ESTABLISHMENT AGREEMENT FOR

MIDLANDS AND EAST

SPECIALISED COMMISSIONING GROUP

Contents

SECTION A: TERMS AND CONDITIONS OF AGREEMENT
INTRODUCTION & AGREEMENT STATUS ..............................................................3
THE COMMITTEE: FUNCTIONS & DUTIES .......................................................4
PRINCIPLES UPON WHICH THE M&ESCG IS BASED ...................................7
COMPOSITION OF THE M&ESCG COMMITTEE ...........................................8
MEETINGS AND BUSINESS TRANSACTIONS .............................................10
DISPUTE RESOLUTION ...................................................................................14
CANCER DRUGS FUND ................................................................................17
ACCOUNTABILITY OF THE M&ESCG .............................................................17
FUNDING ARRANGEMENTS AND OTHER OBLIGATIONS OF MEMBERS ....20
PROCUREMENT OF SERVICES ......................................................................24
HOST PRIMARY CARE TRUSTS ......................................................................28
INVOLVEMENT OF SERVICE PROVIDERS AND CLINICIANS ..................29
USER INVOLVEMENT .....................................................................................30
COMMUNICATION ..........................................................................................30
VARIATION ......................................................................................................31
TERMINATION .................................................................................................32
COUNTERPARTS ............................................................................................34
GOVERNING LAW ..........................................................................................34
PRIORITY OF DOCUMENTS .........................................................................35
DATA SHARING

SECTION B: APPENDICES TO THE AGREEMENT

APPENDIX 1 - THE PCT CLUSTERS

APPENDIX 2 - SPECIALISED SERVICES

APPENDIX 3 - OPERATIONAL OVERSIGHT GROUPS

APPENDIX 4 - THE SPECIALISED COMMISSIONING TEAMS

APPENDIX 5 - COMPOSITION OF THE M&ESCG

APPENDIX 6 - DATA SHARING

SECTION C: SIGNATORIES TO THE AGREEMENT
Section A: Terms and Conditions of Agreement

1.0 INTRODUCTION & AGREEMENT STATUS

1.1 This Establishment Agreement sets out the agreement between the 39 Primary Care Trusts (PCTs) of the NHS Midlands and East Strategic Health Authority cluster to establish the Midlands & East Specialised Commissioning Group (the “M&ESCG”)

1.2 The M&ESCG is hereby established as a joint committee comprised of the following 39 PCTs (such PCTs hereafter referred to together as “Members”, and each a “Member”):

**East of England**
- South East Essex PCT
- South West Essex PCT
- Mid Essex PCT
- North East Essex PCT
- West Essex PCT
- Norfolk PCT
- Cambridgeshire PCT
- Suffolk PCT
- Great Yarmouth and Waveney PCT
- Peterborough PCT
- Bedfordshire PCT
- Luton PCT
- Hertfordshire PCT

**West Midlands**
- Birmingham East and North PCT
- Coventry Teaching PCT
- Dudley PCT
- Heart of Birmingham Teaching PCT
- Herefordshire PCT
- North Staffordshire PCT
- Sandwell PCT
- Shropshire County PCT
- South Staffordshire PCT
- Telford and Wrekin PCT
- Walsall PCT
- Warwickshire PCT
- Wolverhampton City PCT
- Worcestershire PCT
- South Birmingham PCT
- Solihull Care PCT
• Stoke on Trent PCT
• Milton Keynes PCT
• Leicestershire County & Rutland PCT
• Nottinghamshire County Teaching PCT
• Lincolnshire Teaching PCT
• Derbyshire County PCT
• Nottingham City PCT
• Leicester City PCT
• Northamptonshire Teaching PCT
• Derby City PCT.

1.3 This agreement (the “Agreement”) is an NHS contract made between the Members as NHS Bodies pursuant to the National Health Service Act 2006, Section 9.

1.4 The Members agree that the provisions set out in this Agreement shall apply from [ ] (the “Commencement Date”) and shall remain in force until terminated in accordance with Clause 16 of this Agreement.

1.5 The Agreement comprises of Section A (the Terms and Conditions of Agreement) and Section B (Appendix 1 to Appendix 6 inclusive).

1.6 NHS East of England, NHS West Midlands and NHS East Midlands shall in this Agreement be referred to together as the “SHAs”, each an “SHA”. The area within the boundary of an SHA shall be known as an “SHA Area”.

1.7 The Members are clustered into “PCT Clusters”, as listed at Appendix 1.

2.0 THE COMMITTEE: FUNCTIONS & DUTIES

2.1 The Members agree that the M&ESCG is hereby established as a joint sub-committee of each of the boards of the Members in accordance with Regulations 9 and 10 of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administrative Arrangements) (England) Regulations 2002 (the “Regulations”).

2.2 The Members acknowledge and agree that M&ESCG is subject to any
directions which may be made by: the NHS Midlands and East Strategic Health Authority cluster or is statutory successor; West Midlands Strategic Health Authority, East Midlands Strategic Health Authority or East of England Strategic Health Authority or their statutory successor(s) or by the Secretary of State.

2.3 The Members agree that the M&ESCG has been established in accordance with the Regulations to enable the Members to make collective decisions on the review, planning, procurement and performance monitoring of the specialised services as set out in the Specialised Services National Definitions Set (2002) as listed at Appendix 1 or any revision thereto (the “Specialised Services”), and any other service as agreed by the Members on behalf of the relevant populations of the Members (together, the “Services”). For the avoidance of doubt, the M&ESCG will also be able to take collective decisions on the review and planning of any Specialised Service which shall include but not be limited to the provisions set out in paragraphs 2.6.3 and 2.6.4 herein, even if such Specialised Services are not directly procured or contracted by Members. Services commissioned nationally by the National Commissioning Group are excluded from this Agreement.

2.4 The functions of the M&ESCG are undertaken in the context where NHS commissioning is increasingly focused on developing care standards, improving outcomes and the quality assurance of provider services and delivering Quality, Innovation, Productivity and Prevention for all services.

2.5 The Members (by virtue of their powers under the Regulations) unanimously agree to delegate their individual administrative and day-to-day management responsibilities in relation to the Services described in paragraph 2.4 above to the M&ESCG to enable the M&ESCG (on behalf of the Members):

2.5.1 to form one or more sub-committees and appoint host PCTs for the three Specialised Commissioning Teams (“SCTs”) in the NHS SHA Midlands and East cluster area (the “SHA Cluster Area”);
2.5.2 to undertake Specialised Service reviews and reviews of any other agreed Services, manage the introduction of new services, drugs and technologies and over see the implementation of NICE and/or other national guidance or standards relating to Specialised Services, and other agreed Services;

2.5.3 to coordinate a common approach to the commissioning of Specialised Services from providers in the Midlands and East Strategic Health Authority cluster area and elsewhere;

2.5.4 to manage the approved budget for commissioning Specialised Services and other Services, be held accountable for its use, to gain efficiencies from the commissioned Services where possible and develop financial risk sharing arrangements;

2.5.5 to monitor and fund the costs of non-contractual activity ("NCA") for those Services agreed by Members;

2.5.6 to consider and endorse recommendations and outcomes from the Operational Oversight Groups (the “OOGs”, each an “OOG”);

2.5.7 to develop and approve Strategy and Policy implementation plans and monitor performance against objectives;

2.5.8 to approve and monitor plans during transition and convergence towards a National Commissioning Board;

2.5.9 to scrutinise the annual Business Plans developed by the OOGs;

2.5.10 to ensure financial delivery and agree appropriate risk share arrangements;

2.5.11 to agree a single risk management process for the SHA Cluster Area and monitor the Board Assurance Framework;

2.5.12 to monitor contract and financial performance across the SHA Cluster Area and consider and manage issues arising;

2.5.13 to approve local business plans as recommended by the OOGs;

2.5.14 to consider and endorse procurement activity recommended by the OOGs;

2.5.15 to consider consultation outcomes and promote pathway changes in
implementing a consistent approach across the SHA Cluster Area;

2.5.16 to provide a coordinated Specialised Services Commissioning input to clinical networks, local PCT Cluster or Clinical Commissioning Groups/fora and partnerships, and coordinate service development plans with Members and their practice-based commissioners in the SHA Cluster Area;

2.5.17 to maintain close links with PCT Clusters and providers, and other statutory authorities, including those within the criminal justice system, in the NHS Midlands and East Strategic Health Authority cluster area; and

2.5.18 to work in partnership with other Specialised Commissioning Groups ("SCGs") and provide the administrative and day-to-day management ‘lead’ commissioner functions for supra-SCG, or nationally commissioned services as required.

3.0 PRINCIPLES UPON WHICH THE M&ESCG IS BASED

3.1 The M&ESCG will support Members in striving to reduce the inequalities in access to and delivery of services for the populations the Members serve.

3.2 The M&ESCG will seek to share skills, knowledge and/or appropriate resources for the benefit of the total population served.

3.3 The M&ESCG will utilise the funds made available by Members to commission services and support its management costs in a transparent and cost effective way.

3.4 In commissioning and procuring services, the M&ESCG will comply with all applicable statutory duties.

3.5 The M&ESCG will at all times demonstrate value for money and an effective and
efficient commissioning programme.

3.6 The M&ESCG will ensure that the financial risks to individual Members of unforeseen/unplanned activity are minimised, and that inequalities in access to and delivery of services are reduced. Where this is unavoidable, financial risks and financial performance will be reported promptly to inform Members of the financial position accordingly.

3.7 Commitments made by the M&ESCG under agreed terms of reference, will be binding on all Members until the M&ESCG agrees otherwise.

3.8 The M&ESCG will review, plan, develop and monitor the Services in partnership with clinicians, providers and service users.

3.9 The Members acknowledge and agree that notwithstanding their groupings within the PCT Clusters, all applicable legal responsibilities and obligations vested in the Members remain vested in the Members.

3.10 The Members agree that the M&ESCG shall establish the OOGs (the arrangements for which are set out at Appendix 3) and the SCTs (the arrangements for which are set out at Appendix 4) and that those bodies will work with and alongside the M&ESCG in order to assist the M&ESCG to fulfil the M&ESCG’s functions and responsibilities under the terms of this Agreement.

3.11 The dispute resolution procedure set out in this Agreement will apply when disputes between Members arise.

4.0 COMPOSITION OF THE M&ESCG COMMITTEE

4.1 The membership of the M&SCG Committee (the “Committee”) is set out at Appendix 5.

4.2 The M&ESCG, in exercising the functions delegated to it, shall from time to time
appoint officers sufficient for those functions and for such period as it thinks fit.

4.3 The M&ESCG shall from time to time appoint an officer as its Chair, one as its Vice Chair and one as its Secretary, and shall fix their respective periods of office.

4.4 The Chair shall be responsible for the operation of the Committee and shall chair Committee meetings when present. The Chair shall liaise with the SCT Host PCTs (defined below) and each SHA over key appointments. The Chair shall work in close harmony with the Chief Operating Officer (appointed in accordance with Clause 5.7) to ensure that key and appropriate issues are discussed at meetings of the Committee in a timely manner with all the necessary information and advice being made available to the meeting of the Committee to inform the debate and ultimate resolutions.

4.5 If the Chair is absent from a Committee meeting the Vice Chair (as appointed) shall chair the meeting. If both the Chair and Vice Chair are absent, such Representative (as defined in Appendix 5) as the Representatives shall choose shall preside.

4.6 The Member Representatives (as defined in Appendix 5) shall each have one place on the Committee and must be a PCT Chief Executive. For all Member Representatives, and in exceptional circumstances, in the absence of the nominated Member Representative, a named deputy from that Member may attend the meeting of the Committee with the agreement of the Chair. The deputy shall be a PCT Board Director, usually the Director of Commissioning or Director of Finance.

4.7 Each Member Representative will represent the collective view and wish of each of their PCT Clusters and shall act within the authority delegated to them by the
Members of their respective PCT Clusters.

4.8 The Chief Operating Officer shall be responsible for the overall performance of the executive functions of the M&ESCG to the M&ESCG Committee.

4.9 Representatives of other organisations may attend, in a non-voting capacity, with the agreement of the M&ESCG Chair.

4.10 When the meeting is considering a confidential matter, non-voting Representatives may be asked to leave the meeting at the discretion of the M&ESCG Chair. In addition, all Members agree to keep confidential and not disclose to third parties anything discussed during a session of the Committee which would reasonably be considered confidential, subject to: (i) their obligations under the Data Protection Act 1999 (as amended from time to time), the Freedom of Information Act 2000 (as amended from time to time) and any relevant guidance from the Department of Health, such as the Code of Openness in the NHS; (ii) the information already or anyway being in the public domain; (iii) the information being disclosed to the member’s professional advisers where such disclosure is required; and (iv) disclosure otherwise being required by law, a tax authority or a court of law.

5.0 MEETINGS AND BUSINESS TRANSACTIONS

5.1 Calling Meetings.

5.1.1 Ordinary meetings of the Committee shall be held at regular intervals at such times and places as the M&ESCG may determine but which shall normally be bi-monthly, and shall be convened by the Secretary by at least [7] working days prior notice by email to each member.
5.1.2 Special meetings of the Committee shall be convened by at least [48] hours prior notice by e-mail to each Representative from [the Chair] at any time and for any purpose.

5.1.3 The Chair of a PCT Cluster may call a meeting of the Committee at any time.

5.1.4 One third or more of the Member Representatives may requisition a meeting of the Committee in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

5.2 **Notice of meetings and business transactions**

5.2.1 Before each meeting of the Committee, a written notice specifying the business proposed to be transacted shall be delivered to every member, so as to be available to members at least three working days before the meeting.

5.2.2 In the case of a meeting called by members in default of the Chair calling the meeting, the notice shall be approved by those members.

5.2.3 No business shall be transacted at the meeting other than that specified on the agenda. A Representative desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear working days before the meeting. The request should state whether the item should be transacted as a public or confidential item of the meeting and should include appropriate supporting information.

5.2.4 Before each meeting of the Committee a notice of the time and place of the meeting and the agenda shall be displayed at the M&ESCG's website.

5.2.5 An annual cycle will be developed outlining reporting interrelationships between
the M&ESCG and its sub-committees.

5.3 **Agenda, Minutes and Supporting Papers**

5.3.1 The agenda will be sent to Representatives 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

5.3.2 The minutes of the proceedings of a meeting for the M&ESCG or any of its sub-committees shall be drawn up and submitted for agreement at the next ensuing meeting as an agenda item. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Minutes will be made publicly available unless otherwise deemed as inappropriate.

5.3.3 The M&ESCG will take into account the requirements of the Freedom of Information Act and associated guidance when determining which items of business would be prejudicial to the public interest if papers considered are made available to the public. Members agree to inform the M&ESCGs and the SCTs within 48 hours of any request made under the Freedom of Information Act 2000 which relates to the M&ESCG.

5.3.4 Any Member that is dissatisfied by a decision of the Committee and acting in good faith may give notice by e-mail to the Chair of the Committee within [2] clear working days after the decision, requiring it to be referred to dispute resolution. The decision shall be so referred immediately as such notice is received and the effect of that decision shall be suspended until the conclusion of dispute resolution.
5.3.5 A decision not required to be referred to dispute resolution within the time specified shall be binding on all Members.

5.4 Chair’s Ruling

5.4.1 The decision of the Chair of the meeting on questions of order, relevancy and regularity and their interpretation of the Agreement, at the meeting, shall be final.

5.5 Quorum

5.5.1 No business shall be transacted at a meeting unless at least one third of the whole number of the member Representatives are present (the required quorum).

5.5.2 A person attending on behalf of a Representative but without a formal authority to act on behalf of that member Representatives shall not count towards the required quorum (as set out at 5.5.1).

5.5.3 If a Representative (including the Chair) has been disqualified from participating in the discussion of a matter and/or from voting on any resolution by reason of a declaration of a conflict of interest, that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, then that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5.6 Voting

5.6.1 The M&ESCG’s aim is to always achieve collective decision making in a collaborative manner through consensus. The M&ESCG will have a collective responsibility to try to resolve and minimise any local challenges or any
disproportionate impact of a cluster decisions on any one region or PCT Cluster.

5.6.2 If the Committee does need to take a formal vote on any issue, each Representative will have one vote.

5.6.3 Every decision put to a vote at a meeting shall be determined by a majority of the votes of Member Representatives present and voting on the issue.

5.6.4 In the case of an equal vote, the person presiding (i.e. the Chair) shall have a second and casting vote.

5.6.5 At the discretion of the Chair all decisions put to the vote shall be determined by oral expression or by show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by a paper ballot.

5.6.6 If at least two thirds of the Member Representatives present so request, the voting on any decision may be recorded so as to show how each Member Representative present voted or did not vote (except when conducted by paper ballot).

5.6.7 If a Representative so requests, their vote shall be recorded by name.

5.6.8 A decision of the M&ESCG may be valid and effective as if it had been made at a physical meeting of the duly convened and held Committee, provided due notice of the meeting has been given but without a formal ordinary or special meeting, if the decision is carried by a vote in favour by e-mail from each of the Member Representatives (entitled to receive notice and vote at the Committee), subject to Clause 5.5.2, and certified in writing by the Chair.

5.6.9 An absent representative may vote by proxy voting. Absence is defined as being absent at the time of the vote. Voting intentions should be notified to the Chair.
three days in advance of the meeting.

5.7 A unanimous agreement of Representatives will be necessary to appoint a new accountable Chief Operating Officer.

5.8 **Record of Attendance**

The names of the Representatives (including the Chair) present at the meeting shall be recorded.

5.9 **Use of equipment for recording meetings**

Nothing in this Agreement shall be construed as permitting the audio or visual electronic recording of the meetings for any purpose. Such permission shall be granted only upon resolution of the M&ESCG and agreement shall be clearly noted in the minutes and the recording.

6.0 **DISPUTE RESOLUTION**

6.1 Facilitation and/or arbitration may be required in the following circumstances:

6.1.1 the Chair or any voting Representative of the Committee requests facilitation because an impasse has been reached between the M&ESCG and one or more of its Members; or

6.1.2 the Chair or any voting member of the Committee requests facilitation because an impasse has been reached between one or more of its Members.

6.2 Disputes and/or potential disputes may be escalated to dispute resolution by any party following the meetings as outlined under Clause 5.

6.3 Where facilitation or arbitration is required between M&ESCG and a Member, the following process will be followed:
6.3.1 **Stage 1 – Facilitation**

A meeting is held which includes the following:

(i) a representative(s) of the Member(s);

(ii) a representative of the COO(s)/SCT(s) for the SHA area of the Member(s) in dispute;

(iii) a representative of the M&ESCG (which may be but is not be limited to the Chair of the M&ESCG); and

(iv) an appropriate Director from the SHA(s) of the Member(s) in dispute

The meeting will be chaired by the SHA Director and involve expert clinical advice where appropriate.

If resolution is reached, the process will conclude here.

6.3.2 **Stage 2 – SHA Arbitration**

(i) Both the Member involved in the dispute and the SCT (acting on behalf of the M&ESCG) will produce a joint statement of facts as well as a separate report setting out their positions and submit them to the SHA for the SHA Area(s) of the Member(s) in dispute.

(ii) The SHA(s) may invite the SCT (acting on behalf of the M&ESCG) and the Member to present their positions or they may choose to decide on the basis of the information submitted. The decision of the SHA(s) will be binding.

6.4 Disputes which may be progressed via this two stage process (Facilitation and Arbitration) shall include but shall not be limited to:

6.4.1 any dispute concerning a Member’s adherence to the principles of collaborative procurement as set out in the duties performed;
6.4.2 any dispute concerning the principles on which the M&ESCG is based as set out in this Agreement;

6.4.3 any dispute concerning a Member’s position in relation to procurement and reporting of Services as set out in this Agreement.

6.5 In the event of a dispute between the M&ESCG and another cluster SCG, the NSCG will be invited to facilitate and/or arbitrate according to its own facilitation/arbitration process.

6.6 Each Member hereby recognises and agrees the role and responsibility of the SHAs in relation to dispute resolution both as part of any initial Facilitation process and, further, as part of any Arbitration process. In resolving any such dispute an SHA shall have regard to ensuring each Member is fulfilling its statutory responsibilities and ensuring the highest clinical standards and patient safety issues are upheld.

7. CANCER DRUG FUND

7.1 The Members acknowledge and agree that:

7.1.1 The Cancer Drugs Fund (the “CDF”), under new directions, will be administered by the M&ESCG, however accountability for decision making remains with the SHA. Accountability for the CDF does not reside with the Members; and

7.1.2 In the event of an appeal of a decision made by the Clinical Advisory Panel for Cancer Drugs Medicine in relation to the management of the Interim Cancer Drugs Fund, the matter shall be resolved in accordance with the provisions as set out in the Interim Cancer Drugs Fund Policy to be developed on behalf of the cluster.

8.0 ACCOUNTABILITY OF THE M&ESCG
8.1 At SCG level

8.1.1 Each Member is accountable through its statutory responsibilities to use its resources to improve the health of its population. For a number of services, this can only be achieved by working with other Members. The M&ESCG is established on this basis of a shared approach to commissioning.

8.1.2 The M&ESCG is a joint sub-committee of each of the boards of the Members and the Member Representatives on the M&ESCG for each Member can:

- commit the resources which have been agreed to be allocated to the M&ESCG by the Members;
- implement commissioning policy;
- appoint professional advisors;
- commission research /undertake reviews to inform decisions;
- agree, review and update action plans;
- act as an agent for their Member for the purposes of attending and contributing to the M&ESCG; and
- monitor service level agreements/contracts between Members and SCTs (acting through their SCT Host PCTs) and other service providers.

8.1.3 Each Member Representative on the M&ESCG will be able to commit resources on behalf of and has the authority of their Member within the limits set out in their Member’s Standing Financial Instructions and Scheme of Delegation and Reservation. By signing this Agreement each of the Members confirms that its Standing Financial Instructions and Standing Orders are consistent with this Agreement and empowers their representative to commit
resources.

8.1.4 Each Member shall prior to, or at, the first meeting of the M&ESCG provide to the Chief Operating Officer (and to the Operational Directors of each of the SCT Host PCTs) a copy of the Member’s Board Minute confirming the Member’s acceptance of this Agreement.

8.1.5 For the avoidance of doubt, in respect of the exercise by a Member of its duties and responsibilities under this Agreement, including where a Member is acting as a host Primary Care Trust to any group committee of the M&ESCG, the Standing Orders and Standing Financial Instructions of that Member shall apply to the exercise of those duties and responsibilities and in the event of any conflict between the terms of this Agreement and those Standing Orders or Standing Financial Instructions, the Standing Orders and Standing Financial Instructions of that Member shall prevail.

8.1.6 In order to ensure that time is allowed for a Member's Representative to consult within their own PCT Clusters and other constituent Members of their PCT Cluster and with other key stakeholders, the M&ESCG will give adequate notice to Members of proposals to: change commissioning policies, commit resources and/or enter into service agreements and contracts (entered into through the SCT Host PCTs).

8.1.7 Subject to Clause 8.18, the M&ESCG may delegate tasks to such individuals, sub-committees or individual members, as it shall see fit provided that any such delegations are recorded in the relevant Scheme of Delegation and are governed by terms of reference.

8.1.8 The Members acknowledge and agree that the M&ESCG shall not be permitted to act in such a way as could amount to a further delegation of a
function (as opposed to the delegation of an administrative or day-to-day management activity) that has been delegated to the M&ESCG by a PCT.

8.2 At Pan-SCG level

8.2.1 In order to discharge its duties on behalf of Members, the M&ESCG will be responsible for representing Members’ interests in commissioning Services as agreed by the M&ESCG that span a number of SHA Areas and/or require a national commissioning approach. Such responsibility will be discharged through service specific groups/networks to be established by the M&ESCG in conjunction with other SCGs and/or through the National Specialised Commissioning Group (“NSCG”).

8.2.2 The Chair of the M&ESCG or another member of the M&ESCG shall be appointed to represent the M&ESCG and ensure that the M&ESCG’s views are properly taken into account when pan-SCG or NSCG level decisions are being considered and reached at a pan-SCG or NSCG level.

8.2.3 The M&ESCG will take into account decisions taken at pan-SCG or NSCG level.

8.2.4 The Members acknowledge that the M&ESCG will be given adequate notice regarding any issues which entail decision-making at pan-SCG or NSCG level meetings.

9.0 FUNDING ARRANGEMENTS AND OTHER OBLIGATIONS OF MEMBERS

9.1 The Members agree and acknowledge that each Member will contribute
towards the costs of the M&ESCG, its OOG and each SCT carrying out the day–to-day management activities of the M&ESCG through payment of an annual revenue allocation to its respective OOG.

9.2 The annual revenue allocation for each Member (each an “Allocation”) will be based on the level of the portfolio of commissioning services of the OOG of that Member; and the management costs of supporting such commissioning services, including the costs of supporting its SCT and costs incurred in relation to the hosting of that SCT; [and a contribution to the management costs of the M&ESCG]. All payments for such costs shall be payable by each Member to the SCT Host PCT of its SCT (as recipient of the payments on behalf of its OOG) and will be made monthly in accordance with an agreed cash flow schedule at the start of the year and any changes will be agreed as a result of adjustments identified in accordance with this Agreement.

9.3 The baseline allocation value of the Allocation of each Member with will be attached to the Terms of Reference of the OOG of that Member. Members acknowledge and agree that the Allocations include: the cost of the services commissioned within each SHA Area, the management costs of each SCT (and its SCT Host PCT) and a contribution to the management costs of the M&ESCG.

9.4 The Members acknowledge and agree that adjustments to the Allocations described at Clause 9.2 above may be required for the following reasons:

- to reflect annual inflationary and other generic and service specific cost pressures (e.g. NICE guidance, Working Time Directives etc);
- in-year over or under performance against provider service agreements and/or contracts;
• agreed changes to the M&ESCG commissioning portfolio or the portfolio of service providers covered by these funding arrangements and agreed investments to support service improvements, developments or other changes reflected in the Local Delivery Plans of each PCT. In year changes may be required and members will need to agree how these will be managed;

• changes in Member cash limited allocations that affect the services covered by these allocation arrangements;

• national or local initiatives which impact upon the services covered by the subscription arrangements; or

• other technical changes.

9.5 The Members recognise that each SCT (acting through its SCT Host PCT) shall maintain and operate the finances of the M&ESCG for its SHA Area on a trading account basis through the SCT Host PCT, and shall ensure that the budget is in financial balance at the year-end. The Members of an SHA Area agree that no financial liability or risk should reside with the SCT Host PCT by virtue of it being an SCT Host PCT for that SHA Area.

9.6 Unless specifically proposed otherwise by an OOG (with the agreement of, the M&ESCG) any net under-spend against an OOG’s budget will be returned to Members within that SHA Area and any net over-spend by an OOG will be funded in accordance with the following:

• for management expenditure, this will be funded by Members in that SHA Area pro rata on the basis of weighted membership population; or

• for specific services, this will be funded by Members in that SHA Area according to their respective utilisation of the services or pro rata on
the basis of weighted membership population (as appropriate).

9.7 The Members acknowledge and agree that each SCT will endeavour to manage the totality of the Allocations for their SHA Area (a “pooled budget”) within an agreed financial plan. Any changes to the agreed financial plan for an SCT, and therefore to the Allocations which may be required from the Members of its SHA Area during the financial year, will be submitted by that SCT to the OOG for that SHA Area for consultation prior to agreement. Any changes in any services to be made to the Allocations will be made using agreed methodologies that support the principles of appropriate risk sharing and equity between Members in that SHA Area.

9.8 For each SHA Area, all services included in the funding arrangements will be operated as a pooled resource (i.e. with over performances on one contract/service level agreement offset by under performances on others). Adjustments for over and/or under performance will be made only on the total budget for each OOG. Any alternative methodology will only be used following approval by the relevant OOG and M&ESCG.

9.9 The Members within an SHA Area agree to indemnify the SCT Host PCT for that SHA Area against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by that SCT Host PCT arising out of or in connection with the hosting of the SCT. This indemnity shall not cover any losses to the extent that they result from the SCT Host PCT’s negligence, recklessness or wilful misconduct. Risk will be shared by weighted capitation.
9.10 Each Member further undertakes to indemnify each Representative of the M&ESCG and each member of a sub-committee of M&ESCG, 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 Member under such indemnity shall be limited to the proportion of the total amount of its Allocation for the financial year in which such liability, damage, costs, claim or proceedings arise.

9.11 Whilst the M&ESCG will endeavour to act on behalf of all the Members working collaboratively, each Member remains responsible for performing and exercising its statutory duties and functions for delivery of the agreed services to its population and its patients, including:

- assessing individual patient cases;
- referrals;
- patient complaints and complaints procedures;
- individual contract exclusions (where appropriate);
- emergencies;
- managing waiting lists;
- obtaining legal advice if necessary (e.g. on the legality of a specific treatment policy) in conjunction with the M&ESCG where appropriate;
- PPI involvement as appropriate for the services (in conjunction with the M&ESCG where appropriate); and
- managing its own individual patient appeals (supported by the M&ESCG).

9.12 The Members acknowledge and agree that whilst the M&ESCG may support
and act on behalf of the Members if the Members so agree, such support or action will not negate each Member’s statutory responsibility to ensure the delivery of appropriate healthcare services to its population.

10 PROCUREMENT OF SERVICES

10.1 M&ESCG will determine which Services should be procured and from which provider(s) having consulted widely and in accordance with statutory requirements and agreed procurement processes. The Services (as may be varied from time to time) to be procured for each of the three OOGs are set out in Appendix 6.

10.2 The providers of Agreed Services may be:

- NHS Foundation Trusts (NHSFT);
- NHS Trusts;
- Other NHS Bodies;
- Local Government Authorities and agencies;
- Independent sector providers or suppliers
- Charities and voluntary sector providers
- Social enterprises

Or any combination of the above.

10.3 The Members acknowledge and agree that there will be occasions where services may not be available in the UK and agree that the SCG may, where necessary, commission services outside the UK. Any commissioning of services will be in accordance with agreed processes.
10.4 The M&ESCG will work within the principles set out in its Commissioning Framework and national commissioning frameworks, as these are updated from time to time.

10.5 Each Member agrees with each of the others that the principles underpinning, and the functions of the M&ESCG are to support collaborative procurement of Services products including:

- approving the range of Services;
- maintaining close working and contractual relationship between the Members, operating with transparency, openness and maximum good faith;
- operating with transparency, openness and maximum good faith;
- obtaining best value from the Services by assessing clinical effectiveness, cost effectiveness and patients’ and carers’ views;
- ensuring that the requirements of Patient Choice are met;
- agreeing and managing risk sharing arrangements;
- negotiating and agreeing service level agreements/contracts and from time to time negotiating and agreeing variations of specifications and service level agreement/contract terms;
- coordinating and planning for changes in demand and in the financial and investment needs of the Members and reflecting these changes in service level agreements/contracts and any variation to them at a cluster level;
- setting the initial annual budget for each service level
agreement/contract;

- agreeing any in-year variations with the provider and consequential adjustments between the Members if the total M&ESCG budget over or under performs;

- monitoring the provider’s performance under each service level agreement/contract, including activity and patient outcomes, specification requirements & standards and waiting time and other targets;

- carrying out annual or other reviews with the provider, as required under each service level agreement/contract;

- agreeing referral, discharge and other protocols with the provider for each service level agreement/contract;

- establishing any links and/or reporting networks with other PCT consortia, SCGs, pan-SCG bodies or the NSSCG.

10.6 Subject always to Clause 8.1.8 above, the Members jointly delegate their respective functions for the procurement of the Services to the M&ESCG which, acting partly through the OOGs and respective SCTs (and their SCT Host PCTs) will establish collaborative commissioning and managerial arrangements to negotiate, agree and manage all aspects of service level agreements/contracts for the Services on such terms and for such purposes as agreed by the M&ESCG (acting partly through the OOGs, the respective SCTs and their SCT Host PCTs) [and such delegation shall be recorded in each Member’s Scheme of Delegation and Reservation.]

10.7 Service Level Agreements and contracts between the M&ESCG and other parties shall be signed by the relevant SCT Host PCTs and on behalf of all
other Members, in accordance with the delegated limits set by the SCT Host PCTs' Standing Financial Instructions.

10.8 Each SCT Host PCT will collect from all Members within the SHA Area their share of the agreed Allocation for the Services on a monthly basis, and pay the aggregate amounts to the providers of the Services on behalf of all Members (within that area). Through this Agreement, Members commit that these cash payments will be made on time and in full. This is in order that the SCT Host PCTs cash flow is managed appropriately.

10.9 The M&ESCG will provide each Member with a statement for each service level agreement/contract on a monthly basis showing:

- contract performance against contracted activity and payment;
- forecast activity to end of contract year; and
- allocation of contract activity, payment and forecast to the individual Member.

10.10 The M&ESCG will provide each Member with an annual statement summarising for each service level agreement/contract:

- actual SCG activity and cost against agreed planned SCG activity and cost for the previous year;
- allocation of actual activity and actual cost by individual Member for the previous year;
- progress on annual contract reviews; and
- effect of risk sharing arrangements.

11.0 HOST PRIMARY CARE TRUSTS
11.1 M&ESCG will not be a hosted body. Each of the three SCTs will be hosted and therefore capable of (inter alia) employing staff, and entering into contracts/service level agreements (on behalf of M&ESCG).

11.2 A Member for an SCT in each one of the three SHA Areas will be designated, by agreement, as the SCT Host PCT. The intention is that these hosting arrangements will be retained during the transition period towards the development of a National Commissioning Board until 1 April 2013.

11.3 Subject always to Clause 8.1.8 above, the responsibilities of the SCT Host PCTs are:

- to employ such officers as may be required to form the SCTs and provide all necessary corporate services and management support as may be required;
- to be the legal entity which enters into service level agreements/contracts for services commissioned by the M&ESCG for an SHA Area and to ensure that the individuals appointed and employed to support the functions of the M&ESCG carry out those tasks, which are stated in this Agreement to be obligations of the M&ESCG;
- to have in place Standing Orders, Standing Financial Instructions and other appropriate governance arrangements and Schemes of Delegation necessary to enable the M&ESCG’s functions to be carried out;
- to provide full financial support for the Services functions, including: the collection of the Allocations from Members and the making of payments to providers of the Services; the agreement of NHS income
and expenditure/debtor and creditor balances with providers and Members; and the appropriate reporting of income and expenditure within the SCT Host PCT’s statutory and management accounts; and

- to hold the management budget for the respective SCTs and M&ESCG; and to make payments and receive income as necessary on behalf of the M&ESCG and the SCTs.

11.4 The SCTs shall adopt the Standing Orders, Standing Financial Instructions and relevant Schemes of Delegation of the relevant SCT Host PCTs.

11.5 The Members acknowledge and agree that management charge agreed by the M&ESCG, shall be payable to the SCT Host PCTs from the management budget for the costs incurred in acting as the SCT Host PCTs. For the avoidance of doubt, the management costs will include all appropriate statutory employers’ liabilities, IT systems, physical premises and other reasonable costs incurred by a SCT Host PCTs in relation to hosting an SCT.

11.6 The Members of an SHA reserve the right to appoint a successor SCT Host PCT to replace the existing SCT Host PCT for that SHA Area.

12.0 INVOLVEMENT OF SERVICE PROVIDERS AND CLINICIANS

12.1 The M&ESCG will ensure that all arrangements established for M&ESCG’s strategy development will need to demonstrate how they are involving clinicians and the relevant service provider(s).

12.2 Each SCT (on behalf of the M&ESCG) will be responsible for ensuring that there is public health input into such arrangements.

12.3 The M&ESCG will ensure sufficient engagement with the CCGs and direction
of travel during the transition period.

13.0 USER INVOLVEMENT

13.1 The M&ESCG will ensure that all arrangements established for M&ESCG’s strategy development will demonstrate the involvement of service users in the planning and commissioning process.

13.2 Local Involvement Networks (LINks)

The Local Government and Public Involvement in Health 2007 introduced Local Involvement Networks, which are networks of local people and groups that ensure that communities within each local authority area can monitor service provision, influence key decisions and have a stronger voice in the process of commissioning health care. The M&ESCG will work with LINks (and their successor bodies) with a view to ensuring that the public are, directly or through representatives, involved in and consulted upon the planning of health services, the development and consideration of proposals for services changes and decisions affecting the operation of health services.

14.0 COMMUNICATION

14.1 Each Member will act as the overall communication link to their health communities and shall present the approved minutes for each M&ESCG meeting to the next following meeting of the Board of their Member.

14.2 A single M&ESCG Annual Report will be produced for Members’ Boards within six months of the end of the financial year.

14.3 The Members acknowledge and agree that the SCTs will provide a common link between appropriate clinical networks and/or commissioner and provider
service review groups. The M&ESCG will (alongside the SCTs) develop a cluster wide approach and relevant communications plans as part of the strategy work.

15.0 VARIATION

15.1 This Agreement shall not be varied except:

(a) upon recommendation of the Chair or Chief Operating Officer of the Committee included on the agenda for the meeting; and

(b) the two thirds of the M&ESCG Committee Representatives are present at the meeting where variation or amendment is being discussed, and that at least half of the Representatives present are in favour of the amendment; and

(c) providing that any variation or amendment does not contravene a statute or direction made by the Secretary of State.

15.2 The commissioning portfolio, as specified in this Agreement will only be changed following a revision to the Specialised Services National Definitions Set (2002) or by the agreement of the M&ESCG and within the timeframe agreed by the M&ESCG or by Direction from the Secretary of State and any such changes will be applied to all Members.

15.3 Where a Member wishes to propose to amend the Services or financial arrangements described within this Agreement, such proposal shall be made in writing giving a minimum of 6 months notice to the M&ESCG. Any decision to adopt any proposed changes will be made in accordance with Clause 5. Any proposal for a more immediate change can only be agreed by the unanimous agreement of the M&ESCG.
Where a Member wishes to propose a variance to this Agreement this will require the unanimous agreement of the M&ESCG. An effective date for any variance will be decided by the M&ESCG.

16.0 TERMINATION

16.1 This Agreement may be terminated in its entirety by the unanimous agreement of all Members in a special meeting of the Committee (and in respect of which Clauses 5.3.4 and 5.3.5 shall not be applicable) at which all Representatives shall be entitled to attend, and only if sanctioned by the Strategic Health Authority which shall determine the effective date of the termination.

16.2 Immediately after a decision to terminate is unanimously agreed and sanctioned in accordance with the terms of Clause 16.1, the M&ESCG shall instruct the SCTs to give earliest possible voluntary notice of termination to the providers under each Standard Contract entered into between the SCT Host PCTs and providers. Simultaneously, each Member shall give notice to the provider under each commissioning contract for an alternative arrangement.

16.3 During the period between the date of the M&ESCG’s decision in Clause 16.1 and the effective date of termination all the provisions of this Agreement shall remain in full force and effect except that:

16.3.1 all appointments of officers to the M&ESCG and each of its sub-committees shall be terminated on terms agreed with the Members;

16.3.2 in addition the M&ESCG will determine the timetable by which the SCT function will be transferred to other organisations;

16.3.3 final accounts for the SCT shall be prepared and circulated to all Members and any surplus or deficiency actioned to all Members in proportion to their contribution;
16.3.4 any costs to the SCT or the host PCT arising from termination of this agreement will be determined by the M&ESCG and will be paid by all the Members.

16.4 Before or as soon as practicable after the effective date of termination of M&ESCG;

16.4.1 all books of account and other papers of the M&ESCG shall be delivered to one of the Members appointed by the M&ESCG.

16.4.2 the M&ESCG shall record its confirmation that all measures required following termination have been completed.

16.5 The M&ESCG's confirmation under Clause 16.4.2 shall automatically:

16.5.1 terminate all the provisions of this Agreement (except those referred to in Clauses 16.6 and 16.7);

16.5.2 terminate all appointments of representatives to the M&ESCG and each of its sub-committees; and

16.5.3 dissolve the M&ESCG and each of its sub-committees.

16.6 Clauses [9.1], [9.2], [9.9] and [9.10] and this Clause 16.6 shall survive termination of this Agreement and remain in effect as between all Members.

16.7 Clauses [9.1], [9.2], [9.9] and [9.10] shall survive termination of this Agreement and remain in effect as between each Member to the extent of any post-termination residual liabilities arising under any contracts.

16.8 The SHA's role in approving the overall arrangements for Specialised Services commissioning are "Fit for Purpose" and in accordance with the Carter Review will normally preclude any Member(s) from withdrawing from this Agreement. Therefore if an individual Member wishes to withdraw from the agreement they must first:
16.8.1 gain approval from their SHA;
16.8.2 gain approval from their PCT Cluster;
16.8.3 demonstrate they are entering into an alternative collaborative arrangement for commissioning the Specialised Services with another SCG;
16.8.4 provide written evidence from the receiving SCG of their acceptance to this transfer;
16.8.5 Gain approval from the receiving SHA;
16.8.6 Give one (1) years notice to the M&ESCG.

17.0 COUNTERPARTS

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

18.0 GOVERNING LAW

18.1 The formation, interpretation and operation of this Agreement shall be subject to English law.

19.0 PRIORITY OF DOCUMENTS

19.1 If there is any conflict between the terms of this Agreement and the terms of any Contracts / consortium Agreements entered into by the Members, the terms of this Agreement shall prevail.
20.0 DATA-SHARING

20.1 The Members acknowledge and agree that in assisting the M&ESCG to fulfill its functions and duties under this Agreement, the Members will be required to share data.

20.2 The Members (including each SCT Host PCT acting on behalf of the M&ESCG) agree to share data in accordance with the provisions of Appendix 6 (Data-Sharing Obligations).
Section B: Appendices to the Agreement

APPENDIX 1 - THE PCT CLUSTERS

The PCT Clusters within the NHS Midlands and East area comprise as follows:

Suffolk

North Essex

South Essex

Hertfordshire

Cambridgeshire and Peterborough

Birmingham & Solihull

Staffordshire

Black Country

Arden

West Mercia

Bedfordshire and Luton

Norfolk & Waveney

Leicestershire County, Leicester City Rutland

Lincolnshire

Northamptonshire & Milton Keynes

Nottingham County & Nottingham City

Derbyshire City & Derbyshire County
## APPENDIX 2 - Specialised Services: Specialised Services National Definitions Set (2002)

<p>| 1. Specialised cancer services (adult):                        |
| 2. Specialised services for blood and marrow transplantation (all ages) |
| 3. Specialised services for haemophilia &amp; other related bleeding disorders (all) |
| 4. Specialised services for women’s health (adult):            |
| 5. The assessment and provision of equipment for people with complex physical disability (all ages) |
| 6. Specialised spinal services (adult)                         |
| 7. Complex specialised rehabilitation services for brain injury and complex disability (adult) |
| 8. Specialised neurosciences services (adult):                 |
| 9. Specialised burn care services (all)                        |
| 10. Cystic fibrosis services (all ages)                        |
| 11. Renal services (adult)                                    |
| 12. Home parental nutrition services (adult)                   |
| 13. Specialised cardiology &amp; cardiac surgery services (adult): |
| 14. HIV/AIDS treatment and care (all ages)                     |
| 15. Cleft lip and palate services (all ages)                   |
| 16. Specialised immunology services (all ages)                 |
| 17. Specialised allergy services (all)                         |
| 18. Specialised services for infectious diseases (adult)       |
| 19. Specialised services for hepatology, hepatobiliary and pancreatic surgery (adult) |
| 20. Medical genetic services (all ages)                        |
| 21 and 22. Specialised mental health and learning disability services (adult): |</p>
<table>
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<tr>
<td>23.</td>
<td>Specialised services for children:</td>
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<tr>
<td>24.</td>
<td>Specialised dermatology services (adult)</td>
</tr>
<tr>
<td>25.</td>
<td>Specialised pathology services (all ages)</td>
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<tr>
<td>26.</td>
<td>Specialised rheumatology services (adult)</td>
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<tr>
<td>27.</td>
<td>Specialised endocrinology services (adult)</td>
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<tr>
<td>28.</td>
<td>Hyperbaric oxygen treatment services (adult)</td>
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<td>29.</td>
<td>Specialised respiratory services (adult)</td>
</tr>
<tr>
<td>30.</td>
<td>Specialised vascular services (adult)</td>
</tr>
<tr>
<td>31.</td>
<td>Specialised pain management services (adult)</td>
</tr>
<tr>
<td>32.</td>
<td>Specialised ear surgery services (all ages):</td>
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<td>33.</td>
<td>Specialised colorectal services (adult)</td>
</tr>
<tr>
<td>34.</td>
<td>Specialised orthopaedic services (adult)</td>
</tr>
<tr>
<td>35.</td>
<td>Morbid obesity services (all ages)</td>
</tr>
<tr>
<td>36.</td>
<td>Additional services:</td>
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<tr>
<td>37.</td>
<td>Ophthalmology</td>
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<tr>
<td>38.</td>
<td>Specialised haemoglobinopathy services (all ages)</td>
</tr>
<tr>
<td>39.</td>
<td>Non Specialised</td>
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</tbody>
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APPENDIX 3 - Operational Oversight Groups

Subject always to Clause 8.1.8 of Section A above, the Members for each of the three SHA Areas agree to establish, separately for their respective SHA Areas an Operational Oversight Group. The respective Members of each SHA Area agree to develop, alongside the M&ESCG, Terms of Reference for each Operational Oversight Group, and the Members agree that each Operational Oversight Group ("OOG") will each: be formed as a sub-committee to the M&ESCG; report to and be directed by the M&ESCG, and will undertake the following administrative and day-to-day management functions on behalf of M&ESCG:

1. to make recommendations to PCT Board on the funding allocation to be utilised by the OOGs and M&ESCGs

2. to performance manage providers designated by the M&ESCG to ensure that Specialised Services are provided to the highest clinical standard, represent value for money and are accessible to everyone that needs them and avoid unplanned, unsafe proliferation of specialised service provision;

3. to form and agree a local business plan and budget, conduct needs assessment, procure and performance monitor Services to meet the health needs of the population;

4. to develop, negotiate, (and monitor service level agreements/ contracts for Specialised Services;

5. to commit resources as agreed by the PCT Boards within delegated responsibilities and agreed resource limits;

6. to agree local strategic projects and monitor their implementation;

7. to consider local consultation outcomes and recommend pathway changes;

8. to monitor local contract and financial performance;
1.9. to monitor local engagement plans;

1.10. to ensure local operational risk registers are in place, agreed and monitored throughout the year;

1.11. to implement M&ESCG Committee outcomes.

2. The Members acknowledge and agree that the three Operational Oversight Groups for each of the respective SHA Areas will each operate in respect of and in tandem with the respective SCTs to be formed for each SHA Area.
APPENDIX 4 - The Specialised Commissioning Teams (SCTs)

1. Subject always to Clause 8.1.8 of Section A above, the Members agree that separate Specialised Commissioning Team ("SCTs") will be established for each of the three SHA Areas that a host PCT (an “SCT Host PCT”) shall be appointed for each of the SCTs.

2. The M&ESCG will, through the respective nominated SCT Host PCTs, appoint and employ such officers as may be required to form the SCT for each SHA Area.

3. The Chief Operating Officer shall be the “Lead Officer” for the three SCTs. The Chief Operating Officer will be accountable to the Chair of the M&ESCG, and the CEOs of the SCT Host PCTs.

4. The Chief Operating Officer shall act within the delegated authority agreed by the M&ESCG and SCT Host PCT and within the SFIs/SOs of the SCT Host PCT.

5. As part of the M&ESCG’s membership of the NSCG and in its working in partnership with other SCGs, the SCTs will be required to undertake and/or lead work and/or act as Lead Commissioner on behalf of some or all SCGs, with the agreement of those SCGs and their PCTs.

6. Subject always to Clause 8.1.8 of Section A, Members resolve to use their authority under the Regulations to delegate authority directly to the SCT Host PCT and relevant lead SCGs to act and enter into the contracts on their behalf which will be subject to separate notice to Members. This delegation shall, for the contracts and services identified by separate notice, include the delegation of commissioning functions, contracting, performance management, consultation under sections 242 and 244 NHS Act 2006, and all ancillary
functions. The COO on behalf of the Host PCT, may also become an Associate to another Coordinating Commissioner with the agreement of that Coordinating Commissioner, and enter into its Consortium Agreement and Constitution.

7. Where the M&ESCG has acted as a “Lead Commissioner” on behalf of other SCGs it shall, if requested, provide a Third Party Assurance to those SCGs confirming the adequacy of the controls in place within the Host PCTs relating to the Specialised Commissioning expenditure incurred on behalf of those SCGs.

8. The SCTs shall be required to provide such information as reasonably requested by the SCT Host PCTs in order to fulfil the requirements under this Agreement and the SCT Host PCTs’ Corporate Governance Manuals. In addition the SCTs shall support the SCT Host PCTs in responding to the scrutiny of SCG activities by the Host PCTs’ Internal and External Auditors and other relevant regulatory or similar bodies.

9. In the event of a dispute between the SCTs and any Provider, the matter shall be determined in accordance with the Dispute Resolution provisions of the Standard Contract which provisions are deemed to be incorporated into this agreement.
APPENDIX 5 - COMPOSITION OF M&ESCG COMMITTEE

1. The committee of the M&ESCG (the “Committee”) shall be compromised of voting members and non-voting members.

2. The voting members are:

2.1 a chair (the “Chair”);

2.2 a vice-chair (the “Vice-Chair”), each appointed by a process agreed by the chairs of the PCT Clusters in the NHS Midlands and East area from amongst the individuals identified at paragraph 2.4 below;

2.3 the nominated Chief Executive of each of the following PCT Clusters in the NHS Midlands and East area [the “Member Representatives”]

3. The non-voting members of the Committee are:

3.1 a secretary (the “Secretary”), The Secretary shall be the Head Of Corporate Governance of the SCG cluster. For the avoidance of doubt the Secretary shall not have a vote in meetings of the M&ESCG.

3.2 Patient representation (three);

3.3 Lay members (two);

3.4 Strategic Health Authority representative;

3.5 The M&ESCG Cluster Executive Team including:

3.5.1 The Chief Operating Officer;

3.5.2 The Director of Finance & Information;

3.5.3 The Director of Strategy and Transition;

3.5.4 The Director of Clinical Effectiveness, Quality and Safety;
3.5.5 The Communications Project Director; and

3.5.6 The three Operational Directors for each of the three SCTs.

4. In this Agreement, the voting members set out at paragraph 2 above and the non-voting members set out at paragraph 3 above shall, together, be known as the “Representatives”, each a “Representative”.
APPENDIX 6 - DATA-SHARING OBLIGATIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

“Confidential Information”
means any and all information, data and material of any nature belonging to a Disclosing Body which a Recipient Body may receive or obtain in connection with this Agreement which is an Identifier, Personal Data or Sensitive Personal Data or which is other information the release of which is likely to prejudice the functions or activities of the Disclosing Body or which is proprietary to the Disclosing Body or would constitute an actionable breach of confidence;

“Data”
means information or data shared between Members for the purposes of performing services relating to the functions or duties of the M&ESCG as anticipated by this Agreement;

“Data Controller”
shall have the meaning ascribed to the same in the Data Protection Act;

“Data Protection Act”
means the Data Protection Act 1998 and any subsidiary or subordinated legislation as the same may be varied or replaced from time to time;

“Disclosing Body”
means a Member (including an SCT Host PCT acting on behalf of the M&ESCG) that discloses Data in furtherance of the performance of services relating to the functions or duties of the M&ESCG as anticipated by this Agreement;

“Freedom of Information Act”
means the Freedom of Information Act 2000 and any subsidiary or subordinated legislation as the same may be varied or replaced from time to time;

“Identifier”
means any information relating to an individual, which on its own is not Personal Data but when matched with other information is capable of identifying an individual and/or becomes Personal Data;

“Personal Data”
shall have the meaning ascribed to the same in the Data Protection Act;
“Recipient Body”
means a Member (including an SCT Host PCT acting on behalf of the M&ESCG) that receives Data in furtherance of the performance of services in relation to the functions and duties of the M&ESCG as anticipated by this Agreement; and

“Sensitive Personal Data”
shall have the meaning ascribed to the same in the Data Protection Act.

1.2 In this Appendix 6 (Data-Sharing Obligations) any reference to a Member shall include reference to an SCT Host PCT acting on behalf of the M&ESCG.

2. DATA PROTECTION

2.1. The Members shall comply with the Data Protection Act and any other applicable data protection legislation. The Members agree to comply with the obligations placed on them by the eight data protection principles in the Data Protection Act and in particular:

2.1.1. to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed by the seventh data protection principle;

2.1.2. only to process Personal Data in accordance with the instructions of the Disclosing Body and to ensure compliance with the Data Protection Act; and

2.1.3. to allow the Disclosing Body to audit the processing Member's compliance with the requirements of this paragraph on reasonable notice and/or to provide the Disclosing Body with evidence of its compliance with the obligations set out in this paragraph.

2.2. The Members shall comply with the Information Commissioner's Office Code of Practice on Data Sharing and any other relevant Codes of Practice produced or amended from time to time.

2.3. The Members agree to use all reasonable efforts to assist each other to comply with the Data Protection Act. For the avoidance of doubt, this includes providing other Members with reasonable assistance in complying with subject access requests served under Section 7 of the Data Protection Act and consulting with other Members, as appropriate, prior to the disclosure of any Personal Data created in connection with:

2.3.1. this Agreement; or
2.3.2. the conduct or performance of services relating to the functions and duties of the M&ESCG as anticipated by this Agreement in relation to such requests.

2.4. Each Member undertakes that where it obtains, holds, processes, uses, stores and discloses an Identifier, Personal Data or Sensitive Personal Data as is necessary to assist in the performance of services in relation to the function or duties of the M&ESCG as anticipated by this Agreement, that such Identifier, Personal Data or Sensitive Personal Data will be held, processed, used, stored and disclosed only in accordance with the Data Protection Act and any other applicable law.

3. CONFIDENTIALITY

3.1 Subject always to the obligations of the Members under statute or common law, each Member will not use for any purpose (except to carry out its obligations in this Agreement) and will keep confidential and not divulge to any third party (other than is contemplated by this Agreement or to its professional advisers, provided that such third party is under duties of confidentiality no less onerous than those contained in this Agreement) any and all information of the other Members which is marked as confidential or which is by its very nature confidential including without prejudice to the foregoing the terms and conditions of this Agreement.

3.2 The provisions of paragraph 3.1 above do not apply to information which:

3.2.1 comes into the recipient’s possession directly from a third party other than as a result of breach of confidence by such third party;

3.2.2 is in or comes into the public domain other than as a result of a breach of this Agreement;

3.2.3 the Members in question agree in writing is not confidential; or

3.2.4 is required to be disclosed by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

3.3 Each Member undertakes to take all those steps as may from time to time be necessary to ensure compliance with the provisions of this paragraph 3 by its employees, contractors and agents.

3.4 The provisions of this paragraph 3 shall continue following termination of this Agreement for any reason whatsoever and without limit in time.
4. **RELEASE OF DATA**

4.1 Each Member will take practical steps to anonymise Data provided to another Member in the performance of the services relating to the functions or duties of the M&ESCG as anticipated by this Agreement before disclosure.

4.2 The Members acknowledge and agree that it is not the intention of a Member to release any Identifiers, Personal Data or Sensitive Personal Data within Data that is being shared, but the Members acknowledge and agree that some Identifiers, Personal Data or Sensitive Personal Data may be incorporated in Data that Members share where services relating to the functions or duties of M&ESCG as anticipated by this Agreement are performed.

4.3 Members undertake not to release any Identifier, Personal Data or Sensitive Personal Data to any third party and if any such Identifier, Personal Data or Sensitive Personal Data has been released to recall that Confidential Information from the third party.

4.4 The Members shall discuss and agree appropriate security measures to be implemented in respect of the exchange of Data between the Members in order to minimise the risk of Identifiers, Personal Data or Sensitive Personal Data being released to any third party. This includes either the use of password protected electronic files or encrypted files.

4.5 Without prejudice to the generality of the provisions of paragraphs 3 and 4 above, each Recipient Body shall:

   4.5.1 destroy the Data or return the Data to the Disclosing Body once it has been used for the purpose anticipated by this Agreement;

   4.5.2 ensure that any manual Data which is not recorded electronically is stored in locked cabinets after use;

   4.5.3 not publish or quote an Identifier, Personal Data or Sensitive Personal Data contained in Data in any publication or public forum (without the consent of the Disclosing Body); and

   4.5.4 ensure that all of the Member’s employees, contractors and agents are trained in confidentiality and data protection to the extent applicable to this Agreement and understand the requirement to comply with the Member’s data protection and confidentiality obligations in performing services relating to the functions or duties of the M&ESCG as anticipated under this Agreement.
5. FREEDOM OF INFORMATION

5.1. The Members will comply with the Freedom of Information Act and any amendments thereto.

5.2. If any Recipient Body receives a request in accordance with Section 8(1) of the Freedom of Information Act for Data related to this Agreement that has been disclosed to it by a Disclosing Body, the Recipient Body shall consult with the Disclosing Body and its SCT Host PCT before responding to such request and, in particular, shall have due regard to any claim by the Disclosing Body and its SCT Host PCT that the exemptions under the Freedom of Information Act apply to the Data sought.

5.3. Subject to paragraph 5.2 above, the Recipient Body shall not disclose any Data where, in the opinion of the Recipient Body, the Data is subject to an exemption under the Freedom of Information Act and, where applicable, it is not in the public interest to disclose the information.
### Part C: Signatories to the Agreement

Each of the undersigned agrees to enter into this Agreement for and on behalf of their respective Members, and the Members shall hereby be bound by the terms of this Agreement with effect from the Commencement Date.

**SIGNED:**

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