

Collaborative Agreement for CCGs and NHS England

East Midlands Collaborative Commissioning Oversight Group (EMCCOG)

1. Particulars

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

Date of Agreement	24th September 2015
Clinical Commissioning Groups	being those Clinical Commissioning Groups listed in the Terms of Reference (Appendix 1) to this Agreement and falling within the East Midlands Hub

1.2. This Agreement comprises:

- 1.2.1. the Particulars (Clause 1); and
- 1.2.2. the Terms and Conditions (Clauses 2 to 14 and the Schedules to this Agreement).

Signed by	NHS England Catherine O’Connell for and on behalf of East Midlands Hub
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Signature: []

Signed by	[Insert name] Clinical Commissioning Group [Insert name of Authorised Signatory] [for and on behalf of] [] Signature: []
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Terms and Conditions

A. Introduction

2. Recitals

- 2.1. As part of the strategic and operational planning and alignment process undertaken by NHS England, ten geographically specific hub forums (“**Hubs**”) have been formed (identified in the map set out in Schedule 3 (Hubs)). Each CCG is enrolled into one of the Hubs. The CCGs that are party to this Agreement are those CCGs listed in the TOR to this Agreement (Clinical Commissioning Groups) falling within the Hub referred to in clause 1.1 above.
- 2.2. This Agreement sets out the arrangements that will apply between NHS England and the CCGs in relation to the collaborative commissioning of Specialised Services within the Hub referred to in clause 1.1 above. These arrangements are intended to give the CCGs greater involvement in the commissioning of Specialised Services, in order to better align and transform pathways of care around the needs of local populations.
- 2.3. This Agreement constitutes the entire agreement and understanding between the parties relating to the collaborative commissioning of Specialised Services and replaces all previous arrangements, decision-making processes, agreements, promises and understandings between them, whether written or oral, relating to its subject matter.
- 2.4. This Agreement is intended to be implemented alongside other collaborative commissioning arrangements relating to non-specialised services.
- 2.5. No statutory functions are delegated by NHS England to the CCGs (or shared with the CCGs) as part of the collaborative commissioning of Specialised Services under this Agreement. Accordingly, NHS England remains responsible and accountable for the commissioning of Specialised Services and nothing in this Agreement is a divestment or delegation of NHS England’s functions or responsibilities to the CCGs or the Specialised Commissioning Oversight Group.

3. Status of this Agreement and Interpretation

- 3.1. This Agreement is non-binding and should not be regarded as giving rise to contractual rights or liabilities.
- 3.2. This Agreement is to be interpreted in accordance with Schedule 1 (Definitions and Interpretation).
- 3.3. It is not intended that this Agreement will conflict with any other collaborative arrangements to which NHS England or the CCGs are a party. To the extent that this Agreement does conflict with any other collaborative arrangements, NHS England and the CCGs will work together to resolve the conflict in an economic, effective and efficient manner.

4. Background

- 4.1. The CCGs acknowledge that in exercising their obligations under this Agreement, they must comply with the statutory duties set out in the NHS Act, including:
 - 4.1.1. the duty to act consistently with the duties of the Secretary of State and NHS England:-
 - 4.1.1.1. to promote a comprehensive health service, and
 - 4.1.1.2. to meet the objectives and requirements for the time being in the Mandate published under section 13A (section 3(1F));
 - 4.1.2. the duty to co-operate with other NHS bodies (including NHS England) (section 72(1));
 - 4.1.3. the duty to exercise functions effectively, efficiently and economically (section 14Q);
 - 4.1.4. the duty to exercise functions with a view to securing continuous improvement in the quality of services (section 14R);
 - 4.1.5. the duty as to reducing inequalities (section 14T); and
 - 4.1.6. the duty to exercise functions with a view to securing that health services are provided in an integrated way (section 14Z1).
- 4.2. NHS England may take into account each CCG's involvement in the Specialised Collaborative Group in accordance with the terms of this Agreement as part of the CCG's assurance process under the Assurance Framework.

5. Term

- 5.1. This Agreement has effect from the date of this Agreement and will remain in force unless terminated in accordance with clause 15 below.

6. Principles

- 6.1. In performing their respective obligations under this Agreement the Commissioners must:
 - 6.1.1. at all times act in good faith towards each other;
 - 6.1.2. act in a timely manner;
 - 6.1.3. share information and best practice, and work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
 - 6.1.4. 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;
 - 6.1.5. have regard to the needs and views of the other parties to this Agreement and as far as is reasonably practicable take such needs and views into account; and
 - 6.1.6. consider and give due regard to guidance from relevant bodies such as NHS England, NICE, Monitor and Royal Colleges.

B. Role of the Specialised Commissioning Oversight Group

7. The Specialised Collaborative Group

- 7.1. The main purpose of the Specialised Collaborative Group is to select representatives to the Specialised Commissioning Oversight Group in accordance with the Terms of Reference.

8. The Specialised Commissioning Oversight Group

Purpose

- 8.1. The main purpose of the Specialised Commissioning Oversight Group is to consider and make non-binding recommendations to NHS England in relation to the commissioning of Specialised Services.
- 8.2. NHS England is under no obligation to accept the recommendations of the Specialised Commissioning Oversight Group.
- 8.3. The Terms of Reference for the Specialised Commissioning Oversight Group are set out in Appendix 1 (Terms of Reference) to this Agreement.

Roles and Activities

- 8.4. The Specialised Commissioning Oversight Group must act collaboratively to consider the planning and monitoring of Specialised Services commissioning within the Hub, and in particular must carry out the activities set out in Appendix 1 (Terms of Reference).
- 8.5. The Specialised Commissioning Oversight Group must carry out its activities under this Agreement in accordance with:
 - 8.5.1. the terms of this Agreement;
 - 8.5.2. all applicable Law;
 - 8.5.3. Guidance; and
 - 8.5.4. Good Practice.
- 8.6. The Commissioners acknowledge the importance of national support for the collaborative commissioning programme and for obtaining value for money in relation to the commissioning of Specialised Services. Accordingly, the CCGs may not engage commissioning support organisations to assist and support them in the performance of their roles and responsibilities under this Agreement. NHS England is responsible for engaging commissioning support organisations to assist and support the Commissioners in the performance of their roles and responsibilities under this Agreement.
- 8.7. Without prejudice to clause 8.8, NHS England remains responsible and accountable for the commissioning of Specialised Services.
- 8.8. No statutory functions are being delegated by NHS England to the CCGs (or shared with the CCGs) as part of the collaborative commissioning of Specialised Services under this Agreement and accordingly the Specialised Commissioning Oversight Group does not have delegated responsibility to make decisions that bind NHS England.

9. Management and Administrative Support

- 9.1. NHS England may, at its sole discretion, provide management and administrative support to the Specialised Commissioning Oversight Group through the regional and local infrastructure where appropriate for the purposes of enabling the Specialised Commissioning Oversight Group to comply with its obligations under this Agreement.
- 9.2. There will be no additional resources or running cost allowance available to the CCGs under this Agreement.

10. Benefit Share Scheme

- 10.1. A benefit share scheme may be implemented by NHS England. Any net savings made as a result of the collaboration between NHS England and the CCGs under this Agreement will be shared by NHS England with the CCGs, for local investment at the CCGs' discretion.

11. Conflicts of Interest

- 11.1. Each CCG Representative and NHS England Representative of the Specialised Commissioning Oversight Group must abide by NHS England's guidance Managing Conflicts of Interest: Statutory Guidance for CCGs (<http://www.england.nhs.uk/wp-content/uploads/2014/12/man-confl-int-guid-1214.pdf>) and all relevant policies of their appointing body in relation to conflicts of interest.
- 11.2. Where any CCG Representative or NHS England Representative has an actual or potential conflict of interest in relation to any matter under consideration by the Specialised Commissioning Oversight Group, that representative must not participate in meetings (or parts of meetings) in which the relevant matter is discussed, or make a recommendation in relation to the relevant matter. The relevant Commissioner may send an alternative representative to take the place of the conflicted representative in relation to that matter.

12. Notices

- 12.1. 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:
 - 12.1.1. in the case of NHS England, such address as NHS England may specify in writing to the CCGs from time to time; or
 - 12.1.2. in the case of the CCGs, such address as the CCGs may specify in writing to NHS England from time to time.
- 12.2. Notices sent:
 - 12.2.1. by hand will be effective upon delivery;
 - 12.2.2. by post will be effective upon the earlier of actual receipt or 5 working days after mailing; or
 - 12.2.3. by email will be effective when sent (subject to no automated response being received).

13. Disputes

- 13.1. Where any dispute arises within the Specialised Commissioning Oversight Group in connection with this Agreement, all Commissioners must use their best endeavours to resolve that dispute on an informal basis within the Specialised Commissioning Oversight Group.
- 13.2. Where any dispute is not resolved under clause 13.1 on an informal basis, any CCG Agreement Manager or NHS England Agreement Manager may convene a special meeting of the Specialised Commissioning Oversight Group to attempt to resolve the dispute.
- 13.3. If any dispute is not resolved under clause 13.2, 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 days of the referral.

- 13.4. Where any dispute is not resolved under clauses 13.1, 13.2 or 13.3, any CCG Agreement Manager or NHS England Agreement Manager may refer the matter for mediation arranged by an independent third party to be appointed by NHS England, and any agreement reached through mediation must be set out in writing and signed by the Commissioners.

14. Variations

- 14.1. Any variation to this Agreement will only be effective if it is made in writing and signed by all of the Commissioners.
- 14.2. All agreed variations to this Agreement must be appended as a Schedule to this Agreement.

15. Leaving the Collaboration

- 15.1. If a CCG wishes to exit the Specialised Collaborative Group and end its participation in this Agreement, the following provisions will apply:
 - 15.1.1. the CCG must notify NHS England of its wish to exit the Specialised Collaborative Group and end its participation in this Agreement (in accordance with clause 12) and the notice must clearly set out the CCG's reasons for wishing to leave the Specialised Collaborative Group; and
 - 15.1.2. within thirty (30) days of receipt by NHS England of the notice referred to at clause 15.1.1 above, NHS England and the CCG will meet to discuss the CCG's proposals for exiting the Specialised Collaborative Group.
- 15.2. NHS England and the CCG will work together to ensure that there are suitable alternative arrangements in place in relation to the commissioning of Specialised Services.
- 15.3. The CCG acknowledges that the commissioning of Specialised Services remains the responsibility of NHS England and the CCG must not set up an alternative collaborative arrangement in relation to Specialised Services without the consent of NHS England.

16. Counterparts

- 16.1. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

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 CCGs (named in TOR (Clinical Commissioning Groups) and falling under the Hub named in clause 1.1), comprising the Particulars, the Terms and Conditions and the Schedules;
Assurance Framework	means NHS England's CCG Assurance Framework, which can be found at: http://www.england.nhs.uk/wp-content/uploads/2013/11/ccg-ass-frmwrk.pdf ;
CCG Agreement Manager	means the CCG Agreement Manager as named in the Particulars;
CCG Representatives	means the CCG representatives appointed to the Specialised Commissioning Oversight Group;
CCGs	means the Clinical Commissioning Groups named in the TOR (Clinical Commissioning Groups) and falling under the Hub named in clause 1.1;
Chair and Vice Chair	means the persons respectively appointed by the Specialised Commissioning Oversight Group in accordance with paragraphs 1.12 and 1.13 of Appendix 1 (Terms of Reference);
Commissioners	means all parties to this Agreement, being NHS England and the CCGs (whose names appear in the TOR (Clinical Commissioning Groups) falling under the Hub named in clause 1.1);
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 applicable health and social care guidance, guidelines, direction or determination, framework, standard or requirement issued by NHS England or any other regulatory or supervisory body, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the CCGs by NHS England from time to time;

Law	means: (i) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (ii) any enforceable EU right within the meaning of section 2(1) European Communities Act 1972; or (iii) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales, in each case in force in England and Wales;
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;
NHS England Agreement Manager	means the NHS England Agreement Manager named in the Particulars;
NHS England Representatives	means the NHS England representatives appointed to the Specialised Commissioning Oversight Group in accordance with Appendix 1 (Terms of Reference);
Particulars	means the Particulars of this Agreement as set out in clause 1;
Public and Patient Representative	means the public and patient representative appointed to the Specialised Commissioning Oversight Group in accordance with Appendix 1 (Terms of Reference);
Public Health England Representative	means the representative from Public Health England appointed to the Specialised Commissioning Oversight Group in accordance with Appendix 1 (Terms of Reference);
Secretary	means the person appointed by the Specialised Commissioning Oversight Group to that function;
Secretary of State	means the Secretary of State for Health from time to time;
Specialised Collaborative Group	means the collaborative commissioning group established by and made up of the Commissioners to this Agreement, for the purpose set out in clause 7;
Specialised Commissioning Oversight Group	means the collaborative commissioning oversight group established by the Commissioners and governed in accordance with clause 8 and Appendix 1 (Terms of Reference) to this Agreement;

Specialised Services	means the specialised services set out in the list published by NHS England from time to time and found at https://www.england.nhs.uk/commissioning/spec-services/key-docs/
Terms of Reference	means the terms of reference for the Specialised Commissioning Oversight Group set out in Appendix 1 (Terms of Reference) to this Agreement.

EAST MIDLANDS COLLABORATIVE COMMISSIONING OVERSIGHT GROUP

TERMS OF REFERENCE

March 2015

1. Background

- 1.1 NHS England will work collaboratively with CCGs and wider partners to deliver the specialised commissioning, which drives improved outcomes for patients as a result of focusing on integrated pathways, sustainable and high quality services, value for money and equity.
- 1.2 It is anticipated that there will be a movement in accountability for specialised service commissioning toward CCGs in 2016/17 and therefore, the nature of the collaborative arrangements will need to be continually reviewed to ensure these are fit for purpose and recognise the intended future delegation of commissioning functions.
- 1.3 The terms of reference provided here are to be utilised as a guide within each region, to assess and ensure that arrangements locally cover the required membership, scope and remit and decision-making.
- 1.4 These arrangements offer flexibility to establish local delivery groups within each sub-region, for delivery of key priorities and engage more widely with geographies.
- 1.5 The collaborative will develop a priorities plan which will set out the key service transformations that the members will focus on delivering over the coming period, particularly leading to a strong foundation for 2016/17 transformation.

2. Overall Purpose

- 2.1 This collaborative commissioning oversight group is responsible for oversight, direction and delivery of specialised commissioning transformation in the East of England.

3. Core Membership

- 3.1 This group membership will include:
 - CCGs Representatives; and
 - NHS England specialised commissioning and wider team
- 3.2 CCGs to agree representation by geography.

4. Co-opted Members

- 4.1 Co-opted members will include:
 - Public Health England lead; and
 - Public and Patient Voice.
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5. In Attendance

5.1 Managerial and clinical leads from the specialised service commissioning team, including programme of care leads and CCG leads as required.

6. Remit and Responsibilities of the Collaborative Commissioning Oversight Group

6.1 This collaborative is predominantly focused on service transformation and change rather than on “business as usual” contracting and performance. It is consultative in nature and therefore does not give rise to a decision making role.

6.2 Specific areas of responsibility include:

- Greater CCG clinical input to national policy, standards and specification in order to have wider service model and pathway’s aligned;
- Priority setting for service change;
- Service reviews, including engagement and consultation;
- Developing commissioning proposals on service changes, new pathways and reconfiguration;
- QIPP development and delivery; and
- Publication of a priorities plan, and monitoring of delivery against this plan.

7. Local delivery groups

7.1 The collaborative will establish/utilise existing subgroups to represent wider local stakeholder such as local authorities and greater clinical involvement and deliver on key priorities.

7.2 These groups are accountable to the committee and will sponsor and deliver key initiatives identified in the priorities plan.

8. Decision Making/Governance

8.1 Contracts, Budgets and Service changes are retained within NHS England assurance and decision making until formally delegated.

8.2 National specification, standards and policies are the responsibility of NHS England, with greater CCG involvement. These are not varied locally.

8.3 The collaborative will be actively supported with information, knowledge and guidance that will enable and develop capability to take on wider service commissioning in future.

9. Quorum

9.1 The committee is quorate where there is core membership represented as per collaborative agreement on representation between CCGs.

10. Chairing

10.1 The collaborative is chaired by NHS England specialised commissioning lead and has a vice chair as a CCG specialised commissioning lead.

11. Administration and Frequency of Meetings

Bi Monthly, administration and support is provided by the specialised commissioning team and nominated CCG support.

12. Reporting

12.1 Formal reporting will be provided in form of minutes.

12.2 Plans, monitoring and project performance reports will be provided through the committee.

13. Conduct

13.1 Governed by Nolan principles and code of conduct and declaration of interests are taken at each meeting.

14. Review

14.1 The terms of reference will be formally reviewed by members every 12 months.

Version Control

Version	Date	Author	Comments	Status
0.1	March 2015	Christine Richardson	First Draft - Reviewed and at the workshop on the 16 th March and again at the CCG congress on the 15 th May where they were considered to be fit for purpose. Principles adopted at inaugural EMCCOG 25 th June	Draft

Date Agreed:

Final Issued:

East Midlands Specialised Collaborative Commissioning Hub Footprint – Member CCGs

- NHS Lincolnshire East CCG
- NHS South West Lincolnshire CCG
- NHS South Lincolnshire CCG
- NHS Lincolnshire West CCG
- NHS East Leicestershire & Rutland CCG
- NHS Leicester City CCG
- NHS West Leicestershire CCG
- NHS Erewash CCG
- NHS Hardwick CCG
- NHS Mansfield & Ashfield CCG
- NHS Newark & Sherwood CCG
- NHS North Derbyshire CCG
- NHS Southern Derbyshire CCG
- NHS Nottingham City CCG
- NHS Nottingham North & East CCG
- NHS Nottingham West CCG
- NHS Rushcliffe CCG
- NHS Corby CCG
- NHS Milton Keynes CCG
- NHS Nene CCG