

Dated 1st April 2022

TRAFFORD COUNCIL

and

**NHS TRAFFORD CLINICAL COMMISSIONING
GROUP**

**FRAMEWORK PARTNERSHIP AGREEMENT
RELATING TO THE COMMISSIONING OF HEALTH
AND SOCIAL CARE SERVICES RELATING TO THE
BETTER CARE FUND, LOCAL TRAFFORD
DISCHARGE TO ASSESS & LEARNING
DISABILITIES FUND**

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THIS AGREEMENT is made on the 1st day of April 2022

PARTIES

- (1) **TRAFFORD COUNCIL** (the "**Council**")
- (2) **NHS TRAFFORD CLINICAL COMMISSIONING GROUP** (the "**CCG**")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Trafford.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Trafford.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also the means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
 - a) improve the quality and efficiency of the Services;
 - b) meet the National Conditions and Local Objectives;
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;
 - d) Re-balance the local Health and Social Care Economy – Trafford will target our resources on the major causes of ill-health and community breakdown to improve outcomes for Trafford patients and residents, but doing so at an appropriate cost so our resources across the health and social care economy are deployed to deliver best value.
 - e) Improve Health and Wellbeing –Trafford will utilise our own commissioning responsibilities and work with partners across the public, private and voluntary sector to protect good health and prevent ill health by ensuring evidenced based practice at the appropriate scale.
 - f) Develop Communication/Relationships – Trafford will continue to work closely with individuals, communities, voluntary sector and other partner organisations, monitoring and enhancing effective partnerships that improve outcomes for patients and communities which is a key component of our planning process.
 - g) Develop Integration – Trafford will continue to commission and manage effective integrated care pathways in partnership with our local clinical senate, the local Health and Wellbeing Board and other appropriate partnership structures. We will reduce duplication, improve co-ordination across settings and continue to re-design and transform services so they are people-focused to improve outcomes and the patient experience.
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.

- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION

- 1.1 In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

Affected Partner means, in the context of Clause 24, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event

Agreement means this agreement including its Schedules and Appendices.

Authorised Officers means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement.

Better Care Fund means the Better Care Fund as described in NHS England Publications Gateway Ref. No.00314 and NHS England Publications Gateway Ref. No.00535 as relevant to the Partners.

Better Care Fund Plan means the plan attached at Schedule 5 setting out the Partners plan for the use of the Better Care Fund.

Joint Finance Group means the board responsible for review of performance and oversight of this Agreement as set out in Schedule 1.

Trafford Local Discharge to Assess Fund means for people being discharged out of hospital into beds based care for assessment of longer term requirements or home based care for assessment/rehabilitation

CCG Statutory Duties means the Duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act

Change in Law means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England after the date of this Agreement

Commencement Date means 00:01 hrs on 1st April 2022

Confidential Information means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement and the Services and:

- (a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;
- (b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or
- (c) which is a trade secret.

Contract Price means any sum payable to a Provider under a Service Contract as consideration for the provision of Services and which, for the avoidance of doubt, does not include any Default Liability or Performance Payment.

Default Liability means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract) to be payable by any Partner(s) to the Provider as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under the relevant Services Contract or (ii) any act or omission of a third party for which any or all of the Partners are, under the terms of the relevant Services Contract, liable to the Provide

Financial Contributions means the financial contributions made by each Partner to a Pooled Fund in any Financial Year.

Financial Year means each financial year running from 1 April in any year to 31 March in the following calendar year.

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
 - (b) acts of terrorism;
 - (c) acts of God;
 - (d) fire or flood;
 - (e) industrial action;
 - (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
 - (g) any form of contamination or virus outbreak; and
 - (h) any other event,
- in each case where such event is beyond the reasonable control of the Partner claiming relief

Functions means the NHS Functions and the Health Related Functions

Health Related Functions means those of the health related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.

Host Partner means for each Pooled Fund the Partner that will host the Pooled Fund.

Health and Wellbeing Board means the Health and Wellbeing Board established by the Council pursuant to Section 194 of the Health and Social Care Act 2012.

Indirect Losses means loss of profits, loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis.

Individual Scheme means one of the schemes which is agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification.

Integrated Commissioning means arrangements by which both Partners commission Services in relation to an individual Scheme on behalf of each other is exercise of both the NHS Functions and Council Functions through integrated structures.

Joint (Aligned) Commissioning means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75.

Law means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
- (c) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and

(d) any judgment of a relevant court of law which is a binding precedent in England.

Lead Commissioning Arrangements means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of the other Partner in exercise of both the NHS Functions and the Council Functions.

Lead Commissioner means the Partner responsible for commissioning an Individual Service under a Scheme Specification.

Learning Disabilities means the LD pooled budget and plan attached at Schedule 5 setting out the Partners plan.

Losses means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses and "Loss" shall be interpreted accordingly.

Month means a calendar month.

National Conditions mean the national conditions as set out in the NHS England Planning Guidance as are amended or replaced from time to time.

NHS Functions means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the CCG as are relevant to the commissioning of the Services and which may be further described in each Service Schedule

Non Pooled Fund means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification

Non-Recurrent Payments means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 10.

Overspend means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.

Partner means each of the CCG and the Council, and references to "**Partners**" shall be construed accordingly.

Permitted Budget means in relation to a Service where the Council is the Provider, the budget that the Partners have set in relation to the particular Service.

Personal Data means Personal Data as defined by the 1998 Act.

Pooled Fund means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations

Pooled Fund Manager means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 10.

Provider means a provider of any Services commissioned under the arrangements set out in this Agreement.

Public Health England means the SOSH trading as Public Health England.

Quarter means each of the following periods in a Financial Year:

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

and "**Quarterly**" shall be interpreted accordingly.

Regulations means the means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).

Scheme Specification means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement and included in the final Better Care Fund submission.

Sensitive Personal Data means Sensitive Personal Data as defined in the 1998 Act.

Services means such health and social care services as agreed from time to time by the Partners as commissioned under the arrangements set out in this Agreement and more specifically defined in each Scheme Specification.

Services Contract means an agreement for the provision of Services entered into with a Provider by one or more of the Partners in accordance with the relevant Individual Scheme.

Service Users means those individual for whom the Partners have a responsibility to commission the Services.

SOSH means the Secretary of State for Health.

Third Party Costs means all such third party costs (including legal and other professional fees) in respect of each Individual Scheme as a Partner reasonably and properly incurs in the proper performance of its obligations under this Agreement and as agreed by the Partnership Board

Working Day means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.

1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

2.1 This Agreement shall come into force on the Commencement Date.

2.2 The Government have committed funding for the Better Care Fund until March 2023. This Agreement shall therefore continue until 31st March 2023 unless it is terminated beforehand in accordance with Clause 22. When the national position on the future of Better Care Fund beyond 31st March 2023 has been determined the agreement will need to be reviewed. The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

3 GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or

3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.

3.2 The Partners agree to:

3.2.1 treat each other with respect and an equality of esteem;

3.2.2 be open with information about the performance and financial status of each; and

3.2.3 provide early information and notice about relevant problems.

3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

4 PARTNERSHIP FLEXIBILITIES

4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:

4.1.1 Lead Commissioning Arrangements;

4.1.2 the establishment of a Pooled Fund

in relation to Individual Schemes (the "Flexibilities")

5 FUNCTIONS

5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.

5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.

5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Scheme Specification in the BCF Submission and shall be completed and agreed between the Partners. The plan for 2022-23 is included in Schedule 5.

5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.

- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Joint Finance Group.

6 COMMISSIONING ARRANGEMENTS

Integrated Commissioning

- 6.1 Whilst there are no formal integrated Commissioning Arrangements associated with this agreement, the CCG and the Council are working together on a number of integration initiatives which are reflected in the Better Care Fund Scheme Specifications.

Appointment of a Lead Commissioner

- 6.2 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
- 6.2.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.2.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - 6.2.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.2.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 6.2.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 6.2.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 6.2.7 undertake performance management and contract monitoring of all Service Contracts;
 - 6.2.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
 - 6.2.9 keep the other Partners regularly informed of the effectiveness of the arrangements.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 It is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 7.3.1 the Contract Price;
 - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
 - 7.3.3 Approved Expenditure
- 7.4 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.

- 7.5 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
- 7.5.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 7.5.2 providing the financial administrative systems for the Pooled Fund; and
 - 7.5.3 appointing the Pooled Fund Manager;
 - 7.5.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
- 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager in respect of each Individual Service where there is a Pooled Fund shall have the following duties and responsibilities:
- 8.2.1 the day to day operation and management of the Pooled Fund;
 - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.2.5 reporting to the Joint Finance Group as required by the Health and Social Care Commissioning Board and the relevant Scheme Specification;
 - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 8.2.7 preparing and submitting to the Joint Finance Group. Quarterly reports (or more frequent reports if required by the Joint Finance Group) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Joint Finance Group to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
 - 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Fund Manager shall have regard to the recommendations of the Joint Finance Group and shall be accountable to the Partners.
- 8.4 The Joint Finance Group may agree to the viring of funds between Pooled Funds.

9 NON POOLED FUNDS

- 9.1 For the avoidance of doubt, there will be no non pooled funds in relation to this agreement.

10 FINANCIAL CONTRIBUTIONS

- 10.1 The Financial Contribution of the CCG and the Council to each service is set out in Schedule 5

All financial contributions are made on a block basis. – ie the payments to the service providers are agreed up front as a fixed amount for the year and do not change whatever the level of activity, excluding the Local Trafford Discharge to Assess Fund which will be funded from the joint contingency fund based on actual package of care costs incurred.

- 10.2 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the Joint Finance Group minutes and recorded in the budget statement as a separate item.

11 NON FINANCIAL CONTRIBUTIONS

- 11.1 The Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The partners have agreed to the risk share arrangements as set out in schedule 2 for the financial year 2022/23.

Overspends in Pooled Fund

- 12.2 Subject to Clause 12.1, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to the Contract Price or Approved Expenditure.
- 12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with the terms of this agreement and it has informed the Joint Finance Group in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Joint Finance Group is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule 2 shall apply.

Default Liabilities and Third Party Costs

- 12.5 There are no known default liabilities or third party costs relating to the areas of activity included in this agreement at the outset. Any default liabilities or third party costs which may arise during the course of the agreement will be the responsibility of each partner for their areas of responsibility in the funding agreement.

13 CAPITAL EXPENDITURE

Apart from the amounts set aside in the expenditure plan for Social Care Capital and Disabled Facilities grants, no Pooled Funds shall normally be applied towards any capital expenditure. If a further need for capital expenditure is identified this must be agreed by the Partners.

14 VAT

The Partners shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.

15 AUDIT AND RIGHT OF ACCESS

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund and shall require the

Audit Commission to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.

- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Joint Finance Group.

- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:

16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;

16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);

16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.

- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.

- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).

- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

- 17.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.

- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

18 CONFLICTS OF INTEREST

The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 6.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 The Partners have established a Joint Finance Group that meets bi-weekly and part of their remit will be to:
- ensure the overall direction, implementation and successful delivery of the BCF for Trafford.;
 - be responsible for joint decisions on the BCF spend and subsequent monitoring;
 - oversee the programmes of work identified for the Local Trafford Discharge to Assess Fund;
 - oversee the Learning Disability Budget
- 19.3 The Joint Finance Group is based on a joint working group structure. The membership of this group includes the two key Commissioning Sponsors covering both Health and Social Care Commissioning across the CCG and Council. Each member of the Joint Finance Group shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Joint Finance Group to carry out its objects, roles, duties and functions as set out in this Clause 19.
- 19.4 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 19.5 The Joint Finance Group shall be responsible for the overall approval of the Individual Services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.6 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Service and how that Individual Services is reported to the Joint Finance Group and the Health and Wellbeing Board.

20 REVIEW

- 20.1 Save where the Joint Finance Group agrees alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.2 Subject to any variations to this process required by the Joint Finance Group. Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in clause 19.
- 20.3 The Partners shall within 20 Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Joint Finance Group.
- 20.4 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

The Partners' own complaints procedures shall apply to this Agreement. The Partners agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services.

22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Partner giving not less than 6 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund requirements continue to be met.
- 22.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach.
- 22.5 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.5.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 22.5.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 22.5.3 the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
- 22.5.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
- 22.5.5 the Joint Finance Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 22.5.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.6 In the event of termination in relation to an Individual Scheme the provisions of Clause 22.5 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Authorised Officers shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective chief executive/ chief operating officer or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

- 24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

25 CONFIDENTIALITY

- 25.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:

- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
- 25.3 Each Partner:
- 25.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and
 - 25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
 - 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

- 26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
- 26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

27 OMBUDSMEN

The Partners will co-operate with any investigation undertaken by the Health Service Commissioner for England or the Local Government Commissioner for England (or both of them) in connection with this Agreement.

28 INFORMATION SHARING

The Partners will follow the Information Governance Protocol set out in schedule 7, and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

29 NOTICES

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
- 29.1.1 personally delivered, at the time of delivery;
 - 29.1.2 sent by facsimile, at the time of transmission;
 - 29.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
 - 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard

copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:

29.3.1 if to the Council, addressed to Sara Todd, the Chief Executive, Trafford Metropolitan Borough Council

E Mail: Sara.Todd@trafford.gov.uk

and

29.3.2 if to the CCG, addressed to Gareth James, Accountable Officer

E.Mail: Gareth.James1@nhs.net

30 VARIATION

No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

31 CHANGE IN LAW

31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.

31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.

31.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 23 (Dispute Resolution) shall apply.

32 WAIVER

No failure or delay by any Partner to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

33 SEVERANCE

If any provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

34 ASSIGNMENT AND SUB CONTRACTING

The Partners shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partners, which shall not be unreasonably withheld or delayed. This shall not apply to any assignment to a statutory successor of all or part of a Partner's statutory functions.

35 EXCLUSION OF PARTNERSHIP AND AGENCY

- 35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- 35.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:
- 35.2.1 act as an agent of the other;
 - 35.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

37 ENTIRE AGREEMENT

- 37.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.
- 37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

38 COUNTERPARTS


This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

39 GOVERNING LAW AND JURISDICTION

- 39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 39.2 Subject to Clause 23 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this Agreement has been executed by the Partners on the date of this Agreement

THE CORPORATE SEAL of THE)
COUNCIL OF [])
was hereunto affixed in the presence)
of:

 (DIANE EATON)

Signed for on behalf of **CLINICAL
COMMISSIONING GROUP**

 (GARETH JAMES)

Authorised Signatory
Approved through CCG governance on
23 June 2022

SCHEDULE 1– GOVERNANCE

The Better Care Fund is accountable to:

- **NHS England:** The approval of the Better Care Fund for 22/23 will be required to go through an approval process yet to be confirmed in the Better Care Fund guidance for 22/23. The quarterly assurance reporting will also need to be completed and Trafford CCG will lead this process with input from the individual schemes as required. In addition to individual scheme performance, overall reporting on the finances and the performance of the national indicators will be provided.
- **Trafford Health and Wellbeing Board (HWB):** Overall strategic oversight of partnership working between the partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary. Trafford Council and Trafford CCG must seek sign off of the Better Care Fund from the HWB. There will also be annual assurance required to the HWB reporting on performance of the Better Care fund.

Joint Finance Group will have an overview of the BCF and will receive reports and papers as required on the schemes that make up the better care fund. Risks or issues will be escalated to this board as required. Performance reports will be sent to the board at least 3 times per annum. In summary, the board will:

- ensure the overall direction, implementation and successful delivery of the BCF for Trafford
 - be responsible for joint decisions on the BCF spend and subsequent monitoring;
 - oversee the programmes of work identified
- **Each organisation will be responsible for taking decisions through the existing governance structures.**
 - Trafford Council will involve elected members as required through regular meetings with portfolio leads, as well as taking any key decisions through to Trafford Council Executive.
 - Trafford CCG will take key decisions through the CCG QF&P Committee and the CCG governing body.

The above governance arrangements will be in place until 30th June 2022 until the CCG closedown and post 1st July new governance arrangements will be in place to replace the above structure. This new Trafford Locality Committee and revised governance process will be amended within this S75 Agreement and novated into the new organisation Greater Manchester Integrated Care.

SCHEDULE 2– RISK SHARE, OVERSPENDS AND UNDERSPENDS

Risk Share

Better Care Fund and Learning Disability

It has been agreed by both parties that there will not be a contingency fund on a payment by performance approach but that each organisation will meet its own risks with regards to performance.

Overspends

In the event that the CCG or the Council identify at any period during a financial year that there will be insufficient budgetary provision to meet the likely expenditure for the current financial year then expenditure shall be managed by each organisation who will be responsible for meeting their own overspends should they occur.

Underspends

In the event that the CCG or the Council identify at any period during a financial year that there will be underspends then this will be managed by each organisation who will in the first instance be able to meet any overspends in any of their other schemes should this occur. Any underspends remaining after this will be reported back to the Joint Finance Group where decisions on its investment will be made.

Trafford Local Discharge to Assess Fund

The below principles were agreed to support the Fund:

Side letter to support the use of non recurrent funding for the purpose of discharge to assess Background

Since April 2020 and the start of the Covid-19 pandemic Trafford CCG and Trafford Council have been collaborating on the discharge pathway in light of changes made to the easing of the Care Act and specifically the assessment of patients for continued support. Between April 2020 and March 2022 national funding has been available in the form of the hospital discharge fund, however from April 2022 this funding is no longer available and local plans are required to sustain the current operating model.

Funding available

Pre pandemic the council had a recurrent budget of £1m for the spot purchase of discharge to assess beds and 9 beds in Ascot House.

The council is also holding £1.706m of locality transformation funding from 2020-21 against which plans are yet to be drawn and a further £1.577m has been identified in 2021-22. Together this totals the remaining value outstanding in the drawdown of the locality transformation fund no longer available to drawdown from GM.

Should no further funding be available via NHS funding routes for 2022-23 it is proposed that the balance of the transformation funding (£3.283m) will be used to bolster the council's £1m recurrent funding for D2A placements. The 9 D2A beds in Ascot House are already recurrently funded by the LA in addition to the identified £1m budget.

A business case has been drafted proposing the required number of assessment beds both blocked and spot purchase, the GP medical cover and potential input of therapy support services. A summary of the proposal to be funded via the non recurrent fund as of April 2022 is:

- Block Beds – 30 beds across a number of care homes - details to be confirmed
- Block Beds – 9 Ascot House – recurrently funded
- Spot purchase – up to 18 beds
- GP medical Cover
- Medicine Review support

Manchester FT have agreed to fund an assessment team to a cost of £300k which is additional to the £4.283m.

Therapy Services are to be provided by TLCO from either the Age Well team (reactive care) or core community team (routine care). This funding is within TLCO contract.

Increased home care requirements have yet to be evaluated.

How the fund is proposed to operate for D2A

The total cost of the proposed service level for 2022-23 will be assessed against the available funding of £4.283m.

The recurrent council budget of £1m will be fully committed against the total costs.

The balance of £3.283m may be utilised in accordance with the costs identified in the business case to this value but not exceeded.

Due to the timing of the business case, joint agreement was reached to rollover the D2A care home beds until 31 May 2022 including the required GP medical cover until 30 June 2022. The total cost of the care home beds (block and spot purchase excluding Ascot House) and the GP medical cover will be fully chargeable to the 22/23 fund. This will encompass the full cost of the placements and not limited to a 28 day length of stay.

Using data from January to May the locality will need to review the cost of extended length of stay beyond 28 days and consider if the fund should cover this cost either in whole or part.

Estimated cost of the agreed bed complement from June 2022 (43 weeks)

30 Block Beds (homes to be confirmed) @ £1200 per week **£1,548,000**

18 Spot Purchase Beds @ £900 per week **£696,600**

GP Medical Cover **£300,000**

Medicine Support **£72,375**

Total estimated cost £2,616,975

Balance to fund Q1 and a contingency for consideration £1,666,025

The balance of transformation funding will be held and its use will be for the consideration of the Trafford Place Based Leader and Local Partnership Board.

In the event the cost of the D2A pathway exceeds the available funding

If during the course of 2022/23 further capacity within discharge to assess is required which exceeds the identified budget, there will be no automatic recourse to the Local Authority and CCG or ICB. A business case prepared by relevant partners within the Trafford Provider Collaborative will be submitted to the Local Partnership Board including the proposed funding methodology.

In year reporting

The Local Authority will prepare regular reports on the costs against budget, highlighting risks to the fund enabling sufficient time to consider the implications of any potential shortfall in funding such that relevant partners within the Trafford Provider Collaborative may act to mitigate.

Beyond 2022/23

This proposal presents a predominantly non recurrent funding opportunity for 2022/23 only. Beyond this point the Locality will either need to identify further recurrent funding or agree to scale back the discharge pathway capacity to fit within the recurrent council budget of £1m.

SCHEDULE 3– JOINT WORKING OBLIGATIONS

Part 1 – LEAD COMMISSIONER OBLIGATIONS

Terminology used in this Schedule shall have the meaning attributed to it in the NHS Standard Form Contract save where this Agreement or the context requires otherwise.

- 1 The Lead Commissioner shall notify the other Partners if it receives or serves:
 - 1.1 a Change in Control Notice;
 - 1.2 a Notice of a Event of Force Majeure;
 - 1.3 a Contract Query;
 - 1.4 Exception Reportsand provide copies of the same.
- 2 The Lead Commissioner shall provide the other Partners with copies of any and all:
 - 2.1 CQUIN Performance Reports;
 - 2.2 Regular Activity Reports;
 - 2.3 Review Records; and
 - 2.4 Remedial Action Plans;
 - 2.5 JI Reports;
 - 2.6 Service Quality Performance Report;
- 3 The Lead Commissioner shall consult with the other Partners before attending:
 - 3.1 an Activity Management Meeting;
 - 3.2 Contract Management Meeting;
 - 3.3 Review Meeting;and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.
- 4 The Lead Commissioner shall not:
 - 4.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
 - 4.2 vary any Provider Plans (excluding Remedial Action Plans);
 - 4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
 - 4.4 give any approvals under the Service Contract;
 - 4.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
 - 4.6 suspend all or part of the Services;
 - 4.7 serve any notice to terminate the Service Contract (in whole or in part);
 - 4.8 serve any notice;
 - 4.9 agree (or vary) the terms of a Succession Plan;

without the prior approval of the other Partners (acting through the [JCB]) such approval not to be unreasonably withheld or delayed.

- 5 The Lead Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
- 6 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
- 7 The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

Part 2 – OBLIGATIONS OF THE OTHER PARTNER

Terminology used in this Schedule shall have the meaning attributed to it in the NHS Standard Form Contract save where this Agreement or the context requires otherwise.

- 1 Each Partner shall (at its own cost) provide such cooperation, assistance and support to the Lead Commissioner (including the provision of data and other information) as is reasonably necessary to enable the Lead Commissioner to:
 - 1.1 resolve disputes pursuant to a Service Contract;
 - 1.2 comply with its obligations pursuant to a Service Contract and this Agreement;
 - 1.3 ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;
- 2 No Partner shall unreasonably withhold or delay consent requested by the Lead Commissioner.
- 3 Each Partner (other than the Lead Commissioner) shall:
 - 3.1 comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;
 - 3.2 notify the Lead Commissioner of any matters that might prevent the Lead Commissioner from giving any of the warranties set out in a Services Contract or which might cause the Lead Commissioner to be in breach of warranty.

SCHEDULE 4 – PERFORMANCE ARRANGEMENTS

For the Better Care Fund the main area of performance monitoring is non-elective admissions to acute hospitals for Trafford CCG patients.

This is measured against a baseline of the previous year's activity.

There are also a number of subsidiary performance measures

The full list of reported measures is as follows:

- Reduction in avoidable admissions for chronic ambulatory care sensitive conditions;
- Length of Stay – Proportion of inpatients resident for 14 days or more and 21 days or more;
- Reablement – proportion of older people who were still at home 91 days after discharge from hospital into reablement services
- Discharge to normal place of residence following discharge from hospital to home
- Residential Readmissions – rate of permanent admissions to residential care per 100,000 population (65+)

National Conditions

- Plans need to be jointly agreed;
- NHS contribution to Adult Social Care is maintained in line with inflation
- Agreement to invest in NHS Commissioned Out of Hospital services, which may include 7 day services and adult social care
- Plan for improved outcomes for people being discharged from hospital

Details of measures are as included in the final BCF submission Part 2 – performance metrics.

Reports on performance against each of these measures will be presented to the Joint Finance Group on a quarterly basis.

For the Local Trafford Discharge to Assess fund the main areas of performance monitoring are:-

- the number of Discharges from Hospital into the D2A beds and;
- Length of stay beyond 28 days
- Occupancy Levels of D2A beds

For Learning Disabilities the main performance area is for the CCG - Annual Health Checks

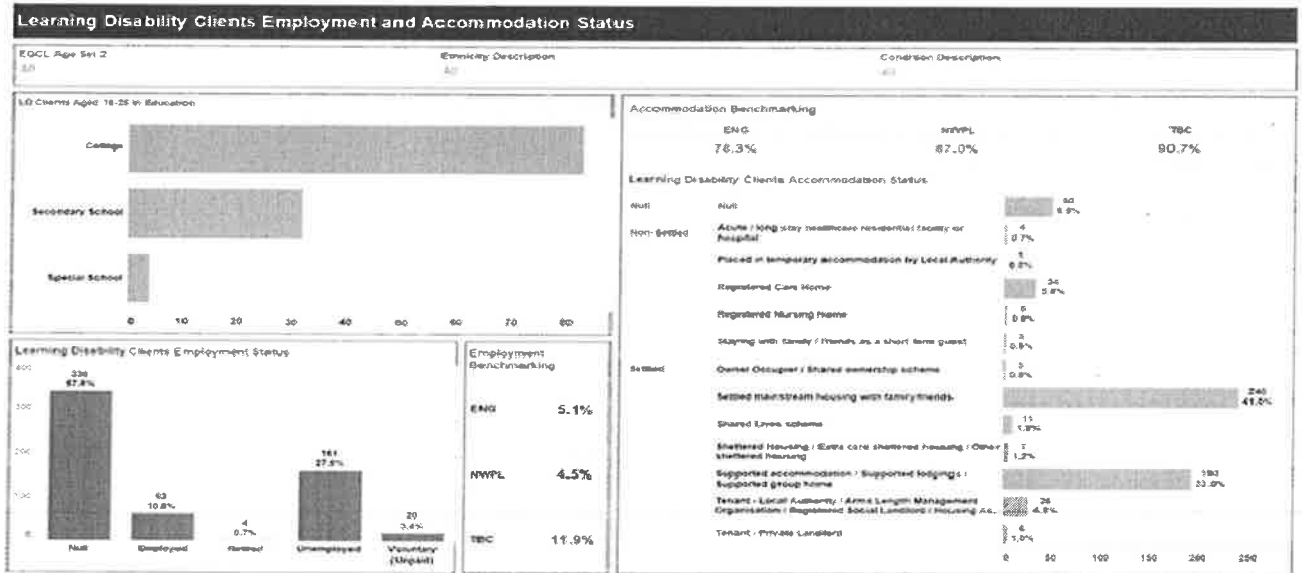
Improving the uptake of Annual Health Checks (AHC's) for people with and Learning Disability has been part of the NHS priorities for some years now and this includes quality standards and a financial incentive as part of the Quality Outcomes Framework (QOF) for GP's. During 20/21 at the height of the pandemic a GM target of 67% was agreed and Trafford exceeded this target achieving 72%. During that time a lot of work was undertaken in collaboration with Cheshire Wirral and Partnership (CWP) which demonstrated how effective joint working with our partners is to help support our most vulnerable patients to undertake their health checks. Targets for 21/22 were set at 70% which was the national target for 21/22 and we agreed quarterly trajectories to help achieve the year end goal. The group has continued to meet on a quarterly basis despite the challenges faced by the pandemic. Some of the group's actions included:

- Quarterly targets set in line with primary care recall system
- All practices supplied with a suite of prevalence searches to help identify missing patients from LD registers
- Collaborative working with CWP, with support offered to practices to review LD registers, complete pre-screen questionnaires, target practices with low LD AHC completion and provide ongoing training to practices
- Encourage practices to use Tableau to view their own LD AHC performance
- Continued promotion of LD AHC's via the clinician briefings
- LD link nurse in place to support practices

As a result of the continued hard work and despite the challenges faced by the Omicron variant at the end of 2021, the working group is pleased to report achievement of 68.13% at the end of March 2022 against the 70% target. Although marginally off target, this is viewed as a success due to the ongoing pressures which our primary care colleagues have faced throughout the year.

Going forward to 22/23 the aim is to achieve the national target of 75%. The working group will remain in place to meet on a quarterly basis.

For LD for the Local Authority the main performance focus is: Learning Disability Clients Employment and Accommodation Status



SCHEDULE 5- POOLED BUDGET PLAN

All payments for the services above are block payments and will not vary with any levels of activity.

Better Care Fund Plan £30.151m

Scheme Name	Source of Funds	2022/23 £'000
Community Nursing	CCG	3,558
End of Life Services	CCG	257
Intermediate Care	CCG	3,889
Nursing Homes	CCG	3,031
Alternative to treat (ATT)	CCG	562
Community equipment & adaptations	CCG	891
Integrated crisis and rapid response services	CCG	167
Early Supported hospital discharge schemes	CCG	2,127
Social Care client packages	IBCF/CCG	7,312
Carers	CCG	652
Stabilise and make safe	CCG	241
Advocacy	CCG	158
Better Care at home	IBCF	372
Market Stabilisation	IBCF	3,194
Asset based community capacity	IBCF	103
Quality Assurance and Improvement	IBCF	67
Disabled Facilities Grant	LA	2,470
Total Better Care Fund		29,051
Ageing Well Team	CCG	1,100
Total BCF & Ageing Well		30,151

- In addition to the BCF CCG minimum Contribution in 22/23 an additional £1.1m is included within the fund to support the Ageing Well team which was a new investment in 21/22.*

LD Fund Plan £28.8m

Scheme Name	Commissioner	2022/23 £'000
Policy, Assessment & Management Costs	CCG	1,313
Care & Support Costs	CCG	1,067
Policy, Assessment & Management Costs	Local Authority	665
Care & Support Costs	Local Authority	25,769
Total LD Pooled Fund		28,814

Trafford Local Discharge to Assess Fund - £4.283m

A summary of the proposal to be funded via the non recurrent fund as of April 2022 is:

- Block Beds – 30 beds across a number of care homes - details to be confirmed
- Block Beds – 9 Ascot House – recurrently funded
- Spot purchase – up to 18 beds
- GP medical Cover
- Medicine Review support

Manchester FT have agreed to fund an assessment team to a cost of £300k which is additional to the £4.283m.

Therapy Services are to be provided by TLCO from either the Age Well team (reactive care) or core community team (routine care). This funding is within TLCO contract. Increased home care requirements have yet to be evaluated.

SCHEDULE 6– POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

See current NHS Trafford Policy:

[COR001 COI Policy April 2019 \(Final\) \(trafford.gov.uk\)](#)

SCHEDULE 7 – INFORMATION GOVERNANCE PROTOCOL

The parties acknowledge their duties with regards to Information Governance and in particular to the requirements of the Data Protection Legislation and the Freedom of Information Act (FOIA). The parties are required to ensure that technical and organisational processes and procedures are in place to protect any confidential data. The parties must only process confidential data which are necessary.

Key aspects of compliance include Information Governance / data protection training for all staff, incident reporting processes,

The CCG is bound by the **NHS Standard Contract Terms - GC21 Patient Confidentiality, Data Protection, Freedom of Information and Transparency, as below:**

Information Governance – General Responsibilities

The Parties must comply with Data Protection Legislation, Data Guidance, the FOIA and the EIR, and must assist each other as necessary to enable each other to comply with these obligations.

- 21.2 The Provider must complete and publish an annual information governance assessment in accordance with, and comply with the mandatory requirements of, the NHS Data Security and Protection Toolkit, as applicable to the Services and the Provider's organisation type.
- 21.3 The Provider must:
 - 21.3.1 nominate an Information Governance Lead;
 - 21.3.2 nominate a Caldicott Guardian and Senior Information Risk Owner;
 - 21.3.3 where required by Data Protection Legislation, nominate a Data Protection Officer;
 - 21.3.4 ensure that the Co-ordinating Commissioner is kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner; and
 - 21.3.5 ensure that NHS England and NHS Digital are kept informed at all times of the identities and contact details of the Information Governance Lead, Data Protection Officer, Caldicott Guardian and the Senior Information Risk Owner via the NHS Data Security and Protection Toolkit.
- 21.4 The Provider must adopt and implement the National Data Guardian's Data Security Standards and must comply with further Guidance issued by the Department of Health and Social Care, NHS England and/or NHS Digital pursuant to or in connection with those standards. The Provider must be able to demonstrate its compliance with those standards in accordance with the requirements and timescales set out in such Guidance, including requirements for enabling patient choice.
- 21.5 The Provider must, at least once in each Contract Year, audit its practices against quality statements regarding data sharing set out in NICE Clinical Guideline 138.
- 21.6 The Provider must ensure that its NHS Data Security and Protection Toolkit submission is audited in accordance with Information Governance Audit Guidance where applicable. The Provider must inform the Co-ordinating Commissioner of the

results of each audit and publish the audit report both within the NHS Data Security and Protection Toolkit and on its website.

- 21.7 The Provider must report and publish any Data Breach and any Information Governance Breach in accordance with IG Guidance for Serious Incidents. If the Provider is required under Data Protection Legislation to notify the Information Commissioner or a Data Subject of a Personal Data Breach then as soon as reasonably practical and in any event on or before the first such notification is made the Provider must inform the Co-ordinating Commissioner of the Personal Data Breach. This GC21.7 does not require the Provider to provide the Co-ordinating Commissioner with information which identifies any individual affected by the Personal Data Breach where doing so would breach Data Protection Legislation.

Data Protection

- 21.8 The Provider must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, Privacy Notices, and to disseminate nationally-produced patient information materials. Any failure by the Provider to inform Service Users as required by Data Protection Legislation or Data Guidance about the uses of Personal Data that may take place under this Contract cannot be relied on by the Provider as evidence that such use is unlawful and therefore not contractually required.
- 21.9 Whether or not a Party or Sub-Contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Legislation and the ICO Guidance on Data Controllers and Data Processors and any further Data Guidance from a Regulatory or Supervisory Body. The Parties acknowledge that a Party or Sub-Contractor may act as both a Data Controller and a Data Processor. The Parties have indicated in the Particulars whether they consider the Provider to be a Data Processor on behalf of one or more of the Commissioners for the purposes of this Contract.
- 21.10 The Provider must ensure that all Personal Data processed by or on behalf of the Provider in the course of delivering the Services is processed in accordance with the relevant Parties' obligations under Data Protection Legislation and Data Guidance.
- 21.11 In relation to Personal Data processed by the Provider in the course of delivering the Services, the Provider must publish, maintain and operate:
- 21.11.1 policies relating to confidentiality, data protection and information disclosures that comply with the Law, the Caldicott Principles and Good Practice;
 - 21.11.2 policies that describe the personal responsibilities of Staff for handling Personal Data;
 - 21.11.3 a policy that supports the Provider's obligations under the NHS Care Records Guarantee;
 - 21.11.4 agreed protocols to govern the sharing of Personal Data with partner organisations; and
 - 21.11.5 where appropriate, a system and a policy in relation to the recording of any telephone calls or other telehealth consultations in relation to the Services, including the retention and disposal of those recordings, and apply those policies and protocols conscientiously.
- 21.12 Where a Commissioner requires information for the purposes of quality management of care processes, the Provider must consider whether the Commissioner's request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Commissioner, the Provider must:
- 21.12.1 provide such information in pseudonymised form where possible; and in any event
 - 21.12.2 ensure that there is a legal basis for the sharing of Personal Data.

21.13 Notwithstanding GC21.12, the Provider must (unless it can lawfully justify non-disclosure) disclose defined or specified confidential patient information to or at the request of the Co-ordinating Commissioner where support has been provided under the Section 251 Regulations, respecting any individual Service User's objections and complying with other conditions of the relevant approval.

The Provider as a Data Processor

21.14 Where the Provider, in the course of delivering the Services, acts as a Data Processor on behalf of a Commissioner, the provisions of Schedule 6F (Provider Data Processing Agreement) will apply.

Responsibilities when engaging Sub-Contractors

21.15 Subject always to GC12 (Assignment and Sub-Contracting), if the Provider is to engage any SubContractor to deliver any part of the Services (other than as a Data Processor) and the Sub-Contractor is to access personal or confidential information or interact with Service Users, the Provider must impose on its Sub-Contractor obligations that are no less onerous than the obligations imposed on the Provider by this GC21.

21.16 Without prejudice to GC12 (Assignment and Sub-Contracting), if the Provider is to require any SubContractor to act as a Data Processor on its behalf, the Provider must:

21.16.1 require that Sub-Contractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out, and take reasonable steps to ensure compliance with those measures;

21.16.2 carry out and and record appropriate due diligence before the Sub-Contractor processes any Personal Data in order to demonstrate compliance with Data Protection Legislation; and

21.16.3 as far as practicable include in the terms of the sub-contract terms equivalent to those set out in Schedule 6F (Provider Data Processor Agreement) and in any event ensure that the SubContractor is engaged under the terms of a binding written agreement requiring the SubContractor to:

21.17 The agreement required by GC21.16 must also set out:

21.17.1 the subject matter of the processing;

21.17.2 the duration of the processing;

21.17.3 the nature and purposes of the processing;

21.17.4 the type of personal data processed;

21.17.5 the categories of data subjects; and

21.17.6 the plan for return and destruction of the data once processing is complete unless the Law requires that the data is preserved.

Freedom of Information and Transparency

21.18 The Provider acknowledges that the Commissioners are subject to the requirements of FOIA and EIR. The Provider must assist and co-operate with each Commissioner to enable it to comply with its disclosure obligations under FOIA and EIR. The Provider agrees:

21.18.1 that this Contract and any other recorded information held by the Provider on a Commissioner's behalf for the purposes of this Contract are subject to the obligations and commitments of the Commissioner under FOIA and EIR;

21.18.2 that the decision on whether any exemption under FOIA or exception under EIR applies to any information is a decision solely for the Commissioner to whom a request for information is addressed;

21.18.3 that where the Provider receives a request for information relating to the Services provided under this Contract and the Provider itself is

subject to FOIA or EIR, it will liaise with the relevant Commissioner as to the contents of any response before a response to a request is issued and will promptly (and in any event within 2 Operational Days) provide a copy of the request and any response to the relevant Commissioner;

- 21.18.4 that where the Provider receives a request for information and the Provider is not itself subject to FOIA or as applicable EIR, it will not respond to that request (unless directed to do so by the relevant Commissioner to whom the request relates) and will promptly (and in any event within 2 Operational Days) transfer the request to the relevant Commissioner;
- 21.18.5 that any Commissioner, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of FOIA and regulation 16 of EIR, may disclose information concerning the Provider and this Contract either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- 21.18.6 to assist the Commissioners in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA or EIR) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by that Commissioner within 5 Operational Days of that request and without charge.
- 21.19 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, or for which an exception applies under EIR, the content of this Contract is not Confidential Information.
- 21.20 Notwithstanding any other term of this Contract, the Provider consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA or for which an exception applies under EIR.
- 21.21 In preparing a copy of this Contract for publication under GC21.20 the Commissioners may consult with the Provider to inform decision-making regarding any redactions but the final decision in relation to the redaction of information will be at the Commissioners' absolute discretion.
- 21.22 The Provider must assist and cooperate with the Commissioners to enable the Commissioners to publish this Contract.

NHS Data Sharing Principles

- 21.23 The Provider must have regard to the NHS Data Sharing Principles

