NHS
Gloucestershire
Clinical Commissioning Group

Primary Care Commissioning Committee (PCCC)

Meeting to be held at 12:00 on Thursday 7th May 2015 in the Board Room, Sanger House, Brockworth, Gloucester GL3 4FE

No.	Item	Lead	Recommendation
1	Welcome & Introductions	Chair	
2	Apologies for Absence	Chair	
3	Declarations of Interest	Chair	
4	Terms of Reference	Chair	Information
5	Delegation Agreement	AS	Information
6	National Updates – verbal	DE	Information
7	Primary Care Overview - verbal	AS	Information
8	8.1 Primary Care Governance Structure 8.2 PCOG Terms of Reference	HG Chair	Information For approval
9	Primary Care Co-Commissioning Budget	CL	Information
10	Quality Report	MAE	Information
11	Any Other Business (AOB)	Chair	
Date and time of next meeting: Thursday 30th July 2015 at 12:00pm in the Board Room at Sanger House			

NHS
Gloucestershire
Clinical Commissioning Group

Agenda Item 4

Primary Care Commissioning Committee

Meeting Date	**Thursday 7th May 2015**
Title	**Primary Care Commissioning Committee Terms of Reference**
Executive Summary	The attached Terms of Reference outline the roles and responsibilities of the Committee.
Key Issues	These Terms of Reference are appended to the revised CCG Constitution that was considered by the Governing Body on the 29th January 2015 and subsequently approved by NHS England on the 6th February 2015.
Risk Issues: **Original Risk** **Residual Risk**	None
Financial Impact	None
Legal Issues (including NHS Constitution)	This document has been compiled in accordance with NHS England guidance.
Impact on Health Inequalities	Not applicable.
Impact on Equality and Diversity	Not applicable.
Impact on Sustainable Development	Not applicable.
Patient and Public Involvement	Not applicable.
Recommendation	These Terms of Reference are presented for information.
Author	Alan Potter
Designation	Associate Director Corporate Governance
Sponsoring Director (if not author)	Alan Elkin, PCCC Chair

Gloucestershire
Clinical Commissioning Group

Appendix 1

NHS Gloucestershire Clinical Commissioning Group

Primary Care Commissioning Committee

Terms of Reference

Introduction

1. NHS England has delegated authority to the Gloucestershire CCG (GCCG) for the commissioning of primary care as set out in Schedule 2 in accordance with section 13Z of the NHS Act. The detail of the powers of delegation is due to be published by NHS England in January 2015.

2. The GCCG acknowledges that, in addition to the statutory duties set out in Chapter A2 of the NHS Act that it already complies with, it must comply with the following as regards primary care:
   a) Duty to have regard to impact on services in certain areas (section13O);

   b) Duty as respects variation in provision of health services (section 13P).

3. The GCCG has established the Primary Care Commissioning Committee (Committee) as a committee of the GCCG Governing Body, in accordance with Schedule 1A of the "NHS Act," to manage primary care.

4. The members of the GCCG acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State.

Aim of the Primary Care Commissioning Committee

5. The purpose of the Committee is to manage the delivery those elements of the primary care healthcare services delegated by NHS England to the GCCG working within the context of the overall CCG Plan. The aim will be to deliver to the people of Gloucestershire, on behalf of the GCCG, services that are of high quality, clinically effective and safe, within available resources. This will be delivered through a culture of openness supported by sound governance arrangements.

Membership

6. The Committee shall consist of the following seven voting members, with actual membership included at Schedule 3:

   - Lay Chair
   - Lay Member

- Accountable Officer
- Chief Finance Officer
- Executive Nurse and Quality Lead
- Governing Body Registered Nurse
- GCCG Governing Body GP

7. The Chair of the Committee shall be appointed from the existing Governing Body three lay members, but will exclude the Audit Committee Chair for reasons of good governance and probity. This appointment will be made by the Governing Body.

8. The Vice Chair of the Committee shall be the other lay member or the Governing Body Registered Nurse.

9. The Committee will invite the following as non-voting attendees:
   - A HealthWatch representative
   - A Health and Wellbeing Board representative
   - NHS England Area Team

10. The Committee may invite any person to attend meetings to provide advice and/or expertise as required.

Secretary

11. The Committee secretary shall be the Associate Director of Corporate Governance.

Quorum

12. Five members of the Committee must be present for the quorum to be established including:
    - at least two individuals being the lay members or the Governing Body Registered Nurse; and
    - the Accountable Officer or the Chief Finance Officer

Meetings and Voting

13. The Committee will operate in accordance with the GCCG's Standing Orders. The Secretary to the Committee will be responsible for giving notice of meetings. This will be accompanied by an agenda and supporting papers and sent to each member representative no later than 5 days before the date of the meeting.

14. The Committee shall meet bi-monthly.

15. The Chair of the Committee may convene additional meetings as required.

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

17. Members of the Committee shall respect confidentiality requirements as set out in the CCG's Constitution

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

19. The minutes of the Committee meetings shall be circulated by the Chair as soon as is practicable after the meetings to which they relate to all members of the Committee.

20. Meetings of the Committee shall:

    a. be held in public;

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

Remit and responsibilities of the Committee

21. The role of the Committee shall be to carry out the functions relating to the commissioning of primary medical services under section 83 of the NHS Act.

22. In performing its role the Committee will exercise its management of the functions in accordance with the agreement entered into between NHS England and NHS Gloucestershire CCG. This includes delegated responsibility for the following working within the context of the CCG Strategy:

    a. The award of GMS, PMS and APMS contracts. This includes: the design of PMS and APMS contracts; and monitoring of contracts;

    b. Locally defined and designed enhanced services ("Local Enhanced Services" and "Directed Enhanced Services");

    c. Making decision regarding local incentive schemes as an alternative to the Quality Outcomes Framework (QOF);

    d. Procurement of new practice provision;

    e. Discretionary payment (e.g., returner/retainer schemes);

    f. Reporting details of 22a –e to the Governing Body.

23. The Committee shall report on and make recommendations to the Governing Body on the following:

    a. Primary medical care strategy for Gloucestershire;

    b. Planning primary medical care services in Gloucestershire (including needs assessment);

    c. Primary Care Estates Strategy;

    d. Premises improvement grants and capital developments;

    e. Contractual action such as issuing branch/remedial notices, and removing a contract;

    f. Practice mergers.

24. The Committee may delegate some tasks to such individuals, sub-committees or individual members as it shall see fit, provided that any such delegations are consistent with the parties' relevant governance arrangements, are recorded in a scheme of

delegation, are governed by terms of reference as appropriate and reflect appropriate arrangements for the management of conflicts of interest. The Committee may not delegate the procurement of services to any individual or sub-committee.

Financial Accountability

25. The Committee's authority for procuring services is covered in the GCCG's scheme of delegation and financial instructions.

Relationship with the Governing Body and Sub-Committees

Relationship with the Governing Body

26. The Committee has delegated authority for the commissioning of some primary care services as outlined in para 22a-e.

27. The Committee shall make recommendations to the Governing Body for the primary care services and functions listed at para 23a-f.

28. The minutes of each meeting of the Committee shall be formally recorded and retained by the Clinical Commissioning Group. The minutes shall be submitted to the Governing Body. The Chair of the Committee shall report the outcome and recommendations of the committee to the next available Governing Body meeting.

Relationship with Sub-Committees

29. The NHS Gloucestershire Primary Care Operational Group (PCOG) shall undertake the operational management, implementation and oversight of the nationally defined primary care contracts and the primary care workstreams. In addition the PCOG will also monitor complaints and quality.

30. The Primary Care Operational Group sub-committee shall report to the Committee and submit the minutes of their meetings to the Committee for review.

Policy and best practice

31. The Committee shall have regard to current good practice, policies and guidance by the National Commissioning Board, GCCG and other relevant bodies.

32. The members acknowledge that the Committee is subject to any directions made by NHS England or by the Secretary of State.

Conduct of the Committee

33. The Committee shall conduct its business in an open and responsive manner and in accordance with these terms of reference and the GCCG's governance arrangements.

NHS
Gloucestershire
Clinical Commissioning Group

Agenda Item 5

NHS Gloucestershire Clinical Commissioning Group
Primary Care Commissioning Committee

Meeting Date	**Thursday 7th May 2015**
Title	**Delegation Agreement**
Executive Summary	The enclosed paper represents the signed Delegation Agreement between NHS England and Gloucestershire CCG (GCCG) regarding Primary Care Co-Commissioning. The Agreement sets out the specific arrangements that apply in relation to the exercise of the Delegated Functions by GCCG on behalf of NHS England with effect from 1 April 2015. The list of the delegated functions to GCCG has been summarised within this paper and provided in more detail at Schedule 2. Functions currently reserved by NHS England are summarised within this paper and provided in more detail within Schedule 3. The Delegation Agreement makes certain provisions that are binding upon GCCG in relation to management of finance, performance reporting, annual planning and staff recruitment. We have been working with NHS England colleagues in order to ensure we have established workable, sensible solutions to these that are satisfactory to all parties. It should be noted that the Delegation Agreement is subject to further variation in the future where agreement is found between NHS England and CCGs.
Risk Issues: **Original Risk**	None.

Residual Risk	Through a robust project management approach to the transition process, all risks were identified early, escalated and mitigated to reduce residual risk in relation to the Delegation Agreement.
Financial Impact	The Delegation Agreement sets out the financial provisions and liabilities at paragraph 13 (inclusive of the following sub-paragraphs). GCCG will be responsible for meeting the expenditure in respect of the Delegated Functions through allocation of the 'Delegated Funds'. As Capital Expenditure Functions are a reserved function, Capital Expenditure Funds are excluded from the delegation.
Legal Issues (including NHS Constitution)	The Delegation Agreement is a legally binding agreement between GCCG and NHS England.
Impact on Health Inequalities	The Delegation Agreement is the formalisation of the delegated commissioning arrangements for Primary Medical Care Services to GCCG. Through this additional responsibility, we are seeking to reduce health inequalities in Gloucestershire.
Impact on Equality and Diversity	None
Impact on Sustainable Development	None
Patient and Public Involvement	The Delegation Agreement was prepared by NHS England. GCCG will be holding all Primary Care Commissioning meetings in public, with Gloucestershire HealthWatch and the Health and Wellbeing Board as invited attendees.
Recommendation	For information only
Author	Stephen Rudd
Designation	Head of Locality and Primary Care Development
Sponsoring Director (if not author)	Helen Goodey Associate Director Locality Development and Engagement

Agenda Item 5

Primary Care Commissioning Committee

7th May 2015

Delegation Agreement

1 Introduction

1.1 The enclosed paper represents the signed Delegation Agreement between NHS England and Gloucestershire CCG (GCCG) regarding Primary Medical Care Co-Commissioning.

1.2 Set out below is a succinct summary of the Agreement.

2 Summary of the Delegation Agreement

2.1 The Agreement sets out the specific arrangements that apply in relation to the exercise of the Delegated Functions by GCCG on behalf of NHS England with effect from 1 April 2015.

2.2 The list of the delegated functions to GCCG has been summarised below and provided in more detail at Schedule 2 of the Agreement:

- decisions in relation to the commissioning, procurement and management of Primary Medical Services Contracts, including but not limited to the following activities:
    - decisions in relation to Enhanced Services;
    - decisions in relation to Local Incentive Schemes (including the design of such schemes);
    - decisions in relation to the establishment of new GP practices (including branch surgeries) and closure of GP practices;
    - decisions about 'discretionary' payments;
    - decisions about commissioning urgent care (including home visits as required) for out of area

registered patients;

- the approval of practice mergers;
- planning primary medical care services, including carrying out needs assessments;
- undertaking reviews of primary medical care services;
- decisions in relation to the management of poorly performing GP practices and including decisions and liaison with the CQC where the CQC has reported non-compliance with standards (but excluding any decisions in relation to the performers list);
- management of the Delegated Funds;
- Premises Costs Directions Functions.

Functions currently reserved by NHS England are summarised below and provided in more detail within Schedule 3:

- management of the national performers list;
- management of the revalidation and appraisal process;
- administration of payments in circumstances where a performer is suspended and related performers list management activities;
- Capital Expenditure Functions;
- Section 7A Functions;
- complaints management.

2.3 The Delegation Agreement makes provision for NHS England to ask GCCG to provide administrative and management services in relation to some of the reserved functions, where the CCG is in agreement to do so.

2.4 Financial provisions are handled at Section A, paragraph 13, along with subsequent sub-paragraphs. Funds will be delegated to the CCG (the "Delegated Funds") each year in respects of the delegated functions for that Financial Year. The Agreement continues by stating how the CCG must act in accordance with statutory duties, and support NHS England in complying with their duties, when exercising the delegated functions and use of the Delegated Funds.

2.5 The CCG must also comply with the NHS England central finance team's operational process for the reporting and accounting of the Delegated Funds. In particular, the CCG will be required to permit the NHS England central finance team to have the ability to process and post journals into the CCG ledger until any electronic interface is in place relating to NHAIS (Open Exeter) and NON NHAIS payments. NHS England (acting through the Local NHS England Team) and the CCG will agree any accruals to be made including any adjustments related to the relevant 14/15 Financial Year expenditure to ensure no net financial impact or gain on the CCG.

2.6 Specific reporting and planning requirements are detailed within the Agreement. This includes the need to provide a plan setting out how the CCG proposed to exercise the delegated functions over the current and next two financial years. The first must be provided within two months of the date of the Delegation Agreement (i.e. by end of May 2015) and thereafter three months prior to the start of each Financial Year. In addition, the CCG must provide NHS England an annual report on how we have exercised the delegated functions.

2.7 The Agreement makes clear that NHS England shall be the named party to any Primary Medical Services contracts and will retain liability in relation to the exercise of the functions being delegated. Claims and litigation processes are also comprehensively handled within paragraph 14 (and subsequent sub-paragraphs).

2.8 The Agreement formalises the requirement for the CCG to establish a committee to exercise its Delegated Functions. GCCG has fulfilled this requirement through the establishment of the Primary Care Commissioning Committee, within a governance structure and conflicts of interest policy described within our amended CCG Constitution.

2.9 Termination of the Delegation Agreement can only happen annually, with notice served by either NHS England or the CCG by 30 September in order to allow termination from the end of that Financial Year. In addition, the provision is made

for the Agreement to be varied in the future, such as for additional functions to be delegated to the CCG.

2.10 Three staffing models are set out for the CCG to choose which to implement. These are:

- **Model 1 – "Assignment":** an informal arrangement whereby NHS England staff remain in their current roles and locations and provide services to the CCG under a service level agreement;
- **Model 2 – "Secondment"**: NHS England staff are formally seconded to the CCG;
- **Model 3 – "Employment"** the CCG may create new posts to undertake the Delegated Functions provided that NHS England existing staff are first offered the opportunity to apply for such posts and subsequently employed if deemed appointable.

2.11 GCCG has chosen Model 3 following discussion and agreement with NHS England on how to implement that model.

3 Recommendation(s)

3.1 The Delegation Agreement is shared for information only.

4 Appendices

- Appendix 1: Delegation Agreement signed by GCCG and NHS England

NHS England

Delegation Agreement

1. Particulars

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

Area	**Gloucestershire**
Clinical Commissioning Group or CCG	**NHS Gloucestershire CCG**
CCG Representative	**Helen Goodey**
CCG Address for Notices	**Sanger House, 5220 Valiant Court, Gloucester Business Park, GL3 4FE**
Date of Agreement	**26th March 2015** **[Note this must commence on 1st April 2015]**
Delegation	**means the delegation made by NHS England to the CCG of certain functions relating to primary medical services under section 13Z of the NHS Act and effective from 1 April 2015 (as amended pursuant to the Delegation)**
NHS England Representative	**Debra Elliott**
Local NHS England Team	**NHS England South Central Sub Region**
NHS England Address for Notices	**Bewley House, Chippenham, Wiltshire**

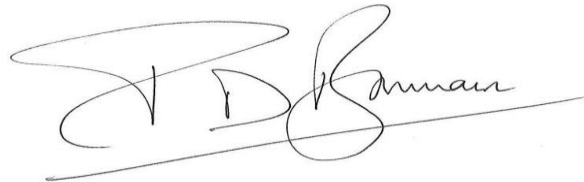
1.2. This Agreement comprises:

1.2.1. the Particulars (Clause 1);

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

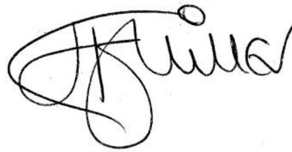
1.2.3. the Local Terms (Schedule 7).

Signed by

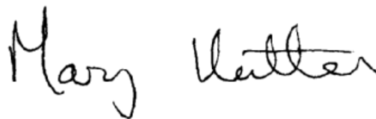


NHS England
Paul Baumann, Chief Financial Officer, NHS England, for and on behalf of NHS England

Signed by **NHS Gloucestershire Clinical Commissioning Group**



Helen Miller
NHS Gloucestershire CCG Clinical Chair



Mary Hutton
NHS Gloucestershire CCG Accountable Officer

Terms and Conditions

A. Introduction

2. Interpretation

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

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

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

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

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

3. Background

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

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

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

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

4. Term

4.1. This Agreement has effect from the date set out in paragraph 10 of the Delegation and will remain in force unless terminated in accordance with clause 17 *(Termination)* below.

5. Principles

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

5.1.1. at all times act in good faith towards each other;

5.1.2. at all times exercise functions effectively, efficiently and economically;

5.1.3. act in a timely manner;

5.1.4. share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

5.1.5. at all times observe relevant statutory powers, requirements and best practice to ensure compliance with applicable laws and standards including those governing procurement, and Information Law; and

5.1.6. have regard to the needs and views of the other Party and as far as is lawful and reasonably practicable, take such needs and views into account.

B. Role of the CCG

6. Performance of the Delegated Functions

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

6.2. The Delegated Functions are the functions set out in paragraph 12 of the Delegation and being:

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

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

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

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

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

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

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

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

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

6.7. Without prejudice to any other provision in this Agreement, the CCG must comply with the NHS England central finance team's operational process (as such process is updated from time to time) for the reporting and accounting of the Delegated Funds. In particular, the CCG will be required to permit the NHS England central finance team to have the ability to process and post journals into the CCG ledger until any electronic interface is in place relating to NHAIS (Open Exeter) and NON NHAIS payments. NHS England (acting through the Local NHS England Team) and the CCG will agree any accruals to be made including any adjustments related to the relevant 14/15 Financial Year expenditure to ensure no net financial impact or gain on the CCG.

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

7. Committee

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

7.2. The structure and operation of the committee must be constituted so as to take into account Guidance issued by NHS England including the updated *Code of Conduct – statutory guidance for CCGs* (http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf).

C. Functions reserved to NHS England

8. Performance of the Reserved Functions

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

8.2. Subject to clause 8.3, the Reserved Functions are all of NHS England's functions relating to primary medical services other than the Delegated Functions and including those functions set out in paragraph 15 of the Delegation and being:

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

8.3. For the avoidance of doubt, the Parties acknowledge that the Delegation may be amended and additional functions may be delegated

to the CCG, in which event consequential changes to this Agreement shall be agreed with the CCG pursuant to clause 22 *(Variations)* of this Agreement.

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

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

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

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

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

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

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

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

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

D. Commissioning

9. Monitoring and Reporting – General Requirements

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

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

9.1.2. the CCG Assurance Framework; and

9.1.3. the CCG's constitution.

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

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

9.4. The CCG must provide to NHS England:

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

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

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

E. Information

10. Information Sharing and Information Governance

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

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

10.3. The Personal Data Agreement:

10.3.1. sets out the relevant Information Law and best practice, including the requirements of the HSCIC IG Toolkit;
10.3.2. sets out how that law and best practice will be implemented, including responsibilities of the Parties to co-operate properly and fully with each other;
10.3.3. identifies the Relevant Information that may be processed, including what may be shared, under this Agreement;
10.3.4. identifies the purposes for which the Relevant Information may be so processed and states the legal basis for the processing in each case;
10.3.5. states who is/are the data controller/s and, if appropriate, the data processor/s of Personal Data;
10.3.6. sets out what will happen to the Personal Data on the termination of this Agreement (with due regard to clause 17 (*Termination)* of the Agreement); and
10.3.7. sets out such other provisions as are necessary for the sharing of Relevant Information to be fair, lawful and meet best practice.

10.4. NHS England and the CCG will share all Non-Personal Data in accordance with Information Law and their statutory powers as set out

in section 13Z3 (for NHS England) and section 14Z23 (for the CCG) of the NHS Act.

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

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

10.5.2. Good Practice; and

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

11. IT inter-operability

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

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

12. Public Information and Access Targets

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

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

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

F. General

13. Financial Provisions and Liability

Notification of the Delegated Funds and Adjustments to the Delegated Funds

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

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

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

13.2.2. all payments under the Premises Costs Directions.

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

13.3.1. in order to take into account any monthly adjustments or corrections to the Delegated Funds that NHS England considers appropriate (following discussions with the CCG), including without limitation adjustments following any changes to the Delegation or Delegated Functions (including changes

pursuant to paragraph 11 or paragraph 30 of the Delegation), changes in allocations, changes in contracts or otherwise;

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

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

13.3.4. to take into account any Claim Losses;

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

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

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

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

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

account in relation to the exercise of the Delegated Functions and the use of the Delegated Funds.

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

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

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

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

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

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

Payment and Transfer

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

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

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

13.11.1. the terms and conditions of this Agreement;

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

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

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

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

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

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

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

13.14. The Parties further acknowledge that:

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

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

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

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

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

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

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

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

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

13.18. The Parties further acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13.23.2. such Contractual Notice may specify procedures in relation to the provision of an annual report to the Chief Executive of NHS England, procedures in relation to the approval of decisions in relation to complaints and/or the appointment of a responsible person by NHS England pursuant to the Complaints Regulations;

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

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

Pooled Funds

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

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

Business Plan, Commissioning Plan and Annual Report

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

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

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

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

13.28. The plan must include the following:

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

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

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

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

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

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

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

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

Risk sharing

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

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

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

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

14. Claims and Litigation

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

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

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

14.4. The CCG must:

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

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

14.4.3. if it receives any correspondence, issue of proceedings, claim document or other document concerning any Claim or potential Claim, immediately notify NHS England and send to NHS England all copies of such correspondence;

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

14.4.5. provide, at its own cost, to NHS England all documentation and other correspondence that NHS England requires for the purposes of considering and/or resisting such Claim; and/or

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

requirements of the NHSLA or any insurer in relation to such Claim.

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

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

NHS England Stepping into Claims

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

NHS England Stepping out of Claims

14.8. NHS England may, at any time after it has exercised its rights set out in clause 14.7 above and following discussion with the CCG, send a notice to the CCG stating that the CCG will be required to take over the conduct of the Claim from NHS England and NHS England must immediately take all steps necessary to transfer the conduct of such Claim to the CCG. In such cases, the CCG shall be entitled to conduct the Claim in the manner it considers appropriate in accordance with its obligations under this clause 14 *(Claims and Litigation)* and subject to Schedule 4 *(Further Information Sharing Provisions)* and Schedule 5 *(Financial Provisions and Decision Making Limits)*.

Claim Losses

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

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

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

15. Breach

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

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

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

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

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

15.2.2. ratify any decision in accordance with paragraph 29 of the Delegation;

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

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

15.2.5. exercise its rights under common law.

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

15.4. If:

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

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

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

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

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

16. Escalation Rights

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

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

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

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

17. Termination

17.1. The CCG may:

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

17.1.2. terminate this Agreement

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

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

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

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

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

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

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

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

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

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

17.3.5. to give effect to legislative changes;

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

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

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

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

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

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

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

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

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

18. Staffing

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

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

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

18.1.3. "Model 3 – Employment" under the terms of which the CCG may create new posts within the CCG to undertake the Delegated Functions provided that the CCG may only do so if it first offers to existing staff of NHS England an opportunity to

apply for such posts and such staff must be appointed if they are deemed appointable,

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

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

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

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

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

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

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

19. Disputes

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

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

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

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

19.2.3. if the people referred to in clause 19.2.2 are for any reason unable to resolve the Dispute within twenty (20) days of it being referred to them, the Parties may attempt to settle it by mediation in accordance with the CEDR model mediation procedure. Unless otherwise agreed between the Parties, the mediator must be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (**"ADR notice"**) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than ten (10) days after the date of the ADR notice.

19.3. If the Dispute is not resolved within thirty (30) days after service of the ADR notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the period of thirty (30) days, or the mediation terminates before the expiration of the period of thirty (30) days, the Dispute must be referred to the Secretary

of State, who shall resolve the matter and whose decision shall be binding upon the Parties.

20. Freedom of Information

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

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

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

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

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

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

21. Conflicts of Interest

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

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

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

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

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

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

22. Variations

22.1. The Parties acknowledge that, under paragraph 30 of the Delegation, the Delegation may be reviewed and amended from time to time and that such amendments may be effected by a revocation and re-issue of an amended Delegation.

22.2. The Parties acknowledge that, under paragraph 11 of the Delegation, certain additional functions may be delegated from time to time by NHS England to the CCG on a date or dates to be notified to the CCG by NHS England in accordance with clause 8.3. If NHS England amends the Delegation and/or delegates additional functions to the CCG, then NHS England and the CCG shall agree such consequential changes to this Agreement pursuant to this clause 22 *(Variations)*.

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

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

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

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

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

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

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

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

22.8.1. that it accepts the National Variation Proposal; or

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

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

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

23. Counterparts

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

24. Notices

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

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

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

24.2. Notices sent:

24.2.1. by hand will be effective upon delivery;

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

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

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

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

Schedule 1
Definitions and Interpretation

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

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

third parties making such investment;

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

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

confidentiality; the Human Rights Act 1998 and all other applicable laws and regulations relating to processing of Personal Data and privacy;

Law means any applicable law, statute, bye-law, regulation, direction, order, regulatory policy, guidance or code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body (including, for the avoidance of doubt, the Premises Costs Directions, the Statement of Financial Entitlements Directions and the Primary Medical Services (Directed Enhanced Services) Directions 2014 as amended from time to time);

Local Incentive Schemes means an incentive scheme developed by the CCG in the exercise of its Delegated Functions including (without limitation) as an alternative to QOF;

Local Terms means the terms set out in Schedule 7 *(Local Terms)*;

Losses means all damages, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges;

National Variation an addition, deletion or amendment to the provisions of this Agreement mandated by NHS England (whether in respect of the CCG or all or some of other Clinical Commissioning Groups) including any addition, deletion or amendment to reflect changes to the Delegation, changes in Law, changes in policy and notified to the CCG in accordance with clause 22 *(Variations)*;

National Variation Proposal a written proposal for a National Variation, which complies with the requirements of clause 22.7;

Need to Know has the meaning set out in paragraph 6.2 of Schedule 4 *(Further Information Sharing Provisions)*;

NHS Act means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012 or

other legislation from time to time);

NHS England means the National Health Service Commissioning Board established by section 1H of the NHS Act, also known as NHS England;

Non-Personal Data means data which is not Personal Data;

Operational Days a day other than a Saturday, Sunday or bank holiday in England;

Particulars means the Particulars of this Agreement as set out in clause 1 *(Particulars)*;

Party/Parties means a party or both parties to this Agreement;

Personal Data shall have the same meaning as set out in the DPA and shall include references to Sensitive Personal Data where appropriate;

Personal Data Agreement means the agreement governing Information Law issues completed further to Schedule 4 *(Further Information Sharing Provisions)*;

Personnel means the Parties' employees, officers, elected members, directors, voluntary staff, consultants, and other contractors and sub-contractors acting on behalf of either Party (whether or not the arrangements with such contractors and sub-contractors are subject to legally binding contracts) and such contractors' and their sub-contractors' personnel;

PMS Contract means an arrangement or contract for the provision of primary medical services made under section 83(2) of the NHS Act (including any arrangements which are made in reliance on a combination of that section and other powers to arrange for primary medical services);

Premises Agreements means tenancies, leases and other arrangements in relation to the occupation of land for the delivery of services under the Primary Medical Services Contracts;

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

Reserved Functions	means the functions relating to the commissioning of primary medical services which are reserved to NHS England (and are therefore not delegated to the CCG under the Delegation) and as set out in detail in clause 8.2 and Schedule 3 *(Reserved Functions)* of this Agreement;
Secretary of State	means the Secretary of State for Health from time to time;
Section 7A Functions	means those functions of NHS England exercised pursuant to section 7A of the NHS Act relating to primary medical services;
Section 7A Funds	shall have the meaning in clause 13.18.1;
Sensitive Personal Data	shall have the same meaning as in the DPA;
Specified Purpose	means the purpose for which the Relevant Information is shared and processed, being to facilitate the exercise of the CCG's Delegated Functions and NHS England's Reserved Functions as specified in paragraph 2.1 of Schedule 4 *(Further Information Sharing Provisions)* to this Agreement;
Statement of Financial Entitlements Directions	means the General Medical Services Statement of Financial Entitlements Directions 2013, as amended or updated from time to time;
Statutory Guidance	means any applicable health and social care guidance, guidelines, direction or determination, framework, standard or requirement to which the CCG and/or NHS England have a duty to have regard, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the CCG by NHS England from time to time;
Survival Clauses	means clauses 10 *(Information Sharing and Information Governance),* 13 *(Financial Provisions and Liability),* 14 *(Claims and Litigation)* 17 *(Termination),* 18 *(Staffing),* 19 *(Disputes)* and 20 *(Freedom of Information)*, together

with such other provisions as are required to interpret these clauses (including the Schedules to this Agreement); and

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

Schedule 2
Delegated Functions

Part 1: Delegated Functions: Specific Obligations

1. Introduction

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

2. Primary Medical Services Contract Management

2.1. The CCG must:

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

2.1.2. actively manage the performance of the counter-party to the Primary Medical Services Contracts in order to secure the needs of people who use the services, improve the quality of services and improve efficiency in the provision of the services including by taking timely action to enforce contractual breaches and serve notice;

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

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

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

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

2.1.6.1. name of counter-party;

2.1.6.2. location of provision of services; and

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

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

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

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

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

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

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

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

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

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

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

Enhanced Services

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

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

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

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

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

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

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

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

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

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

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

Design of Local Incentive Schemes

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

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

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

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

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

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

Making Decisions on Discretionary Payments

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

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

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

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

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

3. Planning the Provider Landscape

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

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

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

3.2.1. consider and use the form of Primary Medical Services Contract that will ensure compliance with NHS England's

obligations under Law including the Public Contracts Regulations 2015/102 and the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013/500 taking into account the persons to whom such Primary Medical Services Contracts may be awarded;

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

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

4. Approving GP Practice Mergers and Closures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2.1. ensure regular and effective collaboration with the CQC to ensure that information on general practice is shared and discussed in an appropriate and timely manner;
6.2.2. ensure that any risks identified are managed and escalated where necessary;
6.2.3. respond to CQC assessments of GP practices where improvement is required;
6.2.4. where a GP practice is placed into special measures, lead a quality summit to ensure the development and monitoring of an appropriate improvement plan (including a communications plan and actions to manage primary care resilience in the locality); and
6.2.5. take appropriate contractual action in response to CQC findings.

7. Premises Costs Directions Functions

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

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

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

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

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

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

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

Schedule 2
Part 2 – Delegated Functions: General Obligations

1. Introduction

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

2. Planning and reviews

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

2.2. The role of the CCG includes:

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

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

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

3. Procurement and New Contracts

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

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

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

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

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

4. Integrated working

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

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

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

5. Resourcing

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

Schedule 3
Reserved Functions

1. Introduction

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

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

2. Management of the national performers list

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

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

2.2.1. considering applications and decision-making in relation to inclusion on the national performers list, inclusion with conditions and refusals;

2.2.2. identifying, managing and supporting primary care performers where concerns arise; and

2.2.3. managing suspension, imposition of conditions and removal from the national performers list.

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

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

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

3. Management of the revalidation and appraisal process

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

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

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

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

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

4. Administration of payments and related performers list management activities

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

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

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

5. Section 7A Functions

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

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

6. Capital Expenditure Functions

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

7. Functions in relation to complaints management

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

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

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

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

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

8. Such other ancillary activities that are necessary in order to exercise the Reserved Functions

8.1. NHS England will carry out such other ancillary activities that are necessary in order for NHS England to exercise the Reserved Functions.

8.2. NHS England will continue to comply with its obligations under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.3. The CCG must assist NHS England's controlled drug accountable officer (**"CDAO"**) to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.4. The CCG must nominate a relevant senior individual within the CCG (the **"CCG CD Lead"**) to liaise with and assist NHS England to carry out its functions under the Controlled Drugs (Supervision of Management and Use) Regulations 2013.

8.5. The CCG CD Lead must, in relation to the Delegated Functions:

8.5.1. on request provide NHS England's CDAO with all reasonable assistance in any investigation involving primary medical care services;
8.5.2. report all complaints involving controlled drugs to NHS England's CDAO;
8.5.3. report all incidents or other concerns involving the safe use and management of controlled drugs to NHS England's CDAO;
8.5.4. analyse the controlled drug prescribing data available; and

8.5.5. on request supply (or ensure organisations from whom the CCG commissions services involving the regular use of controlled drugs supply) periodic self–declaration and/or self-assessments to NHS England's CDAO.

Schedule 4
Further Information Sharing Provisions

1. Introduction

1.1. The purpose of this Schedule 4 *(Further Information Sharing Provisions)* and the associated Personal Data Agreement is to set out the scope for the secure and confidential sharing of information between the Parties on a **Need To Know** basis between individual Personnel in order to enable the Parties to exercise their primary medical care commissioning functions in accordance with the law. This Schedule and the associated Personal Data Agreement is designed to:

1.1.1. inform about the reasons why Relevant Information may need to be shared and how this will be managed and controlled by the organisations involved;
1.1.2. describe the purposes for which the Parties have agreed to share Relevant Information;
1.1.3. set out the lawful basis for the sharing of information between the Parties, and the principles that underpin the exchange of Relevant Information;
1.1.4. describe roles and structures to support the exchange of Relevant Information between the Parties;
1.1.5. apply to the sharing of Relevant Information relating to GPs where necessary;
1.1.6. apply to the sharing of Relevant Information whatever the medium in which it is held and however it is transmitted;
1.1.7. ensure that Data Subjects are, where appropriate, informed of the reasons why Personal Data about them may need to be shared and how this sharing will be managed;
1.1.8. apply to the activities of the Parties' Personnel; and
1.1.9. describe how complaints relating to Personal Data sharing between the Parties will be investigated and resolved, and how the information sharing will be monitored and reviewed.

2. Purpose

2.1. The Specified Purpose(s) of the data sharing initiative is to facilitate the exercise of the CCG's Delegated Functions and NHS England's Reserved Functions:

2.1.1. the management of the primary medical service performers' list in accordance with section 91 of the NHS Act;
2.1.2. management of GP revalidation and appraisal;
2.1.3. administration of payments and related performers list management activities;
2.1.4. planning and delivering the provision of appropriate care services;
2.1.5. improving the health of the local population;
2.1.6. performance management of GP providers;
2.1.7. investigating and responding to incidents and complaints; and
2.1.8. reducing risk to individuals, service providers and the public as a whole.

2.2. Specific and detailed purposes are set out in the Personal Data Agreement appended to this Schedule.

3. Benefits of information sharing

3.1. The benefits of sharing information are the achievement of the Specified Purposes set out above, with benefits for service users and other stakeholders in terms of the improved local delivery of primary healthcare services.

4. Legal basis for Sharing

4.1. Each Party shall comply with all relevant Information Law requirements and good practice in relation to the processing of Relevant Information shared further to this Agreement.

4.2. The Parties shall identify the lawful basis for sharing Relevant Information for each purpose and data flow, and document these in the attached Personal Data Agreement.

5. Relevant Information to be shared

5.1. The Relevant Information to be shared is set out in the attached Personal Data Agreement.

6. Restrictions on use of the Shared Information

6.1. Each Party shall only process the Relevant Information as is necessary to achieve the Specified Purpose, and, in particular, shall not use or process Relevant Information for any other purpose unless agreed in writing by the Data Controller that released the information to the other. There shall be no other use or onward transmission of the Relevant Information to any third party without a lawful basis first being determined, and the originating Data Controller being notified.

6.2. Access to, and processing of, the Relevant Information provided by a Party must be the minimum necessary to achieve the Specified Purpose. Information and Sensitive Personal Data will be handled at all times on a restricted basis, in compliance with Information Law requirements, and Personnel should only have access to Personal Data on a justifiable **Need to Know** basis for the purpose of performing their duties in connection with the services they are there to deliver. The **Need to Know** requirement means that the Data Controllers' Personnel will only have access to Personal Data or Sensitive Personal Data if it is lawful for such Personnel to have access to such data for the Specified Purpose and the function they are required to fulfil at that particular time, in relation to the Specified Purpose, cannot be achieved without access to the Personal Data or Sensitive Personal Data specified.

6.3. Having this Agreement in place does not give licence for unrestricted access to data that the other Data Controller may hold. It lays the parameters for the safe and secure sharing and processing of information for a justifiable **Need to Know** purpose.

6.4. Neither Party shall subcontract any processing of the Relevant Information without the prior written consent of the other Party. Where a Party subcontracts its obligations, it shall do so only by way of a written agreement with the sub-contractor which imposes the same

obligations as are imposed on the Data Controllers under this Agreement.

6.5. Neither Party shall cause or allow Data to be transferred to any territory outside the European Economic Area without the prior written permission of the responsible Data Controller.

6.6. Any particular restrictions on use of certain Relevant Information are included in the attached Personal Data Agreement.

7. Ensuring fairness to the Data Subject

7.1. In addition to having a lawful basis for sharing information, the DPA generally requires that the sharing must be fair. In order to achieve fairness to the Data Subjects, the Parties will put in place the following arrangements:

7.1.1. amendment of internal guidance to improve awareness and understanding among Personnel;
7.1.2. amendment of privacy notices and policies; and
7.1.3. consideration given to further activities to promote public understanding where appropriate.

7.2. Each Party shall procure that its notification to the Information Commissioner's Office reflects the flows of information under this Agreement.

7.3. Further provision in relation to specific data flows is included in the attached Personal Data Agreement.

8. Governance: Personnel

8.1. Each Party must take reasonable steps to ensure the suitability, reliability, training and competence, of any Personnel who have access to the Personal Data (and Sensitive Personal Data) including reasonable background checks and evidence of completeness should be available on request by each Party.

8.2. The Parties agree to treat all Relevant Information as confidential and imparted in confidence and must safeguard it accordingly. Where the Personnel are not healthcare professionals (for the purposes of the DPA) the employing Parties must procure that its Personnel operate under a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

8.3. Each Party shall ensure that all Personnel required to access the Personal Data (including Sensitive Personal Data) are informed of the confidential nature of the Personal Data and each Party shall include appropriate confidentiality clauses in employment/service contracts of all Personnel that have any access whatsoever to the Relevant Information, including details of sanctions against any employee acting in a deliberate or reckless manner that may breach the confidentiality or the non-disclosure provisions of Information Law requirements, or causes damage to or loss of the Relevant Information.

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

8.5. Each Party shall ensure that:

8.5.1. only those employees involved in delivery of the Agreement use or have access to the Relevant Information; and

8.5.2. that such access is granted on a strict **Need to Know** basis and shall implement appropriate access controls to ensure this requirement is satisfied and audited. Evidence of audit should be made freely available on request by the originating Data Controller. These access controls are set out in the attached Personal Data Agreement; and

8.5.3. specific limitations on the Personnel who may have access to the Information are set out in the attached Personal Data Agreement.

9. Governance: Protection of Personal Data

9.1. At all times, the Parties shall have regard to the requirements of Information Law and the rights of Data Subjects.

9.2. Wherever possible (in descending order of preference), only anonymised information, or strongly or weakly pseudonymised information will be shared and processed by Parties, without the need to share easily identifiable Personal Data. The Parties shall cooperate in exploring alternative strategies to avoid the use of Personal Data in order to achieve the Specified Purpose. However, it is accepted that some Relevant Information shared further to this Agreement may be Personal Data/Sensitive Personal Data.

9.3. Processing of any Personal Data or Sensitive Personal Data shall be to the minimum extent necessary to achieve the Specified Purpose, and on a **Need to Know** basis. If either Party:

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

9.3.2. becomes aware of any security breach,

in respect of the Relevant Information it shall promptly notify the other Party. The Parties shall fully cooperate with one another to remedy the issue as soon as reasonably practicable.

9.4. In processing any Relevant Information further to this Agreement, each Party shall:

9.4.1. process the Personal Data (including Sensitive Personal Data) only in accordance with the terms of this Agreement and otherwise only in accordance with written instructions from the originating Data Controller in respect of its Relevant Information;

9.4.2. process the Personal Data (including Sensitive Personal Data) only to the extent as is necessary for the provision of the Specified Purpose or as is required by law or any regulatory body;

9.4.3. process the Personal Data (including Sensitive Personal Data) only in accordance with Information Law requirements and shall not perform its obligations under this Agreement in

such a way as to cause any other Data Controller to breach any of their applicable obligations under Information Law; and

9.4.4. process the Personal Data in accordance with the eight data protection principles (the **"Data Protection Principles"**) in Schedule 1 to the DPA.

9.5. Each Party shall act generally in accordance with the Seventh Data Protection Principle, and in particular shall implement and maintain appropriate technical and organisational measures to protect the Personal Data (and Sensitive Personal Data) against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data (and Sensitive Personal Data) and having regard to the nature of the Personal Data (and Sensitive Personal Data) which is to be protected. In particular, each Data Controller shall:

9.5.1. ensure that only Personnel authorised under this Agreement have access to the Personal Data (and Sensitive Personal Data);

9.5.2. ensure that the Relevant Information is kept secure and in an encrypted form, and shall use all reasonable security practices and systems applicable to the use of the Relevant Information to prevent and to take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution, of the Relevant Information;

9.5.3. obtain prior written consent from the originating Data Controller in order to transfer the Relevant Information to any third party;

9.5.4. permit the other Data Controllers or the Data Controllers' representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the data processing activities carried out further to this Agreement (and/or those of its agents, successors or assigns) and comply with all reasonable requests or directions to enable the Data Controllers to verify and/or procure that the other

Data Controller is in full compliance with its obligations under this Agreement; and

9.5.5. if requested, provide a written description of the technical and organisational methods and security measures employed in processing Personal Data.

9.5.6. Specific requirements as to information security are set out in the Schedule.

9.5.7. Each Party shall use best endeavours to achieve and adhere to the requirements of the NHS Information Governance Toolkit, particularly in relation to Confidentiality and Data Protection Assurance, Information Security Assurance and Clinical Information Assurance.

9.5.8. The Parties' Single Points of Contact (**"SPoC"**) set out in paragraph 14 *(Governance: Single Points of Contact)* below will be the persons who, in the first instance, will have oversight of third party security measures.

10. Governance: Transmission of Information between the Parties

10.1. This paragraph supplements paragraph 9 *(Governance: Protection of Personal Data)* of this Schedule.

10.2. Transfer of Personal Data between the Parties shall be done through secure mechanisms including use of the N3 network, encryption, and approved secure (NHS.net / gcsx) email.

10.3. Faxes shall only be used to transmit Personal Data in an emergency.

10.4. Wherever possible, Personal Data should be transmitted in pseudonymised form, with only reference to the NHS number in 'clear' transmissions. Where there are significant consequences for the care of the patient, then additional data items, such as the postcode, date of birth and/or other identifiers should also be transmitted, in accordance with good information governance and clinical safety practice, so as to ensure that the correct patient record / data is identified.

10.5. Any other special measures relating to security of transfer are specified in the attached Personal Data Agreement.

10.6. Each Party shall keep an audit log of Relevant Information transmitted and received in the course of this Agreement.

10.7. The Parties' Single Point of Contact notified pursuant to paragraph 14 *(Governance: Single Points of Contact)* will be the persons who, in the first instance, will have oversight of the transmission of information between the Parties.

11. Governance: Quality of Information

11.1. The Parties will take steps to ensure the quality of the Relevant Information and to comply with the fourth Data Protection Principle.

11.2. Special measures relating to ensuring quality are set out in the attached Personal Data Agreement.

12. Governance: Retention and Disposal of Shared Information

12.1. The non-originating Party shall securely destroy or return the Relevant Information once the need to use it has passed or, if later, upon the termination of this Agreement, howsoever determined. Where Relevant Information is held electronically the Relevant Information will be deleted and formal notice of the deletion sent to the Party that shared the Relevant Information. Once paper information is no longer required, paper records will be securely destroyed or securely returned to the Party they came from.

12.2. Each Party shall provide an explanation of the processes used to securely destroy or return the information, or verify such destruction or return, if requested by the other Party and shall comply with any request of the Data Controllers to dispose of data in accordance with specified standards or criteria.

12.3. If either Party is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under this paragraph 12 *(Governance: Retention and Disposal of Shared Information)*, it shall

notify the other Party in writing of that retention, giving details of the documents or materials that it must retain.

12.4. Retention of any data shall comply with the Fifth Data Protection Principle and with all good practice including the Records Management NHS Code of Practice, as updated or amended from time to time.

12.5. Any special retention periods are set out in attached Personal Data Agreement.

12.6. Each Party shall ensure that Relevant Information held in paper form is held in secure files, and, when it is no-longer needed, destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.

12.7. Each Party shall ensure that, when no longer required, electronic storage media used to hold or process Personal Data are destroyed or overwritten to current policy requirements.

12.8. Electronic records will be considered for deletion once the relevant retention period has ended.

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

13. Governance: Complaints and Access to Personal Data

13.1. Each Party shall assist the other in responding to any request made under Information Law made by persons who wish to access copies of information held about them (“**Subject Access Requests**”).

13.2. Complaints about information sharing shall be routed through each Party’s own complaints procedure but reported to the Single Points of Contact set out in paragraph 14 *(Governance: Single Points of Contact)* below.

13.3. The Parties shall use all reasonable endeavours to work together to resolve any dispute or complaint arising under this Agreement or any data processing carried out further to it.

13.4. Basic details of the Agreement shall be included in the appropriate log under each Party's Publication Scheme.

14. Governance: Single Points of Contact

14.1. The Parties each shall appoint a single point of contact to whom all queries relating to the particular information sharing should be directed in the first instance. Details of the single points of contact shall be set out in the attached Personal Data Agreement.

15. Monitoring and review

15.1. The Parties shall monitor and review on an ongoing basis the sharing of Relevant Information to ensure compliance with Information Law and best practice. Specific monitoring requirements are set out in the attached Personal Data Agreement.

Template Personal Data Agreement

Data flow : [Description]

Description of information flow and single points of contact for parties involved

Originating Data Controller	[Insert:]			
Contact details for single point of contact for Originating Data Controller	**Name of point of contact**	**Title**	**Contact (email)**	**Contact (phone)**
Recipient Data Controller	[Insert:]			
Contact details for single point of contact of Recipient Data Controller	**Name of point of contact**	**Title**	**Contact (email)**	**Contact (phone)**

Description of information to be shared

Comprehensive description of Relevant Information to be shared	[Insert:]
Anonymised / not information about individual persons	**Yes / No**
Strongly pseudonyimsed	**Yes / No**
Weakly pseudonymised	**Yes / No**
Person - identifiable data	**Yes / No**
Justification for	[Insert or N/A:]

the level of identifiability required	

Legal basis for disclosure and use

DPA Schedule 2 condition/s	[Insert or N/A:]	
DPA Schedule 3 condition/s	[Insert or N/A:]	
Confidentiality	**Explicit consent**	Yes / No [If yes, how documented?:]
	Implied Consent	Yes / No [If yes, how have you implied consent?:]
	Statutory required/permitted disclosure	[Insert statutory basis:]
	Public interest disclosure	[Insert how the public interest favours use/disclosure of the information:]
	Other legal basis	[Insert:]
s. 13Z3 / 14Z23 NHS Act 2006 justification	**S. 13Z3 condition(s) to permit disclosure**	[Insert:]
	S. 14Z23 condition(s) to permit disclosure	[Insert:]
Other specific legal		

considerations	

Restrictions on use of information

[Insert:]

Governance arrangements

Specific measures to ensure fairness to the Data Subject, including privacy impact assessments undertaken	[Insert:]
Access controls on use of information	[Insert:]
Specific limitations on Personnel who may access information	[Insert:]
Other specific security requirements (transmission)	[Insert:]
Other specific security requirements (general)	[Insert:]
Specific requirements as to ensuring quality of information	[Insert:]
Specific requirements for retention and destruction of information	[Insert:]
Specific monitoring and review arrangements	[Insert:]

Schedule 5
Financial Provisions and Decision Making Limits

Financial Limits and Approvals

1. The CCG shall ensure that any decisions in respect of the Delegated Functions and which exceed the financial limits set out below are only taken:

    1.1. by the following persons and/or individuals set out in column 2 of Table 1 below; and
    1.2. following the approval of NHS England (if any) as set out in column 3 of the Table 1 below.

2. NHS England may, from time to time, update Table 1 by sending a notice to the CCG of amendments to Table 1.

Table 1 – Financial Limits		
Decision	**Person/Individual**	**NHS England Approval**
General		
Taking any step or action in relation to the settlement of a Claim, where the value of the settlement exceeds £100,000	CCG Accountable Officer or Chief Finance Officer or Chair	NHS England Head of Legal Services and Local NHS England Team Director or Director of Finance
Any matter in relation to the Delegated Functions which is novel, contentious or repercussive	CCG Accountable Officer or Chief Finance Officer or Chair	Local NHS England Team Director or Director of Finance or NHS England Region Director or Director of Finance or NHS England Chief Executive or Chief Financial Officer
Revenue Contracts		
The entering into of any Primary Medical Services Contract which has or is capable of having a term which exceeds five (5) years	CCG Accountable Officer or Chief Finance Officer or Chair	Local NHS England Team Director or Director of Finance

Capital

Note: As at the date of this Agreement, the CCG will not have delegated or directed responsibility for decisions in relation to Capital expenditure (and these decisions are retained by NHS England) but the CCG may be required to carry out certain administrative services in relation to Capital expenditure under clause 13 *(Financial Provisions and Liability).*

Schedule 6

Template Variation Agreement

Variation Reference:	[insert reference]
Proposed by:	[insert party] [Note – only NHS England may propose National Variations]
Date of Proposal:	[insert date]
Date of Variation Agreement:	[insert date]

Capitalised words and phrases in this Variation Agreement have the meanings given to them in the Agreement referred to above.

1. The Parties have agreed the [National] Variation summarised below:

2. The [National] Variation is reflected in the attached Schedule and the Parties agree that the Agreement is varied accordingly.

3. The Variation takes effect on [insert date].

IN WITNESS OF WHICH the Parties have signed this Variation Agreement on the date(s) shown below

Signed by	**NHS England** **[Insert name of Authorised Signatory] [for and on behalf of] [ ]**
Signed by	**[Insert name] Clinical Commissioning Group** **[Insert name of Authorised Signatory] [for and on behalf of] [ ]**

Schedule to Variation Agreement

[Insert details of variation]

Schedule 7
Local Terms

There are no Local Terms.

Schedule 8
Assignment of NHS England Staff to the CCG

1. Introduction

1.1. The purpose of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* is to give clarity to the CCG and NHS England, in circumstances where NHS England staff are assigned to the CCG under Model 1 of the Staffing Models.

1.2. In accordance with clause 18 of this Agreement, the Parties have agreed that the CCG may only engage staff to undertake the Delegated Functions under one of the three Staffing Models referred to in that clause.

1.3. The Parties agree and acknowledge that until such time as the CCG's preferred Staffing Model takes effect, the engagement of staff to undertake the Delegated Functions shall be in accordance with the terms of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* (the **"Arrangements"**).

2. Duration

2.1. The Arrangements shall commence on the date of this Agreement and shall continue until the date on which the Parties agree which of the Staffing Models (set out at clauses 18.1.1 to 18.1.3) will be adopted by the CCG and the date on which such Staffing Model shall take effect.

3. Services

3.1. NHS England agrees to make available the Assigned Staff to the CCG to perform administrative and management support services together with such other services specified in Schedule 7 *(Local Terms)* (the **"Services"**) so as to facilitate the CCG in undertaking the Delegated Functions pursuant to the terms of this Agreement.

3.2. NHS England shall take all reasonable steps to ensure that the Assigned Staff shall:

3.2.1. faithfully and diligently perform duties and exercise such powers as may from time to time be reasonably assigned to or vested in them; and

3.2.2. perform all duties assigned to them pursuant to this Schedule 8 *(Assignment of NHS England Staff to the CCG).*

3.3. The CCG shall notify NHS England if the CCG becomes aware of any act or omission by any Assigned Staff which may have a material adverse impact on the provision of the Services or constitute a material breach of the terms and conditions of employment of the Assigned Staff.

3.4. NHS England shall be released from its obligations to make the Assigned Staff available for the purposes of this Schedule 8 *(Assignment of NHS England Staff to the CCG)* whilst the Assigned Staff are absent:

3.4.1. by reason of industrial action taken in contemplation of a trade dispute;

3.4.2. as a result of the suspension or exclusion of employment or secondment of any Assigned Staff by NHS England;

3.4.3. in accordance with the Assigned Staff's respective terms and conditions of employment and policies, including, but not limited to, by reason of training, holidays, sickness, injury, trade union duties, paternity leave or maternity or where absence is permitted by Law;

3.4.4. if making the Assigned Staff available would breach or contravene any Law;

3.4.5. as a result of the cessation of employment of any individual Assigned Staff; and/or

3.4.6. at such other times as may be agreed between NHS England and the CCG.

4. Employment of the Assigned Staff

4.1. NHS England shall employ the Assigned Staff and shall be responsible for the employment of the Assigned Staff at all times on whatever terms and conditions as NHS England and the Assigned Staff may agree from time to time.

4.2. NHS England shall pay the Assigned Staff their salaries and benefits and make any deductions for income tax liability and national insurance or similar contributions it is required to make from the Assigned Staff's salaries and other payments.

4.3. The Assigned Staff shall carry out the Services from NHS England's places of work and may be required to attend the offices of the CCG from time to time in the course of carrying out the Services. Nothing in this Schedule 8 *(Assignment of NHS England Staff to the CCG)* shall be construed or have effect as constituting any relationship of employer and employee between the CCG and the Assigned Staff.

4.4. NHS England shall not, and shall procure that the Assigned Staff shall not, hold themselves out as employees of the CCG.

5. Management

5.1. NHS England shall have day-to-day control of the activities of the Assigned Staff and deal with any management issues concerning the Assigned Staff including, without limitation, performance appraisal, discipline and leave requests.

5.2. The CCG agrees to provide all such assistance and co-operation that NHS England may reasonably request from time to time to resolve grievances raised by Assigned Staff and to deal with any disciplinary allegations made against Assigned Staff arising out of or in connection with the provision of the Services which shall include, without limitation, supplying NHS England with all information and the provision of access to all documentation and personnel as NHS England requires for the purposes of considering and dealing with such issues and participating promptly in any action which may be necessary.

6. Conduct of Claims

6.1. If the CCG becomes aware of any matter that may give rise to a claim by or against a member of Assigned Staff, notice of that fact shall be given as soon as possible to NHS England. NHS England and the CCG shall co-operate in relation to the investigation and resolution of any such claims or potential claims.

6.2. No admission of liability shall be made by or on behalf of the CCG and any such claim shall not be compromised, disposed of or settled without the consent of NHS England.

7. Confidential Information and Property

7.1. For the avoidance of doubt, this paragraph 8 *(Confidential Information and Property)* is without prejudice to any other provision of this Agreement in relation to confidential information.

7.2. It is acknowledged that to enable the Assigned Staff to provide the Services, the Parties may share information of a highly confidential nature being information or material which is the property of NHS England or the CCG or which NHS England or the CCG are obliged to hold confidential including, without limitation, all official secrets, information relating to the working of any project carried on or used by the relevant Party, research projects, strategy documents, tenders, financial information, reports, ideas and know-how, employee confidential information and patient confidential information and any proprietary party information (any and all of the foregoing being "**Confidential Information**").

7.3. The Parties agree to adopt all such procedures as the other party may reasonably require and to keep confidential all Confidential Information and that the Parties shall not (save as required by law) disclose the Confidential Information in whole or in part to anyone and agree not to disclose the Confidential Information other than in connection with the provision of the Services.

7.4. The obligations under this Agreement apply to all and any Confidential Information whether the Confidential Information was in or comes into the possession of the relevant person prior to or following this Agreement and such obligations shall continue at all times following the termination of the Arrangements but shall cease to apply to information which may come into the public domain otherwise than through unauthorised disclosure by NHS England or the CCG, as the case may be.

8. Intellectual Property

8.1. All Intellectual Property (meaning any invention, idea, improvement, discovery, development, innovation, patent, writing, concept design made, process information discovered, copyright work, trademark, trade name and/or domain name) made, written, designed, discovered or originated by the Assigned Staff shall be the property of NHS England to the fullest extent permitted by law and NHS England shall be the absolute beneficial owner of the copyright in any such Intellectual Property.

NHS
Gloucestershire
Clinical Commissioning Group

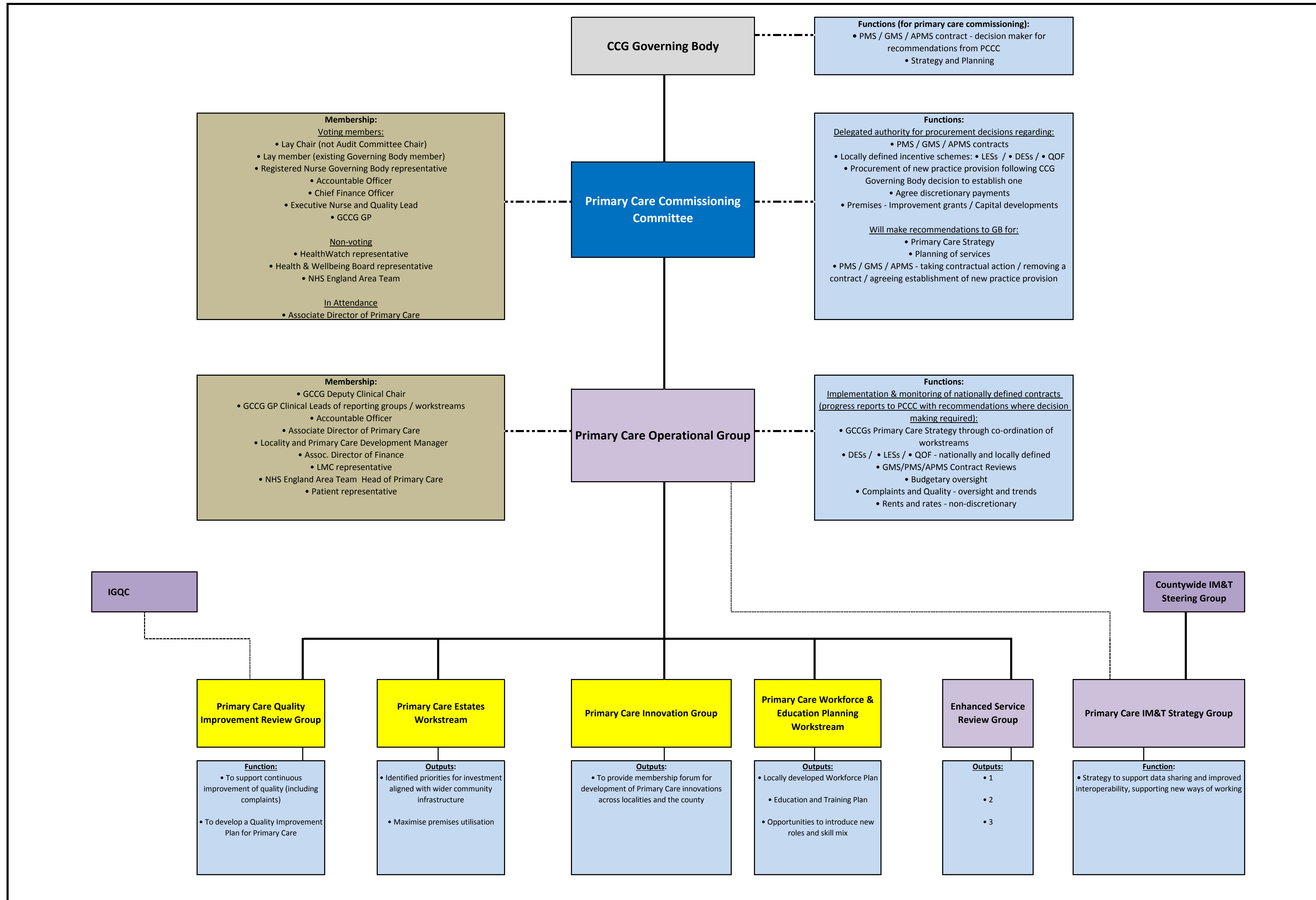
Agenda Item 8

NHS Gloucestershire Clinical Commissioning Group
Primary Care Commissioning Committee

Meeting Date	**Thursday 7th May 2015**
Title	**8.1 Primary Care Governance Structure** **8.2 Primary Care Operational Group Terms of Reference**
Executive Summary	The Primary Care Governance Structure represents Gloucestershire CCGs (GCCGs) response to having a robust governance structure for Primary Care Co-Commissioning. We believe the structure represents an excellent model to deliver the strategic and operational requirements as a result of taking delegated authority for co-commissioning of primary care medical services, while also ensuring decision making is free of conflicts of interest. The Primary Care Operational Group (PCOG) is an integral part of the structure, reporting to the Primary Care Commissioning Committee. The inaugural meeting of the PCOG has now taken place and a Terms of Reference has been prepared for agreement and sign-off by the Primary Care Commissioning Committee.
Risk Issues: **Original Risk** **Residual Risk**	None. Through a robust project management approach to the transition process, all risks were identified early, escalated and mitigated to minimise residual risk in relation to the Primary Care Governance Structure and the

	PCOG.
Financial Impact	None
Legal Issues (including NHS Constitution)	The Delegation Agreement formalises the requirement for the CCG to establish a committee to exercise its Delegated Functions. GCCG has fulfilled this requirement through the establishment of the Primary Care Commissioning Committee, within a governance structure and conflicts of interest policy described within our amended CCG Constitution.
Impact on Health Inequalities	No
Impact on Equality and Diversity	No
Impact on Sustainable Development	No
Patient and Public Involvement	GCCG will be holding all Primary Care Commissioning meetings in public, with Gloucestershire HealthWatch and the Health and Wellbeing Board as invited attendees.
Recommendation	8.1 – Primary Care Governance Structure: for information only 8.2 – PCOG Terms of Reference: for approval
Author	Stephen Rudd
Designation	Head of Locality and Primary Care Development
Sponsoring Director (if not author)	Helen Goodey Associate Director Locality Development and Engagement

CO-COMMISSIONING OF PRIMARY CARE SERVICES: GOVERNANCE STRUCTURE



Workstreams - short-life working groups to deliver outputs

Meeting groups - Primary Care IM&T Strategy Group already in existence

Non-reporting line; will provide information only

Reporting line

CO-COMMISSIONING OF PRIMARY CARE SERVICES: GOVERNANCE STRUCTURE

CCG Governing Body

Primary Care Commissioning Committee

Primary Care Operational Group

IGQC

Countywide IM&T Steering Group

Primary Care Clinical Quality Review Group

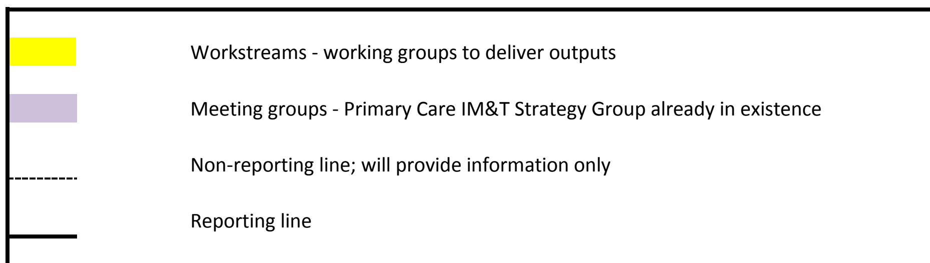
Primary Care Estates Workstream

Primary Care Innovation Group

Primary Care Workforce & Education Planning Workstream

Enhanced Service Review Group

Primary Care IM&T Strategy Group



NHS
Gloucestershire
Clinical Commissioning Group

NHS Gloucestershire Clinical Commissioning Group

Primary Care Operational Group

Terms of Reference

DRAFT

Introduction

1. In accordance with its statutory powers under section 13Z of the National Health Service Act 2006 (as amended), NHS England has delegated the exercise of the functions relating to primary medical care commissioning to NHS Gloucestershire CCG. Full details are set out within Schedule 1.

2. In responding to this delegation, the CCG has established the NHS Gloucestershire CCG Primary Care Commissioning Committee ("Committee") as a corporate decision-making body for the management of the delegated functions and the exercise of the delegated powers.

3. The Primary Care Operational Group ("Group") has been established to implement and monitor the progress of the operational functions that delegated commissioning responsibilities provide, while making recommendations to the Committee where decisions are required. The delegated powers from the CCG Governing Body to the Committee have been established within the terms of reference for the Committee, and set out within the CCG's Scheme of Delegation.

Role of the Group

4. The Group has been established by NHS Gloucestershire CCG in order to provide the operational management, implementation and oversight of the functions specified below. The guiding principle of the functions undertaken at this Group is that only nationally defined contracts and actions can be implemented without referral and recommendations to the Committee.

   - Undertaking GMS, PMS and APMS contract reviews

   - Implementation and monitoring of locally and nationally defined and designed enhanced services ("Local Enhanced Services" and "Directed Enhanced Services");

   - Implementation and monitoring of local incentive schemes as an alternative to the Quality Outcomes Framework (QOF), (if appropriate).

DRAFT

- Agree the structure, terms of reference, deliverables, and the subsequent co-ordination, of the following primary care workstreams and have oversight and delivery of the primary care related groups:

    - Primary Care Clinical Quality Review Group (direct report)
    - Primary Care Innovation Group (direct report)
    - Primary Care IM&T Steering Group (reports to Countywide IM&T Steering Group)
    - Primary Care Estates workstream (direct report)
    - Primary Care Workforce & Education Planning workstream (direct report)
    - Enhanced Services (direct report)

- Implementation of NHS Gloucestershire CCG's Primary Care Strategy

- Primary Care budgets – oversight

- Patient Experience Feedback

- Rents and rates – oversight of non-discretionary payments

Membership

5. The Group will be clinically-led and consist of the following members:

    - GCCG Deputy Clinical Chair (Chair)
    - Associate Director of Primary Care (Vice-Chair)
    - Accountable Officer
    - GCCG GP Clinical Leads of direct and indirect reporting groups and work streams
    - LMC representative
    - NHS England Area Team Head of Primary Care
    - NHS England Assistant Head of Finance (Primary Care)
    - Associate Director of Finance
    - Deputy Director of Quality
    - Associate Director of Communications
    - Associate Director Patient & Public Engagement
    - Locality and Primary Care Development Manager

- Primary Care Development & Engagement Manager

6. The Group may also invite any person to attend meetings to provide advice and/or expertise as required. Any such person shall not be a member of the Group and shall withdraw upon request.

7. Any individual invited to attend the Group may contribute to the proceedings and provide advice and/or guidance to the Group as requested.

Meetings of the Group

8. The Group will be administered by the Primary Care and Localities Team of the CCG, who will be responsible for giving notice of meetings. This will be accompanied by an agenda and supporting papers and sent to each member representative no later than 5 days before the date of the meeting. When the Chair of the Group deems it necessary in light of the urgent circumstances to call a meeting at short notice, the notice period shall be such as s/he shall specify.

Quorum

9. The Group shall be quorate when at least one of the Chair or Vice-Chair is in attendance, along with a minimum of four other members of the Group.

Frequency of meetings

10. The Group will meet monthly, although the Chair may determine that a more frequent meeting interval is required initially.

11. Members of the Group shall respect confidentiality requirements as set out in the CCG's Constitution.

12. It is envisaged that these Terms of Reference, including membership will be reviewed from time to time, reflecting experience of the Group in fulfilling its functions. If changes are recommended it will be the responsibility of the Primary Care Commissioning Committee to sign-off an amended version.

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Accountability of the Committee

13. The Group will report to the Committee and present its minutes to the Committee following each meeting and then for onward reporting to the Governing Body.

14. This will be accompanied bi-monthly by a performance report across the functions and workstreams overseen by the Group, including finance position, along with identified key risks and issues.

15. If recommendations are being made for decisions by the Committee, this will be set out within an accompanying pack of information.

DRAFT

Gloucestershire Clinical Commissioning Group

Agenda Item 9

Gloucestershire Clinical Commissioning Group
Primary Care Commissioning Committee

Meeting Date	**Thursday 7th May 2015**
Title	**Primary Care Co-Commissioning Budget**
Executive Summary	The CCG's delegated budget for primary care totals £76.8m. At present, there remain a number of areas that remain to be resolved which finance teams within NHS England and the CCG are working to resolve
Key Issues	- Finalisation of baseline expenditure for the CCG - Understanding of all financial commitments for 2015/16
Risk Issues: **Original Risk** **Residual Risk**	Financial position 3 x 4 = 12 3 x 4 = 12
Financial Impact	The budget as set contains an inherent risk as the baseline expenditure to CCG level is currently still being identified. The CCG has reflected this financial risk within its overall programme budget.
Legal Issues (including NHS Constitution)	Not applicable
Impact on Health Inequalities	GCCG will use the autonomy afforded by delegated commissioning arrangements to ensure services are focussed on areas of greatest need.
Impact on Equality and Diversity	As above
Impact on Sustainable Development	There are no direct sustainability implications contained within this report.
Patient and Public Involvement	Not applicable

Recommendation	This report is presented for information only
Author & Designation	Cath Leech Chief Finance Officer
Sponsoring Director (if not author)	Not applicable

Primary Care Commissioning Committee
7th May 2015
Primary Care Co-Commissioning Budget

1.	**Introduction**
	The budget for primary care co commissioning has been set using information provided by NHS England on the expenditure incurred in 2014/15. Information is currently incomplete and this means that there is an inherent risk within the system. A schedule of the 2015/16 budget is given at Appendix 1. Please note that this budget does not include the budgets previously held by the CCG for enhanced services. These budgets now form part of the CCG's overall budgets and will be reported as part of the CCG's financial position and will form a part of the CCG's annual accounts.
2.	**Resources**
	The CCG has now received confirmation of the total allocation for GP primary care services; this is £76.802m.
3.	**Expenditure**
	Further work is continuing with NHS England to try to break down expenditure to individual CCG level, however, this is taking some time due to the systems involved and the way that expenditure has been coded. A range of expenditure levels has been modelled from different sources and the difference between these sources is circa £1.5m.
	The CCG has therefore set a budget for primary care services which remains within the resource allocation, however, the financial risk around these budgets has been recognised in the overall CCG budgets and reflected as a financial risk. The budget set includes the application of the NHS England business rule in terms of the achievement of a 1% surplus, and a contingency reserve of 0.5% and a headroom reserve of 1%. It is good practice to hold a contingency reserve to allow for unexpected expenditure during the year and also population and demand growth. Headroom is a reserve which is designed to be used non-recurrently to pump prime

	developments or fund double running costs; there are currently no commitments against headroom for primary care services.
4.	**Budget Arrangements**
	Primary care budgets will be subject to the same Prime Financial Policies and financial procedures as all other CCG budgets. Budgetary limits for expenditure will be as per the current CCG Detailed Scheme of Delegation. Extracts from the CCG's Detailed Scheme of Delegation are shown in Appendix 2
5.	**Risks**
	At present there are a number of financial risk associated with the primary care budget: - The baseline expenditure for the CCG is not clear in all areas, this forms a piece of ongoing work with NHS England to disaggregate fully the expenditure associated with each CCG - Commitments against the budget, particularly for premises developments are not yet fully known. - Population and demand growth may exceed planned levels There is ongoing work between the CCG and NHS England finance teams to finalise the actual expenditure relating to the baseline and also to ensure that all commitments for 2015/16 have been identified. This will then inform the forecast for the primary care budgets going forward.
6.	**Payments**
	The CCG finance and primary care teams have been and are continuing to work with NHS England to ensure that there are robust finance procedures in place around the validation of claims and processing of payments. This work will continue through the year as roles within NHS England change and systems such as Exeter become available to the CCG. Payments have been made in April, we are not aware of any issues so far.
7.	**Recommendation**
	This report is presented for information

GLOUCESTERSHIRE CCG **Appendix 1**

Primary Care Co-commissioning Draft Budget 2015/16		**2015/16 Budget**	
		£000	**£000**
Indicative 2015/16 Allocation (per Allocations Annex A Primary Care Indicative Baselines: GP Services)			**76,802.0**
Baseline expenditure (using 2014/15 figures as a base)			
Contract		49,571.7	
QOF		8,085.1	
Enhanced services (excl LES funded by CCG)		3,846.5	
Premises		8,312.1	
Maternity payments			
Other (cannot be gauged accurately from information & some apportionments included		3,540.2	
		73,355.7	(73,355.7)
Potential increases in 2015/16			
Population growth (on contract, QOF & ES only)	1.00%	615.0	
DDRB recommendations (on contract, QOF & ES only)	1.00%	495.7	
Rent reviews (based on average 14/15 increases)	5.00%	415.6	
Impact of new premises developments			
		1,526.4	(1,526.4)
Net Position after 2014/15 forecast & 15/16 potential commitments			**1,920.0**
Contingency & Headroom reserve		1,152.0	
		1,152.0	(1,152.0)
Potential Surplus/(Deficit)			**768.0**
Required Surplus @ 1%			**768.0**

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
Prime Financial Policies - Sec 7	**1. Management of Budgets** Responsibility to keep expenditure within budgets and to ensure that budgets are only used for the type of expenditure for which they have been set. At individual budget level (Pay and Non Pay) At Directorate level All Other Areas	 Budget Holder Director Chief Finance Officer/Accountable Officer	
Prime Financial Policies - Sec 17	**3. Non Pay Revenue and Capital Expenditure / Requisitioning / Ordering** a) Payment of Goods and Services • Stock/non-stock requisitions up to £1,000 • Stock/non-stock requisitions up to	 Budget Manager Budget Holder	

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
	£10,000 • Stock/non stock requisitions up to £249,999 • Stock/non stock requisitions from £250,000 to £499,999 • Stock/non stock requisitions from £500,000 to £999,999 • Stock/non stock requisitions from £1,000,000	 Directors Chief Finance Officer Accountable Officer Governing Body	
	b) Authorisation of Payments against an signed NHS Contract or signed s75 or s256 with the Local Authority	Accountable Officer Chief Finance Officer, Director, Deputy Director of Commissioning, Deputy CFO	
Prime Financial Policies - Sec 13	5.1 Quotation, Tender and & Contract Procedures (including secondary, primary and community healthcare services) where no suitable nationally negotiated framework agreements / contracts are available for use: (Values are the total value of	As per section 3	

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
	expenditure excluding VAT for the total duration of any time period committed to):	As per section 3	
	a) No requirement to obtain quotes for single items up to £1,000	As per section 3	
	b) 2 written quotes for goods / services between £1,000 and £5,000.	As per section 3	
	c) Obtaining a minimum of 3 written quotations for goods / services from £5,000 to £50,000	Chief Finance Officer / Deputy CFO	
	d) Obtaining a minimum of 3 written competitive tenders for goods / services from £50,000 (process by delegated procurement personnel).	Chief Finance Officer/ Accountable Officer	
	e) Contracts above European Union (OJEU) limits.	Chief Finance Officer/Accountable Officer	Report to Audit Committee

Appendix 2

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
	f) Approval to accept quote / tender other than the lowest that meet the award criteria Quotations & tenders <£99,999	Chief Finance Officer/Accountable Officer	
	Tenders >£100,000	Chief Financial Officer /Accountable Officer	
	g) Waiving of quotations & Tenders subject to SOs & PFP		
	Up to £99,999	Chief Financial Officer	
	£100,000 - £249,999	Accountable Officer	
	£250,000+	Governing Body	
	Opening Quotations:	Directors and senior managers	
	Opening Tenders:	Accountable Officer and Directors, Deputy CFO, Associate Director of Corporate Governance	

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
Prime Financial Policies - Sec 14	**6. Agreement and Signing of Contracts for the purchasing of Health Care and Agreements with the Local Authority and GP Practices**		
	Signing of Health Care Contracts with the Local Authority		
	Contracts of less than £10,000,000	Director of Commissioning Implementation or Chief Finance Officer	
	Contracts greater than £10,000,000	Accountable Officer or Chief Finance Officer	
	Variations to contracts	Director of Commissioning Implementation or Chief Finance Officer	
	Signing of Agreements between the CCG and the Local Authority	Accountable Officer / Chief Finance Officer or Director of Commissioning Implementation	

Appendix 2

Reference Document	Delegated Matter	Delegated Authority - Commissioner	Scope of Delegation
	Signing of Agreements and Contracts for the purchase of primary care services with GP practices.	Accountable Officer or Chief Finance Officer	

NHS
Gloucestershire
Clinical Commissioning Group

Agenda Item 10

Primary Care Commissioning Committee (PCCC)

PCCC Meeting Date	Thursday 7th May 2015
Title	**Gloucestershire CCG Quality Report**
Executive Summary	As a result of the delegated commissioning of Primary Medical Services to GCCG as of 1st April 2015, the CCG will have responsibility of monitoring and assurance of the quality of GP services in-county. This report provides assurance to the Committee and Governing Body that quality and patient safety issues are given the appropriate priority and that there are clear actions to address them.
Key Issues	This report will provide assurance of high quality patient safety, clinical effectiveness and patient/carer experience within Primary Care GP Service
Risk Issues: **Original Risk** **Residual Risk**	Failure to secure quality, safe services for the population of Gloucestershire
Financial Impact	Not applicable
Legal Issues (including NHS Constitution)	Compliance with the NHS Constitution, NHS Outcomes Framework and recommendations from NICE and CQC
Impact on Health Inequalities	A focus on the delivery of equitable services for the residents of Gloucestershire and which will reflect the diversity of the population served.

Impact on Equality and Diversity	There are no direct health and equality implications contained within this report.
Impact on Sustainable Development	There are no direct sustainability implications contained within this report.
Patient and Public Involvement	Not applicable
Recommendation	The PCCC is asked to note the contents of this report.
Author	Marion Andrews-Evans
Designation	Executive Nurse & Quality Lead
Sponsoring Director (if not author)	Not applicable

Agenda Item 10

Primary Care Commissioning Committee (PCCC)
7th May 2015
Quality Report

1	**Introduction**
1.1	Since the establishment of the CCG, the organisation has had a responsibility for developing quality in primary care. The CCG's role in relation to this has been rather ambiguous due to the commissioning role and primary care quality assurance being the responsibility of the Area Team. The change to delegated commissioning for the CCG has clarified the responsibility for quality assurance and given the organisation the opportunity to lead the development of quality, safe services in GP primary care. The CCG does not have the responsibility for poorly performing professionals working in primary care, which remains with the Sub-Region.
1.2	To support this new role in the CCG the Quality Team and Primary Care Team have been developing new assurance systems. In addition the teams have been exploring what new posts/roles will be required to take on these additional responsibilities.
2	**Primary Care Quality Assurance processes**
2.1	The formal system of quality assurance will be undertaken by the development of a new Clinical Quality Review Group (CQRG) for primary care (Appendix 1 Terms of Reference). It is proposed that like the other 4 provider CQRGs, this new CQRG reports to the CCG Integrated Governance and Quality Committee.
2.2	Since this is a new responsibility of the CCG the quality assurance work plan is being developed. It will include a focus on patient experience, clinical effectiveness and patient safety.

2.3	One of the early initiatives for primary care will be a drive to encourage GP practices to '*Sign up to* Safety'. This will raise the profile of patient safety with an increase in incident reporting and learning lessons from these events in primary care.
2.4	The use of information from CQC inspections of GP practices will help to focus the quality development work required. In addition the CCG has agreed with the Sub-Region an escalation process regarding the management of practices that have an unsatisfactory rating following a CQC inspection.
3	**Practice Nurse Education and Development**
3.1	One of the ways of improving the quality of primary care services is to ensure there is a workforce that is skilled and knowledgeable. For some time practice nurse education has not been a priority and it is therefore important that there is a new emphasis on this valuable group of staff.
3.2	To take this forward it is proposed to have a role in the CCG of Practice Nurse education and development manager. To support this work the CCG is planning to establish a Practice Nurse education group, with representatives of experienced practice nurses from each locality. These proposals have met with a positive response from both the LMC and Practices Nurses, with several nurses already volunteering to join the group.
4	**Recommendation**
	The Primary Care Commissioning Committee are asked to note the contents of this report and support the way forward with the quality assurance processes.
5	**Appendices** ▪ Primary Care Clinical Quality Review Group Terms of Reference

Appendix 1

Gloucestershire Primary Care
Clinical Quality Review Group

Terms of Reference

Purpose

- The group will lead on assurance regarding the implementation of national and local quality standards, develop key quality performance indicators and clinical/quality outcome measures for the Primary Medical Services contracts and advise and report to Integrated Governance & Quality Committee (IG&Q)to provide assurance of effectiveness, quality and patient safety issues**.**
- To monitor and review primary care safety and quality standards in the current year as outlined in the national standard contract, with reference to benchmarking where appropriate.
- To lead on responding to any in-year national or local quality standard requirements or other service quality issues that may arise.
- To provide a forum for inter provider clinical quality and patient safety issues.
- To develop a tool that incorporates key quality indicators for primary care leading to a Framework to support monitoring of quality.
- To provide a forum for review of patient experience and engagement feedback of primary care services.

Key Responsibilities

- To provide assurance to the Primary Care Commissioning Committee(PCCC) on quality and patient safety issues relating to primary care.
- To agree areas and issues to be reported in order to provide assurance to IGQC, in accordance with the primary care quality framework.
- Identify and agree areas for attention including those arising from the ad hoc QOF reports and provide action plans which will be monitored and reviewed at subsequent CQRG meetings
- Act as a Forum to review potential additional quality issues that may arise and propose appropriate response or action.
  - Take account of the work and outcomes of relevant clinical quality, patient experience and patient safety groups that may have an impact on the quality requirements of the Primary Medical services.

- Share clinical quality and patient safety issues with relevant groups and partner agencies and explore opportunities for joint working and/or shared learning.
- Oversee the outcome of CQC practice visits and report on agreed actions with the Sub-Region.
- To feedback on patient experience and engagement activities undertaken with the primary care service users.

Membership

Gloucestershire Clinical Commissioning Group (GCCG)

- Chair – Executive Nurse and Quality Lead
- Deputy Clinical Chair
- Associate Director Locality Development and Engagement
- Associate Director Engagement and Experience
- Deputy Director of Quality
- Head of Performance
- GP Lead
- Primary Care Contracts Manager
- Advanced Nurse Practitioner (Primary Care)
- Practice Manager

Other members may be co-opted if required for specific agenda items.

Accountability and Reporting

The CQRG will be accountable to, and will routinely report, to Integrated Governance & Quality Committee.

Quorum

Chair or Vice Chair, representation from leads of Primary Care and Quality Directorates or nominated deputy plus one further member.

Frequency of CQRG Meetings

Primary Care CQRG meetings will be held quarterly and arranged by the quality team in the GCCG . Frequency may be changed if required by agreement and specific subject focused group meetings can also be called.

Agenda and Papers

The agenda and papers will be circulated electronically one week prior to the meeting.

Agenda items and relevant papers should be submitted at least 1 week prior to this date. Minutes will be circulated in draft within 5 working days of the meeting to allow members to respond. Secretariat to be provided by GCCG Quality Team.

Minutes will be shared with PCCC/IGQC.

Review

These Terms of Reference will be reviewed annually. The membership of the CQRG may be subject to change that reflects any organisational and personnel changes.

Information Requirements

- Information is provided in accordance with the quality indicators and monitoring schedules.
- Monthly information will be provided within 10 operational days of month end and quarterly reports will be provided six weeks after the end of the quarter.

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Standard Agenda template attached as appendix A

Standard CQRG Agenda Template **Appendix A**

……………………………Clinical Quality Review Group

Meeting to be held on ……………..2014
At ………in …………….., Sanger House

AGENDA

No.	Item	Lead	Paper
1.0	Apologies for Absence		
2.0	Minutes from Last Meeting	All	Paper
3.0	Matters Arising	All	Paper
4.0	**Clinical Effectiveness**		
4.1	NICE Compliance		
4.2	Care Pathways and referral criteria		
5.0	**Patient Safety**		
5.2	Incident reporting, use of NRLS		
5.3	Serious Incidents Trend Analysis & Action Plans		
5.4			

5.5	Primary Care Staffing		
5.6	Safeguarding		
6.0	**Patient Experience**		
6.1	Patient Experience activities and feedback		
6.2	Complaints and PALS Report		
6.3 6.4	F&FT Update *Quality Alerts* feedback		
7.0	**Quality Overview**		
7.1	CQC Recent Visits		
7.2	Staff Experience		
7.3	Quality Framework update		
7.4	QOF update		
8.0	**Any Other Business**		
8.1	Deep Dive reviews		
Date and Time of Next Meeting			

Membership:

Marion Andrews Evans
Andy Seymour
Charles Buckley
Helen Goodey
Teresa Middleton
Becky Parish
Alex Holland
Rupert Boex
Cherri Webb
Advanced Nurse Practitioner (TBC)
Practice Manager (TBC)