



MARCH 2, 2023

MEMORANDUM OF UNDERSTANDING BETWEEN
FIVE LONDON ICBS
FOR OPERATIONAL MANAGEMENT OF PHARMACY, OPTOMETRY &
DENTAL (POD) DELEGATED SERVICES FROM 1 APRIL 2023

FINAL: 2 MARCH 2023

Memorandum of Understanding

between

**North East London ICB,
North Central London ICB,
North West London ICB,
South East London ICB,
South West London ICB**

For

**Operational Management of Pharmacy, Optometry and Dental
(POD) Delegated Services from 1st April 2023**

“POD MOU”

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| | | <p>7.1.4: To reflect individual ICB responsibility for establishing Acute Dental contractual arrangements</p> <p>7.1.13: Added General Pharmaceutical Council</p> <p>7.1.15: Clarify support to ICB internal audit and local fraud team</p> <p>8.1.6: Added within scope of POD COG TOR</p> <p>9.3: Added reference to paragraph 8.1.9</p> <p>9.8: Added having regard to 8.1.9, 9.3.1 and 9.3.2</p> <p>9.6: ICB interface with POD Commissioning Team between meetings</p> <p>9.7: ICBs have individual responsibility for POD commissioning and contracting decisions.</p> <p>11.1.4(f): Amended so that COG is forum for planning transformation of POD services</p> <p>12.1.2: Reworded for clarity</p> <p>12.12: All Financial decisions will be made under individual ICB governance processes.</p> <p>12.3: Text deleted which suggested that decisions were not made under ICB individual governance processed.</p> <p>13.2: Quality & Performance processes set out in SOPs</p> <p>15.1.3: Escalation of dispute between the five ICBs to CLICs added as an option</p> <p>24.1.2(b): Amended to clarify that there is no liability for patients outside London.</p> <p>24.6: ICB Liability for costs of investigations and remedial actions.</p> | |
| 02/03/23 | Jonathan Weaver | <p>Where reference is made to Regional Clinical Advisors in paras 9.10, 9.11 and 10.3 added 'and/or consultants in dental public health'</p> <p>9.3.2 Added 'with input from Dental Public Health'</p> <p>11.1.3(g) Amended to Consultant in Dental Public Health</p> <p>13.1 Amended to include circumstances of involvement of Consultant in Dental Public Health</p> | 7 |

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Definitions

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| CLICs | Collaboration of the London ICBs, being a meeting of the Chief Executives of the five London ICBs |
| COG | Commissioning Oversight Group |
| COSOP | Cabinet Office Statement of Practice |
| CPs | Community Pharmacists |
| CQC | Care Quality Commission |
| Delegation Agreement | The Delegation Agreement between an individual ICB and NHS England in respect of POD services |
| FOI | Freedom of Information |
| GDPs | General Dental Practices |
| GOS | General Ophthalmic Services |
| GPhC | General Pharmaceutical Council |
| Host ICB | ICB responsible for hosting delegated POD services (i.e. NEL ICB) |
| ICB | Integrated Care Board |
| LDC | Local Dental Committee |
| LOC | Local Optical Committee |
| LPC | Local Pharmacy Committee |
| LRC | Local Representative Committees |
| NHS BSA | NHS Business Services Authority |
| NHS PCSE | NHS Primary Care Support England |
| PAG | (London) Performance Advisory Group |
| PCDP | <i>TBA</i> |
| PDAF | Pre-Delegation Assessment Framework |
| PLDP | Performer List Decisioning Making Panel |
| POD | Pharmacy, Optometry and Dental |
| POD Commissioning Team | The team responsible for commissioning and contracting of POD services, employed by NEL ICB (Host ICB) |
| SOPs | Standard Operating Procedures |

1. Introduction to the Memorandum of Understanding

- 1.1 In the London Region of NHS England (NHSE), the five London Integrated Care Boards (ICBs) named below will each take on the delegated responsibility for Pharmacy, Optometry and Dentistry (POD) services from 1st April 2023:
 - 1.1.1 NHS North East London ICB
 - 1.1.2 NHS North West London ICB
 - 1.1.3 NHS North Central London ICB
 - 1.1.4 NHS South West London ICB
 - 1.1.5 NHS South East London ICB
(referred to as 'the five ICBs')
- 1.2 This follows the legal and operational establishment of ICBs on 1st July 2022 as a result of the Health and Care Act 2022 and NHS England determining that it shall delegate responsibility for the commissioning and contracting of Community Pharmacy services, General Ophthalmic services, General Dental services, and Acute and Community Dental services (collectively referred to as "POD services") to ICBs. These delegation arrangements by NHS England are the subject of a separate delegation agreement signed by all ICBs that will take effect from 1st April 2023.
- 1.3 The five abovementioned ICBs have determined that NHS North East London ICB (NEL ICB) will act as the "Host ICB", hosting a central POD Commissioning Team that will include staff whose employment will transfer to the Host ICB from NHS England, and that will be responsible for co-ordinating the commissioning and contracting of POD services on behalf of all five ICBs.
- 1.4 The five ICBs have agreed to the "hosting" arrangement to allow an initial lift and shift of the POD Commissioning Team from NHS England to NEL ICB to ensure the safe landing of the POD commissioning and contracting function. Accordingly, these arrangements may be changed by the parties by mutual agreement in the future, this MOU being subsequently amended.
- 1.5 This MOU sets out the arrangements governing the appointment of NEL ICB by the five ICBs as the Host ICB to take effect from 1st April 2023.
- 1.6 NHS England has agreed to continue to act as employer for the POD Commissioning Team for the period 1st April 2023 to 30th June 2023, i.e. for the first three months following delegation of the responsibility for the commissioning and contracting of POD services to ICBs. These arrangements are not the subject of this MOU and will be set out in a separate agreement between NHS England and the Host ICB.
- 1.7 For purposes of clarity, this MOU also includes relevant details of the relationship between the Medical Directorate (which will continue to fall under the responsibility of NHS England London Region), the Host ICB and the four other ICBs, even though NHS England is not a party to this MOU.

2. Objectives of this MOU

- 2.1 This Memorandum of Understanding (MOU) forms an agreement between North East London ICB (referred to as the "Host ICB") and the other four ICBs (referred to as "the four ICBs") in relation to the hosting of a centralised London team to support the commissioning and contracting of POD services from budgets delegated to all five London ICBs.

- 2.2 This MOU is not intended to be a legally enforceable contract and it does not replace or supersede any legal obligations that apply to each individual ICB.
- 2.3 The objectives of this MOU are to:
- 2.3.1 Set out the common purpose and key principles of the relationship between the five ICBs and how this relates to NEL ICB's role as Host ICB;
 - 2.3.2 Enable all five ICBs to work together to:
 - a) provide an initial lift and shift of the POD Commissioning Team from NHS England London Region to secure a safe landing of the commissioning function to ICBs;
 - b) share information and commission POD services with a pan London perspective of health need and inequalities;
 - c) discharge their delegated responsibilities effectively;
 - 2.3.3 Establish the role, responsibilities and liabilities of the Host ICB working on behalf of all five ICBs;
 - 2.3.4 Establish the Host ICB as the organisation to receive those POD services commissioning and contracting staff transferred from NHS England London Region;
 - 2.3.5 Enable staff employed by the Host ICB to integrate effectively with the five ICBs, including the establishment of appropriate decision-making processes and Standard Operating Procedures (SOPs); and
 - 2.3.6 Establish principles for managing commissioning and contracting risks, including financial, service delivery, reputational, political and contract performance risks.

3. Principles of this MOU

- 3.1 The principles of this MOU are in line with those set out in the Pre-Delegation Assessment Framework (PDAF) Overview July 2022, and align to the Delegation Agreements between NHS England and the five individual ICBs, and include:
- 3.2 The establishment of a single operating model for all five ICBs that:
- 3.2.1 Fosters and continues a history of joint working between the five ICBs;
 - 3.2.2 Allows for the transfer of the employment of experienced staff to the Host ICB and minimises risk of the POD Commissioning Team being destabilised by different models;
 - 3.2.3 Maintains subject matter expertise and efficiencies; and
 - 3.2.4 Allows a pan London perspective to the commissioning and contracting of POD services, recognising that ICB financial allocations will be based on the historic spend on contractors located in their geographical area, which will include

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funding for patients that are not registered with GPs or resident within their boundaries;

- 3.3 And builds around a central hub model operating on behalf of all five ICBs:
 - 3.3.1 The Host ICB providing the POD commissioning, contracting and supporting functions;
 - 3.3.2 Subject matter expertise being retained by the existing POD Commissioning Team;
 - 3.3.3 An employment commitment that all POD services staff are employed by the Host ICB where their employment is transferred from NHS England London Region; and
 - 3.3.4 All five ICBs providing system governance and leadership via the POD Commissioning Oversight Group (COG).

4. Commencement Date

- 4.1 This MOU shall commence on 1st April 2023 and terminate in accordance with the provisions of paragraph 16.

5. Transfer of Staff

- 5.1 As part of this MOU, the Host ICB agrees to employ NHS England staff who form part of the pharmaceutical, general ophthalmic, and dental services commissioning team (referred to as the POD Commissioning Team) on behalf of the five ICBs.

6. Transitional Arrangements

- 6.1 This MOU recognises that there will need to be a transitional period between 1st April 2023 and 30th June 2023, following the delegation of responsibility for the commissioning and contracting of POD services to the five ICBs, during which NHS England London Region continues to be the employer of the POD Commissioning Team staff even though the obligations of the Host ICB under this MOU, many of which will be discharged by the POD Commissioning Team, commence on 1st April 2023. The detail of any arrangements between the Host ICB and NHS England London Region associated with this transitional period are not the subject of this MOU.

7. Responsibilities Delegated to the Host ICB

- 7.1 The Host ICB will assume the following responsibilities on behalf of the five ICBs:
 - 7.1.1 Employment of all staff within the POD Commissioning Team from 1st July 2023, with associated responsibility for all legal and NHS workforce requirements;

- 7.1.2 Reporting of contractual, financial and activity performance to the five ICBs;
- 7.1.3 Ensuring that contractors are paid under their respective contracts (or under the Pharmacy Framework Agreement), working appropriately with NHS Business Services Authority (NHS BSA) and NHS Primary Care Support England (NHS PCSE);
- 7.1.4 Management of all contracts necessary for the commissioning of POD services, including the Pharmacy Framework Agreement, preparation and issue of any relevant contract variations and contract monitoring information for the five ICBs. NB. In respect of acute dental contracts, the POD Commissioning Team will provide each of the five ICBs with appropriate schedules of information for inclusion in their own individual contracts with those providers, and therefore each individual ICB will be responsible for establishing contracts with those providers (see paragraph 9.13);
- 7.1.5 Management of the establishment of new POD services through procurement and the implementation of Pharmacy Control of Entry requirements;
- 7.1.6 Management of the termination of existing POD services where necessary or required;
- 7.1.7 Implementation of all relevant national POD policies and guidance, liaising as appropriate with relevant national teams on behalf of the five ICBs, including:
 - (a) ensuring compliance with the Mandated Guidance set out in Schedule 9 (Mandated Guidance) of the Delegation Agreement between NHS England and individual ICBs and such further Mandated Guidance as may be issued by NHS England from time to time, insofar as it could be considered to reasonably apply to the obligations for the Host ICB under this MOU; and
 - (b) ensuring compliance with any national standards or best practice as published from time to time (and/or submission of data sets required), as applicable to Pharmacists, Optometrists, Dentists, or employed POD Commissioning Team staff;
- 7.1.8 Working with the POD clinical advisors engaged through NHS England London Region, to manage performance and quality, implementing necessary contractual actions and permitted actions under the Pharmacy Framework Agreement;
- 7.1.9 Providing support to individual ICBs in their responses to Freedom of Information (FOI) requests as set out in paragraph 9.4;
- 7.1.10 Where appropriate, co-ordinating necessary responses to complaints as required by complaints teams residing in each individual ICB;
- 7.1.11 Liaising with the Local Representative Committees, the LPC, LDC and LOC, keeping ICBs appropriately informed;
- 7.1.12 Providing administration for the POD Commissioning Oversight Group (COG) and other groups established between the five ICBs and POD Commissioning Team for the purposes of discharging the POD commissioning function;

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- 7.1.13 Liaising as necessary with the Care Quality Commission (CQC) and General Pharmaceutical Council (GPhC) working with the NHS England London Regional Medical Directorate;
 - 7.1.14 Liaising and close working with the NHS England London Regional Medical Directorate and Health Education England;
 - 7.1.15 Liaising and close working with the Fraud team, and internal auditors of NEL ICB and other ICBs as required in accordance with paragraphs 9.14 and 9.15;
 - 7.1.16 Providing information and/or explanations on behalf of the five ICBs to NHS England in discharge of ICB responsibilities under their individual Delegation Agreements (Clauses 10.1.1 and 10.1.2 of those Agreements) in relation to, and/or being relevant to, the Delegated POD Functions that are the subject of this MOU;
 - 7.1.17 Supporting the five ICBs to discharge their financial responsibilities as set out in paragraph 12 of this MOU;
 - 7.1.18 Supporting the five ICBs to discharge their responsibilities in respect of patient engagement, reducing health inequalities, addressing wider dental and wider public health needs as set out in paragraph 9.3; and
 - 7.1.19 Facilitating, insofar as they apply to Pharmacists, Optometrists and Dentists, the following services:
 - (a) infection control
 - (b) clinical waste
 - (c) contractor occupational healthacting as an intermediary between the responsible body / commissioner of the above services, POD contractors and the five ICBs.
- 7.2 The Host ICB must ensure that the above responsibilities are appropriately discharged by the POD Commissioning Team in accordance with the agreed London Operating Model for POD services, any NHS England Standard Operating Procedures (SOPs) where such SOPs have been acknowledged and/or agreed by the five ICBs at the POD Commissioning Oversight Group (described in section 11). Such SOPs that have been agreed by the five ICBs at commencement of this MOU are listed and embedded in Appendix 1.

8. Responsibilities Discharged by All Five ICBs Collectively

- 8.1 The following responsibilities will be discharged collectively by all five ICBs and managed through the POD Commissioning Oversight Group (described in section 11), as set out below:
 - 8.1.1 To work collaboratively for the common good of London, providing a “safe landing” for the commissioning of POD services;

- 8.1.2 Oversight of activities of the POD Commissioning Team, providing senior London system leadership, advice and support;
- 8.1.3 Periodic review and update of this MOU governing the relationship between the five ICBs to ensure that it remains fit for purpose;
- 8.1.4 Oversight of the financial and overall performance of POD services across London, including where appropriate the escalation of issues associated with the financial allocations of individual ICBs to NHS England London Region for resolution in accord with the ICBs' Delegation Agreements, where such issues are not able to be resolved at the POD Commissioning Oversight Group (COG).
- 8.1.5 Approval of, and amendment to, Standard Operating Procedures of the POD Commissioning Team;
- 8.1.6 Decision-making within the scope of the Terms of Reference of the POD Commissioning Oversight Group relating to individual contracts or pharmacy arrangements under the Pharmacy Framework Agreement where matters are escalated for decision by the POD Commissioning Team (i.e. matters that do not fall under agreed SOPs). This may include actions arising from clinical performance issues;
- 8.1.7 London system leadership with regard to POD services;
- 8.1.8 Pan London policy development, where necessary and appropriate; and
- 8.1.9 Developing pan London strategies for the development/transformation of POD services, where appropriate adopting a pan London approach and planning:
 - (a) for addressing dental and wider public health needs;
 - (b) for addressing health inequalities; and
 - (c) for the engagement of patients and the public.

9 Responsibilities Retained by Each Individual ICB

- 9.1 To identify a lead officer(s) to attend and, with sufficient authority, contribute to the POD Commissioning Oversight Group.
- 9.2 To discharge their financial responsibilities as set out in paragraph 12 of this MOU.
- 9.3 To appropriately discharge their responsibility under their Delegation Agreement and inform the development of pan London strategies for the development/transformation of POD services as referred to in paragraph 8.1.9 in respect of:
 - 9.3.1 Legal duties to involve patients and the public in shaping the provision of POD services, including by working with local communities, under-represented groups and those with protected characteristics under the Equality Act 2010; and
 - 9.3.2 Considering how they can address health inequalities in performing their obligations with input from Dental Public Health.

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- 9.4 To be responsible for the management of, and response to, Freedom of Information (FOI) requests in respect of POD services as required by their Delegation Agreement.
- 9.5 To manage the complaints process for POD, appropriately liaising with the POD Commissioning Team.
- 9.6 To cascade information as appropriate within their individual ICB. The lead POD officer referred to in paragraph 9.1 shall themselves, or identify a named individual who will provide the interface between their ICB and the POD Commissioning Team between the meetings of the POD Commissioning Oversight Group, supporting the POD Commissioning Team in the operational delivery of its functions.
- 9.7 To make decisions relating to the commissioning of POD services in a timely way in compliance with its own ICB Governance Framework, engaging appropriately with other ICBs at the POD Commissioning Oversight Group, where such decisions impact across ICB borders or more widely across London, and to present all POD commissioning and contracting decisions at the POD Commissioning Oversight Group.
- 9.8 To work with the other four ICBs and the POD Commissioning Team to co-develop POD commissioning plans across London, having regard to paragraphs 8.1.9, 9.3.1 and 9.3.2.
- 9.9 To ensure that appropriate and transparent reporting and accountability mechanisms are put in place within each ICB in relation to POD.
- 9.10 To manage the engagement of various local individual ICB teams such as the infection control team and communications team where such engagement is necessary with the POD Commissioning Team or Regional Medical Advisors and/or Consultants in Dental Public Health.
- 9.11 To work with the POD Commissioning Team, regional clinical advisors and Consultants in Dental Public Health (in terms of health protection) to manage local stakeholder engagement and communications, should this be necessary.
- 9.12 To liaise as appropriate with the Local Representative Committees, the LPC, LDC and LOC, keeping the POD Commissioning Team appropriately informed.
- 9.13 To establish appropriate contractual arrangements with acute providers to commission acute dental services in collaboration with the POD Commissioning Team (see paragraph 7.1.4).
- 9.14 To be responsible for any necessary internal audit of expenditure within its ledger and associated actions, with the appropriate support of the POD Commissioning Team (see paragraph 7.1.15).
- 9.15 To lead any liaison with the local Fraud team as necessary in relation of expenditure within its ledger and associated contracts, with appropriate support of the POD Commissioning Team (see paragraph 7.1.15).

10 Responsibilities Retained by NHS England London Region (Reserved Functions)

- 10.1 Management of the national performers lists for Dentists and Optometrists, including hosting the London Performer List Decision Making Panel (PLDP).
- 10.2 Management of the revalidation and appraisal process for Dentists and Ophthalmic Medical Practitioners.
- 10.3 Specialist clinical advice for POD services provided by the Regional Medical Directorate and Consultants in Dental Public Health, including presence, as appropriate, at the POD Commissioning Oversight Group. Specialist advice shall include presentation of relevant learning and pan London issues at the POD Commissioning Oversight Group.
- 10.4 Management of concerns about the clinical performance of individual Dentists, Pharmacists and Optometrists, including hosting the London Performance Advisory Group (PAG).
- 10.5 Section 7A functions (i.e. prison services).

11 Governance Arrangements

11.1 The following governance arrangements will be put in place:

- 11.1.1 In signing this MOU, the five ICBs confirm that the proposed arrangements detailed within this MOU have been endorsed by each individual ICB through each ICB's own relevant governance processes.
- 11.1.2 The five ICBs shall establish the POD Commissioning Oversight Group to provide oversight to the agreement and the discharge of the responsibilities of the Host ICB.
- 11.1.3 The POD Commissioning Oversight Group (see Terms of Reference at Appendix 2 below, agreed at commencement of this MOU) shall have membership comprising:
 - a) The Chairperson (TBA)
 - b) A Senior Officer representative of each Individual ICB
 - c) A Senior Officer representative of the Host ICB
 - d) The POD Service Commissioning Manager, or suitable deputy
 - e) Lead Finance Officer for POD of the Host ICB, or suitable deputy
 - f) POD clinical advisors
 - g) Consultant in Dental Public Health
- 11.1.4 The POD Commissioning Oversight Group shall:
 - (a) Provide advice or steer to the Host ICB and POD Commissioning Team, where such advice or steer is required by the Host ICB or POD Commissioning Team to discharge their responsibilities under this agreement;
 - (b) Make decisions as required and within the scope of the TOR of the group to enable the Host ICB or POD Commissioning Team to discharge their responsibilities under this agreement;

- (c) Be responsible for amending or agreeing new POD Standard Operating Procedures;
 - (d) Seek approval, where required or necessary, under individual ICB governance processes where the POD Commissioning Oversight Group makes a recommendation in relation to a decision but is unable under its terms of reference to approve that decision;
 - (e) Where appropriate, escalate matters to NHS England London Region associated with the financial allocations of individual ICBs for resolution in accord with the ICBs' Delegation Agreements, where such issues are not able to be resolved at the POD Commissioning Oversight Group; and
 - (f) Act as forum for planning the ongoing evolution/transformation of the commissioning arrangements for POD services across London, but recognising that ultimate responsibility rests with each individual ICB.
- 11.1.5 The POD Commissioning Oversight Group shall be able to escalate any matters as appropriate to CLIC (the Collaboration of London ICBs) via the Director of the London ICS Network.
- 11.1.6 The POD Commissioning Oversight Group shall be able to convene time-limited working groups where necessary to address specific issues.
- 11.1.7 NEL ICB as Host ICB shall be responsible for the employment of the POD Commissioning Team under the governance framework of NEL ICB.
- 11.1.8 Where Standard Operating Procedures (SOPs) have been agreed by the POD Commissioning Oversight Group (see Appendix 1 below), these shall be implemented by the POD Commissioning Team. It is the responsibility of NEL ICB as Host ICB to ensure that all such SOPs are properly implemented.
- 11.1.9 The POD Commissioning Oversight Group will maintain a risk register with risks appropriately cascaded to individual ICBs and escalated where necessary to CLIC via the Director of the London ICS Network. NB. The risk register must follow such format as notified by NHS England to ICBs from time to time.

12 Financial Arrangements

- 12.1 Each ICB shall receive its own financial allocation for POD services. For 2023/24 (i.e. the first year) this will not include the costs of employing the POD Commissioning Team.
- 12.1.1 For this first year, and until POD allocations for individual ICBs are adjusted, the Host ICB will be directly funded by NHSE London Region based on the current staff budget (and the Host ICB will need to invoice NHSE accordingly). Any underspends, overspends or increases in budget will be the responsibility of the five ICBs and shared in proportion to ICB financial allocation for the year for which any adjustment in budget is required.

- 12.1.2 In future years (from date currently unknown), if the relevant running cost allocation is not given to the Host ICB by NHSE London Region (and is instead distributed to all five ICBs), then the Host ICB will need to recover funding to cover the cost of staffing by invoicing all five ICBs. It has been determined that the recovery of such costs will be in proportion to ICB financial allocation for that year (unless it is clear from the financial allocation adjustment how much each ICB has additionally received).
- 12.2 Income and Expenditure for POD services shall be recorded and managed on the accounting ledgers of each individual ICB, and each individual ICB shall be responsible for appropriately reporting such spend against its allocation to NHS England.
- 12.3 Each ICB shall ensure that the POD Commissioning Team is notified in a timely way of its POD financial allocation, and of any changes to its POD financial allocation, to allow the POD Commissioning Team to appropriately discharge its functions for the five ICBs.
- 12.4 All payments for POD services shall be made directly from the relevant bank accounts of each ICB as follows:
- 12.4.1 Payments to General Dental Practices (GDPs) and Community Pharmacists (CPs) shall be made by NHS Business Services Authority (NHS BSA) from each ICB bank account. For GDPs, NHS BSA will make payments based on the contract values advised by the POD Commissioning Team, and for CPs based on activity submitted/claimed through the NHS BSA system by the CPs. NHS BSA are responsible for any processing/ validating of such claims.
- 12.4.2 Payments for General Ophthalmic Services (GOS) shall be made by NHS Primary Care Support England (NHS PCSE) from each ICB bank account. NHS PCSE will make payments based on the activity submitted/claimed by GOS contractors. NHS PCSE are responsible for any processing/ validating of such claims.
- 12.4.3 Payments for Acute and Community Dental providers **will need to be made on a monthly basis by each ICB** based on contract payment information provided by the POD Commissioning Team. The timetable for the provision of this payment information shall be agreed by the POD Commissioning Oversight Group.
- 12.5 Each ICB shall be responsible for undertaking any necessary:
- 12.5.1 accounting ledger reconciliations;
- 12.5.2 element of financial audit associated with transactions on its financial ledger;
- 12.5.3 adjustments for accruals/prepayments to its own accounting ledger;
- 12.5.4 reporting of spend/income recorded on its own accounting ledger; and
- 12.5.5 loading of budgets onto its own accounting ledger.

The POD Commissioning Team shall be responsible for providing any necessary contractual information to support any of the individual ICB responsibilities listed above and will support each ICB by provision, or facilitating provision from third party payments agencies, of any relevant audit evidence.

12.6 The budget allocations for each individual ICB shall be based on the expenditure net of income (where applicable) for Financial Year 2022/23 of:

12.6.1 GDPs located within their geographical boundaries;

12.6.2 CPs located within their geographical boundaries;

12.6.3 GOS providers located within their geographical boundaries; and

12.6.4 For Acute and Community Dental Services, patients registered with that ICB.

In subsequent paragraphs of this MOU the above providers for a given ICB are referred to as the *ICB's portfolio of providers*.

12.7 On a monthly basis, according to a timetable agreed between the five ICBs and the POD Commissioning Team through the POD Commissioning Oversight Group, the POD Commissioning Team shall provide each ICB with a POD Monthly Contract Performance, Finance and Activity Report setting out the activity and net expenditure (after accounting for income) for their portfolio of providers. Such reports shall be based on the best available information at the time, which will be subject to payment processing lags (i.e. for CP 2 months and for GOS 1 month (there is no time delay for GDS)), and although circulated by the POD Commissioning Team to each individual ICB, will be presented by the POD Commissioning Team *once for London* at the POD Commissioning Oversight Group.

12.8 At any time the five ICBs will be able to individually access the COMPAS system and eDen online tools for GDS to access up-to-date contractual, financial and activity information.

12.9 The five ICBs agree that the POD Commissioning Oversight Group (see paragraph 11.1.4) shall be the forum for the resolution of any queries *once for London* associated with the monthly report.

12.10 Each ICB shall be individually responsible for determining how it reflects the monthly finance information referred to in paragraph 12.7 in its own individual accounting ledger. This MOU recommends that the five ICBs agree a standard set of principles at the POD Commissioning Oversight Group so that they report monthly financial information in a consistent way in their ledgers.

12.11 The POD Commissioning Team shall also generate a suite of reports that provides a pan London overview of income and expenditure against allocation.

12.12 The five ICBs agree that **any POD commissioning and contracting decisions that relate to how their individual allocations are spent shall be made within the governance framework of their own individual ICBs, although such decisions will be presented and discussed at the POD Commissioning Oversight Group where broader cross-ICB boundary implications will be considered.** Such decisions may include but are not limited to:

12.12.1 Decisions relating to how GDP contractual underspends are re-invested;

12.12.2 Decisions relating to the procurement of new POD services; and

12.12.3 Decisions relating to variations to contracts.

- 12.13 The five ICBs agree that they will take the necessary actions to ensure that the provisions of paragraph 12.12 above are incorporated within their own individual ICB financial and commissioning governance structure.
- 12.14 The five ICBs agree that where POD commissioning arrangements/decisions need to be communicated or notified to other ICB committees, management groups or stakeholders, then those five ICBs shall undertake that activity i.e. **such activity shall not be the responsibility of the POD Commissioning Team.**

13 Quality and Performance

- 13.1 Addressing concerns in relation to quality and performance requires co-ordinated and collaborative working between the five ICBs, the POD Commissioning Team and the Medical Directorate (which will remain under the responsibility of the NHS England London Regional Office) and, in terms of concerns around infection prevention and quality where there is a population health/population health concerns, consultants in dental public health.
- 13.2 Many of these processes are set out in the Standard Operating Procedures that form part of this agreement or are the subject of separate ICB guidance.
- 13.3 Given that this MOU is about the relationship between the five ICBs, and how the POD Commissioning Team discharges its responsibility across London, the focus of this section is quality and performance implications associated with contractual delivery. The implications for individual performers (dentists, optometrists and pharmacists) in terms of the ability to practice will remain the responsibility of the Medical Directorate of NHS England London Region, although it is recognised that there may be a role for individual ICBs to play in this arena in respect of, for example, managing local communications and press, commissioning and funding a retrospective review of clinicians' notes.
- 13.4 It is expected that most contractual and performance concerns will be managed by the POD Commissioning Team with specialist advice from the NHS England London Regional Medical Directorate under Standard Operating Procedures agreed under this MOU, with actions, where appropriate, reported to the POD Commissioning Oversight Group.

14 Communications Between the Five ICBs and the POD Commissioning Team

- 14.1 It is agreed that there is a need to effectively manage ICB requests for information and other communications between the five ICBs and the POD Commissioning Team, minimising duplication, maximising the subsequent sharing of information across London, and recognising the limited staffing resource that will have been transferred to the Host ICB.
- 14.2 It is agreed that each of the five ICBs will nominate a POD Lead Officer who will provide the key interface between their respective ICB and the POD Commissioning Team. All requests for information or actions from the POD Commissioning Team should be channelled appropriately, either raised at the POD Commissioning

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Oversight Group, or via one of the nominated email addresses specified in the table below, which shall be set up and managed by the POD Commissioning Team.

| | |
|----------------------------------|-----------|
| Pharmacy Queries | Email TBA |
| General Optometry Queries | Email TBA |
| General Dental Queries | Email TBA |
| Acute & Community Dental Queries | Email TBA |

- 14.3 An ICB should send all queries/requests via the email addresses specified above, clearly stating *the ask and deadline* in the subject of the email. The POD Commissioning Team will respond to queries/requests within five full working days, directing queries/requests to the appropriate individuals/team. All queries/requests will be captured in a log and regularly checked for key themes, which can be used to inform deliverables to aid the sharing of information, i.e. masterclasses.
- 14.4 The five ICBs recognise that only matters of pan London interest should be brought to the POD Commissioning Oversight Group.

15 Dispute Resolution

- 15.1 In the event of a dispute between two or more ICBs in relation to a matter connected to the provisions of this MOU, the following process will be applied:
- 15.1.1 **Step 1:** The ICBs concerned shall use their best endeavours to resolve the dispute.
- 15.1.2 **Step 2:** If not resolved through Step 1, the dispute may be escalated by either/any ICB for discussion at the POD Commissioning Oversight Group.
- 15.1.3 **Step 3:** If not resolved through Step 2, the POD Commissioning Oversight Group may:
- (a) escalate the matter to the relevant ICB Chief Executives/CLICs; and/or
 - (b) suggest mediation by a third party, trusted by the parties in dispute; and/or
 - (c) suggest binding arbitration by a third party, appointed with the agreement of the ICBs in dispute.
- 15.2 Each of the five ICBs shall be responsible, where necessary, for complying with the Disputes provisions contained in clause 24 of its individual Delegation Agreement with NHS England. The Host ICB and POD Commissioning Team shall provide such information and attend such meetings as are reasonable and necessary to allow an individual ICB to comply with those provisions.

16 MOU Termination Provisions and Consequences of Termination

- 16.1 Subject to the requirement that written approval must be granted by NHS England, any party to this agreement (i.e. any of the five ICBs) shall be able to terminate this MOU at any time through the service of 12 months' written notice to the other parties, or at an earlier date if this is agreed by all parties to this MOU.
- 16.2 This MOU shall automatically terminate in the event that the Delegation Agreement between NHS England and any one of the five ICBs either expires, or is terminated.
- 16.3 Termination of this MOU in any circumstance will not affect any rights or liabilities of the ICBs that have accrued before the date of that termination, or which later accrue following the date of that termination.
- 16.4 Prior to any termination of this MOU, the five ICBs, and if appropriate, NHS England and any successor provider(s) of those POD commissioning and contracting services that are the subject of this MOU, will, where appropriate:
- 16.4.1 Agree a plan for the transition of those services from the Host ICB to any successor organisation, including the parties' responsibilities in relation to the transition, the parties' arrangements in respect of those staff engaged in the provision of those services, and the date on which the successor organisation will take responsibility for those services.
 - 16.4.2 Implement and comply with their respective obligations under the plan for transition agreed in accordance with paragraph 16.4.1 above; and
 - 16.4.3 Act with a view to minimising any inconvenience or disruption to the commissioning and contracting of healthcare in the area.
- 16.5 For a reasonable period before and after termination of this MOU, the Host ICB must:
- 16.5.1 Co-operate with NHS England, the four ICBs and any successor organisation(s) in order to ensure continuity and a smooth transfer of those POD commissioning and contracting services that are the subject of this MOU;
 - 16.5.2 At the reasonable request of NHS England and/or any one of the four ICBs:
 - a) promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of those POD commissioning and contracting services that are the subject of this MOU by a successor organisation;
 - b) deliver to NHS England or any one of the other four ICBs all materials and documents used by the Host ICB in the exercise of the delivery of those services; and
 - 16.5.3 Use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Host ICB

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and any third party which relate to, or are associated with, those POD commissioning and contracting services that are the subject of this MOU.

17 Conflict of Interest

17.1 The parties shall ensure that any and all conflicts of interest are openly declared in any decision-making forum convened for the purposes of making a decision under the provisions of this MOU. In particular, the parties recognise the unique position of NEL ICB as Host ICB and employer of the POD Commissioning Team, and that conflicts of interest may arise for the POD Commissioning Team through the discharge of their responsibilities under this agreement. All such potential conflicts of interest must be openly declared to the other parties as and when they arise.

18 Variations to this Memorandum of Understanding

18.1 Any variation to this MOU will only be effective if it is made in writing and signed by each of the five ICBs (i.e. a representative with sufficient authority from each ICB) subject to paragraph 18.2.

18.2 Any material change to this MOU must be agreed in writing by NHS England.

19 Provisions Surviving Termination

19.1 Any rights, duties or obligations set out in this MOU, of any of the parties, which are to survive and continue after termination of this MOU, are referred to in paragraph 19.2.

19.2 The surviving provisions include the following paragraph together with such other provisions as are required to interpret and give it effect:

19.2.1 Paragraph 24 Liability and Indemnity, in respect of claims or losses that relate to the period from commencement to termination of this MOU.

19.3 The surviving provisions referred to in paragraphs 19.1 and 19.2 shall continue for a period of up to 6 years from the date of termination of this MOU.

20 Intellectual Property

20.1 The Host ICB grants to NHS England and/or any of the four ICBs a fully paid-up, non-exclusive, perpetual licence to use the Host ICB Deliverables for the purposes of the exercise of its statutory and contractual functions.

20.2 The Host ICB must co-operate with NHS England and/or any of the four ICBs to enable them to understand and adopt Best Practice (including the dissemination of Best Practice to other commissioners or providers of NHS services), and must supply such materials and information in relation to Best Practice as NHS England and/or any of the

four ICBs may reasonably request, and (to the extent that any Intellectual Property Rights (IPR) attaches to Best Practice) must grant NHS England and/or any of the four ICBs a fully paid-up, non-exclusive, perpetual licence for NHS England to use Best Practice IPR for the commissioning, contracting and provision of POD services and to share any Best Practice IPR with other commissioners and providers of POD services to enable those parties to adopt such Best Practice.

21 Severability

21.1 If any provision, or part of any provision of this MOU, is declared invalid or otherwise unenforceable, that provision or part of the provision as applicable will be severed from this MOU. This will not affect the validity and/or enforceability of the remaining part of that provision or of other provisions in this MOU.

22 Confidentiality and Data Protection

22.1 The Host ICB shall, at all times, ensure that it complies with the requirements expected of ICBs under their individual Delegation Agreements with NHS England (Clause 21 of the Delegation Agreement: Confidential Information of the Parties).

22.2 The Host ICB, in the discharge of its responsibilities under this MOU, shall at all times ensure compliance with the data protection provisions set out in the Delegation Agreements between the five ICBs and NHS England (Clause 17 of the Delegation Agreement: Data Protection, Freedom of Information and Transparency) and any relevant legislation and national NHS guidance.

23 Conflicts of Interest and Transparency on Gifts and Hospitality

23.1 The Host ICB must ensure that in delivering obligations under this MOU all staff comply (as defined in the Delegation Agreement between the Host ICB and NHS England) with the Law, with Managing Conflicts of Interest in the NHS and other Guidance, and with Good Practice, in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest.

23.2 Without prejudice to the general obligations set out in paragraph 23.1, the Host ICB must maintain a register of interests in respect of all persons making decisions concerning the functions set out in this MOU. This register must be publicly available. For the purposes of this provision, the Host ICB may rely on an existing register of interests rather than creating a further register.

24 Liability and Indemnity

24.1 The Delegation Agreement between individual ICBs and NHS England establishes that each ICB is liable for any claim or loss associated with those POD services for which it is responsible as follows:

- 24.1.1 Where the claim/loss relates to services provided by a General Dental Practice, Community Pharmacist or General Ophthalmic Services provider, then this claim/loss shall be met by the ICB in which that provider is geographically located. The provisions of this paragraph shall apply regardless of whether the claim/loss relates to a provider and/or a patient (and regardless of where any patient making a claim is resident or registered);
- 24.1.2 Where the claim/loss relates to services provided by an Acute or Community Dental provider, then the claim/loss will be met by:
- (a) the ICB(s) whose registered (or if not registered, resident) patient is making the claim; or
 - (b) where the claim/loss is associated with a liability under a contract with a provider, then that claim/loss will be met by the ICB(s) who is a signatory to that contract.
- 24.2 Any such claims or losses referred to in paragraph 24.1 shall be met from the financial allocations for the ICB that is liable for the claim or loss.
- 24.3 As the employer of the POD Commissioning Team, the Host ICB is liable for any claims or losses associated with the employment of that team (including legal and employment tribunal costs). It is agreed under this MOU that the other four ICBs will indemnify the Host ICB against such employment claims or losses, as set out in paragraph 24.5.
- 24.4 As the employer of the POD Commissioning Team, the Host ICB is liable for any staff redundancy costs arising either during, or at termination of, this MOU. It is agreed under this MOU that the four ICBs will indemnify the Host ICB against such staff redundancy costs, as set out in paragraph 24.5.
- 24.5 Each of the five ICBs will contribute towards the cost of any claims, losses or redundancy costs referred to in paragraphs 24.3 and 24.4 in proportion to their POD financial allocation for the year in which the claim, loss or redundancy cost was incurred.
- 24.6 Each of the five ICBs is individually liable for the costs of any investigative or remedial actions required as a commissioner of POD services, where those investigative or remedial actions are outside the normal scope of work of the POD Commissioning Team, and where the appointment of a third-party organisation/contractor is required e.g. for a retrospective review of patient clinical records. The liability for an individual ICB shall extend only to those services for which it is responsible, as set out below:
- 24.6.1 Where the cost of any investigative or remedial action relates to services provided by a General Dental Practice, Community Pharmacist or General Ophthalmic Services provider, then this cost shall be met by the ICB in which the provider is geographically located. The provisions of this paragraph shall apply regardless of where any patient who participates in any such investigation or remedial action is resident or registered, subject to paragraph 24.6.3;

24.6.2 Where the cost of any investigative or remedial action relates to services provided by an Acute or Community Dental provider, then this cost will be met by the individual ICB(s) that hold the contract for those services, subject to paragraph 24.6.3;

24.6.3 Where two or more ICBs are involved in the joint management of a POD incident that impacts on patients across ICB boundaries, then they may agree to share the costs referred to in paragraphs 24.6.1 and 24.6.2 in any way that they jointly deem appropriate.

25 Sub-Contracting and Sub-Delegation

25.1 The Host ICB may not sub-contract the delivery of any of its obligations under this MOU without the express written agreement of the other four ICBs.

25.2 The Host ICB may not sub-delegate any of its responsibilities under this MOU without the express written agreement of the other four ICBs.

26 Review of this MOU

26.1 It is anticipated by the parties that this MOU will be reviewed for fitness for purpose prior to 1st January 2024, and thereafter annually.

NB1. The Standard Operating Procedures, which form appendices to this agreement, will be reviewed from time to time, as appropriate, and may be amended without change to the MOU itself.

NB2. Nothing in this provision of paragraph 26.1 shall prevent the parties changing this MOU at any time, where such a change is agreed in writing by all parties to this MOU in line with the provisions of paragraph 18.

27 Agreement of the Parties

This Memorandum of Understanding is agreed by

| Name and role of approving individual | Signature | Date | <i>For and on behalf of</i> |
|--|------------------|-------------|------------------------------------|
| | | | North East London ICB |
| | | | North West London ICB |
| | | | North Central London ICB |
| | | | South West London ICB |
| | | | South East |

| | | | |
|--|--|--|------------|
| | | | London ICB |
|--|--|--|------------|

Appendix 1 – Standard Operating Procedures

The following Standard Operating Procedures (SOPs) will form part of this MOU, but may be amended by mutual agreement of the parties from time to time as appropriate in accordance with paragraph 8.1.5 of this MOU:

NB. This is a list of SOPs available at the time of commencement of this MOU, and it is anticipated that further SOPs will be added to the table throughout the term of this Agreement.

| Group | SOP Title |
|-----------------------|--|
| Pharmacy | Advanced Payment |
| Pharmacy | Advanced Services: Medicines Use Review New Medicine Service Adjustments |
| Pharmacy | CAS Alerts |
| Pharmacy | Bank Details Changes |
| Pharmacy | Bank Holiday Rota Planning |
| Pharmacy | Dealing with EPS Patient Nomination Issues |
| Pharmacy | Enhanced Services Payments |
| Pharmacy | Pharmacy FAQs |
| Pharmacy | Complaints & Issues |
| Pharmacy | CCG Access to FP10s |
| Pharmacy | How to change Out of Office Message |
| Pharmacy | How to map the Pharmacy Covid Mailbox onto your Outlook |
| Pharmacy | LPS Payments |
| Pharmacy | Missed Batch Prescriptions |
| Pharmacy | National templates |
| Pharmacy | NHS Mail Account Requests |
| Pharmacy | Notes on Sending out Pharmaceutical List Extracts |
| Pharmacy | Community Pharmacy payment - pre-registration training grant sops |
| Pharmacy | Prescription Search Request Form |
| Pharmacy | Process for pharmacy closures during normal opening hours |
| Pharmacy | Roles and Responsibility when managing the Pharmacy Mailbox |
| Pharmacy Market Entry | Change of ownership report |
| Pharmacy Market Entry | Core and supplementary hours SOPs |

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| | |
|-----------------------|---|
| Pharmacy Market Entry | Decision report instructions |
| Pharmacy Market Entry | End process for application or closure of a pharmacy |
| Pharmacy Market Entry | Example core hours report |
| Pharmacy Market Entry | Fitness to practice mailbox instructions SOP |
| Pharmacy Market Entry | Fitness to practice SOP |
| Pharmacy Market Entry | Generic mailbox |
| Pharmacy Market Entry | IP list checking |
| Pharmacy Market Entry | Notice of commencement |
| Pharmacy Market Entry | Pharmacy manual |
| Pharmacy Market Entry | Receiving and completing first referral – high level guide NHSE |
| Pharmacy Market Entry | Report writing for PSRC |
| Pharmacy Market Entry | Populating the interested parties list SOP |
| Dental | COMPASS Entry validation |
| Dental | Contract managers dental variations tracker |
| Dental | Draft dental training for contract manager |
| Acute Dental | Acute dental commissioning cycle SOP |
| Acute Dental | Managing closure of services SOP |
| Acute Dental | Receipting an invoice via purchase order |

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Appendix 2 – Terms of Reference for POD Commissioning Oversight Group

The following is the agreed Terms of Reference for the POD Commissioning Oversight Group



230228 London POD
Commissioning Over: