our respective obligations under this Agreement.
- 17.2 Many of Our Services Contracts will include provisions that dictate what happens if there is an Event of Force Majeure. If an applicable Services Contract dictates what happens if there is an Event of Force Majeure then We will comply with Our obligations under the Services Contract and will do everything We reasonably can to make sure that the Event of Force Majeure does not have a material adverse effect on the overall Services and Our Alliance. If the applicable Services Contract does not

dictate what happens if there is an Event of Force Majeure then those of Us affected must comply with Clauses 17.3 to 17.9 (inclusive) below.

- 17.3 If an Event of Force Majeure occurs, the Affected Participant must:
- (a) take all reasonable steps to mitigate the consequences of that event;
  - (b) resume performance of its obligations as soon as practicable; and
  - (c) use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.
- 17.4 The Affected Participant must send an initial written notice to each of Us immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure and its likely impact. The Affected Participant must then serve a more detailed written notice within a further 5 Business Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of its obligations under this Agreement.
- 17.5 If it has complied with its obligations under Clauses 17.1 and 17.4 (*Force Majeure*), the Affected Participant will be relieved from liability under this Agreement if and to the extent that it is not able to perform its obligations under this Agreement due to the Event of Force Majeure.

*Effect of an Event of Force Majeure*

- 17.6 We must at all times following the occurrence of an Event of Force Majeure use all reasonable endeavours to prevent and mitigate the effects of an Event of Force Majeure. We must at all times whilst an Event of Force Majeure is subsisting take steps to overcome or minimise the consequences of the Event of Force Majeure and facilitate the continued performance of this Agreement.
- 17.7 None of Us will be entitled to bring a claim for breach of obligations under this Agreement by another of Us or incur any liability to another of Us for any losses or damages incurred by that other Alliance Participant to the extent that an Event of Force Majeure occurs and the Affected Participant is prevented from carrying out obligations by that Event of Force Majeure.
- 17.8 In the event that a Participant reasonably believes that the effects of the Event of Force Majeure will make it impossible for this Agreement to continue, that Participant may serve notice of this on the Alliance Leadership Team in order that the Alliance Leadership Team can consider whether this Agreement should terminate in accordance with Clause 18.18.

*Cessation of Event of Force Majeure*

- 17.9 The Affected Participant must notify each of Us as soon as practicable after the Event of Force Majeure ceases or no longer causes the Affected Participant to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement will continue to be performed on the terms existing immediately prior to the occurrence of the Event of Force Majeure.

**18. RECTIFICATION, EXCLUSION AND TERMINATION**

- 18.1 This Clause 18 sets out the circumstances in which one of Us may be excluded from the Alliance. These circumstances include:
- (a) Wilful Default as more fully described in Clause 18.3 below;
  - (b) the termination of a Services Contract; or

(c) an event of Insolvency affecting one of Us.

18.2 In cases where the default can be remedied then the Defaulting Participant will be given the opportunity to rectify the problem as set out in Clauses 18.4 to 18.6 below.

Wilful Default

18.3 In this Agreement the phrase "**Wilful Default**" means that a Participant has committed one of the following acts or omissions. The Participant committing the act is called the "**Defaulting Participant**". The acts or omissions are:

- (a) an intentional or reckless act or omission by the Defaulting Participant or any of its officers or representatives appointed to the Alliance Leadership Team or Alliance Management Team which that Defaulting Participant or any of its officers or representatives appointed to the Alliance Leadership Team or Alliance Management Team knew or ought reasonably to have known:
  - (i) was likely to have harmful consequences for the Alliance, one or more other Participants, or the Service Users; or
  - (ii) was a breach of an Alliance Principle;
- (b) an intentional or reckless act or omission by the Defaulting Participant or any of its officers or representatives appointed to the Alliance Leadership Team or Alliance Management Team without regard to the possible harmful consequences arising out of the act or omission;
- (c) an intentional failure by the Defaulting Participant or any of its officers or representatives appointed to the Alliance Leadership Team or Alliance Management Team to act in good faith as required under this Agreement;
- (d) a repudiation of this Agreement by the Defaulting Participant;
- (e) a failure by the Defaulting Participant to honour an indemnity provided under this Agreement;
- (f) a failure by the Defaulting Participant to pay moneys due under this Agreement within 14 Business Days of being directed to do so in writing by the Alliance Leadership Team;
- (g) a fraudulent act or omission by the Defaulting Participant or any of its officers or representatives appointed to the Alliance Leadership Team or Alliance Management Team;
- (h) an intentional failure of, or refusal by, the Defaulting Participant, to effect and maintain appropriate insurance policy or Indemnity Arrangement which it is obliged to effect and maintain under a Services Contract, this Agreement or at law; or
- (i) an intentional or reckless breach of a confidentiality obligation, or other obligation, in Clauses relating to confidentiality in this Agreement or in a Services Contract although this does not mean any innocent or negligent act, omission or mistake the Defaulting Participant or any of its officers, employees or agents acting in good faith.

Opportunity to Rectify Default

18.4 If at any time a Participant considers that one of Us is in Wilful Default, then that Participant may call a meeting of the Alliance Leadership Team to decide what action it may take for the good of Our Alliance (a "**Rectification Meeting**"). Any meeting called under this Clause will be conducted in accordance with Part 1 of Schedule 3

(Alliance Leadership Team – Terms of Reference). We all agree that We will attend all Rectification Meetings.

- 18.5 At a Rectification Meeting, We will all discuss the reasons why the Defaulting Participant is failing to comply with its obligations under this Agreement. The Participant calling the Rectification Meeting will have an opportunity to explain why it has called the Rectification Meeting and the Defaulting Participant will have an opportunity to explain why it is so failing. The other Participants to this Agreement will also have an opportunity to give their views.
- 18.6 If by the end of the Rectification Meeting all Participants other than the Defaulting Participant consider that an action needs to be taken in order to ensure that the best possible services are being provided to Service Users, then all Participants other than the Defaulting Participant may together issue a Rectification Notice setting out the actions or directions that the Defaulting Participant will take. All Participants other than the Defaulting Participant will always make sure that any actions or directions given under a Rectification Notice are given for Best for Service reasons. We all agree that, if any one of Us is the Defaulting Participant, We will carry out the actions or directions given under the Rectification Notice.

#### Further Rectification or Exclusion

- 18.7 If the Defaulting Participant fails to properly carry out the actions or directions set out under a Rectification Notice then a Participant may call a further meeting in the same way as set out in Clause 18.4. Any meeting called under this Clause 18.7 will be conducted in accordance with Part 1 of Schedule 3 (Alliance Leadership Team – Terms of Reference). If by the end of that further Rectification Meeting all Participants other than the Defaulting Participant are still concerned that the Defaulting Participant is preventing the Service Users from receiving the best service reasonably possible in accordance with the Key Performance Indicators then all Participants other than the Defaulting Participant may together issue a further Rectification Notice or an Exclusion Notice to the Defaulting Participant. We all agree that, if any one of Us is the Defaulting Participant, We will abide by the provisions of an Exclusion Notice.

#### Additional Grounds for Exclusion

- 18.8 The Commissioner Participants may serve an Exclusion Notice on a Provider Participant at any time:
- (a) if that Provider Participant's Services Contract is terminated for any reason; or
  - (b) if that Provider Participant is subject to an act of Insolvency.

#### Consequences of Exclusion or Termination

- 18.9 Where a Provider Participant is excluded from the Alliance:
- (a) because a Provider Participant's Services Contract is terminated by the **[Commissioner Participants] OR [Representative Commissioner]** without cause; or
  - (b) because a Provider Participant's Services Contract is terminated by the Provider Participant following a breach or default of the Services Contract on the part of **[a Commissioner Participant] OR [Representative Commissioner]**,

and, as a consequence of such termination, that Provider Participant suffers loss, expense or damage then subject to that Provider Participant making reasonable efforts to mitigate its losses:

- (c) where Clause 18.9(a) applies, **[both of the Commissioner Participants shall jointly] OR [the Representative Commissioner]** shall indemnify the Provider Participant in respect of such loss, expense or damage; or
- (d) where Clause 18.9(b) applies, the **[Commissioner Participant in breach or default] OR [Representative Commissioner]** shall indemnify the Provider Participant in respect of such loss, expense or damage.

18.10 Any amounts due in respect of such costs shall be due and payable when actually incurred by the respective Provider Participant.

18.11 Where a Provider Participant is excluded from the Alliance:

- (a) as a result of Insolvency (pursuant to Clause 18.8); or
- (b) as a result of Wilful Default (pursuant to Clause 18.7); or
- (c) as a result of the Provider Participant's Services Contract has been terminated by the **[Commissioner Participants] OR [Representative Commissioner]** following a breach or default on the part of the relevant Provider Participant; or
- (d) as a result of the Provider Participant's Services Contract has been terminated by the relevant Provider Participant without cause;

and where, as a consequence of such exclusion or termination, this causes the Commissioner Participants or any other Provider Participant financial loss, expense or damage then, subject to Clause 16 (Liability and Indemnity) and the Commissioner Participants and any remaining Provider Participants making reasonable efforts to mitigate their losses, the excluded Provider Participant shall indemnify the Commissioner Participants and any other Provider Participant as the case may be, in respect of such loss, expense or damage.

18.12 Any amounts due in respect of such costs shall be due and payable when actually incurred by the respective Commissioner Participant or Provider Participant (as the case may be).

No double recovery

18.13 We agree that where loss, expense or damage is suffered by one of Us and may be recovered from one or more of Us pursuant to this Agreement but also pursuant to a Service Contract (for example by way of an indemnity of a claim for breach of contract) then We shall be entitled to recover the loss, expense or damage but shall not seek to recover any such loss, expense or damage more than once. Any sums recovered under one claim shall be accounted for and credited under any separate claim for the same loss, expense or damage.

18.14 Where a Provider Participant is excluded under this Clause 18 or its relevant Service Contract is terminated in circumstances envisaged under Clause 18.9, that excluded Provider Participant:

- (a) shall not be entitled to any payment in respect of overheads, margin or any reward payment whether or not such payments relate to a period before or after the date of the relevant Exclusion Notice;
- (b) **[shall provide a statement of accounts to the Alliance Leadership Team setting out the payments it has received under this Agreement and what it has spent in relation to this Agreement up to the date of exclusion and shall return any overpayment where directed to do so by the Alliance Leadership Team within 30 days of such a direction; and]**
- (c) shall be paid any Direct Costs which relate to services provided by it up to the time of exclusion/termination.

18.15 A Provider Participant which has been excluded **[or whose Services Contract has been terminated]** shall have no further interest in Our Alliance nor shall it be represented on the Alliance Leadership Team or Alliance Management Team.

18.16 Nothing shall prevent any of Us entering into separate contractual arrangements with any excluded Provider Participant (in accordance with Clause 18.17) for the purposes of providing the Services, notwithstanding that it is no longer a member of Our Alliance.

#### Impact of Exclusion on Services Contracts

18.17 Where a Provider Participant is excluded from the Alliance, We recognise that the associated Services Contract is likely to be terminated and/or amended at the same time as the exclusion to reflect how the impacted services are to be delivered (by way of example only, the Provider Participant may be requested by the **[Commissioner Participants] OR [Representative Commissioner]** to provide the impacted services under a services contract outside the scope of Our Alliance or the Commissioner Participants **OR [Representative Commissioner]** may look to Our Alliance to deliver the impacted services). In addition to any specific obligations under the relevant Services Contract to ensure a smooth transfer of Services, We agree to work together in good faith to agree the necessary changes so that services continue to be provided for the benefit of the Service Users.

#### Termination of this Agreement

18.18 The Alliance Leadership Team may resolve to terminate this Agreement if an Event of Force Majeure renders the continuation of the Agreement impossible pursuant to Clause 17.8.

18.19 The Alliance Leadership Team may resolve to terminate this Agreement if a Dispute cannot be resolved pursuant to paragraph 1.6(c)(i) of Schedule 8 of this Agreement.

### 19. **SURVIVORSHIP**

19.1 If:

- (a) any of Us are excluded from the Alliance; or
- (b) this Agreement is terminated or expires for any reason then such termination or expiry will be without prejudice to rights or obligations accrued as at the date of such termination or expiry and,

those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following such exclusion from the Alliance or termination or expiry of this Agreement, will so continue and continue to apply to a Participant that has been excluded from the Alliance, subject to any limitation of time expressed in this Agreement.

### 20. **VARIATION PROCEDURE**

20.1 The provisions of this Agreement may be varied at any time by a Notice of Variation signed by the Participants in accordance with this Clause 20. This does not apply where a Variation is a Mandatory Variation.

20.2 If a Participant wishes to propose a Variation, that Participant must submit a draft Notice of Variation [to **the other Participants] [the Chair of the Alliance Leadership Team]** to be considered at the next meeting (or when otherwise determined by the Participants) of the Alliance Leadership Team.

20.3 A draft Notice of Variation must set out

- 20.3.1 the Variation proposed and details of the consequential amendments to be made to the provisions of this Agreement;
  - 20.3.2 the date on which the Variation is proposed to take effect;
  - 20.3.3 the impact of the Variation on the achievement of the Alliance Objectives and the Key Performance Indicators; and
  - 20.3.4 any impact of the Variation on any Services Contracts.
- 20.4 The Alliance Leadership Team will consider the draft Notice of Variation and either:
- 20.4.1 accept the draft Notice of Variation, in which case all Participants will sign the Notice of Variation;
  - 20.4.2 amend the draft Notice of Variation, such that it is agreeable to all Participants, in which case all Participants will sign the amended Notice of Variation; or
  - 20.4.3 not accept the draft Notice of Variation, in which case the minutes of the relevant Alliance Leadership Team shall set out the grounds for non-acceptance.

**21. TRANSFER TO THIRD PARTIES**

- 21.1 Nothing in this Clause 21 (Transfer to third parties) affects any relevant Provider Participant's rights to assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights or obligations under a Services Contract.
- 21.2 The Provider Participants may not sub-contract any or all of their obligations under this Agreement.
- 21.3 The Provider Participant may not assign, delegate, transfer, charge or otherwise dispose of all or any of its rights or obligations under this Agreement without the prior written consent of the Commissioner Participants.
- 21.4 Each Provider Participant will be responsible for the performance of and will be liable to each of Us for the acts and omissions of any third party to which it may assign, transfer or otherwise dispose of any obligation under this Agreement as if they were the acts or omissions of that Provider Participant unless:
  - (a) the Provider Participant in question has obtained the prior consent of the Commissioner Participants in accordance with Clause 21.3; and
  - (b) the terms of that assignment, transfer or disposal have been approved and accepted by that third party so that that third party is liable to each of Us for its acts and omissions.
- 21.5 This Agreement will be binding on and will be to the benefit of each of Us and Our respective successors and permitted transferees and assigns.
- 21.6 Each of the Commissioner Participants may only novate the whole (not part) of this Agreement to any central government department, NHS body or a Minister of the Crown provided it also novates any Services Contract.

**22. PRECEDENCE**

- 22.1 Unless otherwise specifically provided to the contrary in this Agreement, in the event of a conflict or inconsistency between any provision of any of the Services Contracts or any resolution of the Alliance Leadership Team or of the Alliance Management Team with any provisions of this Agreement, the order of precedence below will apply:

- (a) the clauses then schedules then appendices and then annexures of any Services Contract; then
- (b) all other documents, if any, which are stated in a Services Contract to be incorporated in that agreement; then
- (c) the Clauses then the Schedules of this Agreement; then
- (d) any resolution of the Alliance Leadership Team; then
- (e) any resolution of the Alliance Management Team.

## 23. INFORMATION AND FURTHER ASSURANCE

23.1 Each of the Provider Participants will during the Term:

- (a) promptly provide to the Commissioner Participants, and to any other person involved in the performance and achievement of the Alliance Objectives, such information about the Services and such co-operation and access as the Commissioner Participants will reasonably require from time to time in connection with the Alliance Objectives, provided that if the provision of such information, co-operation or access amounts to a Variation, then the Variation Procedure will apply;
- (b) identify and obtain all consents necessary for the fulfilment of its obligations under the Services Contracts; and
- (c) comply with any reasonable instructions and guidelines issued by the Commissioner Participants from time to time provided that such compliance does not amount to a Variation in which case the Variation Procedure will apply,

in each case to the extent that such action does not cause a Provider Participant to be in breach of the Exclusion Notice or any Legislation.

23.2 During the Term We will, and will use Our respective reasonable endeavours to procure that any necessary third parties will, each execute and deliver to the each of Us such other instruments and documents and take such other action as is reasonably necessary to fulfil the provisions of this Agreement in accordance with its terms.

23.3 Subject to Clauses 13 (Intellectual Property Rights), 14 (Confidentiality, Freedom of Information and Information Governance) and 20 (Variation Procedure) and any associated Schedules, We must during the Term promptly notify each other of any modification, upgrade, improvement, enhancement or development to the Services, or which could be applied to the Services, in each case on a Best for Service basis.

## 24. ANNUAL REVIEW

24.1 We must ensure that the Alliance Leadership Team carries out an annual review, on a Best for Service basis unless the Commissioner Participants decide otherwise, to enable the Commissioner Participants to ascertain the extent to which the Key Performance Indicators and the Alliance Objectives will be achieved. The annual review shall address the governance arrangements for the alliance, including the Terms of Reference for the Alliance Leadership Team and the Alliance Management Team.

## 25. CONTRACT MANAGEMENT RECORDS AND DOCUMENTATION

25.1 Each Provider Participant must at all times during the Term keep, or cause or procure to be kept, and retain, and thereafter for a period not less than six (6) years following expiry or termination of this Agreement, accurate accounts and full supporting

documentation containing all data reasonably required for the computation and verification of the provision of the Services and all monies payable or paid under any Services Contract to which that Provider Participant is a party by the Commissioner Participants and give the Commissioner Participants or its agents every reasonable facility from time to time having given reasonable notice in writing during normal business hours to inspect the said accounts records and supporting documentation and to make copies of or to take extracts from them. To the extent that Legislation or the terms of the applicable Services Contract impose more onerous obligations than this Clause 25.1 then We shall comply with the more onerous obligations. We agree that We shall collect and make available all necessary data to ensure that the Commissioner Participants can meet their statutory responsibilities.

25.2 Before We exchange or share any Confidential Information or personal data among Us, We shall enter into appropriate data sharing agreements. We will each at least once in each calendar year audit Our practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.

## 26. **WARRANTIES**

26.1 Each of Us warrants to the others that:

- (a) it has full power and authority to enter into this Agreement and all governmental or official approvals and consents and all necessary consents have been obtained and are in full force and effect;
- (b) its execution of this Agreement does not and will not contravene or conflict with its constitution, any Legislation, or any agreement to which it is a party or which is binding on it or any of its assets; and
- (c) to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Agreement.

26.2 The warranties set out in this Clause 26 (*Warranties*) are given on the date of this Agreement and repeated on every day during the term of this Agreement.

## 27. **RELATIONSHIP OF THE PARTICIPANTS**

27.1 Each of Us will not pledge the credit of one or more other Participants or represent Ourselves as being one or more other Participants, or an agent, partner, employee or representative of one or more other Participants and none of Us will hold Ourselves out as such or as having any power or authority to incur any obligation of any nature, express or implied, on behalf of one or more other Participants.

27.2 Nothing in this Agreement will be construed as creating a legal partnership or a contract of employment between any of Us.

27.3 Save as expressly provided otherwise in this Agreement, none of the Provider Participants will be, or be deemed to be, an agent of the Commissioner Participants and none of the Provider Participants will hold itself out as having the authority or power to bind the Commissioner Participants in any way.

27.4 None of Us will place or cause to be placed any order with the Provider Participants or otherwise incur liabilities in the name of any of the other Participants or their representatives.

## 28. **NOTICES**

28.1 Any notices given under this Agreement must be in writing and must be served in the ways set out below in this Clause 28.1 at the addresses set out at in Part 2 of Schedule 1. The following table sets out the respective deemed time and proof of service:

<b>Manner of Delivery</b>	<b>Deemed time of delivery</b>	<b>Proof of Service</b>
Personal delivery	On delivery	Properly addressed and delivered
Prepaid first class recorded delivery domestic postal service	9.00am on the second Business Day after posting	Properly addressed prepaid and posted

29. **THIRD PARTY RIGHTS**

- 29.1 A person who is not a Participant has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of this Agreement.
- 29.2 Our rights to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a Participant.

30. **SEVERABILITY**

- 30.1 If any part of this Agreement is declared invalid or otherwise unenforceable, it will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining provisions.

31. **ENTIRE AGREEMENT**

- 31.1 This Agreement and the Services Contracts constitute Our entire agreement and understanding and, subject to the terms of each Services Contract, supersedes any previous agreement between Us relating to the subject matter of this Agreement.
- 31.2 Each of Us acknowledges and agrees that in entering into this Agreement We do not rely on and have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a Participant or not) other than as expressly set out in this Agreement.
- 31.3 Nothing in this Clause 31 (Entire Agreement) will exclude any liability for fraud or any fraudulent misrepresentation.

32. **WAIVER**

- 32.1 Any relaxation or delay of any of Us in exercising any right under this Agreement must not be taken as a waiver of that right and must not affect Our ability subsequently to exercise that right.

33. **DISPUTE RESOLUTION PROCEDURE**

- 33.1 Subject as otherwise specifically provided for in this Agreement, We agree that any Dispute arising out of or in connection with this Agreement or any of the other Services Contracts will be resolved in accordance with Schedule 8 (Dispute Resolution Procedure) in preference to any right We have to refer the matter to the NHS dispute resolution procedure.

34. **COSTS AND EXPENSES**

- 34.1 Each of Us will be responsible for paying Our own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

35. **LAW AND JURISDICTION**

35.1 This Agreement and any Dispute arising out of or in connection with it, whether such Dispute is contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise, will be governed by, and construed in accordance with, the laws of England.

35.2 Subject to:

35.2.1 the Participants first complying with Clause 33 (Dispute Resolution Procedure) and Schedule 8 (Dispute Resolution Procedure); and

35.2.2 any requirement under a Services Contract to refer the matter to the NHS dispute resolution procedure,

the Participants hereby submit to the exclusive jurisdiction of the English courts.

36. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all of Us, notwithstanding that all of Us are not signatories to the same counterpart.

**IN WITNESS OF WHICH** We have signed this Agreement as set out in Schedule 1.

**SCHEDULE 1 - PART 1**

**PARTICIPANTS**

<b>No.</b>	<b>Participant</b>	<b>Address of principal office of Participant</b>	<b>Signed for and on behalf of the Participant</b>
1	[insert name] ("defined name")	[insert address]	Print name _____ Signature _____ Date _____
2	[insert name] ("defined name")	[insert address]	Print name _____ Signature _____ Date _____
3	[insert name] ("defined name")	[insert address]	Print name _____ Signature _____ Date _____
4	[insert name] ("defined name")	[insert address]	Print name _____ Signature _____ Date _____
5	[insert name] ("defined name")	[insert address]	Print name _____ Signature _____ Date _____

Participant [1] and [2] are together referred to in this Agreement as the "Commissioner Participants".

Participants [3] to [X] are together referred to in this Agreement as the "Provider Participants".

Participants [X] to [X] are together referred to in this Agreement as the "Primary Care Provider Participants".

The Commissioner Participants and the Provider Participants [**and the Primary Care Representative**] are together referred to as "We", "Us" or "Our" as the context requires.

"Participant" means any of Us.

**SCHEDULE 1 - PART 2**  
**ADDRESSES FOR NOTICES**

<b>Participant</b>	<b>Address for Notices</b>
[insert defined name]	[insert address]

DRAFT

**SCHEDULE 1 - PART 3**

**SERVICE CONTRACTS**

<b>Provider Participant</b>	<b>Organisation contract with</b>	<b>Date contract entered into</b>
<i>[insert Provider Participant]</i>	<i>[insert other party(ies) to the Service Contract]</i>	<i>[insert date Service Contract entered into]</i>

DRAFT

## SCHEDULE 2

### DEFINITIONS AND INTERPRETATION

#### 1 Interpretation

- 1.1 The headings in this Agreement will not affect its interpretation.
- 1.2 Reference to any statute or statutory provision, to Legislation or to Data Guidance includes a reference to that statute or statutory provision, Legislation or Data Guidance as from time to time updated, amended, extended, supplemented, re-enacted or replaced in whole or in part.
- 1.3 Reference to a statutory provision includes any subordinate legislation made from time to time under that provision.
- 1.4 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement, unless expressly stated otherwise.
- 1.5 References to any body, organisation or office include reference to its applicable successor from time to time.
- 1.6 Any references to this Agreement or any other documents or resources includes reference to this Agreement or those other documents or resources as varied, amended, supplemented, extended, restated and/or replaced from time to time and any reference to a website address for a resource includes reference to any replacement website address for that resource.
- 1.7 Use of the singular includes the plural and vice versa.
- 1.8 Use of the masculine includes the feminine and vice versa.
- 1.9 Use of the term “including” or “includes” will be interpreted as being without limitation.
- 1.10 The following words and phrases have the following meanings:
- |   |  |
|---|--|
| <b>“Affected Participant”</b>               | has the meaning set out in Clause 17;  |
| <b>“Agreement”</b>                          | means this Agreement;  |
| <b>“Alliance”</b>                           | means the Participants working together as an alliance to achieve the Alliance Objectives;                                 |
| <b>"Alliance Intellectual Property"</b>     | means any new Intellectual Property developed by Us under this Agreement and in connection with the Alliance;              |
| <b>“Alliance Objective(s)”</b>              | means the objective set out in Clause 6.1;   |
| <b>"Alliance Leadership Team"</b>           | means the board of the Alliance established pursuant to Clause 8;  |
| <b>"Alliance Management Team"</b>           | means the team established pursuant to Clause 8;   |
| <b>“Alliance Principles”</b>                | has the meaning set out in Clause 7.1 (Alliance Principles);   |
| <b><i>["Alliance Programme Manager"</i></b> | <i>means the person engaged pursuant to Clause 8;]</i>   |
| <b>“Best for Service”</b>                   | means best for the achievement of the Alliance Objectives on the basis of ensuring coherence with the Alliance Principles; |

<b>“Business Day”</b>	means any day which is not a Saturday, Sunday or a bank or public holiday in the United Kingdom;
<b>"Chair"</b>	has the meaning set out in paragraph 5.5 of Part 1 of Schedule 3;
<b>“Commencement Date”</b>	means <i>[insert date]</i> ;
<b>“Commissioner Participants”</b>	has the meaning set out in Schedule 1;
<b>“Competition Sensitive Information”</b>	means Confidential Information which is owned, produced and marked as Competition Sensitive Information including information on costs by one of the Provider Participants and which that Provider Participant properly considers is of such a nature that it cannot be exchanged with the other Provider Participant(s) without a breach or potential breach of competition law;
<b>“Confidential Information”</b>	means the provisions of this Agreement and all information provided in connection with this Agreement which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement;
<b><u>"Data Guidance"</u></b>	<u>means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with the Data Protection Laws (whether specifically mentioned in this Agreement or not), to the extent that the same are published and publicly available or the existence or contents of them have been notified to Us by any relevant Regulatory or Supervisory Body. This includes but is not limited to guidance issued by NHS Digital, the National Data Guardian, the Department of Health, NHS England, the Health Research Authority, Public Health England and the Information Commissioner</u>
<b><u>"Data Protection Laws"</u></b>	<u>means all applicable data protection and privacy legislation, laws, regulations and Data Guidance including the Data Protection Act 1998, the Human Rights Act 1998, the Health and Social Care (Safety and Quality) Act 2015, the common law duty of confidentiality and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by the Information Commissioner from time to time</u>
<b>"Defaulting Participant"</b>	has the meaning set out in Clause 18.3;
<b>"Department of Health"</b>	means the Department of Health in England of HM Government or other relevant body, or such other body superseding or replacing it from time to time and/or the Secretary of State
<b>"Direct Costs"</b>	means <i>[insert definition]</i> ;
<b>“Dispute”</b>	has the meaning set out in Paragraph 1 of Schedule 8 (Dispute

	Resolution Procedure);
"EIR"	means the Environmental Information Regulations 2004
"Exclusion Notice"	means a notice issued pursuant to Clause 18 (Rectification, Exclusion and Termination) which must specify the grounds on which the Exclusion Notice has been issued and which will have the effects specified in Clause 18;
"Event of Force Majeure"	means an event or circumstance which is beyond the reasonable control of any Affected Participants claiming relief under Clause 17 (Force Majeure), including war, civil war, armed conflict or terrorism, strikes or lock outs, riot, epidemic, fire, flood or earthquake, and which directly causes the Affected Participant to be unable to comply with all or a material part of its obligations under this Agreement;
"FOIA"	means the Freedom of Information Act 2000
"Fund Holder"	means [ <i>insert</i> ] unless otherwise agreed by the Provider;
"Health Research Authority"	means the body established under section 109 of the Care Act 2014
"IG Guidance for Serious Incidents"	means the Health and Social Care Information Centre's <i>Checklist Guidance for Information Governance Serious Incidents Requiring Investigation</i> dated June 2013:
"Improvement"	means any improvement, enhancement or modification to the Intellectual Property of a Provider Participant which cannot be used independently of the Intellectual Property of a Provider Participant;
"Indemnity Arrangement"	means either: <ul style="list-style-type: none"> <li>(i) a policy of insurance;</li> <li>(ii) an arrangement made for the purposes of indemnifying a person or organisation; or</li> <li>(iii) a combination of (i) and (ii);</li> </ul>
<u>"Information Commissioner"</u>	<u><a href="http://ico.org.uk">the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals: ico.org.uk</a></u>
"Information Governance Breach"	means an information governance serious incident requiring investigation, as defined in IG Guidance for Serious Incidents
"Initial Expiry Date"	means [ <i>insert date</i> ];
"Initial Period"	means the period set out in Clause 5.3;
"Insolvency"	means any of the following events or circumstances: <ul style="list-style-type: none"> <li>(a) where the Provider Participant is or is deemed for the purposes of any Legislation to be, unable to pay its debts or insolvent;</li> </ul>

- (b) where a Provider Participant admits its inability to pay its debts as they fall due;
- (c) the value of a Provider Participant's assets being less than its liabilities taking into account contingent and prospective liabilities);
- (d) where, by reason of actual or anticipated financial difficulties, a Provider Participant commences negotiations with creditors generally with a view to rescheduling any of its indebtedness;
- (e) where a Provider Participant suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986;
- (f) a moratorium is declared in respect of any of a Provider's Participant's indebtedness;
- (g) where a Provider Participant calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that Participant (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (h) where a Provider Participant has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- (i) where a Provider Participant has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver or similar officer (in each case, whether out of court or otherwise) appointed over all or any part of its assets or a person becomes entitled to appoint the above over such assets;
- (j) where a Provider Participant takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
- (k) where a Provider Participant has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security; or
- (l) where a Provider Participant has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within 14 Business Days of it being levied;
- (m) where a Provider Participant has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events listed above; and/or
- (n) where a Commissioner Participant substantially or

materially ceases to operate, is dissolved, or is de-authorised as an **[NHS trust] OR [NHS foundation trust]**;

- (o) where **[Commissioner A or Commissioner B]** is clinically and/or financially unsustainable as a result of any clinical or financial intervention or sanction by the regulator responsible for the independent regulation of **[NHS trusts] OR [NHS foundation trusts]** or the Secretary of State and which has a material adverse effect on the delivery of the Services; and
- (p) a trust special administrator is appointed over where **[Commissioner A or Commissioner B]** under the National Health Service Act 2006 or a future analogous event occurs;

<b>"Intellectual Property"</b>	means rights in and to inventions, patents, design rights (registered or unregistered), copyrights (including rights in software), rights in confidential information, database rights and any similar or analogous rights that exist anywhere in the world and including any application for any registration of the foregoing;
<b>"Key Performance Indicators"</b>	means the key performance indicators set out in Schedule 5 (Key Performance Indicators);
<b>"Legislation"</b>	means any applicable statute, statutory rule, order, directive, regulation or other instrument having force of law (including any directive or order promulgated by any competent national or supra national body) and all other legislation as may be in force from time to time;
<b>"Local Healthwatch"</b>	means an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007;
<b>"Mandatory Variation"</b>	means any Variation in the scope of the Services which the Commissioner Participants are required to implement by reason of a change in Legislation or applicable health or social care guidance, direction, standard or requirement to which the Commissioner Participants have a duty to have regard;
<b>"Monitor"</b>	means the corporate body known as Monitor provided by section 61 of the Health and Social Care Act 2012;
<b>"Misappropriation"</b>	means any use of the payments made under this Agreement for matters unrelated to the provision of the Services;
<b>"National Data Guardian"</b>	means the body which advises and challenges the health and care system to help ensure that citizens' confidential information is safeguarded securely and used properly: <a href="https://www.gov.uk/government/organisations/national-data-guardian">https://www.gov.uk/government/organisations/national-data-guardian</a> , and its predecessor body the Independent Information Governance Oversight Panel
<b>"NHS Digital"</b>	means the Health and Social Care Information Centre <a href="https://digital.nhs.uk/">https://digital.nhs.uk/</a>
<b>"NHS England"</b>	the National Health Service Commissioning Board established by section 1H of the NHS Act 2006 Act, also known as NHS England;

"NHS Serious Incident Framework"	NHS England's serious incident framework;
"Participants"	has the meaning set out in Schedule 1;
"Patient Safety Incident"	means any unintended or unexpected incident that occurs in respect of a Service User, during and as a result of the provision of the Services, that could have led, or did lead to, harm to that Service User;
"Primary Care Provider Participant"	has the meaning set out in Schedule 1;
"Provider Participants"	has the meaning set out in Schedule 1;
"Public Health England"	means an executive agency of the Department of Health established under the 2012 Act
"Rectification Meeting"	has the meaning set out in Clause 18.4;
"Rectification Notice"	means a notice issued by the <b><i>[Alliance Leadership Team] OR [Commissioner Participants]</i></b> pursuant to Clause 18.6 which sets out the actions or directions that the Defaulting Participant needs to take to address any failure to meet its obligations under this Agreement;
<b><i>["Representative Commissioner"]</i></b>	<b><i>means [insert relevant Commissioner] OR [such other commissioning authority as the Commissioner Participants may nominate to act as and on behalf of the Commissioner Participants for the purposes of this Agreement in accordance with Schedule 3;]</i></b>
"Regulatory or Supervisory Body"	any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Participant and/or staff must comply or to which it or they must have regard;
"Reserved Matters"	means each of the matters listed in Clause 9;
"Serious Incident"	has the meaning given to it in the NHS Serious Incident Framework;
"Service Users"	means the people that live in <b><i>[insert geographic location]</i></b> and are in receipt of the Services;
"Services"	means the <b><i>[insert high level description of the services within the scope of the Alliance]</i></b> as described in Schedule 9 (Scope of the Services) and provided by a Provider Participant pursuant to its Services Contract or by any of the Provider Participants pursuant to the Services Contracts, as the case may be, and as amended from time to time in accordance with Clause 20 (Variation Procedure);
"Services Contracts"	means the services contracts listed in Part 3 of Schedule 1;
"Term"	means the Initial Period and any period of extension made under Clause 5.4;

<b>"Transfer Regulations"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and EC Council Directive 77/187; and
<b>"Variation"</b>	means any alteration of or change to this Agreement;
<b>"Variation Procedure"</b>	means the variation mechanism set out in with Clause 20 (Variation Procedure);
<b>"Wilful Default"</b>	has the meaning set out in Clause 18.3.

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## SCHEDULE 3 - PART 1

### ALLIANCE LEADERSHIP TEAM – TERMS OF REFERENCE

#### 1 Purpose

- 1.1 The Alliance Leadership has been established to provide strategic direction to the alliance, to manage risk and to hold to account the Alliance Management Team for the performance of the alliance such that it achieves the objectives set for it.

#### 2 Status and authority

- 2.1 The Alliance is established by the Participants, who remain sovereign organisations, to provide a financial and governance framework for the delivery of the Services. The Alliance is not a separate legal entity, and as such is unable to take decisions separately from the Participants or bind its Participants; nor can one or more Participants 'overrule' any other Participant on any matter (although all Participants will be obliged to comply with the terms of the Agreement).
- 2.2 The Agreement establishes the Alliance Leadership Team to lead the Alliance on behalf of the Participants. As a result of the status of the Alliance the Alliance Leadership Team is unable in law to bind any Participant so it will function as a forum for discussion of issues with the aim of reaching consensus among the Participants.
- 2.3 The Alliance Leadership Team will function through engagement between its members so that each Participant makes a decision in respect of, and expresses its views about, each matter considered by the Alliance Leadership Team. The decisions of the Alliance Leadership Team will, therefore, be the decisions of the Participants, the mechanism for which shall be authority delegated by the Participants to their representatives on the Alliance Leadership Team.
- 2.4 Each Participant shall delegate to its representative on the Alliance Leadership Team such authority as is agreed to be necessary in order for the Alliance Leadership Team to function effectively in discharging the duties within these Terms of Reference. The Participants shall ensure that each of their representatives has equivalent delegated authority. Authority delegated by the Participants shall be defined in writing and agreed by the Participants, and shall be recognised to the extent necessary in the Participants' own schemes of delegation (or similar).
- 2.5 The Participants shall ensure that the Alliance Leadership Team members understand the status of the Alliance Leadership Team and the limits of the authority delegated to them.

#### 3 Responsibilities

- 3.1 The Alliance Leadership Team will:
- (a) ***[ensure alignment of all organisations to the [insert name of local programme] vision and objectives;***
  - (b) ***promote and encourage commitment to the Alliance Principles and Alliance Objectives amongst all Participants;***
  - (c) ***formulate, agree and ensure that implementation of strategies for achieving the Alliance Objectives and the management of the Alliance;***
  - (d) ***discuss strategic issues and resolve challenges such that the Alliance Objectives can be achieved;***
  - (e) ***respond to changes in the operating environment, including in respect of national policy or regulatory requirements, which impact upon the***

**Alliance or any Participants to the extent that they affect the Participants' involvement in the Alliance;**

- (f) agree policy as required;**
- (g) agree performance outcomes/targets for the Alliance such that it achieves the Alliance Objectives;**
- (h) review the performance of the Alliance, holding the Alliance Management Team to account, and determine strategies to improve performance or rectify poor performance;**
- (i) ensure that the Alliance Management Team identifies and manages the risks associated with the Alliance, integrating where necessary with the Participants' own risk management arrangements;**
- (j) generally ensure the continued effectiveness of the Alliance, including by managing relationships between the Participants and between the Alliance and its stakeholders;**
- (k) ensure that the Alliance accounts to relevant regulators and other stakeholders through whatever means are required by such regulators or are determined by the Alliance Leadership Team, including, to the extent relevant, integration with communications and accountability arrangements in place within the Participants;**
- (l) address any actual or potential conflicts of interests which arise for members of the Alliance Leadership Team or within the Alliance generally, in accordance with a protocol to be agreed between the Participants (such protocol to be consistent with the Participants' own arrangements in respect of declaration and conflicts of interests, and compliant with relevant statutory duties);**
- (m) oversee the implementation of, and ensure the Participants' compliance with, this Agreement and all other Services Contracts;**
- (n) review the governance arrangements for the Alliance at least annually.]**

#### **4 Accountability**

- 4.1 The Alliance Leadership Team is accountable to the Participants and **[insert as necessary but to address all regulatory requirements and accountability to relevant stakeholders]**.
- 4.2 The minutes of the Alliance Leadership Team will be sent to the Participants within **[insert reasonable period following each meeting]**.
- 4.3 The minutes shall be accompanied by a report on any matters which the Chair considers to be material. It shall also address any minimum content for such reports agreed by the Participants.

#### **5 Membership and Quorum**

- 5.1 The Alliance Leadership Team will comprise:
  - (a) **[Participant 1]: [insert job title of person(s) from Commissioner 1]**
  - (b) **[Participant 2]: [insert job title of person(s) from Commissioner 2]**
  - (c) **[Primary Care Provider Representative]: [insert job title of person(s) from Primary Care Provider Representative]**
  - (d) **[repeat as many times as required]**

5.2 The following persons may attend meetings of the Alliance Leadership Team as observers but will not participate in decisions:

(a) **[Organisation 1]: [insert job title of person(s) from Organisation 1]**

5.3 Other members/attendees may be co-opted as necessary.

5.4 The Alliance Leadership Team will be quorate if two thirds of its members are present, subject to the members present being able to represent the views and decisions of the Participants who are not present at any meeting. Where a member cannot attend a meeting, the member can nominate a named deputy to attend. Deputies must be able to contribute and make decisions on behalf of the Participant that they are representing. Deputising arrangements must be agreed with the Chair prior to the relevant meeting.

5.5 The Alliance Leadership Team will be chaired by **[insert name or job title and organisation]** (the "Chair"). **[Insert name job title and organisation]** will be the Deputy Chair.

5.6 Where the Chair is absent, the Deputy Chair shall take on the role of the Chair.

## **6 Conduct of Business**

6.1 Meetings will be held **[insert frequency, e.g. monthly]**.

6.2 The agenda will be developed in discussion with the Chair. Circulation of the meeting agenda and papers via email will take place one week before the meeting is scheduled to take place. In the event members wish to add an item to the agenda they need to notify **[insert]** who will confirm this will the Chair accordingly.

6.3 At the discretion of the Chair business may be transacted through a teleconference or videoconference provided that all members present are able to hear all other parties and where an agenda has been issued in advance.

6.4 At the discretion of the Chair a decision may be made on any matter within these Terms of Reference through the written approval of every member, following circulation to every member of appropriate papers and a written resolution. Such a decision shall be as valid as any taken at a quorate meeting but shall be reported for information to, and shall be recorded in the minutes of, the next meeting.

## **7 Decision Making and Voting**

7.1 The Alliance Leadership Team will aim to achieve consensus for all decisions of the Participants.

7.2 To promote efficient decision making at meetings of the Alliance Leadership Team it shall develop and approve detailed arrangements through which proposals on any matter will be developed and considered by the Participants with the aim of reaching a consensus. These arrangements shall address circumstances in which one or more Participants decides not to adopt a decision reached by the other Participants.

## **8 Conflicts Of Interests**

8.1 The members of the Alliance Leadership Team must refrain from actions that are likely to create any actual or perceived conflicts of interests.

8.2 The Alliance Leadership Team shall develop and approve a protocol for addressing actual or potential conflicts of interests among its members (and those of the Alliance Management Team). The protocol shall at least include arrangements in respect of declaration of interests and the means by which they will be addressed. It shall be consistent with the Participants' own arrangements in respect of conflicts of interests, and any relevant statutory duties.

## **9 Confidentiality**

- 9.1 Information obtained during the business of the Alliance Leadership Team must only be used for the purpose it is intended. Particular sensitivity should be applied when considering financial, activity and performance data associated with individual services and institutions. The main purpose of sharing such information will be to inform new service models and such information should not be used for other purposes (e.g. performance management, securing competitive advantage in procurement).
- 9.2 Members of the Alliance Leadership Team are expected to protect and maintain as confidential any privileged or sensitive information divulged during the work of the Alliance. Where items are deemed to be privileged or particularly sensitive in nature, these should be identified and agreed by the Chair. Such items should not be disclosed until such time as it has been agreed that this information can be released.

## **10 Support**

- 10.1 Support to the Alliance Leadership Team will be provided as part of a programme management approach.
- 10.2 The programme structure and supporting work groups will be developed and agreed as part of the Alliance Leadership Team work plan.

## **11 Review**

- 11.1 These Alliance Leadership Team terms of reference will be formally reviewed annually.

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## SCHEDULE 3 – PART 2

### ALLIANCE MANAGEMENT TEAM – TERMS OF REFERENCE

#### 12 Purpose

12.1 The Alliance Management Team has been established to manage the alliance, particularly in respect of the delivery of plans to achieve the Alliance Objectives and strategies agreed by the Alliance Leadership Team, and to manage performance and risk.

#### 13 Status and authority

13.1 The Alliance is established by the Participants, who remain sovereign organisations, to provide a financial and governance framework for the delivery of the Services. The Alliance is not a separate legal entity, and as such is unable to take decisions separately from the Participants or bind its Participants; nor can one or more Participants 'overrule' any other Participant on any matter (although all Participants will be obliged to comply with the terms of the Agreement).

13.2 The Agreement establishes the Alliance Management Team to manage the Alliance on behalf of the Participants. As a result of the status of the Alliance the Alliance Management Team is unable in law to bind any Participant so it will function as a forum for discussion of issues with the aim of reaching consensus among the Participants.

13.3 The Alliance Management Team will function through engagement between its members so that each Participant makes a decision in respect of, and expresses its views about, each matter considered by the Alliance Management Team. The decisions of the Alliance Management Team will, therefore, be the decisions of the Participants, the mechanism for which shall be authority delegated by the Participants to their representatives on the Alliance Leadership Team.

13.4 Each Participant shall delegate to its representative on the Alliance Management Team such authority as is agreed to be necessary in order for the Alliance Management Team to function effectively in discharging the duties within these Terms of Reference. The Participants shall ensure that each of their representatives has equivalent delegated authority. Authority delegated by the Participants shall be defined in writing and agreed by the Participants, and shall be recognised to the extent necessary in the Participants' own schemes of delegation (or similar).

13.5 The Participants shall ensure that the Alliance Management Team members understand the status of the Alliance Management Team and the limits of the authority delegated to them.

#### 14 Responsibilities

14.1 The Alliance Management Team will:

- (b) ***promote and encourage commitment to the Alliance Principles and Alliance Objectives amongst all Participants;***
- (c) ***implement strategies agreed by the Alliance Leadership Team to achieve the Alliance Objectives;***
- (d) ***identify and escalate to the Alliance Leadership Team strategic issues and resolve challenges such that the Alliance Objectives can be achieved;***

- (e) *implement decisions on the Alliance Leadership Team in response to changes in the operating environment, including in respect of national policy or regulatory requirements, which impact upon the Alliance or any Participants to the extent that they affect the Participants' involvement in the Alliance;*
- (f) *manage the performance of the Alliance, accounting to the Alliance Leadership Team in this respect;*
- (g) *identify and manage the risks associated with the Alliance, integrating where necessary with the Participants' own risk management arrangements;*
- (h) *implement arrangements through which the Alliance accounts to relevant regulators and other stakeholders through whatever means are required by such regulators or are determined by the Alliance Leadership Team, including, to the extent relevant, integration with communications and accountability arrangements in place within the Participants;*
- (i) *address any actual or potential conflicts of interests which arise for members of the Alliance Management Team or within the Alliance generally, in accordance with a protocol to be agreed between the Participants (such protocol to be consistent with the Participants' own arrangements in respect of declaration and conflicts of interests, and compliant with relevant statutory duties);*

## 15 Accountability

- 15.1 The Alliance Management Team is accountable to the Alliance Leadership Team.
- 15.2 The minutes of the Alliance Management Team will be sent to the Alliance Leadership Team within [insert reasonable period following each meeting].
- 15.3 The minutes shall be accompanied by a report on any matters which the Chair considers to be material. It shall also address any minimum content for such reports agreed by the Alliance Leadership Team.

## 16 Membership and Quorum

- 16.1 The Alliance Management Team will comprise:
  - (j) **[Participant 1]: [insert job title of person(s) from Commissioner 1]**
  - (k) **[Participant 2]: [insert job title of person(s) from Commissioner 2]**
  - (l) **[Primary Care Provider Representative]: [insert job title of person(s) from Primary Care Provider Representative]**
  - (m) **[repeat as many times as required]**
- 16.2 The following persons may attend meetings of the Alliance Management Team as observers but will not participate in decisions:
  - (n) **[Organisation 1]: [insert job title of person(s) from Organisation 1]**
- 16.3 Other members/attendees may be co-opted as necessary.
- 16.4 The Alliance Management Team will be quorate if two thirds of its members are present, subject to the members present being able to represent the views and decisions of the Participants who are not present at any meeting.
- 16.5 Where a member cannot attend a meeting, the member can nominate a named

deputy to attend. Deputies must be able to contribute and make decisions on behalf of the Participant that they are representing. Deputising arrangements must be agreed with the Chair prior to the relevant meeting.

16.6 The Alliance Management Team will be chaired by [*insert name or job title and organisation*] (the "Chair"). [*Insert name job title and organisation*] will be the Deputy Chair.

16.7 Where the Chair is absent, the Deputy Chair shall take on the role of the Chair.

## **17 Conduct of Business**

17.1 Meetings will be held [*insert frequency, e.g. monthly*].

17.2 The agenda will be developed in discussion with the Chair. Circulation of the meeting agenda and papers via email will take place one week before the meeting is scheduled to take place. In the event members wish to add an item to the agenda they need to notify [*insert*] who will confirm this will the Chair accordingly.

17.3 At the discretion of the Chair business may be transacted through a teleconference or videoconference provided that all members present are able to hear all other parties and where an agenda has been issued in advance.

17.4 At the discretion of the Chair a decision may be made on any matter within these Terms of Reference through the written approval of every member, following circulation to every member of appropriate papers and a written resolution. Such a decision shall be as valid as any taken at a quorate meeting but shall be reported for information to, and shall be recorded in the minutes of, the next meeting.

## **18 Decision Making and Voting**

18.1 The Alliance Management Team will aim to achieve consensus for all decisions of the Participants.

18.2 To promote efficient decision making at meetings of the Alliance Management Team it shall develop and approve detailed arrangements through which proposals on any matter will be developed and considered by the Participants with the aim of reaching a consensus. These arrangements shall address circumstances in which one or more Participants decides not to adopt a decision reached by the other Participants.

## **19 Conflicts Of Interests**

19.1 The members of the Alliance Management Team must refrain from actions that are likely to create any actual or perceived conflicts of interests.

19.2 The Alliance Management Team shall adopt and comply with the protocol for addressing conflicts of interests as approved by the Alliance Leadership Team.

## **20 Confidentiality**

20.1 Information obtained during the business of the Alliance Management Team must only be used for the purpose it is intended. Particular sensitivity should be applied when considering financial, activity and performance data associated with individual services and institutions. The main purpose of sharing such information will be to inform new service models and such information should not be used for other purposes (e.g. performance management, securing competitive advantage in procurement).

20.2 Members of the Alliance Management Team are expected to protect and maintain as confidential any privileged or sensitive information divulged during the work of the Alliance. Where items are deemed to be privileged or particularly sensitive in nature, these should be identified and agreed by the Chair. Such items should not be disclosed until such time as it has been agreed that this information can be released.

**21 Support**

- 21.1 Support to the Alliance Management Team will be provided as part of a programme management approach.
- 21.2 The programme structure and supporting work groups will be developed and agreed as part of the Alliance Management Team work plan.

**22 Review**

- 22.1 These Alliance Management Team terms of reference will be formally reviewed annually.

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**SCHEDULE 4**

**RISK/REWARD MECHANISM**

*[For local determination]*

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**SCHEDULE 5**

**KEY PERFORMANCE INDICATORS**

*[For local determination]*

<b>No.</b>	<b>KPI description and threshold to be achieved</b>	<b>Method of measurement</b>	<b>Evidence to be provided</b>	<b>Frequency of application of KPI</b>	<b>Consequence of not achieving threshold</b>

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## SCHEDULE 6

### CONFIDENTIAL INFORMATION OF THE PARTICIPANTS

#### 1. CONFIDENTIAL INFORMATION OF THE PARTICIPANTS

- 1.1 We will, except as permitted by this Schedule 6, keep confidential all Confidential Information disclosed to any one of Us by any Participant in connection with this Agreement, and We will use all reasonable endeavours to prevent staff in Our organisations from making any disclosure to any person of that information.
- 1.2 Paragraph 1.1 above will not apply to disclosure of information that:
- (a) is in or comes into the public domain other than by breach of this Agreement;
  - (b) the receiving Participant can show by its records was in its possession before it received it from the disclosing Participant; or
  - (c) the receiving Participant can prove it obtained or was able to obtain from a source other than the disclosing Participant without breaching any obligation of confidence.
- 1.3 A Participant may disclose the other Participant's Confidential Information:
- (a) to comply with applicable Legislation;
  - (b) to comply with government policy in relation to transparency
  - (c) to any appropriate Regulatory or Supervisory Body;
  - (d) in connection with any dispute resolution or litigation between the Participants;
  - (e) as permitted under any other express arrangement or other provision of this Agreement; and
  - (f) where the disclosing Participant is a Commissioner Participant, to NHS bodies for the purposes of carrying out their duties.

## SCHEDULE 7

### FREEDOM OF INFORMATION AND TRANSPARENCY

#### 1 Freedom of Information and Transparency

- 1.1 We acknowledge that certain Participants are subject to the requirements of FOIA and EIR. We will assist and co-operate with each Participant to enable it to comply with its disclosure obligations under FOIA and EIR. We agree:
- (a) that this Agreement and any other recorded information held by any of Us for the purposes of this Agreement are subject to the obligations and commitments of the Participants that are subject to the FOIA and EIR;
  - (b) that the decision on whether any exemption under FOIA or exception under EIR applies to any information is a decision solely for the Participant to whom a request for information is addressed;
  - (c) that where a Participant receives a request for information relating to this Agreement, it will liaise with the Alliance Leadership Team as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Business Days) provide a copy of the request and any response to the Alliance Leadership Team;
  - (d) that where a Participant receives a request for information and the Participant is not itself subject to FOIA or as applicable EIR, it will not respond to that request (unless directed to do so by the Participant to whom the request relates) and will promptly (and in any event within 2 Business Days) transfer the request to the Alliance Leadership Team;
  - (e) that any Participant, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA and regulation 16 of EIR, may disclose information concerning another Participant and this Agreement either without consulting with the relevant Participant, or following consultation with the Participant and having taken its views into account provided always that in the case of information covered by paragraph 9.2 of Part 1 of Schedule 3 the relevant Participant(s) and the Chair shall be consulted and their views taken into account before any information is disclosed;
  - (f) that any request for an internal review or correspondence with the Information Commissioner received by a Participant or appeal to the First Tier Tribunal (Information Rights) to which a Participant is a party that concerns information covered by paragraph 9.2 of Part 1 of Schedule 3 shall be notified to the relevant Participant(s) and the Chair, who shall each be consulted and their views taken into account before a formal response is provided; [and]
  - (g) to assist each Participant in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA or EIR) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by that Participant within 5 Business Days of that request and without charge.
- 1.2 ***[For local determination. Participants may wish to describe here how information received or generated by the Alliance Leadership Team and the Alliance Management Team will be dealt with under the FOIA and EIR. In particular, Participants may wish to set out if/ when this information is held on behalf of all Participants. Care needs to be taken to ensure that the provisions***

**of clause 10 (transparency) are complied with, especially in relation to Competition Sensitive Information.]** We acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, or for which an exception applies under EIR, the content of this Agreement is not Confidential Information.

- 1.3 Notwithstanding any other term of this Agreement, We consent to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA or for which an exception applies under EIR.
- 1.4 In preparing a copy of this Agreement for publication the Alliance Leadership Team may consult with the Participants to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Alliance Leadership Team's absolute discretion.
- 1.5 We will assist and cooperate with each other to enable this Agreement to be published.

## **SCHEDULE 8**

### **DISPUTE RESOLUTION PROCEDURE**

***[For local determination. The process to resolve disputes must be carefully considered. An example has been included to facilitate discussions between the Participants.]***

#### **1 Avoiding and Solving Disputes**

- 1.1 We commit to working cooperatively to identify and resolve issues to Our mutual satisfaction so as to avoid all forms of dispute or conflict in performing our obligations under this Agreement.
- 1.2 We believe that:
  - (a) by focusing on our agreed Alliance Objectives and Alliance Principles;
  - (b) being collectively responsible for all risks; and
  - (c) fairly sharing risk and rewards as part of the Risk/Reward Mechanismreinforce our commitment to avoiding disputes and conflicts arising out of or in connection with Our Alliance.
- 1.3 We shall promptly notify each other of any dispute or claim or any potential dispute or claim in relation to this Agreement or the operation of Our Alliance (each a '**Dispute**') when it arises.
- 1.4 In the first instance the Alliance Management Team shall seek to resolve any Dispute to the mutual satisfaction of each of Us. If the Dispute cannot be resolved by the Alliance Management Team within 10 Business Days of the Dispute being referred to it, the Dispute shall be referred to the Alliance Leadership Team for resolution.
- 1.5 The Alliance Leadership Team shall deal proactively with any Dispute on a Best for Service basis in accordance with this Agreement so as to seek to reach a unanimous decision. If the Alliance Leadership Team reaches a decision that resolves, or otherwise concludes a Dispute, it will advise Us of its decision by written notice. Any decision of the Alliance Leadership Team will be final and binding on Us.

- 1.6 We agree that the Alliance Leadership Team, on a Best for Services basis, may determine whatever action it believes is necessary including the following:
- (a) If the Alliance Leadership Team cannot resolve a Dispute, it may select an independent facilitator to assist with resolving the Dispute; and
  - (b) The independent facilitator shall:
    - (i) be provided with any information he or she requests about the Dispute;
    - (ii) assist the Alliance Leadership Team to work towards a consensus decision in respect of the Dispute;
    - (iii) regulate his or her own procedure and, subject to the terms of this Agreement, the procedure of the Alliance Leadership Team at such discussions;
    - (iv) determine the number of facilitated discussions, provided that there will be not less than three and not more than six facilitated discussions, which must take place within 20 Business Days of the independent facilitator being appointed; and
    - (v) have its costs and disbursements met by the Commissioner Participants.
  - (c) If the independent facilitator cannot facilitate the resolution of the Dispute, the Dispute must be considered afresh in accordance with this Schedule 8 and only after such further consideration again fails to resolve the Dispute, the Alliance Leadership Team may decide to:
    - (i) terminate the Alliance; or
    - (ii) agree that the Dispute need not be resolved.

**SCHEDULE 9**  
SCOPE OF SERVICES

*[For local determination]*

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