

# Network Contract Directed Enhanced Service

Mandatory Network Agreement

April 2019



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## PRIMARY CARE NETWORK AGREEMENT

### INTRODUCTION

The intent of this Agreement is to support the delivery of the individual and collective responsibilities of the Network Contract Directed Enhanced Service Scheme (the “Network Contract DES”) as set out in Chapter Four of [Investment and Evolution: A five year framework for GP contract reform](#), and to support the ways in which general practices and local primary and community health care providers agree to work together to deliver more integrated services to their populations.

It is recognised that the successful implementation of a primary care network will require strong relationships and the creation of an environment of trust, collaboration and innovation and this Agreement seeks to support those relationships.

Signatories to this Agreement are referred to as Members.

Members include the Core Network Practices and may include any other organisations that form part of this primary care network (the “Network”). The membership is likely to develop over time with the maturity of the Network.

Core Network Practices are the GP practices listed below who will sign up to and be responsible for delivering the requirements of the Network Contract DES which includes the Network Contract DES specification published by NHS England. The legal entity that constitutes a Core Network Practice will be the “Contractor” as defined in that Core Network Practice’s existing primary medical care contract.

This Agreement:

- supplements and operates in conjunction with the Core Network Practices’ existing primary medical care contracts and the respective obligations under these contracts continue;
- creates our Network;
- sets out the principles of our Network and how the requirements of the Network Contract DES will be delivered;
- includes the financial, workforce and other arrangements between the Members; and
- details how Core Network Practices will work collaboratively with other Members.

The geographical area covered by our Network is set out in Schedule 1.

In this Agreement, “we” or “us” means all Members.

**MEMBERS**

The Core Network Practices of our Network are:

<b>Name and address of Core Network Practice</b>	<b>Name of signatory</b>	<b>Signature of signatory and date of signature</b>

Where other organisations are Members of our Network, these are:

<b>Name and address of Member organisation</b>	<b>Name of signatory</b>	<b>Signature of signatory and date of signature</b>

## **AGREED TERMS**

### **COMMENCEMENT AND STATUS**

1. In accordance with the Network Contract DES specification, this Agreement will be effective on the date that the commissioner receives confirmation from the Core Network Practices that all Members have signed the Network Agreement.
2. As soon as practical after the commissioner receives such confirmation, the Core Network Practices must notify other Members of the date that the Agreement became effective.
3. Our Network is established from the date this Agreement becomes effective.
4. Each Core Network Practice warrants that it has confirmed its participation in the Network Contract DES in accordance with the process set out in the Network Contract DES specification.
5. We agree that this Agreement is legally binding and is not an NHS Contract pursuant to section 9 of the National Health Service Act 2006.
6. In addition to the agreed terms set out in Clauses 1 to 106 (“the Clauses”), we have agreed specific matters about our Network and matters relating to the operation of our Network. These are set out in Schedule 1.
7. Where we have agreed rights and obligations that are additional to or, where expressly stated, replace, any of these Clauses, these are set out in Schedule 2.

### **PRINCIPLES**

8. We acknowledge that nothing in this Network Agreement is intended to vary, relax or waive any rights or obligations contained in the Core Network Practices’ primary medical services contracts relating to the provision of essential services under those contracts.
9. We will work together to establish an integrated and collaborative team environment to deliver the activities and aims of our Network.
10. We will co-operate with each other in a timely and effective way and give to each other such assistance as we may reasonably require in connection with this Agreement.
11. We will openly, honestly and efficiently share information with each other that is relevant to our Network in the manner set out in this Agreement.
12. We will aim to update this Agreement to incorporate relevant statutory changes and any changes in the way we work together as agreed in accordance with the decision-making process set out in this Agreement.
13. We will aim to update this Agreement as and when required. This will include when a national variation is published which is discussed by NHS Commissioning Board and the British Medical Association through the usual process or at any other point that circumstances require to enable the Core Network Practices to deliver any new Network Contract DES requirements.
14. We may agree additional principles. If we agree additional principles, these will be set out in Schedule 2.

## **GENERAL OBLIGATIONS AND PATIENT INVOLVEMENT**

15. We will carry out our obligations under this Agreement.
16. We will carry out our obligations with all due care, skill and ability and use our best endeavours to promote the interests of patients.
17. We will devote such time as may be required to properly carry out our obligations.
18. In carrying out our obligations, we will comply with all applicable laws.
19. We are each responsible for ensuring our individual regulatory compliance.
20. Where any incident that may impact on patient safety arises or where there is any potential breach of the Network Contract DES, we will ensure that all Core Network Practices are made aware as soon as practicable after we become aware of the issue. This is in addition to any action that may be required by our own services contracts.
21. Where any patient safety incident or potential breach of the Network Contract DES is investigated by a commissioner or a regulator, we will work collectively to respond to such investigation and share all relevant information with each other, the commissioner or regulator (as relevant) for the purpose of that investigation.
22. Where any of us propose any change to the services we provide to patients at a Network level, we will discuss how to best to involve and/or inform patients of those proposed changes in line with our collective and individual patient engagement obligations.

## **ACTIVITIES**

23. We agree that as members of our Network we will aim to work together in a collaborative manner to deliver network-based services. The arrangements for this collaborative working will be set out in Schedule 3. We acknowledge that Schedule 3 describes activities which will be undertaken by Core Network Practices and those which will be undertaken by all Members in relation to our Network. We each agree to comply with our individual obligations as set out in Schedule 3.

## **FINANCIAL ARRANGEMENTS**

24. We acknowledge that Schedule 4 describes the financial arrangements between the Core Network Practices and, if relevant, financial arrangements relating to the other Members. We each agree to comply with our individual obligations as set out in Schedule 4.
25. We each agree that where we receive payments to carry out any activity under this Agreement, that payment is utilised in a manner that constitutes an efficient and effective use of NHS funding.

## **WORKFORCE**

26. The aim of our Network is to deliver integrated primary and community health care services as outlined in Schedule 3, supported by an integrated workforce team.
27. Although the aim of our Network is to work as an integrated primary and community health care team, we will each have individual responsibility for our own staff. This Agreement does not automatically cover the arrangements for staff employed by individual Members relating to services that are outside the scope of this Agreement, but it can be expanded should Members so wish.

28. We acknowledge that Schedule 5 sets out workforce arrangements including the employment arrangements of any additional staff. We acknowledge that “additional staff” here refers to additional staff as defined and further explained in the Network Contract DES specification. Schedule 5 may also set out any arrangements for the re-organisation of existing staff for the purposes of carrying out activity for our Network. We each agree to comply with our individual obligations as set out in Schedule 5.
29. Where an individual is engaged by a Member for the purpose of carrying out an activity set out in this Agreement, we will include in Schedule 5 the employment arrangements and how the relevant individual will be deployed in relation to the relevant activity.
30. The Core Network Practices must ensure that at all times a Clinical Director has been appointed and is in place. The Clinical Director will have responsibility for delivering the relevant role requirements set out in the Network Contract DES specification. We may agree additional role requirements for the Clinical Director. If we agree additional role requirements, these will be set out in Schedule 2 and these will be in addition to and not replace the role requirements set out in the Network Contract DES specification.
31. The name of the Clinical Director and the method of appointment are set out in Schedule 1.

#### **INFORMATION SHARING AND CONFIDENTIALITY**

32. For the purposes of this Agreement, confidential information means the provisions of this Agreement and all information provided in connection with this Agreement which is secret or otherwise not publicly available (in both cases in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement.
33. We may each request from any Member any information, including confidential information, which the requesting Member, acting reasonably, considers is necessary to enable us to carry out the activity of our Network as set out in this Agreement. Such information may include (but is not limited to) patient records, information on expenditure on Network related activity, information on performance of activity under this Agreement and information on workforce arrangements.
34. Where information, including confidential information, is requested by a Core Network Practice, acting reasonably, for submission to the commissioner for the purposes of showing compliance with the Network Contract DES specification, we will provide the information so requested.
35. Provided information is requested in accordance with Clause 33, we agree that we will not unreasonably withhold agreement to share information following a request from another Member.
36. We will ensure that any information provided to another Member in accordance with this Agreement is accurate in all material respects and we will provide such information within reasonable timescales and in the format requested, having regard to any due contractual or legal obligations.

37. We agree that sharing and processing of patient records and other information considered to be personal data under any applicable data protection legislation will take place as and when it is required. Before any personal data is shared between any Members, the relevant Members will enter into a data sharing agreement. If any Member processes personal data on behalf of other Members, the relevant Members will enter into a data processing agreement.
38. Subject to Clause 39 below and/or unless the information is to be provided to a commissioner to show compliance with the Network Contract DES specification, we will keep confidential all confidential information disclosed to any one of us by any Member in connection with this Agreement and we will use all reasonable endeavours to prevent staff in our organisations or any other person under our express or implied control from making any disclosure to any person of that information.
39. In addition to disclosing any confidential information to the commissioner for the purposes of the Network Contract DES, any Member may disclose another Member's confidential information:
  - a) to comply with applicable legislation;
  - b) to any appropriate regulatory body;
  - c) in connection with any dispute resolution or litigation between the Members; and
  - d) as permitted under any other express arrangement or other provision of this Agreement,  
provided that:
    - e) the Member whose confidential information is being disclosed is, where practicable, given prior notification of the disclosure;
    - f) the disclosure is reasonably considered to be necessary; and
    - g) where practicable, the intent to disclose is discussed with the Clinical Director prior to the disclosure.
40. We may agree additional arrangements in relation to information sharing and confidentiality. If we agree additional arrangements, these will be set out in Schedule 2. We acknowledge that any additional arrangements set out in Schedule 2 will be in addition to, and will not replace, Clauses 32 to 39.

## **CONFLICTS OF INTEREST**

41. The Core Network Practices and the Clinical Director will develop arrangements for managing conflicts of interest.
42. The conflicts of interest arrangements will include arrangements for identifying and declaring interests, maintaining a register of interests, and the management of any conflicts of interest.
43. Once agreed by the Core Network Practices, the arrangements will apply to all Members.

## **INTELLECTUAL PROPERTY**

44. For the purposes of this Agreement, intellectual property means rights in and to inventions, patents, design rights (registered or unregistered), copyrights, rights in confidential information, database rights and any similar or analogous rights that exist anywhere in the world and including any application for any registration of the foregoing.
45. Each of us has our own existing intellectual property and we will retain the ownership of our respective intellectual property rights.
46. If any of us creates any new intellectual property in the course of this Agreement, the Member which creates the intellectual property will own the rights to that intellectual property unless agreed otherwise.
47. We agree that in the interest of our Network we will grant to each other a royalty free non-exclusive license to use our existing and newly created intellectual property for the purposes of fulfilment of our obligations under this Agreement.
48. We may decide a different approach to intellectual property matters. If we agree on a different approach, we will set this out in Schedule 2 and that approach in Schedule 2 will replace Clauses 44 to 47.

## **MEETINGS AND DECISION-MAKING**

### **Meetings of Core Network Practices**

49. Core Network Practices will arrange and attend meetings as often as is necessary to discuss any issues relating to the Network Contract DES including (but not limited to) performance, strategies and the operating environment relating to the delivery of the requirements of the Network Contract DES.
50. Core Network Practices will agree an agenda prior to each meeting and ensure papers are circulated to each Core Network Practice in advance.
51. With the agreement of Core Network Practices, Members who are not Core Network Practices may attend meetings of the Core Network Practices to participate in discussions, subject to the agreed decision-making processes as set out within Schedule 1.

### **Meetings of all Members of the Network**

52. Meetings of all of us will take place as often as is reasonably necessary to discuss any issues relating to our Network. Arrangements for these meetings will be agreed by us.

### **Meetings generally and decision-making**

53. Further arrangements relating to meetings of the Core Network Practices and meetings of all Members including (but not limited to) ways in which meetings can be held, attendance and quorum requirements, and how decisions are made are set out in Schedule 1. We acknowledge that any arrangements set out in Schedule 1 will be in addition to, and will not replace, Clauses 49 to 52 which will continue to apply.

## **JOINING THE NETWORK**

54. Clauses 55 to 58 below set out the minimum requirements relating to situations where an organisation wishes to join our Network. We may agree additional



arrangements in relation to an organisation joining our Network. If we do agree additional arrangements, these will be set out in Schedule 2. We acknowledge that any additional arrangements set out in Schedule 2 will be in addition to, and not replace, Clauses 55 to 58 which will continue to apply.

55. A person or organisation may from time to time indicate to one or more Members that it wishes to join our Network. Where this occurs, the relevant Member(s) will notify the Clinical Director and the request shall be discussed by all other Members as soon as practicable, as per the governance arrangements set out within Schedule 1.
56. In accordance with the arrangements for meetings and decision-making as set out in Schedule 1, it will be considered and decided whether it is appropriate for that person or organisation to join our Network.
57. We acknowledge that where a person or organisation seeking to join our Network would be a Core Network Practice, the Network Contract DES specification states that commissioner approval (not to be unreasonably withheld) will be required prior to that person or organisation joining.
58. Where a person or organisation joins our Network, this Agreement will be updated in accordance with the variation procedure to include reference to that persons or organisation as a Member and to reflect any consequential amendments to the Schedules of this Agreement that have been determined.

## **LEAVING THE NETWORK**

59. Clauses 60 to 79 below set out the minimum requirements relating to situations where a Member departs or is required to leave our Network. We may agree additional arrangements in relation to Member(s) leaving our Network. If we do agree additional arrangements, these will be set out in Schedule 2. We acknowledge that any additional arrangements set out in Schedule 2 will be in addition to, and not replace, Clauses 60 to 79 which will continue to apply.

### **Voluntary departure**

60. Though anticipated to be rare, a Member may choose to leave our Network. From the date the Member leaves our Network, that Member will also be removed from this Agreement and the Agreement will continue in force as between the remaining Members unless determined otherwise in accordance with the decision-making arrangements set out in Schedule 1 and any relevant requirements of the Network Contract DES specification.
61. Where a Member which is not a Core Network Practice wishes to leave our Network, it will notify all Members of its intention to leave and provide a preferred leaving date which must be at least three months after it notifies all Members of its intention to leave unless a different notice period is included in Schedule 2. Clauses 62 to 64 will apply in this situation.
62. In accordance with the arrangements for meetings and decision-making as set out in Schedule 1, the following matters will be considered or determined (as relevant):
  - a) the consequences of that Member's departure in relation to Network activities, financial arrangements, workforce, the continued viability of our Network, and any other Network related matters;
  - b) the actions required of the departing Member; and

- c) the actual leaving date.
63. The departing Member agrees to comply with all reasonable actions that are determined to be required of it before the actual leaving date. Such actions may include executing such documents as are required to ensure the business of our Network can be continued by the remaining Members. In accordance with Clause 59, we may have agreed additional general obligations in relation to Member(s) leaving our Network in Schedule 2. A departing Member will also comply with any of those obligations. If any actions are not completed prior to the actual leaving date, the departing Member will complete those actions as soon as practicable after that date.
  64. With effect from the date the Member leaves our Network, we will ensure that this Agreement is updated in accordance with the variation procedure to remove references to the departed Member and to reflect any changes to the Schedules that have been determined, including, without limitation, changes to services taking into account any relevant requirements of the Network Contract DES specification.
  65. Where a Core Network Practice wishes to leave our Network, it will notify all Members of its intention to leave and provide a preferred leaving date which must be at least six months after it notifies all Members of its intention to leave unless a different notice period is included in Schedule 2. Clauses 66 to 70 will apply in this situation.
  66. The Core Network Practices will ensure that the commissioner is notified as soon as practicable after all Members are notified of the intention of a Core Network Practice to leave. All Core Network Practices will work together with the commissioner in relation to determining appropriate arrangements relating to that Core Network Practice leaving in accordance with the Network Contract DES specification.
  67. In accordance with the arrangements for meetings and decision-making as set out in Schedule 1, the following matters will be considered or determined (as relevant) having regard to any views of the commissioner:
    - a) the consequences of the Core Network Practice's departure in relation to Network activities, financial arrangements, workforce and any other Network related matters;
    - b) the actions required of the departing Core Network Practice; and
    - c) the actual leaving date.
  68. It is acknowledged that while commissioner approval is not required for a Core Network Practice to cease to be signed up to the Network Contract DES, when a Core Network Practice is leaving our Network, the process to leave set out in the Network Contract DES specification must be followed.
  69. The departing Core Network Practice agrees to comply with all reasonable actions that are determined to be required of it before the actual leaving date. Such actions may include executing such documents as are required to ensure the business of our Network can be continued by the remaining Members. In accordance with Clause 59, we may have agreed additional general obligations in relation to Member(s) leaving our Network in Schedule 2. A departing Member will also

comply with any of those obligations. If any actions are not completed prior to the actual leaving date, the departing Core Network Practice will complete those actions as soon as practicable after that date.

70. With effect from the date the Core Network Practice leaves our Network, we will ensure that the Agreement is updated in accordance with the variation procedure to remove references to the departed Core Network Practice and to reflect any changes to the Schedules that have been determined.

### **Expulsion**

71. A Member may be required to leave our Network in certain circumstances. These include committing an act or omission set out in Clause 72 below or where an event set out in Clause 75 below occurs. From the date a Member is expelled from or required to leave our Network, that Member will be removed from this Agreement and the Agreement will continue in force as between the remaining Members unless determined otherwise in accordance with the decision-making arrangements set out in Schedule 1 and any relevant requirements of the Network Contract DES specification.
72. A Member must notify the relevant individual/groups as set out within the governance arrangements within Schedule 1 if that Member or another Member:
- a) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 calendar days after being notified in writing to make such payment;
  - b) commits a material breach of any term of this Agreement and that breach is either irremediable or (if such breach is remediable) fails to remedy that breach within the period determined and notified in writing;
  - c) repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
  - d) is not in breach of this Agreement but we have set out in Schedule 2 additional circumstances which enable us to take steps to expel a Member, and those additional circumstances apply to a Member,

and for the purposes of Clause 722(b) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which one or more Members would otherwise derive from this Agreement.

73. Where a Member has notified the relevant individuals/groups in accordance with Clause 722 and in accordance with the arrangements for meetings and decision-making as set out in Schedule 1, the following matters will be considered or determined (as relevant):
- a) the process to be followed for investigating the matter;
  - b) if it is determined that the event occurred:
    - i the consequences of the event in relation to Network activities, financial arrangements, workforce and any other Network related matters;
    - ii the actions required of any Member including the Member determined to have committed the event;

- iii whether, taking into account the seriousness of the event and any other relevant factors, the Member should be given the opportunity to rectify the matter or whether the relevant Member should be expelled from our Network;
  - c) if it is determined that the Member is to be expelled, any actions required of that Member and the expulsion date.
- 74. Where it is determined that a Core Network Practice committed the event and expulsion of that Core Network Practice is likely, any consideration or determination will have regard to any views of the commissioner and it is acknowledged that the process to leave as set out in the Network Contract DES specification must be followed.
- 75. A Member must notify all other Members as soon as it becomes aware that any of the events below may occur to that Member or another Member:
  - a) a Member is a Core Network Practice and its primary medical services contract expires or is terminated;
  - b) a Member is not a Core Network Practice and its services contract expires or is terminated such that it is reasonable to consider that the Member cannot continue to comply with its obligations under this Agreement; or
  - c) a Member undergoes an event of insolvency listed in Schedule 6.
- 76. Where a Member has notified other Members in accordance with Clause 75 and in accordance with the arrangements for meetings and decision-making as set out in Schedule 1, the following matters will be considered or determined (as relevant):
  - a) the likelihood of the relevant event occurring;
  - b) the consequences of the relevant event occurring in relation to Network activities, financial arrangements, workforce and any other Network related matters;
  - c) if it is determined that the relevant event is likely to occur or has occurred,
    - i the actions required by any Member including the Member to whom the event is likely to occur or has occurred;
    - ii whether the Member to whom the event is likely to occur or has occurred is required to leave our Network and if so the leaving date.
- 77. Where it is determined that a Core Network Practice committed an act or omission set out in Clause 72 or is likely to undergo (or has undergone) an event listed in Clause 75, any consideration or determination will have regard to any views of the commissioner and it is acknowledged that the process to leave as set out in the Network Contract DES specification must be followed. It is acknowledged that the process for a Core Network Practice to be required to leave our Network for any reason is dependent on the process to leave set out in the Network Contract DES specification which includes the involvement of the commissioner.
- 78. Where it is determined that a Member is to be expelled from or is required to leave our Network, that Member agrees to comply with all reasonable actions that are determined to be required of it before the expulsion/leaving date. Such actions may include executing such documents as are required to ensure the business of our Network can be continued by the remaining Members. In accordance with

Clause 59, we may have agreed additional general obligations in relation to Member(s) leaving our Network in Schedule 2. A departing Member will also comply with any of those obligations. If any actions are not completed prior to the expulsion date, the expelled or departing Member will complete those actions as soon as practicable after that date.

79. With effect from the expulsion date, we will ensure that the Agreement is updated in accordance with the variation procedure to remove references to the expelled or departed Member and to reflect any changes to the Schedules that have been determined.

## **VARIATION PROCEDURE**

80. We agree that the wording in the Clauses to this Agreement may not be varied unless a national variation is published which has been discussed by the NHS Commissioning Board and the British Medical Association through the usual process in which case that national variation will be deemed accepted by each Member and we will update this Agreement accordingly. Such national variation may also relate to schedules to this Agreement.
81. Subject to Clause 80, no variation of this Agreement shall be effective unless it is in writing and signed by all Members (or their authorised representatives).
82. We may decide a different variation procedure to that set out in Clause 81. If we agree on a different approach, we will set this out in Schedule 2 and that approach in Schedule 2 will replace Clause 81 but will not replace Clause 80.

## **DURATION AND TERMINATION**

83. This Agreement will continue for the duration of the Network Contract DES unless terminated earlier in accordance with its terms.
84. If all Core Network Practices cease to be signed up to the Network Contract DES or all Core Network Practices wish to wind up our Network (subject to any provisions in Schedule 2 that state the circumstances in which Core Network Practices can decide to wind up), our Network will be dissolved and this Agreement will terminate.
85. Prior to:
- a) the expiry of the Network Contract DES; or
  - b) all Core Network Practices ceasing to be signed up to the Network Contract DES or all Core Network Practices deciding to wind up our Network,
- and in accordance with the arrangements for meetings and decision-making as set out in Schedule 1, the following matters will be considered or determined (as relevant) having regard to any views of the commissioner:
- c) the consequences of the expiry or termination in relation to Network activities, financial arrangements, workforce and any other Network related matters;
  - d) the actions required of the Members; and
  - e) the actual expiry or termination date.
86. It is acknowledged that, while commissioner approval is not required for a Core Network Practice to cease to be signed up to the Network Contract DES, if all Core Network Practices do so, this leads to dissolution of our Network and so there will

need to be commissioner involvement in the process. We acknowledge that the commissioner may not unreasonably withhold consent to any changes to our Network proposed by us and this will include changes that result in the dissolution of our Network.

87. We each agree to comply with all reasonable actions that are determined to be specifically required of our organisation before this Agreement expires or terminates. If any actions are not completed prior to the expiry or termination date, we will complete those actions as soon as practicable after that date.
88. We may agree additional arrangements in relation to expiry or termination. If we do agree additional arrangements, these will be set out in Schedule 2 or other Schedules if more appropriate. We acknowledge that any additional arrangements set out in Schedule 2 or other relevant Schedule will be in addition to, and not replace, Clauses 84 to 87 which will continue to apply.

### **EVENTS OUTSIDE OUR CONTROL**

89. If an event occurs that is reasonably considered to be outside the reasonable control of the relevant Members and that event prevents one or more of us from carrying out our obligations under this Agreement, the affected Member(s) must:
  - a) notify all other Members as soon as practicable after the start of the event and after the event ceases;
  - b) take all reasonable steps to mitigate the consequences of that event;
  - c) resume performance of its obligations as soon as practicable; and
  - d) use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.
90. We agree that, provided an affected Member has complied with Clause 89, we will not be entitled collectively or individually to bring a claim for breach of obligations against the affected Member. The affected Member will not incur any liability to any of us for any losses or damages incurred by one or more of us provided that the event prevents the affected Member from carrying out its obligations under this Agreement.
91. We may agree additional arrangements in relation to events outside our control. If we do agree additional arrangements, these will be set out in Schedule 2. We acknowledge that any additional arrangements set out in Schedule 2 will be in addition to, and will not replace, Clauses 89 and 90 which will continue to apply.

### **DISPUTE RESOLUTION**

92. If any of us have a dispute in relation to this Agreement, we will seek to resolve the dispute together by holding meetings in accordance with Schedule 1. We will aim to discuss the dispute with a view to finding a resolution.
93. If we are unable to come to a satisfactory resolution between ourselves, any Member that is party to the dispute may refer the dispute to our Local Medical Committee (LMC). If the LMC agrees to hear our dispute, we will work with the LMC to agree a process for hearing the dispute.
94. We may decide a different approach to dispute resolution. If we agree on a different approach, we will set this out in Schedule 2 and that approach in Schedule 2 will replace Clauses 92 and 93.

## GENERAL

95. If a conflict or inconsistency arises between any wording in a Clause of this Agreement and any wording included in a Schedule of this Agreement, the wording in the Clause will take precedence unless this Agreement expressly states that in relation to a particular clause or clauses, a Schedule takes precedence.
96. We may have individual arrangements that are relevant to this Agreement with organisations that are not party to this Agreement. We may set out those arrangements in Schedule 7. If a conflict or inconsistency arises between any wording in a Clause or a Schedule of this Agreement (other than Schedule 7) and any wording included in Schedule 7, the wording in the Clause or Schedule (other than Schedule 7) will take precedence.
97. Unless we list any arrangements in Schedule 7, this Agreement constitutes the entire agreement between us in relation to our Network and the Network Contract DES and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to our Network and the Network Contract DES.
98. Termination or expiry of this Agreement or the fact that a Member has been removed from this Agreement will not affect any rights, remedies, obligations or liabilities of the Members that have accrued up to the date of termination, expiry or removal, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination, expiry or removal.
99. If this Agreement expires, terminates or a Member is removed from this Agreement, those provisions of this Agreement which are expressly or by implication intended to come into or remain in force and effect following such expiry, termination or removal, will so continue and continue to apply to a Member.
100. Any relaxation or delay of any of us in exercising any right under this Agreement must not be taken as a waiver of that right and must not affect our ability subsequently to exercise that right.
101. If any part of this Agreement is declared invalid or otherwise unenforceable, it will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining provisions.
102. This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
103. A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
104. Any notices given under this Agreement must be in writing and must be served by hand or post to the address of the relevant other Member(s) set out in the Agreement. Notices:
  - a) by post will be effective upon the earlier of actual receipt, or five calendar days after mailing; and
  - b) by hand will be effective upon delivery.

105. We may decide additional methods of serving notice. If we agree on additional methods, we will set this out in Schedule 2 and those methods in Schedule 2 will be in addition to, and will not replace Clause 104.
106. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and, subject to the dispute resolution provisions set out above, each Member irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).



## Guidance Notes

### General

The Template Primary Care Network Agreement (the Network Agreement) is to be used to record the arrangements between the organisations working together in a primary care network (PCN). It is a requirement of the Network Contract Directed Enhanced Service Scheme (the Network Contract DES) that the GP practices within a PCN have an agreed Network Agreement in place.

The Network Agreement should be used between the GP practices within a PCN that have signed up to the Network Contract DES and, reflecting the wider collaboration between PCN providers, with any other organisations that are involved with the PCN. There is no requirement within the Network Contract DES in 2019/20 for any collaboration between practices and other providers to be documented in the Network Agreement but the PCN can choose to include other providers where such relationships exist. The organisations signed up to the Network Agreement are referred to as Members.

The Network Agreement is a legally binding contract.

The Network Agreement consists of;

- a set of Clauses which are mandatory and cannot be varied by the Members unless expressly indicated; and
- a set of Schedules which are to be populated by each PCN with its specific arrangements. The completion of Schedule 1 is mandatory.

The Clauses set out a basic framework of rights and obligations between the Members, covering matters that are usually present in a legally binding contract. These include, commencement, duration, termination, information sharing, confidentiality, intellectual property and general contractual provisions.

The Clauses also covers principles of working together that are necessary for a PCN to be effective as well as situations that may occur to a PCN, including organisations joining and leaving the PCN.

The Clauses are supplemented by the Schedules.

Schedules 1 (Network Specifics) and 2 (Additional Terms) contain additional obligations relating to the operation of the PCN. Schedule 1 **must** be populated with the relevant information but it is for PCNs to determine if they want to add additional terms in Schedule 2. The Clauses recognise that a PCN will likely want to personalise various processes and it is expressly indicated in the Clauses whether any additional information included in Schedule 2 replaces, or is simply additional to, the Clauses.

Clause 37 requires parties to enter into data sharing or data processing agreements as required. Template data sharing agreements will be made available for use.

## **Schedules 1 – Network Specifics**

Schedule 1 must be populated before the GP practices in a PCN submit the initial Network Agreement as set out in the Network Contract DES specification.

The Network Area must be set out, along with the name of the Clinical Director, the method of their appointment and the nominated payee.

Decision-making is perhaps the most critical part of the Network Agreement. Schedule 1 requires detail on how a PCN holds meetings and makes effective decisions. The matters below are provisions that need to be considered and explained in Schedule 1:

- *Matters to be decided* – the Clauses set out certain matters which need decisions, such as whether to allow an organisation to join and whether to expel a member. There will be a range of other matters that need deciding such as activities, financial arrangements, workforce matters, etc, The PCN needs to consider what level of detail it requires here and whether to cross refer to the matters set out in other Schedules.
- *Manner of meetings* – in person, by telephone, use of video conferencing. There need to be clear arrangements about each type of meeting. *Pre-meeting activities* – are agendas and supporting papers circulated, by whom and to what timescales?
- *Attendance* – who is allowed to attend and in what capacity, are representatives/deputies allowed, are there minimum attendance requirements or is this on a matter by matter basis; identify provisions that the Members agree to ensure that those attending meetings and taking decisions have authority to bind the Member they represent;
- *Conduct of meeting* – is there a Chair, what does the Chair do?
- *Voting* – what decisions are made by which Members? Are all decisions made by all Members or can different matters be decided by different groups of Members (such as all GP practices)? Are decisions made unanimously or by majority? If decision are made in relation to expelling a Member, PCNs should consider voting arrangements and the extent to which the Member about whom a decision is being made can participate.
- *Minutes* – are meetings minuted, who takes them, are they circulated?

## **Schedule 2 – Additional Terms**

The Clauses indicate where a PCN can add additional wording. For example, the arrangements for an organisation joining the PCN are set out in the Clauses but where a PCN decides on a specific approach to dealing with potential Members, it can set out those details in Schedule 2. The provision in the Clauses continue to apply and so any PCN specific wording must work around the Clauses.

Certain Causes allow wording in Schedule 2 to replace wording in the Clauses. For example, the dispute resolution Clauses set out a basic process for resolving disputes. The PCN may decide that a more exhaustive process is beneficial. This can be set out in Schedule 2 and will replace the basic process in the Clauses.

Unless a Clause indicates that it can be replaced by wording in Schedule 2, the default position is that it cannot. Schedule 2 will usually therefore operate in tandem with the Clauses.

If there is any additional information that a PCN wishes to include that is not set out in the Clauses, this can be included in Schedule 2. For example, the Network Agreement does not contain wording relating to Freedom of Information Act (FOIA) requests. A member of the PCN to which FOIA applies may want to see agreed processes for dealing with such requests. The PCN can therefore include this in Schedule 2. Similarly any restrictions on what members must, should, can and/or can't do, e.g. insurance requirements, non-solicitation of other Members' staff, storage of information (to the extent not in the separate data sharing arrangements), place of business (potentially) or licences (potentially), can be included here.

### **Schedule 3 – Activities**

This Schedule is to be populated by the PCN with information setting out who does what in relation to matters relevant to the Network Agreement. It is for PCNs to decide what level of detail is included here and what can be left for individual Members to decide. There should be enough clarity for every Member to know what it and every other member is responsible for so as to reduce the potential for disputes.

Matters that can be set out here also include how the Members can monitor the activity being undertaken by individual Members. PCNs may want to include service levels and key performance indicators here – essentially setting out how performance will be measured.

### **Schedule 4 – Financial Arrangements**

GP practices in the PCN receive funding from the commissioner under the Network Contract DES. The funding is funnelled through one recipient. This Schedule will therefore need to clearly set out who gets what in terms of payments. This Schedule could link to Schedule 3 so as to make clear that an organisation is paid a set amount for a specific activity.

As with Schedule 3, the level of detail required here must be sufficient for each member to know what money is to be given and received and when.

Other related financial arrangements can be included here such as how in-common expenses are split, how profits/losses are managed, how PCN accounts are dealt with, banking arrangements that are separate from practices' individual arrangements, responsibility for taxation arrangements, etc.

Other financial related matters can be included here as required such as whether Members are required to provide indemnities, e.g. if a member wishes to leave or is required to leave. Any caps on indemnities should be included and PCNs should decide whether this is the same for each member.

In a similar way, the PCN will need to consider if Members are required to have insurance for Network related activity over and above the insurance they already hold. Costs incurred in the running of the PCN, e.g. costs of meetings and administration activity can be set out here. If relevant, the PCN may want to make

clear here how the accounts of the PCN are managed.

### **Schedule 5 – Workforce**

An important element of the Network Contract DES is the provision of funding for additional staff. This schedule needs to set out the arrangements in the PCN for engaging or employing these persons.

Matters that could be included here include how an individual is employed, who employs that individual and under what terms, and what policies apply to that individual if they are carrying out work across the Network at different premises.

### **Schedule 6 – Insolvency**

This schedule sets out a list of suggested different events of insolvency that would enable Members to take action under the Clauses. This Schedule can be amended by the PCN as it sees fit.

### **Schedule 7 – Arrangements with organisations outside of the Network**

This schedule is used for referring to or setting out arrangements with organisations outside the PCN. It will be important for all Members to know which outside organisations other Members are working with to the extent to which it is relevant for PCN related matters. It could be complicated to weave in those other arrangements into the Network Agreement and so Schedule 7 enables them to be recognised and identified by the PCN.