

**Draft NHS Standard Contract 2020/21**

**Agreement for system collaboration and financial management 2020/21**

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**[ SYSTEM NAME ]**

**AGREEMENT FOR SYSTEM COLLABORATION AND FINANCIAL MANAGEMENT 2020/21**

Date:

The CCGs and Providers listed below are members of the [ ] ICS/STP and have agreed with NHS England and NHS Improvement a System Financial Trajectory for 2020/21. NHS England is not a member of the ICS/STP, but as commissioner of [specialised and other directly-commissioned services] from [list relevant Providers] its commissioning expenditure and commissioning decisions will have an impact on the System’s ability to meet the System Financial Trajectory or 2020/21 and to plan for a sustainable financial position in the longer term.

We have therefore agreed:

1. **Our Objectives**

We are committed to using our collective resources as efficiently and effectively as possible to meet the health and care needs of the people served by our System, provide high-quality services and improve health outcomes.

Our **Objectives** are:

* 1. To do so while achieving the System Financial Improvement Trajectory for 2020/21, on the shared understanding that a failure to do so is a failure of us all; and
  2. To plan in an integrated and co-ordinated fashion for a sustainable financial balance for our System for 2021/22 and beyond.

1. **How We Will Work Together**
   1. We will work together collaboratively to pursue and achieve our Objectives, providing whatever support and assistance we can to each other to do so. We will act with utmost good faith towards each other.
   2. In pursuit of our Objectives, and in all matters connected with this Agreement, we will seek solutions and agree and take actions which offer the most effective and efficient use of our collective resources in the best interest of our System and the people we serve, even where those solutions and actions may not be in the immediate best interests of any one or more of us individually.
   3. We will ensure that our respective operational plans and plans for spending within the System for 2020/21 and beyond are aligned and are in keeping with our Objectives, so that successful delivery of each operational and spending plan is a success for all of us and contributes towards achieving our Objectives.
   4. We will each perform our respective obligations under the contracts details of which are set out in Schedule 1 (our **Contracts**). This Agreement supplements our Contracts. This Agreement does not qualify or waive any of our respective obligations under our Contracts.
   5. We will be as open and transparent with each other as we are with our own board members/Regional leadership. We will, on an open-book basis, provide each other with all information that is reasonably required to pursue and achieve our Objectives and to enable appropriate mutual scrutiny and challenge. In particular, we will share the information described in Schedule 2. We will each comply with the further provisions set out in Schedule 2.
   6. We will hold each other to account. We will scrutinise and challenge each other, and we will each be open to scrutiny and challenge by others. We will support each other in meeting those challenges.
   7. In pursuing our Objectives, we will engage and co-operate with other commissioners and providers of health and care services for the people served by our System (including commissioners and providers of primary care and social care services), giving due consideration to their views and suggestions in relation to any matter we discuss under this Agreement. In pursuing our Objectives, we will use our reasonable endeavours to ensure that we do not have a negative impact on other Systems.
   8. For the purposes of this Agreement we will be represented by our respective Representatives. Our Representatives will meet and will conduct business at their meetings in accordance with Schedule 3.
   9. We will operate the mechanisms for system financial management set out in and from time to time agreed by our Representatives in accordance with Schedule 3. We will (subject to our own governance processes and to implementation under our Contracts, as required) individually and collectively take the actions recommended by our Representatives in accordance with Schedule 3 in pursuit of our Objectives.
   10. The provisions set out in Schedule 4 will apply to this Agreement.
   11. We are conscious of the rights of patients enshrined in the NHS Constitution and of our respective responsibilities and duties under the NHS Constitution, the NHS Act 2006, the Health and Social Care Act 2012, the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013, the Public Contract Regulations 2015 and the NHS Provider Licence. Nothing in this Agreement or the manner in which we conduct ourselves under it is intended to infringe or compromise those rights, responsibilities and duties, and we will do everything we can to ensure that it does not do so.

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| **The CCGs** |  |  |
| [ ] CCG  [Address] | ………………….  Authorised signatory | [Representative]  (Chief Executive/Director of Finance/Chief Financial Officer) |
| [ ] CCG  [Address] | ………………….  Authorised signatory | [Representative]  (Chief Executive/Director of Finance/Chief Financial Officer) |
| [Add further commissioners as necessary] |  |  |
| **The Providers** |  |  |
| [ ] NHS Foundation Trust  [Address] | …………………..  Authorised signatory | [Representative]  (Chief Executive/Director of Finance/Chief Financial Officer) |
| [ ] NHS Trust  [Address] | …………………..  Authorised signatory | [Representative]  (Chief Executive/Director of Finance/Chief Financial Officer) |
| [Add further providers as necessary] |  |  |
| **NHS England, as commissioner of specialised other directly commissioned services** |  |  |
| NHS England and NHS Improvement  [local office address] | …………………..  Authorised signatory | [Representative]  (Regional Finance Director/ Regional Director of Commissioning) |
| **Other signatories** |  |  |
| [Add as agreed locally][[1]](#footnote-1) |  |  |

**SCHEDULE 1**

**OUR CONTRACTS**

This Agreement relates to the following contracts (the **Contracts**) and to the services commissioned under them by the CCGs and NHS England (the **Services**):

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| --- | --- | --- |
|  | **Parties** | **Services** |
| NHS Standard Contract dated [ ] | [ ] CCG  [ ] CCG  [ ] CCG  [ ] NHS Trust | [Acute, A&E] |
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**SCHEDULE 2**

**TRANSPARENCY[[2]](#footnote-2)**

1. We have shared and will share with each other the following information on an open-book basis:

our opening financial and operational plans for 2020/21 (which, in the case of NHS England, means those plans relating to its expenditure on specialised and other directly commissioned services within the System only), including;

planned expenditure against income/allocation, reflecting agreed contract values and any reserves

key assumptions on which plans are based, including about activity levels, workforce, premises, investment/de-investment programmes, other cost drivers and cost improvement/QIPP plans

analysis of key risks to delivery of those plans;

monthly in-year reports summarising the position against all of the above, showing projected year-end position against Financial Improvement Trajectories, highlighting any significant (and new/changed) risks and describing action in hand to address them; and

(subject to paragraph 4 below) any further information which may reasonably be required to be available to us all in order for us to pursue and achieve our Objectives.

1. We will, except as permitted below, keep information shared under this Agreement confidential and will not use it for purposes other than those contemplated by this Agreement.
2. We will each be entitled to disclose to third parties information shared by another party to this Agreement only if:
   1. the information is in or comes into the public domain other than by breach of this Agreement; or
   2. it is necessary to do so to comply with any applicable legal requirement or government policy in relation to transparency; or
   3. the disclosure is made in response to a request from an appropriate regulatory or supervisory body; or
   4. the party which shared the information consents to it being disclosed*.*

## We will not share information which, if it is shared between providers, would allow providers to forecast or coordinate commercial strategy or behaviour in any market or might otherwise be considered competition sensitive, nor otherwise act in a manner contrary to the requirements of Condition C2 (Competition Oversight) of the NHS Provider Licence.

1. We acknowledge that we are each subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. We agree that:
   1. we will assist and co-operate with each other to enable us to comply with our disclosure obligations under those Acts;
   2. if any of us receives a request for information under either Act that relates to this Agreement then the party that receives the request for information will be responsible for responding to it;
   3. if the request for information relates to information that was shared by one of us, the party that receives the request for information will notify the party that shared the information and will not respond directly to the request for information without their permission, unless it is required to do so in order to comply with its obligations under either Act; and
   4. except for any information which is exempt from disclosure in accordance with the provisions of FOIA, or for which an exception applies under EIR, the content of this Agreement is not confidential information.
2. We will not share any personal data under this Agreement, and none us will act as a processor of personal data on behalf of any of the others.

**SCHEDULE 3**

**SYSTEM FINANCIAL MANAGEMENT**

*Note: This Schedule should set out how the parties’ Representatives will engage with each other and the financial management mechanism they have agreed and will operate. It should set out the actions that the parties will take to resolve in-year risks to achieving their System Financial Improvement Trajectory and ensure longer-term financial sustainability for the System as a whole.*

*This Schedule is to be populated locally, but in doing so the parties should consider and cover at least the following:*

**Meetings of Our Representatives**

*Note: this section should detail when, how and on what basis the parties are to meet to discuss matters under this Agreement. In particular:*

* *Who must and who may attend those meetings*
* *Quoracy requirements*
* *Where and when those meetings will be held (monthly is recommended)*
* *Who will chair meetings*
* *Who will take minutes, and when and to whom minutes will be distributed*
* *How and when this group will report within the local System (assuming there is a higher overarching System forum to which this one reports).*

*Where appropriate, this could be by reference to existing ICS/STP governance arrangements, but must allow for the involvement of NHS England in its role as commissioner within the System.*

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| ***Insert locally-agreed text here*** |

***Review and discussion of performance against our Objectives, risks to achieving them, opportunities for action or investment***

*Note: this section should detail what is to be reviewed and discussed. In particular:*

* *Describe the business to be conducted at these meetings, which should routinely include review of the monthly reports and other information shared under Schedule 2 and consideration on an open and transparent basis of actions needed to address risks identified which may jeopardise delivery of the Objectives*
* *Describe what other business may be brought to meetings by any member, which could include*
* *open and transparent sharing of views on actual and contingent risks and pressures, and of potential opportunities and mitigations*
* *issues where one party sees an opportunity for action or investment (by some or all the other parties) which can lead to an improved position against the FIT*
* *issues where one party believes that the actions of one or more other parties are making overall achievement of the System FIT less possible (whilst perhaps prioritising delivery of their own Organisational FIT).*

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| ***Insert locally-agreed text here*** |

***Actions and decisions in pursuit of our Objectives***

*Note: this section should set out the range of issues which the System may face, and how the parties might respond. In particular, this Schedule should:*

* *establish a principle of subsidiarity, with the onus on each party to deliver its services plans and Organisational FIT and making clear that the Representatives will only consider issues where a) it is clear that the individual party raising the issue is doing all it can to tackle that issue itself and b) that, where relevant, the “place” affected has also sought to address the issue, before it is raised at “system” level*
* *describe the different types of in-year pressure which may emerge and the possible responses which the group may, in principle, agree in respect of how they should be managed.*

*In-year pressures could include:*

* *QIPP or CIP schemes do not deliver the planned savings*
* *new cost pressures emerge*
* *demand for services higher than planned*
* *there are significant changes in patient flows between providers*

*In principle responses to such pressures should include:*

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| *Instigating further investigation (joint where appropriate) of the facts and possible responses, to inform decisions on future action* | *No party should unreasonably withhold agreement to such action* |
| *Agreeing recommendations to relevant Boards/NHSE Regional team as to actions which parties can take to help to address the issue at no cost to themselves (for example, clinically-appropriate measures to manage demand for services)* | *No party should unreasonably withhold agreement to such action or its implementation under its Contract* |
| *Agreeing recommendations to relevant Boards/NHSE Regional team as to actions which parties can take to help to address the issue at reasonable cost to themselves and where, at system level, the aggregate saving can reasonably be expected to exceed the aggregate cost (for example ….)* | *No party should unreasonably withhold agreement to such action or its implementation under its Contract* |
| *Where a “System risk reserve” has been established, agreeing recommendations as to how/whether any of this should be deployed to address a particular issue* | *No party should unreasonably withhold agreement to such action or its implementation under its Contract* |
| *Agreeing recommendations for more radical redesign of services to deliver improved efficiency, with a view to informing commissioning and provision of services in 2021/22 and beyond* | *Subject to agreement and documentation in Contracts* |
| *Agreeing System-wide business cases for investment proposals in pursuit of Objectives* | *Subject to sign-off in accordance with individual governance requirements (SFIs etc)* |
| *Agreeing recommendations to change levels or basis of contractual payment between specific parties* | *Subject to agreement and documentation in Contracts and to compliance with National Tariff rules and principles* |
| *Agreeing recommendations for reinvestment by commissioners of sums withheld from providers for breach of National Quality Requirements/Operational Standards/RAPs and/or for Information Breaches* | *No party should unreasonably withhold agreement to such action* |
| *Agreeing recommendations for investment by commissioners of sums allocated to CQUIN payments but unearned due to CQUIN indicators not being met* | *No party should unreasonably withhold agreement to such action* |
| *Agreeing recommendations to adjust (or ask NHSE/I for an adjustment to) the individual FITs which make up the system FIT* | *No party should unreasonably withhold agreement to such action or its implementation under its Contract* |

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| ***Insert locally-agreed text here*** |

**SCHEDULE 4**

**OTHER MATTERS**

1. This Agreement relates to the financial year 2020/21 only. Our current expectation is that we will enter into a new agreement covering the same or similar matters in respect of the financial year 2021/22. On that basis, we do not expect there to be any extension of this Agreement. We will, however, continue to abide by it for as long as relevant matters relating to the financial year 2020/21 remain to be dealt with by us.
2. This Agreement may be varied by unanimous agreement between us. Any variation must be documented in writing and confirmed in writing by each of our authorised signatories.
3. We are sharing our intellectual property in the form of the information that we share under this Agreement, and we will collectively have the right to use that intellectual property but only for the purposes of this Agreement. None of us will acquire the intellectual property of any other of us.
4. We intend that the rights in any intellectual property created by any of us specifically for the purposes of this Agreement will belong to the party that created it. We will collectively have the right to use that intellectual property but only for the purposes of this Agreement.
5. We do not intend this Agreement to be legally binding, and no legal obligations or legal rights will be created between us by it, but we each enter into this Agreement intending to honour all our obligations set out in this Agreement.
6. Nothing in this Agreement is intended to, or will be deemed to, establish any partnership or joint venture between us, constitute any of us as the agent of any of the others, nor authorise any of us to make or enter into any commitments for or on behalf the others.
7. We agree that each of us will remain individually liable for any losses or liabilities incurred due to our own (or our employee's) actions and none of us intends that any of the others will be liable for any loss suffered by any of us as a result of this Agreement.
8. We acknowledge that each Party remains accountable to its own regulatory body (NHS England or NHS Improvement, as appropriate), and may be subject to actions on the part of the appropriate regulatory body in respect of its own acts, omissions and performance, regardless of this Agreement.

1. System Leaders and/or other organisations may be added as signatories either: (a) Where they have specific oversight or other roles in relation to the matters covered by the Agreement agreed and documented locally as an addition to this template, and/or (b) To simply acknowledge what has been agreed between CCGs and Providers within the local system [↑](#footnote-ref-1)
2. NOTE: There is a risk that the providers and commissioners sharing financial information and potentially putting in place mutual financial management controls may be seen to favour incumbent providers of services and could potentially breach the procurement principles of transparency and equal treatment of all potential providers. If an incumbent provider is involved in developing requirements for a services contract and this ultimately leads to them gaining an unfair advantage over other providers in the market, such as on a re-procurement of a services contract, this could be grounds for challenging a procurement procedure. Care should therefore be taken that that arrangements put in place under the SCFMA are not favouring incumbent providers over other potential providers. Commissioners will need to consider how they can ensure that, when services contracts are procured, they can neutralise any incumbent advantage from being party to the SCFMA as much as possible in order to ensure all potential providers are treated equally. [↑](#footnote-ref-2)