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Model Collaborative Commissioning Agreement

Multiple Contract Option

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# Guidance notes

This document provides an updated Model Collaborative Commissioning Agreement for use by commissioners when they are commissioning healthcare services through the NHS Standard Contract on a multilateral basis – that is, where a group of commissioners collaborate to commission together, with one acting as the co-ordinating commissioner.

This document is designed for use where commissioners are collaborating over a number of provider contracts, and is based on the assumption that each commissioner will be a party to every provider contract covered by the collaboration. A separate version of this document is available for use where commissioners collaborate for a single contract only.

NHS England strongly encourages commissioners to collaborate closely in negotiating and agreeing contracts with providers. Using the co-ordinating commissioner model enables a consistent approach to contracting and is more efficient for both commissioners and providers, avoiding a proliferation of small, separate contracts. However, it is for commissioners to determine the extent to which they choose to adopt the co-ordinating commissioner model.

The NHS Standard Contract may be used by CCGs/ICBs, by NHS England and by local authorities. Any combination of these commissioners may agree to work together to hold a single contract with a given provider, identifying a co-ordinating commissioner and putting in place a collaborative agreement..

Governance arrangements for any collaborative commissioning approach are for local agreement. The use of this Model Agreement is therefore not mandatory. Rather, the Model Agreement is offered as a guide only, for use or adaptation locally as desired.

This document has been provided as Word document. Commissioners using it as the basis for local agreements should

* delete these guidance notes from their final local Agreement
* where this Model Agreement offers draft text within square brackets, add, delete or substitute text as appropriate and remove the square brackets.

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**Contents**

**This Agreement** is dated [INSERT DATE]

**Between**

[*insert name*] Clinical Commissioning Group/Integrated Care Board whose principal office is at [*insert address*]

[*insert name*] Clinical Commissioning Group/Integrated Care Board whose principal office is at [*insert address*]

[*insert name*] Clinical Commissioning Group/Integrated Care Board whose principal office is at [*insert address*]

[NHS England, whose [Local Area Team] principal office is at [*insert address*]

[[*insert name*] Local Authority whose principal office is at [*insert address*]][[1]](#footnote-1)

**Background**

The Commissioners wish to enter into a collaborative commissioning arrangement to commission the Services and manage the Commissioning Contracts. Each Commissioner under this Agreement is a party to every Commissioning Contract covered by the Collaborative. This Agreement sets out the terms under which Commissioners intend to collaborate in assessing the need for the Services, and to work together in procuring, negotiating and signing the Commissioning Contracts and managing the Commissioning Contracts throughout their term.

The Commissioners have agreed that [the same Commissioner will take the role of Co-ordinating Commissioner in respect of all Commissioning Contracts] *OR* [different Commissioners will take the role of Co-ordinating Commissioner in respect of different Commissioning Contracts]

**It is agreed:**

1. **Commencement, duration and status of this Agreement**
   1. This Agreement comes into effect on the date that it is executed by all of the Commissioners, and, unless terminated earlier, will expire on:
      1. the expiry of the last Commissioning Contract to expire; or
      2. the exit of any Commissioner from any Commissioning Contract (unless that Commissioner has exited from all Commissioning Contracts, in which case this Agreement will not terminate but will be read as applying only to the remaining Commissioners still party to all Commissioning Contracts).
   2. If there is any conflict between the terms of this Agreement and the terms of any Commissioning Contract, the terms of the relevant Commissioning Contract will prevail.
   3. If any Commissioning Contract is varied, this Agreement will, to the extent necessary, be interpreted as including whatever variation may be necessary to make this Agreement consistent with the Commissioning Contracts.
   4. For the purposes of this Agreement, different Commissioners may be appointed as Co-ordinating Commissioner in respect of different Commissioning Contracts, as described in clause 6.5. Accordingly, references in this Agreement to the roles and responsibilities of a Co-ordinating Commissioner refer to those roles and responsibilities regarding those Commissioning Contracts for which that Commissioner is appointed Co-ordinating Commissioner. Where the same Commissioner is appointed Co-ordinating Commissioner for all Commissioning Contracts, all references to Co-ordinating Commissioner are to be read as referring to that Commissioner only.
2. **Principles of the Collaborative**
   1. In performing their respective obligations under this Agreement and the Commissioning Contracts, the Commissioners must:
      1. at all times act in good faith towards each other;
      2. act in a timely manner;
      3. share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
      4. at all times, observe relevant statutory powers, requirements and best practice to ensure compliance with applicable laws and standards including those governing procurement, data protection and freedom of information; and
      5. have regard to the needs and views of all of the Commissioners, irrespective of the size of any of the respective Holdings of the Commissioners and as far as is reasonably practicable take such needs and views into account.
3. **Functions of the Collaborative**
   1. The function of the Collaborative is to act collaboratively in the planning, securing and monitoring of the Services, and in particular, with respect to the Commissioning Contracts, to:
      1. plan services to meet the health needs of the local population in accordance with the Commissioners’ respective commissioning intentions and ambitions;
      2. agree the range of Services, and procure and negotiate the Commissioning Contracts;
      3. manage the Commissioning Contracts, including in respect of quality standards, observance of service specifications, and monitoring of activity and finance, so as to obtain best performance, quality and value from the Services by assessing quality and outcomes (including clinical effectiveness, patient experience and patient safety);
      4. manage variations to the Commissioning Contracts or Services in accordance with national policy, service user needs and clinical developments; and
      5. conduct market management and service design.
4. **Roles and responsibilities**
   1. The roles and responsibilities of the Commissioners in relation to the Commissioning Contracts and the functions of the Collaborative are set out in Schedule 3.
   2. The Commissioners have engaged or intend to engage one or more commissioning support organisations to assist and support them in the performance of their roles and responsibilities. Details of each clinical support organisation, the agreements under which they have been or are to be appointed, and their respective roles and responsibilities are set out in Schedule 4.
5. **Collaborative Forum**
   1. Each Commissioner must:
      1. appoint its representative member(s) to the Collaborative Forum and any sub groups;
      2. appoint one of its representative members to give and receive notices and other communications for the purposes of the Collaborative Forum;
      3. respond promptly to all requests for, and promptly offer, information or proposals relevant to the operation of the Collaborative Forum and sub groups; and
      4. agree as appropriate arrangements to approve or respond to any proposed Co-ordinating Commissioner Action in accordance with clause 7 below.

***Collaborative Forum functions and membership***

* 1. The Collaborative Forum is an arrangement established by agreement of the Commissioners as the focus for discussion of matters relating to the Commissioning Contracts and the pursuit of the objectives and performance of the function of the Collaborative.
  2. The membership of the Collaborative Forum will be [one] representative appointed by each of the Commissioners. The period of the appointment of each member of the Collaborative Forum will be decided by the Commissioner appointing that representative.

***Chair, Deputy Chair and Secretary***

* 1. The Collaborative Forum will from time to time appoint a Chair and Deputy Chair and a Secretary, and will determine their respective periods of office.
  2. The initial incumbents of those roles will be:
     1. Chair [*insert agreed Chair*]
     2. Deputy Chair [*insert agreed Deputy Chair*]
     3. Secretary [*insert agreed Secretary*]
  3. The Collaborative Forum may establish sub groups as it deems appropriate from time to time.

***Meetings***

* 1. General meetings of the Collaborative Forum will be held at least once every [4] weeks, or as otherwise agreed by the Commissioners from time to time, and will be convened by the Secretary by at least [5] days’ prior notice by e-mail to each member
  2. Special meetings of the Collaborative Forum may be called by any of the Commissioners by giving at least [48 hours] notice by e-mail to each member in the following circumstances:
     1. where that Commissioner has concerns relating to the safety and welfare of Service Users under any Commissioning Contract;
     2. in response to a quality, performance or financial query by any Regulatory or Supervisory Body;
     3. to convene a dispute resolution meeting under clause 14.2;
     4. following suspension of any Service under clause 6.9; or
     5. for the consideration of any matter which that Commissioner considers of sufficient urgency and importance that its consideration cannot wait until the date of the next general meeting.
  3. The quorum for conducting a meeting of the Collaborative Forum is the attendance of representatives on behalf of [number] of the Commissioners, including the representatives of each Co-ordinating Commissioner (or, where a meeting concerns some Commissioning Contracts only, the Co-ordinating Commissioners for those Commissioning Contracts).
  4. Other persons (for example, representatives of a clinical advisory group, patient group or Local HealthWatch) may attend Collaborative Forum meetings by invitation of any Co-ordinating Commissioner.

1. **Recommendations and consensus**
   1. The Commissioners acknowledge that:
      1. the Collaborative Forum does not have delegated responsibility to make decisions that bind the Commissioners, and accordingly the Collaborative Forum does not itself make binding decisions on behalf of the Commissioners in relation to their respective commissioning functions;
      2. the Collaborative Forum may make recommendations to the Commissioners, which each Commissioner may adopt in accordance with its own constitution, and a recommendation of the Collaborative Forum will only be binding on a Commissioner to the extent it is accepted by that Commissioner;
      3. each Commissioner is responsible for making its own decisions, in relation to the Services and the Collaborative, in accordance with the terms of its constitution and its statutory duties;
      4. each Commissioner is responsible for ensuring that its representatives to the Collaborative have sufficient delegated authority, in accordance with that Commissioner’s constitution, to act on behalf of that Commissioner within the remit of the Collaborative;
   2. It is the intention that the Collaborative Forum will arrive at a consensus regarding the recommendations to be made to the Commissioners concerning the Services or the Commissioning Contracts.
   3. Where a consensus is not reached regarding a recommendation concerning the Services or a Commissioning Contract, a recommendation to be made to the Commissioners may be decided by simple majority vote of the Collaborative Forum. Any recommendation of the Collaborative Forum arrived at by majority vote will also contain reference to any minority views.
   4. Any recommendations of the Collaborative Forum, whether arrived at by consensus or by majority vote, will be communicated to each Commissioner by its representative, and each Commissioner will take its own decision in respect of the recommendation.

***Co-ordinating Commissioner***

* 1. Each Commissioner appoints the Co-ordinating Commissioner in respect of each Commissioning Contract (as identified in Schedule 2) to carry out the responsibilities in respect of that Commissioning Contract set out in Schedule 3 Part B as its agent, subject to the terms of this Agreement.
  2. The Commissioners acknowledge that, regarding those of its roles and responsibilities that relate to routine contract management, information and reporting, a Co-ordinating Commissioner may undertake those actions as reasonably required and in accordance with objectives and principles of this Agreement, but without further consultation with the Commissioners regarding routine contract management matters.
  3. Where a Co-ordinating Commissioner proposes to take any actions under the relevant Commissioning Contract that affect the commissioning strategy, procurement, commissioning responsibilities or decisions of the Commissioners, including actions relating to the variation, termination or suspension of the Services, Prices under the Commissioning Contract or any other actions in respect of that Commissioning Contract that affect the statutory commissioning responsibilities of the Commissioners (such actions being **Co-ordinating Commissioner Actions**), that Co-ordinating Commissioner may (subject to clause 6.9) take that Co-ordinating Commissioner Action only after receiving the approval of each Commissioner in accordance with clause 7.
  4. Each Commissioner appoints the relevant Co-ordinating Commissioner as its agent to sign any variations to each Commissioning Contract on its behalf, but a Co-ordinating Commissioner may not sign any variation to a Commissioning Contract on behalf of the Commissioners except in accordance with clause 7.
  5. If a Suspension Event occurs under a Commissioning Contract and the Co-ordinating Commissioner reasonably believes that it is necessary to suspend any Service in accordance with General Condition 16 of the Commissioning Contract with immediate effect, the Commissioners agree that the relevant Co-ordinating Commissioner may take such immediate action in respect of any affected Service as the Co-ordinating Commissioner considers necessary, provided that the Co-ordinating Commissioner must promptly report the circumstances of the suspension to all affected Commissioners, and any affected Commissioner may call a meeting of the Collaborative Forum under clause 5.8 to discuss the suspension of the affected Service and to agree any further measures in respect of the Services.

1. **Co-ordinating Commissioner Actions**
   1. Where a Co-ordinating Commissioner intends to take a Co-ordinating Commissioner Action, the Co-ordinating Commissioner must (unless clause 6.9 applies) circulate details of the proposed Co-ordinating Commissioner Action (including, in the case of variations to a Commissioning Contract, the proposed variation) to all Commissioners in sufficient time to allow the prior approval of that action by the Commissioners under this clause 7.
   2. The Co-ordinating Commissioner must inform all Commissioners, when circulating details of a proposed Co-ordinating Commissioner Action under clause 7.1, of the timescale required for a response by each Commissioner to the proposed Co-ordinating Commissioner Action, taking into account any timescales allocated to the relevant action under the relevant Commissioning Contract.
   3. Each Commissioner must respond in writing to the Co-ordinating Commissioner, within the timescale set by the Co-ordinating Commissioner under clause 7.2, either confirming that it agrees the proposed Co-ordinating Commissioner Action, or rejecting it.
   4. Where:
      1. all Commissioners have confirmed their agreement to the proposed Co-ordinating Commissioner Action under clause 7.3; or
      2. no Commissioner (having duly received details of the proposed Co-ordinating Commissioner Action and notice of the required timescale from the Co-ordinating Commissioner under clauses 7.1 and 7.2) has rejected the proposal under clause 7.3,

the Co-ordinating Commissioner will proceed to implement the Co-ordinating Commissioner Action (where appropriate, by signing the relevant variation, notice or other applicable documentation) on behalf of all Commissioners. Each Commissioner acknowledges that in those circumstances the Co-ordinating Commissioner may implement the Co-ordinating Commissioner Action, and that it has authorised the Co-ordinating Commissioner to do so, either through express approval, or through refraining from exercising its ability to reject the proposed Co-ordinating Commissioner Action under clause 7.3.

* 1. Each Commissioner acknowledges that, in respect of its rights and obligations under each Commissioning Contract, it is bound by a variation to that Commissioning Contract or other Co-ordinating Commissioner Action implemented by the Co-ordinating Commissioner in accordance with this clause 7, whether or not it has given express approval to that action.
  2. If the response of one or more Commissioners under clause 7.3 is that it rejects the proposed Co-ordinating Commissioner Action, the Co-ordinating Commissioner may not proceed to implement the Co-ordinating Commissioner Action, but must call a meeting of the Collaborative Forum to discuss the options in relation to that Commissioning Contract. If, as a result of that meeting, a modified Co-ordinating Commissioner Action is proposed, the process in this clause 7 will apply to that new proposal and any subsequent proposal until a consensus is reached. Where a consensus is not reached within a reasonable time, the Co-ordinating Commissioner may refer the issue to Dispute Resolution.

1. **Record keeping**
   1. The Commissioners must nominate a Co-ordinating Commissioner (or any other Commissioner) to keep notes of all proceedings and agreements of the Collaborative Forum, and the nominated Commissioner must do so and must circulate copies to all Commissioners (whether or not present or represented at the relevant meeting) by e-mail within [two] Operational Days after the end of the meeting to which they relate.
   2. Copies of notes, discussions and recommendations of the Collaborative Forum meetings will be retained by the Secretary, with historic notes and records being passed to any new secretary on appointment.
   3. The Commissioners acknowledge that records of the Collaborative Forum, as well as information relating to the Commissioning Contract and Services circulated within the Collaborative Forum, are confidential, and each Commissioner must treat such records and information as it would its own confidential information.
2. **Information and reporting**

9.1 Each Co-ordinating Commissioner must provide each of the other Commissioners with any information it receives from the relevant Provider in accordance with the provisions of each Commissioning Contract prior to the next routine meeting of the Collaborative Forum.

1. **Obligations of each Commissioner**
   1. Each Commissioner remains responsible for:
      1. performing and exercising its statutory duties and functions for the commissioning of health services to meet the reasonable requirements of those service users for which it is responsible;
      2. making decisions relating to its policy, for committing commissioning resources and for making commissioning decisions for its health economy; and
      3. liabilities arising as a result of the exercise of its functions.
   2. Each Commissioner will be separately and solely responsible for payment to the Provider in respect of the Services attributed to that Commissioner, in accordance with:
      1. the amount of Activity apportioned or attributed to that Commissioner, in accordance with the Prices and specifications agreed under the Commissioning Contract; and
      2. applicable guidance relating to the responsible commissioner, including “Who Pays?” Guidance.
2. **Collaborative Costs and Resources**

11.1 [*Select one of the following options: either*:] [The arrangements agreed by the Commissioners in respect of the costs incurred by any Co-ordinating Commissioner in performing its roles and responsibilities are set out in Schedule 6.] [*or*] [Each Commissioner (including each Co-ordinating Commissioner) will bear its own costs in relation to this Agreement and the performance of its roles and responsibilities under or in connection with it.

1. **Indemnity**
   1. Each Commissioner undertakes to indemnify each other Commissioner against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses, whether arising in tort (including negligence) or as a result of default or breach of this Agreement or of the Commissioning Contract, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud of the indemnifying Commissioner (or its employees, agents or sub-contractors), except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement or the Commissioning Contract, or applicable Law by the indemnified Commissioner or (or its employees, agents or sub-contractors).
   2. Each Commissioner further undertakes to indemnify each Co-ordinating Commissioner against any liability, damages, costs, claims or proceedings arising out of or in connection with any act or omission (which is not recklessly negligent, fraudulent or involving criminal liability) committed or omitted by it during the course of performing its duties under this Agreement, provided that the liability of each Commissioner under such indemnity, in respect of any Commissioning Contract, will be limited to the proportion of the total amount from time to time indemnified under this clause 12.2 equal to that Commissioner’s Holding for the relevant Commissioning Contract.
2. **Notices**
   1. Any notices given under this Agreement must be in writing and must be served by hand, post, or e-mail to the address for the relevant Commissioner set out in Schedule 3.
   2. Notices:
      1. by post will be effective upon the earlier of actual receipt, or 5 Operational Days after mailing;
      2. by hand will be effective upon delivery;
      3. by e-mail will be effective when sent in legible form subject to no automated response being received.
3. **Dispute resolution**
   1. Where any dispute arises within the Collaborative Forum in connection with this Agreement, all Commissioners must use their best endeavours to resolve that dispute on an informal basis within the Collaborative Forum.
   2. Where any dispute is not resolved under clause 14.1 on an informal basis, any Commissioner may convene an exceptional meeting of the Collaborative Forum to attempt to resolve the dispute.
   3. If any dispute is not resolved under clause 14.2, it will be referred by the Secretary to the chief executives of the Commissioners, who will co-operate in good faith to resolve the dispute within 10 Operational Days of the referral.
   4. Where any dispute is not resolved under clauses 14.1, 14.2 or 14.3, any Commissioner may refer the matter for mediation arranged by an independent third party to be appointed by the relevant Co-ordinating Commissioner, and any agreement reached through mediation must be set out in writing and signed by the Commissioners.
4. **Conflicts of interest**
   1. Each Commissioner representative of the Collaborative Forum must abide by all policies of its appointing Commissioner in relation to conflicts of interest.
   2. Where any Commissioner representative of the Collaborative Forum has an actual or potential conflict of interest in relation to any matter under consideration by the Collaborative Forum, that representative must not participate in meetings (or parts of meetings) in which the relevant matter is discussed or participate in the decision of the Collaborative Forum to make a recommendation in relation to the relevant matter, but the relevant Commissioner may send an alternative representative to take the place of the conflicted representative in relation to that matter.
5. **Joining or leaving the Collaborative**

***Joining***

* 1. A CCG/ICB that becomes a Commissioner to all Commissioning Contracts may join the Collaborative, subject to that CCG/ICB agreeing to be bound by the terms of this Agreement.

***Leaving***

* 1. Any of the Commissioners may cease to be a party to this Agreement:
     1. by [3] months’ written notice to the Co-ordinating Commissioner where that Commissioner is, or will be, no longer a Commissioner to the Commissioning Contracts;
     2. by not less than2 months’ written notice to the Chair given to expire at the end of a full Contract Year; or
     3. by agreement of all the Commissioners,

provided that any notice given under clauses 16.2.1 or 16.2.2 or agreed exit under clause 16.2.3 will not come into effect while the relevant Commissioner is still party to any Commissioning Contract.

* 1. If any Commissioner fails to provide its duly completed authority, or fails to sign a Commissioning Contract within any time limit set by agreement of the Commissioners, the remaining Commissioners may exclude that Commissioner from the Collaborative for that Contract Year.
  2. Where any Commissioner leaves the Collaborative other than at the end of a Contract Year, that Commissioner will (unless each Commissioner has agreed to bear its own costs in relation to this Agreement or other arrangements have been agreed under clause 11) remain responsible for meeting its share of the management costs of the Collaborative in respect of the Contract Year during which it leaves the Collaborative.

1. **Variations to this Agreement**
   1. Any variation to this Agreement will only be effective if it is made in writing and signed by all the Commissioners.
   2. All agreed variations to this Agreement must be appended at Schedule 5.
2. **Consequence of expiry or termination**
   1. The Commissioners to this Agreement recognise their continuing responsibilities in relation the performance of functions and liabilities under this Agreement. This liability extends, insofar as is required beyond expiry of termination of this Agreement.
   2. Termination or expiry of this Agreement does not affect any accrued rights or remedies under this Agreement or any other agreement between the Commissioners.
3. **Counterparts**

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

1. **Governing law**

20.1 This Agreement will be considered as an agreement made in England and will be subject to the laws of England.

**IN WITNESS OF WHICH the Commissioners have signed this Agreement on the date shown below**

**CCG/ICB Name**

**Authorised Officer Date**

**CCG/ICB Name**

**Authorised Officer Date**

**CCG/ICB Name**

**Authorised Officer Date**

**[NHS England**

**Authorised Officer Date]**

**[[*name*] Local Authority**

**Authorised Officer Date]**

1. **Definitions and Interpretation**

In this Agreement, unless the context otherwise requires:

* 1. Capitalised terms have the meanings as set out in the table below, and any capitalised terms not defined in that table are as defined in the Commissioning Contract.
  2. A reference to the singular includes the plural and vice versa and reference to a gender includes any gender.
  3. The headings in this Agreement will not affect its interpretation

| **Term** | **Meaning** |
| --- | --- |
| **CCG/ICB** | a Clinical Commissioning Group/an Integrated Care Board |
| **Chair and Deputy Chair** | the persons respectively appointed by the Collaborative Forum |
| **Collaborative** | the collaborative commissioning group formed by the Commissioners under this Agreement |
| **Collaborative Forum** | the group of the Collaborative established by the Commissioners as described in clause 5 of this Agreement |
| **Commissioners** | the parties whose names appear at the head of this Agreement |
| **Commissioning Contracts** | the contracts entered into or to be entered into by the Commissioners to this Agreement and a provider of NHS-funded services, details of which are set out in Schedule 2, as varied and/or extended in accordance with its terms |
| **Contract Value** | the aggregate amount of the Expected Annual Contract Values for the relevant Commissioning Contract. |
| **Co-ordinating Commissioner** | the Commissioner identified as such, in respect of each Commissioning Contract, in Schedule 2 |
| **Co-ordinating Commissioner Action** | has the meaning given to it in clause 6.7 |
| **Dispute Resolution** | the process agreed by the Commissioners and set out in clause 14 |
| **E-mail** | a communication by electronic mail, marked with a ‘read receipt’ |
| **Holding** | in relation to each of the Commissioners, the percentage by value attributable to it of the estimated Actual Contract Value of the relevant Commissioning Contract, calculated at the start of each Contract Year |
| **Provider** | the provider of the Services under a Commissioning Contract |
| **Secretary** | the person appointed by the Collaborative Forum to that function |
| **Services** | the services commissioned or to be commissioned under the Commissioning Contracts, or any Commissioning Contract, as applicable |

1. **Commissioning Contracts**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Provider name** | **Date of Contract**  (to be completed once Contract entered into) | **Description of Services** | **Contract reference**  (to be completed once Contract entered into) | **Commissioner appointed as Co-ordinating Commissioner** |
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1. **Roles and responsibilities**

**Part A: Roles and Responsibilities of all Commissioners**

1. **Signing the Commissioning Contract, and commissioning support organisation appointment**
   1. All Commissioners will sign each Commissioning Contract, for which each Commissioner acts as separate principal.
   2. Where any Commissioner has appointed a commissioning support organisation to act as its agent, in respect of any of its functions under a Commissioning Contract, that commissioning support organisation may (subject to paragraph 1.2.3) carry out any of the roles attributed to that Commissioner in this Schedule 3, but each Commissioner acknowledges that:
      1. no commissioning support organisation may be a signatory to a Commissioning Contract;
      2. each commissioning support organisation acts as agent for the relevant Commissioner, and no powers are delegated by any Commissioner to the commissioning support organisation in respect of the Services; and
      3. where the Commissioners, or any Commissioner, enters into an agreement with any commissioning support organisation, the functions attributed to that commissioning support organisation, and the commissioning support organisation’s authority to act on behalf of the relevant Commissioner or Commissioners, is as set out in that agreement.
   3. Where any commissioning function or activity of a Commissioner is exercised by another Commissioner on its behalf, or where any commissioning function or activity is exercised jointly by the Commissioners, each Commissioner acknowledges that it retains statutory responsibility for those functions or activities.
2. **Actions of Each Commissioner under each Commissioning Contract**

Each Commissioner undertakes, on its own account in relation to each Commissioning Contract and to enable the Co-ordinating Commissioner to carry out its functions under Schedule 3 Part B, to carry out all actions required in relation to its rights and obligations under each Commissioning Contract in relation to its population, including:

* 1. modelling demand for the services, specifying indicative activity levels for inclusion in each Commissioning Contract, and monitoring actual Activity against indicative levels;
  2. reviewing and, where appropriate, contesting reconciliation accounts received from each Provider and making payments to each Provider in respect of Activity allocated to that Commissioner, either to that Provider (where payments are disaggregated) or through the Co-ordinating Commissioner, in accordance with clause 10.2 above and the payment provisions of the Commissioning Contract;
  3. where instructed by the Co-ordinating Commissioner, applying any financial adjustments or withholdings (and each Commissioner acknowledges that where so instructed by a Co-ordinating Commissioner, it will make any adjustments, deductions or withholdings in accordance with those instructions);
  4. assessing, and approving or rejecting, individual funding requests;
  5. managing Service User complaints, and dealing with Serious Untoward Incidents;
  6. specifying as applicable any Prior Approval Schemes and, in respect of any Service Specification, applicable exclusion or acceptance criteria (where different from others under the Commissioning Contract);
  7. managing referrals; and
  8. initiating Dispute Resolution, unless Dispute Resolution is initiated by a Co-ordinating Commissioner on behalf of all Commissioners.

1. **Actions in support of the Collaborative and the Co-ordinating Commissioner**
   1. Each Commissioner undertakes:
      1. to nominate a Representative, with delegated authority to act on its behalf in relation to the Collaborative and the Services;
      2. To provide all relevant information to the relevant Co-ordinating Commissioner promptly, so as:
         1. to enable the conduct of the pre-contract functions under Part B paragraph 2 below; and
         2. to assist each Co-ordinating Commissioner in the management of the Commissioning Contract.
   2. Each Commissioner further undertakes to carry out any additional roles and responsibilities assigned to it as agreed by the Commissioners and set out in Schedule 5C of the Commissioning Contract and/or in Table 1 below.

**Part B**: **Roles and Responsibilities of the Co-ordinating Commissioner in respect of each Commissioning Contract**

1. **Roles and Responsibilities of the Co-ordinating Commissioner in respect of each Commissioning Contract**
   1. The Co-ordinating Commissioner undertakes to perform the roles and responsibilities allocated to the Co-ordinating Commissioner under the relevant Commissioning Contract, including those set out in paragraphs 3 to 5 of this Schedule 3 Part B, and those other roles in relation to the Commissioning Contract set out in paragraph 2 of this Schedule 3 Part B.
   2. The Co-ordinating Commissioner further undertakes to perform any additional roles and responsibilities assigned to it as agreed by the Commissioners and set out in Schedule 5C of the relevant Commissioning Contract and/or in Table 1 below.
2. **Pre-contract functions[[2]](#footnote-2)**
   1. To lead preparations leading up to the signing of the Commissioning Contract, including, in respect of the Commissioning Contract:
      1. confirming the scope of the relevant Services, including as relevant requirements for activity, specifications, key outcomes, integrated service provision, and other deliverables under the Contract, and assessing the available provider market;
      2. confirming any procurement strategy in line with applicable requirements, the nature of the services and the condition of the relevant provider market, and conducting any agreed procurement process;
      3. negotiating the variable elements of the Contract with the provider, including:
         1. contract duration;
         2. Service Specifications;
         3. Expected Annual Contract Values;
         4. Quality Requirements and Local Incentive Scheme Indicators; and
         5. Local Prices.
3. **Management of the Commissioning Contract**

3.1 During the term of the Commissioning Contract, to carry out those functions, rights or obligations attributed to the Co-ordinating Commissioner under the Commissioning Contract (subject to clause 7), including:

* + 1. managing Activity, including notifying the provider of Activity Planning Assumptions, monitoring Activity and reviewing Activity Reports, dealing with Activity Queries and Activity Management Meetings, and agreeing Activity Management Plans;
    2. implementing any Prior Approval Scheme
    3. agreeing Service Development and Improvement Plans and/or Data Quality Improvement Plans with the provider;
    4. agreeing Service Variations;
    5. agreeing information and reporting requirements, and managing Information Breaches
    6. agreeing Local Prices, managing agreements or proposals for Local Variations and Local Modifications, making and receiving payments (where Commissioners’ payments under the Commissioning Contract are aggregated), including CQUIN payments;
    7. agreeing Local Quality Requirements and Local Incentive Scheme Indicators, and variations to National CQUINs as applicable;
    8. implementing financial adjustments or sanctions resulting from breaches of any provider obligations including those relating to Activity Management Plans, Data Quality Improvement Plans and Service Development Improvement Plans;
    9. managing complaints;
    10. the appointment of an auditor
    11. conducting Review Meetings, and undertaking contract management, including the issuing and receipt of Contract Performance Notices and agreeing any Remedial Action Plan or related contract management processes;

1. **Reporting under the Commissioning Contract**
   1. Disseminating to each Commissioner relevant information provided by the Provider in respect of the Commissioning Contract, including in relation to:
      1. Monthly Activity Reports;
      2. Service Quality Performance Reports;
      3. reconciliations of payment against actual Activity, including allocations against individual Commissioners in respect of Activity and payment;
      4. reports under any Data Quality Improvement Plan or Service Development and Improvement Plan;
      5. contract management provisions including Contract Query Notices and Remedial Action Plans;
      6. any financial adjustments or sanctions in respect of the Services;
      7. proposed Variations,

and any other information received from the Provider in relation to that Commissioner, or reasonably required by any Commissioner in respect of its Services.

* 1. Providing such other relevant information to Commissioners in relation to the Commissioning Contract as agreed by the Commissioners.

1. **Termination, suspension and disputes**
   1. Implementing the following actions on behalf of the Commissioners:
      1. initiating suspension of the Commissioning Contract, or any Service, following a Suspension Event;
      2. serving notice to terminate the Commissioning Contract, or any Service, in accordance with the terms of the Commissioning Contract; and
      3. initiating and conducting Dispute Resolution (unless in any case an individual Commissioner elects to initiate Dispute Resolution on its own account).
2. **Table of additional agreed Roles and Responsibilities in relation to the Commissioning Contract**

The Commissioners have agreed that the following additional roles, in relation to each relevant Commissioning Contract, will be undertaken by individual Commissioners, as set out in this table:

**Table 1**

|  |  |  |
| --- | --- | --- |
| **Commissioner**  (Insert name of the CCG/ICB against each of the identified roles) | **Identified role**  (Co-ordinating Commissioner or Commissioner) | **Additional responsibilities** |
| **Contract:** [identify relevant Commissioning Contract] | | |
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|  |  |  |
| **Contract:** [insert additional roles and responsibilities for each other relevant Commissioning Contract] | | |
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1. **Commissioning support agreements**

The roles and responsibilities agreed to be performed by any commissioning support organisation in respect of any Commissioning Contract are set out in the table below:

|  |  |  |
| --- | --- | --- |
| Commissioning support organisation  (Insert name of each organisation engaged, against each of the identified roles) | **Relevant Commissioner**  (Identify the Commissioner(s) responsible for engaging each organisation) | Commissioning support organisation **Roles and Responsibilities** |
| **Contract:** [identify relevant Commissioning Contract] | | |
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|  |  |  |
| **Contract:** [insert additional roles and responsibilities for each other relevant Commissioning Contract] | | |
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1. **Agreed variations to this Agreement**

[Insert details of the agreed variation]

1. **Collaborative Costs and Resources**[[3]](#footnote-3)

[Insert any arrangements agreed under Clause 11]

1. *This collaboration agreement has been prepared for use when NHS commissioners (a number of CCGs/ICBs, or one or more CCGs/ICBs and NHS England) are collaborating to commission services under a single NHS Standard Contract. Where a Local Authority is one of the collaborating commissioners it may need adaptation, and all prospective parties to the collaboration should take legal advice as to any changes which may need to be made to it. Where NHS commissioners and a Local Authority are to enter into Section 75 arrangements in relation to the relevant commissioning contract, it would generally be appropriate to include all necessary provisions within a Section 75 Agreement rather than have a separate collaboration agreement: again, the commissioners should take legal advice* [↑](#footnote-ref-1)
2. This section is drafted on the basis that each Co-ordinating Commissioner will carry out these pre-contract roles for their respective Commissioning Contract. Commissioners may need to amend this paragraph if it is agreed that a different Commissioner is to manage the pre-contract process. [↑](#footnote-ref-2)
3. Where Commissioners decide to bear their own costs in relation to the Collaborative under Clause 11, this Schedule can be deleted [↑](#footnote-ref-3)