

LEEDS HEALTH AND CARE PARTNERSHIP

MEMORANDUM OF UNDERSTANDING

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1	21.05.21	1	Hill Dickinson
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3	02.11.21	3	Amends and Comments from Governance Network
4	05.05.22	4	Amends for 1 July Establishment Date
5	16.05.22	5	Hill Dickinson

BACKGROUND

- (A) Leeds has a long history of successful partnership working with people at the heart and with a breadth of assets to enable genuine whole system change. There are many examples of how, by working together as a partnership, we have achieved successes and improvements to lives of people who live and work in Leeds. Building on this success, we want to proactively continue to create the conditions that enable and support our health and care staff who come from all professions to continue to work together, and with people and communities, to deliver measurable progress towards our ambition to improve outcomes and reduce inequalities for our population. Whereas Leeds has predominantly led with a values and behaviours culture, working together on a shared ambition of the Health and Wellbeing Strategy and developing strong relationships, and mutual accountability, partners have agreed that Leeds would benefit from having an agreement which captures and formalises health and care partnership arrangements in Leeds.
- (B) This Memorandum of Understanding (“**MoU**”) sets out the vision, objectives and shared principles of the signatories to this MoU (“**Partners**”) in establishing a place-based partnership for Leeds (the “**Partnership**”) and further developing place-based health and care provision for the people of Leeds using a population health management approach, building on the progress achieved by the Partners to date. The MoU also sets out how the Partners will work together as participants in the Partnership, including the governance arrangements.
- (C) The Partners will focus on the Priority Areas within the ‘Healthy Leeds – Our Plan to Improve Health and Wellbeing in Leeds’, Healthy Leeds Plan (“**HLP**”) set out in this MoU to work towards specific outcomes over the term. Further Priority Areas, or changes to existing Priority Areas, may be agreed by the Partners during the term of this MoU as required to further the collaborative work of the Partners for the benefit of the population of Leeds.

- (D) In light of the passing of the Health and Care Act 2022, the Partners recognise that from the Commencement Date they will need to continue with a programme of work through the Partnership governance arrangements set out in this MoU to further develop the Partnership to become a thriving place-based partnership and discharge delegated functions from the NHS West Yorkshire Integrated Care Board (“ICB”) and allocate resources for the benefit of the Leeds population.
- (E) The Partners acknowledge that the success of the Partnership will rely on the Partners working collaboratively rather than separately to plan financially sustainable methods of delivering integrated, population-focused services in furtherance of the Priority Areas and the Partnership Development Plan which is being developed and will be approved by the Leeds Committee in the summer 2022.
- (F) This MoU is intended to supplement and work alongside the Partners’ respective governance arrangements and, in the case of provider Partners, their existing and future services contracts with the ICB, NHS England and the Council, whilst respecting their individual sovereignty. It is also intended to work alongside the section 75 agreement in relation to the Better Care Fund between the ICB and the Council.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this MoU, capitalised words and expressions shall have the meanings given to them in Schedule 1.
- 1.2 In this MoU, unless the context requires otherwise, the following rules of construction shall apply:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.2.3 a reference to a Partner includes its personal representatives, successors or permitted assigns;
- 1.2.4 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.5 any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.6 a reference to writing or written includes emails.

2. STATUS AND PURPOSE

2.1 The Partners have agreed to work together on behalf of the people of Leeds to establish the Partnership through which to identify and respond to the health and care needs of the Leeds population, and deliver integrated health, support and community care to develop and ultimately deliver improved health and care outcomes for the people of Leeds.

2.2 This MoU sets out the key terms that the Partners have agreed, including:

2.2.1 the vision of the Partners, and key objectives for the development and delivery of integrated services in Leeds and the Priority Areas;

2.2.2 the key principles that the Partners will comply with in working together through the Partnership;

2.2.3 the governance structures underpinning the Partnership as at the Commencement Date.

2.3 Notwithstanding the good faith consideration that each Partner has afforded the terms set out in this MoU, the Partners agree that, save as provided in Clause 2.4 below, this MoU shall not be legally binding. The Partners each enter into this MoU intending to honour all of their respective obligations.

2.4 Each of the Partners agrees to work together in a collaborative and integrated way on a Best for Leeds basis. This MoU is not intended to conflict with or take precedence over the terms of the Services Contracts or the Section 75 Agreement unless expressly agreed by the Partners.

3. APPROVALS

Each Partner acknowledges and confirms that as at the date of this MoU, it has obtained all necessary authorisations to enter into this MoU and that its own organisational leadership body has approved the terms of this MoU.

4. DURATION AND REVIEW

4.1 This MoU will take effect on the Commencement Date and will expire on [DATE] (the “Initial Term”), unless and until terminated in accordance with the terms of this MoU.

4.2 At the expiry of the Initial Term this MoU will expire automatically without notice unless, no later than 3 months before the end of the Initial Term, the Partners agree in writing that the term of the MoU shall be extended for a further term to be agreed between the Partners.

- 4.3 The Partners will review progress made against the Partnership Development Plan and the terms of this MoU by March 2023 and at such intervals thereafter as the Partners may agree. The Partners may agree to vary the MoU to reflect developments as appropriate in accordance with Clause 18 (*Variations*).

SECTION A: VISION, OBJECTIVES AND PRINCIPLES

5. THE VISION

- 5.1 The Partners have agreed to work towards a common vision for the Partnership as follows:

Leeds, a healthy and caring city for all ages, where people who are the poorest will improve their health the fastest.

6. THE OBJECTIVES

- 6.1 The Partners have agreed to work together and to perform their duties under this MoU in order to achieve the following Objectives:

6.1.1 Living our Partnership Principles: we start with people; we deliver; we are Team Leeds;

6.1.2 Working with people and staff and hearing all of their voices;

6.1.3 Rethinking how we deliver better person-centred outcomes, drive a seamless experience of care and reduce inequalities;

6.1.4 A relentless focus on our shared three key city ambitions combined to make Leeds a healthy, compassionate, climate conscious city with a strong economy, where people who are the poorest improve their health the fastest;

6.1.5 Creating a culture that encourages system leadership – ‘Leeds £’, ‘city first, organisational second’, ‘working as if we are one organisation’;

6.1.6 Collectively owning and unblocking performance, intelligence, efficiency, quality and financial issues facing health and care;

6.1.7 Unblocking intra-organisational system issues, maximising opportunities, eliminating duplication;

6.1.8 A shared transformation plan which creates meaningful change, ensuring the short-term is managed in the context of the long-term;

6.1.9 ‘One city voice’ – shared understanding and ownership of unified positions and messages; and

6.1.10 Maximise the leverage from our collective influence regionally and nationally.

- 6.2 Through the Objectives, the Partners will aim to achieve the following Outcomes identified in the Leeds Health & Wellbeing Strategy:
- 6.2.1 People will live longer and have healthier lives;
 - 6.2.2 People will live full, active and independent lives;
 - 6.2.3 People's quality of life will be improved by access to quality services;
 - 6.2.4 People will be actively involved in their health and their care; and
 - 6.2.5 People will live in healthy, safe and sustainable communities.
- 6.3 The Partners acknowledge that they will have to make decisions together in order for the Partnership arrangements to work effectively. The Partners agree that they will work together and make decisions on a Best for Leeds basis in order to achieve the Objectives, subject to Clause 9.

7. THE PRINCIPLES

- 7.1 The Principles set out below underpin the delivery of the Partners' obligations under this MoU and set out key factors for a successful relationship between the Partners for the delivery of the Partnership.
- 7.2 The Partners agree that the successful delivery of the Partnership operating model will depend on their ability to effectively co-ordinate and combine their expertise and resources in order to deliver an integrated approach to the planning, provision and use of community assets and services across the Partners.
- 7.3 The Partners will work together in good faith and, unless the provisions in this MoU state otherwise, the Partners will ensure:
- 7.3.1 We start with people – working with people instead of doing things to them or for them, maximising the assets, strengths and skills of Leeds' citizens, carers and workforce:
 - Have 'Better Conversations' – equipping the workforce with the skills and confidence to focus on what's strong rather than what's wrong through high support, high challenge, and listening to what matters to people;
 - 'Think Family' – understand and coordinate support around the unique circumstances adults and children live in and the strengths and resources within the family;
 - Think 'Home First' – supporting people to remain or return to their home as soon as it is safe to do so;

- 7.3.2 We deliver – prioritising actions over words. Using intelligence, every action focuses on what difference we will make to improving outcomes and quality and making best use of the Leeds £:
- Make decisions based on the outcomes that matter most to people;
 - Jointly invest and commission proportionately more of our resources in first class primary, community and preventative services whilst ensuring that hospital services are funded to also deliver first class care;
 - Direct our collective resource towards people, communities and groups who need it the most and those focused on keeping people well;
- 7.3.3 We are Team Leeds – working as if we are one organisation, being kind, taking collective responsibility for and following through on what we have agreed. Difficult issues are put on the table, with a high support, high challenge attitude:
- Unify diverse services through a common culture;
 - Be system leaders and work across boundaries to simplify what we do;
 - Individuals and teams will share good practice and do things once;
- 7.3.4 Act across the Leeds health and care system in line with Nolan’s Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Leadership;
- 7.3.5 Act in the best interests of the population of Leeds;
- 7.3.6 Resolve differences between members and present a united front in the best interests of the people of Leeds;
- 7.3.7 Openness and transparency in discussions;
- 7.3.8 Actively work to remove barriers that prevent Team Leeds working;
- 7.3.9 Hold each other to account;
- 7.3.10 Be clear in language used to reduce any confusion between Partners;
- 7.3.11 Seek clarity from other Partners if unsure of terminology/language used;
- 7.3.12 Offer constructive challenge to improve service delivery and ensure financial balance;
- 7.3.13 Openness and transparency in decision making, being explicit of when not agreeing/supporting a decision;
- 7.3.14 Stick to decisions that are made;
- 7.3.15 Follow through on actions agreed,

and together with the principles set out in Clause 7.2 these are the “Principles”.

8. PROBLEM RESOLUTION AND ESCALATION

- 8.1 The Partners agree to adopt a systematic approach to problem resolution which recognises the Objectives and the Principles set out in Clauses 6 and 7 above and which:
- 8.1.1 seeks solutions without apportioning blame;
 - 8.1.2 is based on mutually beneficial outcomes;
 - 8.1.3 treats each Partner as an equal party in the dispute resolution process; and
 - 8.1.4 contains a mutual acceptance that adversarial attitudes waste time and money.
- 8.2 If a problem, issue, concern or complaint comes to the attention of a Partner in relation to the Priority Areas, Objectives, Principles or any matter in this MoU such Partner shall notify the other Partners. The Partners shall then try to resolve the issue in a proportionate manner by a process of discussion within 20 Operational Days of notification. If they are not able to do this, the matter will be resolved in accordance with Schedule 5 (*Dispute Resolution Procedure*).
- 8.3 If any Partner receives any formal enquiry, complaint, claim or threat of action from a third party relating to this MoU (including, but not limited to, claims made by a supplier or requests for information made under the FOIA relating to this MoU) the receiving Partner will liaise with the Leeds Health and Care Partnership Executive Group as to the contents of any response before a response is issued.

SECTION B: OPERATION OF AND ROLES IN THE PARTNERSHIP

9. RESERVED MATTERS

- 9.1 The Partners agree and acknowledge that nothing in this MoU shall operate as to require them to make any decision or act in anyway which shall place any Partner in breach of:
- 9.1.1 Law;
 - 9.1.2 any Services Contract or the Section 75 Agreement;
 - 9.1.3 any specific Department of Health and Social Care or NHS England policies;
 - 9.1.4 if applicable its Constitution (including for the ICB and the Council), any terms of its provider licence from NHS Improvement or its registration with the CQC;
 - 9.1.5 the terms of reference for the Leeds Health and Care Partnership ICB Committee;
 - 9.1.6 any legislative requirements including the NHS Act 2006 (as amended); or

9.1.7 any term of a non-NHS party's legal constitution or other legally binding agreement or governance document of which specific written notice has been given to the Partners, and the Leeds Health and Care Partnership Executive Group will not make a final recommendation which requires any Partner to act as such.

10. TRANSPARENCY

- 10.1 Subject to compliance with the Law and contractual obligations of confidentiality, the Partners will provide to each other all information that is reasonably required in order to deliver the Priority Areas and implement the Partnership Development Plan in line with the Objectives.
- 10.2 The Partners have responsibilities to comply with the Law (including where applicable Competition Law). The Partners will make sure that they share information, and particular Competition Sensitive Information, in such a way that is compliant with Competition Law. The ICB will ensure that the Leeds Committee of the West Yorkshire ICB and corresponding sub Leeds place Committees establish appropriate information barriers between and within the Providers so as to ensure that Competition Sensitive Information and Confidential Information are only available to those Providers who need to see it to achieve the Objectives and for no other purpose whatsoever so that the Partners do not breach Competition Law.
- 10.3 It is accepted by the Partners that the involvement of the Providers in the governance arrangements for the Partnership is likely to give rise to situations where information will be generated and made available to the Providers which could give the Providers an unfair advantage in competitive procurements or which may be capable of distorting such procurements (for example, disclosure of pricing information or approach to risk may provide one Provider with a commercial advantage over a separate Provider).
- 10.4 Any Provider will have the opportunity to demonstrate to the reasonable satisfaction of the ICB and/or the Council (where acting as a commissioner) in relation to any competitive procurements that the information it has acquired as a result of its participation in the Partnership, other than as a result of a breach of this MoU, does not preclude the ICB and/or the Council (where acting as a commissioner) from running a fair competitive procurement in accordance with their legal obligations.
- 10.5 Notwithstanding Clause 10.4 above, the ICB and the Council may take such measures as they consider necessary in relation to competitive procurements in order to comply with their obligations under Law which may include excluding any potential bidder from the competitive procurement in accordance with the Law governing that competitive procurement.

SECTION C: GOVERNANCE ARRANGEMENTS

11. LEEDS HEALTH AND CARE (PLACE-BASED) PARTNERSHIP GOVERNANCE

11.1 The governance structure for the Place Partnership is set out in the diagram in Schedule 3 (*Governance*) and includes the following:

11.1.1 the Leeds Health and Wellbeing Board;

11.1.2 the Leeds Health and Care Partnership ICB Committee;

11.1.3 the Leeds Health and Care Partnership Executive Group; and

11.1.4 three Leeds Sub-Committees.

Leeds Health and Wellbeing Board

11.2 The Leeds Health and Wellbeing Board is a committee of the Council, charged with promoting greater health and social care integration in Leeds. The Health and Wellbeing Board will receive reports from the Leeds Health and Care Partnership Executive Group as to the development of the Partnership arrangements under this MoU and progress against the Health & Wellbeing Strategy and the Partnership Development Plan.

Leeds Health and Care Partnership ICB Committee (the “Leeds ICB Committee”)

11.3 The Leeds ICB Committee is established as a formal committee of the West Yorkshire ICB Board, in accordance with the ICB’s constitution. The Leeds ICB Committee has delegated authority from the ICB Board to make decisions about the use of ICB resources in Leeds in line with its remit, and otherwise support the ICB as set out in its terms of reference at Schedule 3 Part 1 (current as at the Commencement Date). The decisions reached by the Leeds ICB Committee are decisions of the ICB, in line with the ICB’s Scheme of Reservation and Delegation. Members of the Leeds ICB Committee must comply with ICB policies and procedures.

11.4 The Leeds ICB Committee reports to the ICB Board and will:

11.4.1 together with Partner organisations, oversee the Partnership arrangements under this MoU;

11.4.2 act in accordance with its terms of reference at Schedule 3 Part 1;

11.4.3 provide updates to the Health and Wellbeing Board on progress against the Joint Health and Wellbeing Strategy (JHWS) for Leeds;

11.4.4 report to Partner organisations on progress against the Objectives;

11.4.5 liaise where appropriate with:

- (a) national stakeholders (including NHS England and NHS Improvement); and
- (b) the West Yorkshire Integrated Care Partnership,

to communicate the views of the Partnership on matters relating to integrated care in Leeds.

11.5 The Partners acknowledge that their employees may be appointed as members of the Leeds ICB Committee. The Partners agree to support their employees in doing so in line with the aims and objectives of the Leeds ICB Committee. The Partners acknowledge that any individual who is nominated as a member of the Leeds ICB Committee or sub-committee of the Leeds ICB Committee understands and agrees to bring knowledge and perspective from their sector but not be a delegate or carry agreed mandates from that sector or from their Partner organisation.

11.6 Each Partner must ensure that its appointed members or attendees of the Leeds ICB Committee (or their appointed deputies/alternatives) attend all of the meetings of the relevant group and participate fully and exercise their rights on a Best for Leeds basis and in accordance with Clause 5 (*Objectives*) and Clause 7 (*Principles*).

Leeds Health and Care Partnership Executive Group (PEG)

11.7 PEG is a consultative and collaborative group to inform and support the work of the Leeds ICB Committee and the Health and Wellbeing Board. PEG is not a committee of any Partner or any combination of Partners and will operate as a collaborative forum.

11.8 PEG will support system development by establishing a shared culture where Partner staff adopt common sets of values and behaviours. It will help to oversee and support the development of shared partnership infrastructure that may be required to support the work of the Partnership. PEG will act in accordance with its terms of reference.

Leeds System Committees

11.9 The Leeds System Committees are Quality and People's Experience, Finance, and Delivery. The System Committees are established by, and will each report and provide assurance to, the Leeds ICB Committee [as formal sub-committees of the Leeds ICB Committee]. Their terms of reference are set out in **[to be included]**.

11.10 The Partners will review and develop the governance arrangements for the Partnership during 2022/23 to strengthen joint decision-making between the Partners, such review to include consideration of developing a joint committee structure between the Partners in line with the relevant provisions of the Health and Care Act 2022.

Place Lead role

11.11 Following a nomination from the Partnership, the ICB has appointed a 'Place Lead' who has responsibility for strategic leadership of the Partnership. The Place Lead is the 'convenor' of the Partnership, bringing Partners together and leading collaborative work and integration

across the Partnership. The Place Lead is a member of the WY Integrated Care Board, the Leeds ICB Committee, the Leeds Health and Wellbeing Board and the PEG.

12. CONFLICTS OF INTEREST

- 12.1 Subject to compliance with Law (including without limitation Competition Law) and contractual obligations of confidentiality, the Partners agree to share all information relevant to the achievement of the Objectives in an honest, open and timely manner.
- 12.2 The Partners will:
- 12.2.1 disclose to each other the full particulars of any real or apparent conflict of interest which arises or may arise in connection with this MoU or the operation of the Partnership governance immediately upon becoming aware of the conflict of interest whether that conflict concerns the Partner or any person employed or retained by them for or in connection with the performance of this MoU;
 - 12.2.2 not allow themselves to be placed in a position of conflict of interest in regard to any of their rights or obligations under this MoU (without the prior consent of the other Partners) before they participate in any decision in respect of that matter; and
 - 12.2.3 use best endeavours to ensure that their representatives on the Leeds ICB Committee also comply with the requirements of this Clause 12 when acting in connection with this MoU.
- 12.3 If there is:
- 12.3.1 any uncertainty or a lack of consensus between the Partners regarding the existence of a conflict of interest under Clause 12.2.1 or 12.2.2; or
 - 12.3.2 any query or Dispute as to whether any Partner is put in a position (or will be) of conflict under Clause 12.2.2,
- any Partner may refer the matter for resolution under Clause 8 (Problem Resolution and Escalation).
- 12.4 The Partners will each comply with the ICB conflicts of interest policy when participating in the Leeds ICB Committee or any other Governance Group undertaking ICB Business, otherwise the conflicts of interest policy and procedures of its Partner organisation will apply.
- 12.5 The ICB has made arrangements to manage any actual and potential conflicts of interest to ensure that decisions made by committees or sub-committees of the ICB will be taken and seen to be taken without being unduly influenced by external or private interest and do not, (and do not risk appearing to) affect the integrity of the ICB's decision-making processes. These arrangements apply to the Leeds ICB Committee and any sub-committees of the Leeds ICB Committee.

- 12.6 The ICB has agreed policies and procedures for the identification and management of conflicts of interest which are published on the ICB website.
- 12.7 The Partners shall ensure that all Leeds ICB Committee and sub-committee members nominated by them comply with the ICB policy on conflicts of interest in line with their terms of office. This will include but not be limited to declaring all interests on a register that will be maintained by the ICB.
- 12.8 The Partners shall ensure that all Leeds ICB Committee and sub-committee members comply with the ICB Standards of Business Conduct policy.

SECTION D: FINANCIAL PLANNING

13. FINANCIAL PRINCIPLES

- 13.1 The Partners will continue to be paid in accordance with the mechanism set out in their respective Services Contracts.
- 13.2 The Partners commit to developing and agreeing system financial principles during the initial term for the allocation of resources within Leeds.
- 13.3 Any future introduction of a risk / reward sharing mechanism would require additional provisions to be agreed between the Partners and incorporated into this MoU in accordance with Clause 18 (Variations).

SECTION E: FUTURE DEVELOPMENT OF THE PARTNERSHIP

14. PARTNERSHIP DEVELOPMENT PLAN

- 14.1 The Partners have agreed to work together to implement a Partnership Development Plan which is being developed and approved by the Leeds Committee in the summer 2022. The areas for development set out in the Partnership Development Plan have been identified by the Partners as priorities for 2022/23 in order to ensure that the Partnership continues to develop and implement the new model of health and care planning and delivery in Leeds from the Commencement Date. The Partners will keep the Partnership Development Plan under review through the governance structures set out in this MoU and may agree to amend the Partnership Development Plan as required during the Initial Term in accordance with Clause 18 (*Variations*), in line with policy direction and legislative developments.

SECTION F: GENERAL PROVISIONS

15. EXCLUSION AND TERMINATION

- 15.1 A Partner may be excluded from this MoU on notice from the other Partners (acting in consensus) in the event of:

15.1.1 the termination of their Services Contract; or

- 15.1.2 an event of Insolvency affecting them.
- 15.2 A Partner may withdraw from this MoU by giving not less than 6 months' written notice to each of the other Partners' representatives.
- 15.3 A Partner may be excluded from this MoU on written notice from all of the remaining Partners in the event of a material or a persistent breach of the terms of this MoU by the relevant Partner which has not been rectified within 30 days of notification issued by the remaining Partners (acting in consensus) or which is not reasonably capable of remedy. In such circumstances this MoU shall be partially terminated in respect of the excluded Partner.
- 15.4 The PPB may resolve to terminate this MoU in whole where:
- 15.4.1 a Dispute cannot be resolved pursuant to the Dispute Resolution Procedure; or
- 15.4.2 where the Partners agree for this MoU to be replaced by a formal legally binding agreement between them.
- 15.5 Where a Partner is excluded from this MoU, or withdraws from it, the excluded or withdrawing (as relevant) Partner shall procure that all data and other material belonging to any other Partner shall be delivered back to the relevant Partner or deleted or destroyed (as instructed by the relevant Partner) as soon as reasonably practicable.
- 16. INTRODUCING NEW PROVIDERS**
- 16.1 Additional parties may become parties to this MoU on such terms as the Partners shall jointly agree in writing, acting at all times on a Best for Leeds basis. Any new Partner will be required to agree in writing to the terms of this MoU before admission.
- 17. LIABILITY**
- 17.1 The Partners' respective responsibilities and liabilities in the event that things go wrong with the Services will be allocated under their respective Services Contracts and not this MoU.
- 18. VARIATIONS**
- 18.1 Save as set out in Clause 19, any amendment, waiver or variation of this SPA will not be binding unless set out in writing, expressed to amend, waive or vary this SPA and signed by or on behalf of each of the Partners.
- 19. ASSIGNMENT AND NOVATION**
- 19.1 Unless the Partners agree otherwise in writing, none of the Partners will novate, assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of their rights and responsibilities under this MoU.

20. CONFIDENTIALITY AND FOIA

- 20.1 Each Partner shall keep confidential all Confidential Information that it receives from the other Partners except to extent such Confidential Information is required by Law to be disclosed or is already in the public domain or comes into the public domain otherwise than through an unauthorised disclosure by a Partner to this MoU.
- 20.2 To the extent that any Confidential Information is covered or protected by legal privilege, then disclosing such Confidential Information to any Partner or otherwise permitting disclosure of such Confidential Information does not constitute a waiver of privilege or of any other rights which a Partner may have in respect of such Confidential Information.
- 20.3 The Partners agree to procure, as far as is reasonably practicable, that the terms of this Clause 20 (*Confidentiality and FOIA*) are observed by any of their respective successors, assigns or transferees of respective businesses or interests or any part thereof as if they had been party to this MoU.
- 20.4 Nothing in this Clause 20 (*Confidentiality and FOIA*) will affect any of the Partners' regulatory or statutory obligations, including but not limited to competition law of any applicable jurisdiction.
- 20.5 The Partners acknowledge that some of them are subject to the requirements of the FOIA and will facilitate each other's compliance with their information disclosure requirements, including the submission of requests for information and handling any such requests in a prompt manner and so as to ensure that any Partner which is subject to FOIA is able to comply with their statutory obligations.

21. GENERAL

- 21.1 Any notice or other communication given to a Partner under or in connection with this MoU shall be in writing, addressed to that Partner at its principal place of business or such other address as that Partner may have specified to the other Partner in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery or commercial courier or email.
- 21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 21.1 above; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Operational Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or if sent by email, one (1) Operational Day after transmission.
- 21.3 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership between any of the Partners, constitute any Partner the agent of another Partner, nor authorise any

Partner to make or enter into any commitments for or on behalf of any other Partner except as expressly provided in this MoU.

- 21.4 This MoU may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this MoU, but all the counterparts shall together constitute the same agreement. The expression “counterpart” shall include any executed copy of this MoU scanned into printable PDF, JPEG, or other agreed digital format and transmitted as an e-mail attachment. No counterpart shall be effective until each Partner has executed at least one counterpart.
- 21.5 This MoU, 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, English law, and where applicable, the Partners irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 21.6 A person who is not a Partner to this MoU shall not have any rights under or in connection with it.

This MoU has been entered into on the date stated at the beginning of it.

SCHEDULE 1

Definitions and Interpretation

1. The following words and phrases have the following meanings:

Best for Leeds	best for the achievement of the Vision, Objectives and Outcomes for the Leeds population on the basis of the Principles.
Commencement Date	the date entered on page one (1) of this MoU.
Commercially Sensitive Information	Confidential Information which is of a commercially sensitive nature relating to a Partner, its intellectual property rights or its business or which a Partner has indicated would cause that Partner significant commercial disadvantage or material financial loss.
Commissioner	a Partner who is also a commissioner of Services, being the ICB and the Council as at the Commencement Date.
Competition Law	the Competition Act 1998 and the Enterprise Act 2002, as amended by the Enterprise and Regulatory Reform Act 2013.
Competition Sensitive Information	Confidential information which is owned, produced and marked as Competition Sensitive Information by one of the Partners and which that Partner properly considers is of such a nature that it cannot be exchanged with the other Partners without a breach or potential breach of Competition Law. Competition Sensitive Information may include, by way of illustration, trade secrets, confidential financial information and confidential commercial information, including without limitation, information relating to the terms of actual or proposed contracts or sub-contract arrangements (including bids received under competitive tendering), future pricing, business strategy and costs data, as may be utilised, produced or recorded by any Partner, the publication of which an organisation in the same business would reasonably be able to expect to protect by virtue of business confidentiality provisions.
Confidential Information	the provisions of this MoU and all information 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 MoU, including Commercially Sensitive Information and Competition Sensitive Information.
Dispute	any dispute arising between two or more of the Partners in connection with this MoU or their respective rights and obligations under it.
Dispute Resolution Procedure	the procedure set out in Schedule 5 for the resolution of disputes which are not capable of resolution under Clause 8 (<i>Problem Resolution and Escalation</i>).
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such Act.
Good Practice	Good Clinical Practice and/or Good Health and/or Social Care Practice (each as defined in the Services Contracts), as appropriate.
Governance Group	any group referred to in this MoU or set up pursuant to the various terms of reference referred to in this MoU to further the work of the Partnership.
ICB	NHS West Yorkshire Integrated Care Board.
Initial Term	the initial term of this MoU as set out in Clause 4.1.
Insolvency	(as may be applicable to each Partner) a Partner taking any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business.
Law	<ul style="list-style-type: none"> a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; b) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; c) Guidance (as defined in the NHS Standard Contract); d) National Standards (as defined in the NHS Standard Contract); and e) any applicable code.

Leeds Health and Care Partnership Executive Group	has the meaning set out in Clause 11.7.
Leeds Health and Care Partnership ICB Committee	the Leeds Place-based Partnership Committee of the ICB, the terms of reference for which are set out in Part 1 of Schedule 4 (Governance).
Leeds ICB Committee	the Leeds Health and Care Partnership ICB Committee.
MoU	this memorandum of understanding incorporating the Schedules.
NHS Standard Contract	the NHS Standard Contract for NHS healthcare services as published by NHS England from time to time.
Objectives	the objectives for the Partnership set out in Clause 6.1.
Operational Days	a day other than a Saturday, Sunday or bank holiday in England.
Outcomes	the outcomes for the Partnership set out in Clause 6.2.
Partnership Development Plan	the initial Partnership Development Plan set out in Schedule 3 (<i>Partnership Development Plan</i>).
PEG	the Leeds Health and Care Partnership Executive Group has the meaning set out in Clause 11.7.
Population	the population of Leeds, who reside in Leeds or are registered with a Leeds GP.
Principles	the principles for the Partnership set out in Clause 7.
Priority Areas	the priority areas identified by the Partners as set out in Schedule 2 (<i>Priority Areas</i>).
Provider	a Partner who is also a provider of Services under a Services Contract.
Section 75 Agreement	the agreement entered into by the Commissioners under section 75 of the National Health Service Act 2006 to commission the services listed in the Schedules to that agreement.
Service Users	people within the Leeds population, who reside in Leeds or are registered with a Leeds GP.
Services	the services provided, or to be provided, by each Provider to Service Users pursuant to its respective Services Contract.

Services Contract	a contract entered into by one of the ICB or the Council and a Provider for the provision of Services, and references to a Services Contract include all or any one of those contracts as the context requires.
Vision	the vision of the Partnership, as set out in Clause 5.

SCHEDULE 2

Priority Areas

The Partners have identified the Priority Areas during the Initial Term (as may be agreed and amended from time to time) as:

‘Healthy Leeds – Our Plan to Improve Health and Wellbeing in Leeds (HLP)’

SCHEDULE 3

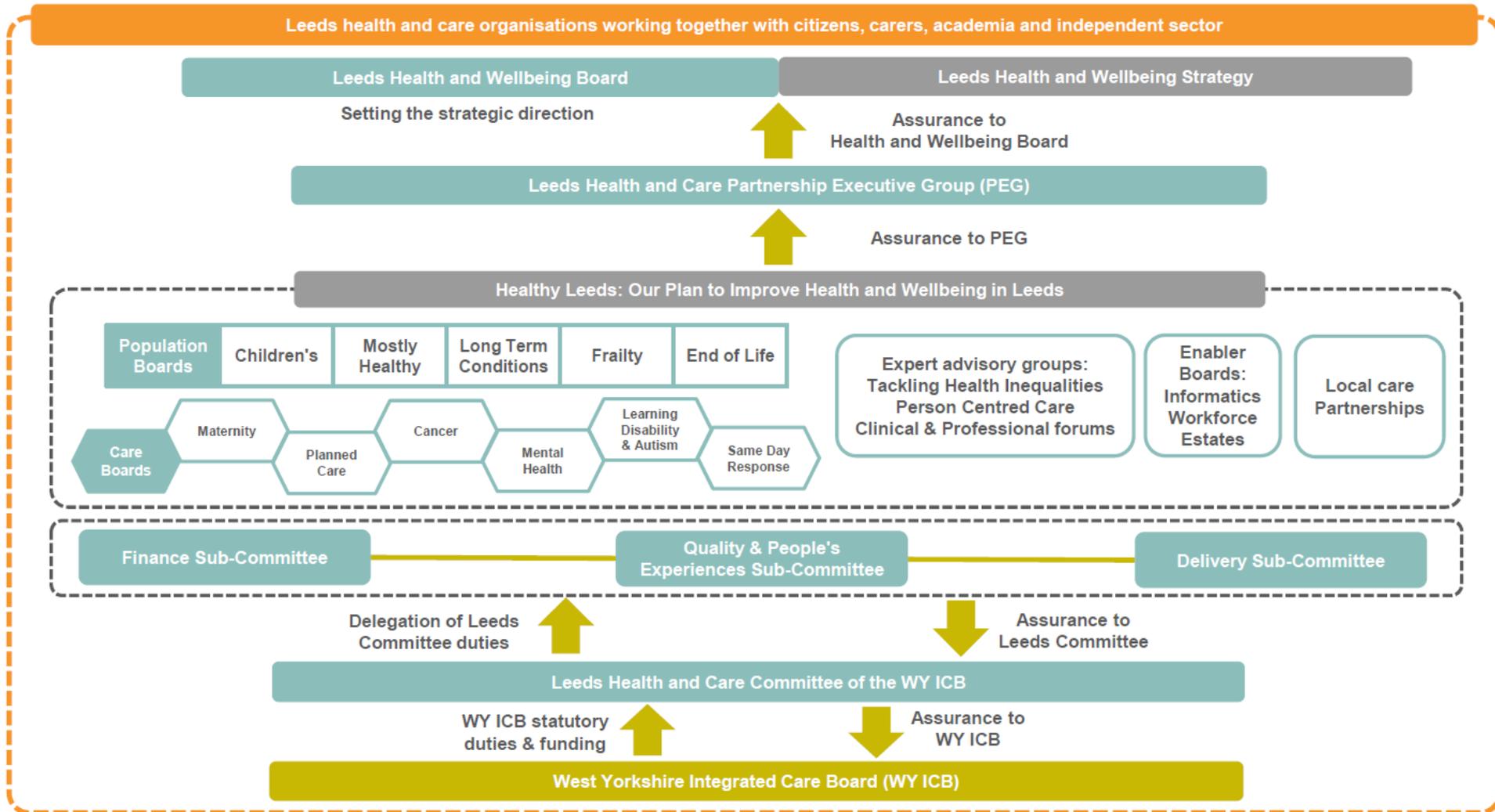
Governance

This Schedule 4 sets out the governance arrangements for the Partnership under this MoU.

The diagram below summarises the governance structure which the Partners have agreed to establish and operate from the Commencement Date, to provide oversight of the development and implementation of the Partnership approach and the arrangements under this MoU.

This Schedule also contains the terms of reference for the Leeds Health and Care Partnership ICB Committee.

Overview of the Leeds Partnership governance model



Part 1 – Leeds Health and Care Partnership ICB Committee - Terms of Reference

Leeds Health and Care (Place Based) Partnership Integrated Care Board (ICB) Committee Terms of Reference

Version control

Version: 0.4 (final approved version to be 1.0)

Approved by: ICB Board

Date Approved:

Responsible Officer:

Date Issued:

Date to be reviewed: Initially 6 months, thereafter annual

Change history

Version number	Changes applied	By	Date
0.1	Initial draft	Laura Ellis	21.09.21
0.2	Review	Stephen Gregg	29.09.21
0.3	Review	Leeds Governance Network – Place amends	02.11.21
0.4	Review	Sam Ramsey	27.04.22

1. Introduction

- 1.1 The Leeds Health and Care (Place Based) Partnership Integrated Care Board (ICB) Committee is established as a committee of the West Yorkshire ICB Board, in accordance with the ICB's Constitution, Standing Orders and Scheme of Delegation.
- 1.2 These terms of reference, which must be published on the ICB website, set out the remit, responsibilities, membership and reporting arrangements of this Committee and may only be changed with the approval of the ICB Board. The Committee has no executive powers, other than those specifically delegated in these terms of reference.
- 1.3 The ICB is part of the West Yorkshire Integrated Care System, which has identified a set of guiding principles that shape everything we do:
 - We will be ambitious for the people we serve and the staff we employ.
 - The West Yorkshire partnership belongs to its citizens and to commissioners and providers, councils and NHS. We will build constructive relationships with

communities, groups and organisations to tackle the wide range of issues which have an impact on health inequalities and people's health and wellbeing.

- We will do the work once – duplication of systems, processes and work should be avoided as wasteful and potential source of conflict.
- We will undertake shared analysis of problems and issues as the basis of taking action.
- We will apply subsidiarity principles in all that we do – with work taking place at the appropriate level and as near to local as possible.

1.4 The ICS has committed to behave consistently as leaders and colleagues in ways which model and promote our shared values:

- We are leaders of our organisation, our place and of West Yorkshire.
- We support each other and work collaboratively.
- We act with honesty and integrity, and trust each other to do the same.
- We challenge constructively when we need to.
- We assume good intentions; and
- We will implement our shared priorities and decisions, holding each other mutually accountable for delivery.

1.5 The Leeds Health and Care Partnership have a shared bold ambition: Leeds will be the best city for health and wellbeing.

1.6 Our clear vision is: Leeds will be a healthy and caring city for all ages, where people who are the poorest improve their health the fastest.

1.7 We have also agreed a number of partnership principles:

- We start with people – working with people instead of doing things to them or for them, maximising the assets, strengths and skills of Leeds' citizens, carers and workforce.
 - Have 'Better Conversations' – equipping the workforce with the skills and confidence to focus on what's strong rather than what's wrong through high support, high challenge, and listening to what matters to people
 - 'Think Family' – understand and coordinate support around the unique circumstances adults and children live in and the strengths and resources within the family
 - Think 'Home First' – supporting people to remain or return to their home as soon as it is safe to do so
- We deliver – prioritising actions over words. Using intelligence, every action focuses on what difference we will make to improving outcomes and quality and making best use of the Leeds £.
 - Make decisions based on the outcomes that matter most to people
 - Jointly invest and commission proportionately more of our resources in first class primary, community and preventative services whilst ensuring that hospital services are funded to also deliver first class care

- Direct our collective resource towards people, communities and groups who need it the most and those focused on keeping people well
- We are Team Leeds – working as if we are one organisation, being kind, taking collective responsibility for and following through on what we have agreed. Difficult issues are put on the table, with a high support, high challenge attitude.
 - Unify diverse services through a common culture
 - Be system leaders and work across boundaries to simplify what we do
 - Individuals and teams will share good practice and do things once

2. Membership

2.1 This part of the terms of reference describes the membership of the Leeds Health and Care (Place Based) Partnership ICB Committee. Further information about the criteria for the roles and how they are appointed is documented separately.

2.2 Core membership

2.2.1 The membership of the Committee will be as follows:

- Independent Chair
- Independent Lay Member – Finance and Governance
- Independent Lay Member – Health Inequalities and Delivery
- Healthwatch Representative
- Executive Members (Leeds Office of the WY ICS)
 - ICB Leeds Place Lead
 - ICB Leeds Finance Lead
 - ICB Leeds Nurse Lead
 - ICB Leeds Medical Officer
- Partner Members
 - 1 x Leeds Teaching Hospitals Trust
 - 1 x Leeds & York Partnership Foundation Trust
 - 1 x Leeds Community Healthcare Trust
 - 1 x Leeds City Council
 - 1 x Primary Care
 - 1 x Third Sector
 - 1 x Director of Public Health

2.3 Required attendees

- Non-voting members to be in attendance (TBC)

2.4 ICB officers may request or be requested to attend the meeting when matters concerning their responsibilities are to be discussed or they are presenting a paper.

2.5 Any member of the ICB Board can be in attendance subject to agreement with the

Chair.

3. Arrangements for the conduct of business

3.1 Chairing meetings

The meetings will be run by the chair. In the event of the chair of the committee being unable to attend all or part of the meeting, the remaining members of the committee should appoint a chair for the meeting.

3.2 Quoracy

No business shall be transacted unless at least 50% of the membership is present. The quorum is 8 individuals. This must include representation from the following as a minimum:

- The Chair or his/her nominated Deputy Chair
- At least one independent lay member
- ICB Place Director or ICB Place Finance Lead
- ICB Place Nurse Lead or ICB Place Medical Officer
- At least two partner members

For the sake of clarity:

- a) No person can act in more than one capacity when determining the quorum.
- b) An individual who has been disqualified from participating in a discussion on any matter and/or from voting on any motion by reason of a declaration of a conflict of interest, shall no longer count towards the quorum.

Members of the Committee may participate in meetings by telephone, video or by other electronic means where they are available and with the prior agreement of the Chair. Participation by any of these means shall be deemed to constitute presence in person at the meeting.

Members are normally expected to attend at least 75% of meetings during the year.

With the permission of the person presiding over the meeting, the Executive Members and the Partner Members of the Committee may nominate a deputy to attend a meeting of the Committee that they are unable to attend. The deputy may speak and vote on their behalf. The decision of person presiding over the meeting regarding authorisation of nominated deputies is final.

3.3 Voting

In line with the ICB's Standing Orders, it is expected that decisions will be reached by consensus. Should this not be possible, each voting member of the Committee will have one vote, the process for which is set out below:

- a. All members of the committee who are present at the meeting will be eligible to cast one vote each. (For the sake of clarity, members of the committee are set out at paragraph 2.2.1; attendees and observers do not have voting rights.)
- b. Absent members may not vote by proxy. Absence is defined as being absent at the time of the vote, but this does not preclude anyone attending by teleconference or other virtual mechanism from exercising their right to vote if eligible to do so.
- c. A resolution will be passed if more votes are cast for the resolution than against it.

- d. If an equal number of votes are cast for and against a resolution, then the Chair (or in their absence, the person presiding over the meeting) will have a second and casting vote.
- e. Should a vote be taken, the outcome of the vote, and any dissenting views, must be recorded in the minutes of the meeting.

Conflict resolution

The Committee will be expected to reach a consensus when agreeing matters of business. This will mean that core members are expected to compromise and demonstrate the behaviours listed within the Terms of Reference.

If the group cannot reach a consensus on a specific matter, the group will consider inviting an independent facilitator to assist with resolving the specific matter.

3.4 Frequency of meetings

The Committee will meet no less than four times in a 12 month period in public. Development sessions may also be held throughout the year.

The Chair may call an additional meeting at any time by giving not less than 14 calendar days' notice in writing to members of the Committee.

One third of the members of the Committee may request the Chair to convene a meeting by notice in writing, specifying the matters which they wish to be considered at the meeting. If the Chair refuses, or fails, to call a meeting within seven calendar days of such a request being presented, the Committee members signing the requisition may call a meeting by giving not less than 14 calendar days' notice in writing to all members of the Committee specifying the matters to be considered at the meeting.

In emergency situations the Chair may call a meeting with two days' notice by setting out the reason for the urgency and the decision to be taken.

3.5 Urgent decisions

In the case of urgent decisions and extraordinary circumstances, every attempt will be made for the Committee to meet virtually. Where this is not possible the following will apply:

- a) The powers which are delegated to the Committee, may for an urgent decision be exercised by the Chair of the Committee and the ICB Lead Place Lead. If the Chair of the Committee is not an independent non-executive member, then such an individual must also be consulted.
- b) The exercise of such powers shall be reported to the next formal meeting of the Committee for formal ratification, where the Chair will explain the reason for the action taken, and the ICB Audit Committee for oversight.

3.6 Admission of the press and public

In accordance with Public Bodies (Admission to Meetings) Act 1960 All meetings of the ICB at which public functions are exercised will be open to the public. This includes the Committee.

The Committee may resolve to exclude the public from a meeting or part of a meeting where it would be prejudicial to the public interest by reason of the confidential nature of

the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings or for any other reason permitted by the Public Bodies (Admission to Meetings) Act 1960 as amended or succeeded from time to time.

The chair of the meeting shall give such directions as he/she thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Committee's business shall be conducted without interruption and disruption.

As permitted by Section 1(8) Public Bodies (Admissions to Meetings) Act 1960 as amended from time to time) the public may be excluded from a meeting to suppress or prevent disorderly conduct or behaviour.

Matters to be dealt with by a meeting following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Committee.

A public notice of the time and place of the meeting and how to access the meeting shall be given by posting it at the offices of the ICB body and electronically at least 7 calendar days before the meeting or, if the meeting is convened at shorter notice, then at the time it is convened.

The agenda and papers for meetings will be published electronically 5 working days in advance of the meeting excluding, if thought fit, any item likely to be addressed in part of a meeting is not likely to be open to the public.

3.7 Declarations of interest

If any member has an interest, financial or otherwise, in any matter and is present at the meeting at which the matter is under discussion, he/she will declare that interest as early as possible and act in accordance with the ICB's Conflicts of Interests Policy. Subject to any previously agreed arrangements for managing a conflict of interest, the chair of the meeting will determine how a conflict of interest should be managed. The chair of the meeting may require the individual to withdraw from the meeting or part of it. The individual must comply with these arrangements, and actions taken in mitigation will be recorded in the minutes of the meeting.

3.8 Support to the Committee

Administrative support will be provided to the Committee by the ICB. This will include:

- Agreement of the agenda with the Chair in consultation with the ICB Place Lead, taking minutes of the meetings, keeping an accurate record of attendance, management and recording of conflicts of interest, key points of the discussion, matters arising and issues to be carried forward.
- Maintaining an on-going list of actions, specifying members responsible, due dates and keeping track of these actions.
- Sending out agendas and supporting papers to members five working days before the meeting.
- Drafting minutes for approval by the Chair and ICB Place Lead within five working days of the meeting and then distribute to all attendees following this approval within 10 working days.
- An annual work plan to be updated and maintained on a monthly basis.

4. Remit and responsibilities of the committee

The Leeds Health and Care (Place Based) Partnership ICB Committee has been provided with delegated authority to make decisions about the use of NHS resources in Leeds, including the agreement of contracts for relevant services. The decisions reached are the decisions of the ICB, in line with the organisation's scheme of delegation.

The West Yorkshire Integrated Care Board high level Scheme of Reservation and Delegation (SoRD) is attached at Appendix 1 and outlines those responsibilities that will be delegated to a Committee or Sub-Committee.

5. Authority

- 5.1 The Committee is authorised to investigate any activity within its terms of reference. It is authorised to seek any information it requires within its remit, from any employee of the ICB and they are directed to co-operate with any such request made by the Committee.
- 5.2 The Committee is authorised to commission any reports or surveys it deems necessary to help it fulfil its obligations.
- 5.3 The Committee is authorised to obtain legal or other independent professional advice and secure the attendance of advisors with relevant expertise if it considers this is necessary. In doing, so, the Committee must follow procedures put in place by the ICB for obtaining legal or professional advice.
- 5.4 The Committee is authorised to create sub-committees or working groups as are necessary to fulfil its responsibilities within its terms of reference. The Committee may not delegate executive powers delegated to it within these terms of reference (unless expressly authorised by the ICB Board) and remains accountable for the work of any such group.

6. Reporting

- 6.1 The Committee shall submit its minutes to each formal ICB Board meeting.
- 6.2 The Leeds ICB Place Lead shall draw to the attention of the ICB Board any significant issues or risks relevant to the ICB.
- 6.3 The Committee's minutes will be published on the ICB website once ratified.
- 6.4 The Committee shall submit an annual report to the ICB Audit Committee and the ICB.
- 6.5 The Committee will receive for information the minutes of other meetings which are captured in the Committee work plan e.g. sub-committees.

7. Conduct of the committee

- 7.1 All members will have due regard to and operate within the Constitution of the ICB, Standing Orders, standing financial instructions and Scheme of Delegation.
- 7.2 Members must demonstrably consider the equality and diversity implications of decisions they make and consider whether any new resource allocation achieves positive change around inclusion, equality and diversity.

- 7.3 Members of the Committee will abide by the 'Principles of Public Life' (The Nolan Principles) and the NHS Code of Conduct.
- 7.4 The Committee shall agree an Annual Work Plan with the ICB Board.
- 7.5 The Committee shall undertake an annual self-assessment of its own performance against the annual plan, membership and terms of reference. This self-assessment shall form the basis of the annual report from the Committee.
- 7.6 Any resulting changes to the terms of reference shall be submitted for approval by the ICB Board.

7.7 Behaviours and practice all members will demonstrate (TBC)

- Act across the Leeds health and care system in line with Nolan's Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Leadership.
- Act in the best interests of the population of Leeds.
- Resolve differences between members and present a united front in the best interests of the people of Leeds.
- Openness and transparency in discussions.
- Hold each other to account.
- Offer constructive challenge to improve service delivery and ensure financial balance.
- Openness and transparency in decision making, being explicit of when not agreeing/supporting a decision.
- Undertake the necessary discussions within their own organisations prior to the group meeting in order to make decisions within the meeting.

8. Equality

- 8.1 The group shall have due regard to equality in all its activities and shall take steps to demonstrate it has consulted with communities appropriately in its decisions.

SCHEDULE 4

Dispute Resolution Procedure

1. Avoiding and Solving Disputes

- 1.1 The Partners commit to working cooperatively to identify and resolve issues to the Partners' mutual satisfaction so as to avoid all forms of dispute or conflict in performing their obligations under this MoU. Accordingly the Partners will look to collaborate and resolve differences under Clause 8 (*Problem Resolution and Escalation*) of this MoU prior to commencing this procedure.
- 1.2 The Partners believe that by focusing on their agreed Objectives and Principles they are reinforcing their commitment to avoiding disputes and conflicts arising out of or in connection with the Partnership arrangements set out in this MoU.
- 1.3 The Partners shall promptly notify each other of any dispute or claim or any potential dispute or claim in relation to this MoU or the operation of the Partnership (each a '**Dispute**') when it arises.
- 1.4 In the first instance the relevant Partners' representatives shall meet with the aim of resolving the Dispute to the mutual satisfaction of the relevant Partners. If the Dispute cannot be resolved by the relevant Partners' representatives within 10 Operational Days of the Dispute being referred to them, the Dispute shall be referred to senior officers of the relevant Partners, such senior officers not to have had direct day-to-day involvement in the matter and having the authority to settle the Dispute. The senior officers shall deal proactively with any Dispute on a Best for Leeds basis in accordance with this MoU so as to seek to reach a unanimous decision.
- 1.5 The Partners agree that the senior officers may, on a Best for Leeds basis, determine whatever action it believes is necessary including the following:
 - 1.5.1 If the senior officers cannot resolve a Dispute, they may agree by consensus to select an independent facilitator to assist with resolving the Dispute; and
 - 1.5.2 The independent facilitator shall:
 - (i) be provided with any information he or she requests about the Dispute;
 - (ii) assist the senior officers to work towards a consensus decision in respect of the Dispute;
 - (iii) regulate his or her own procedure;

- (iv) determine the number of facilitated discussions, provided that there will be not less than three and not more than six facilitated discussions, which must take place within 20 Operational Days of the independent facilitator being appointed; and
- (v) have its costs and disbursements met by the Partners in Dispute equally.

1.5.3 If the independent facilitator cannot resolve the Dispute, the Dispute must be considered afresh in accordance with this Schedule 5 and only after such further consideration again fails to resolve the Dispute, the Partners may agree to:

- (i) terminate this MoU in accordance with Clause 16.1.1; or
- (ii) agree that the Dispute need not be resolved.