

TRAFFORD COUNCIL

Report to: Executive
Date: 28th January 2019
Report for: Decision
Report of: Executive Member for Adult Social Care

Report Title

S75 Better Care Fund and improved Better Care Fund agreement 2018-19 between Trafford Clinical Commissioning Group and Trafford Council

Summary

The Better Care Fund was introduced by the Government from 1st April 2015 consolidating a number of previous funding streams into one pooled fund which is hosted by the CCG. This fund includes monies for the protection of adult social care. The expectations of the Government of having a Better Care Fund are to promote better integration of health and social services for individuals and deliver cost benefits across the whole system. The Better Care Fund is the subject of a Section 75 agreement which describes how the money will be managed.

In October 2017, the executive agreed to give delegated authority to the Chief Legal Officer to complete the Section 75 agreement on behalf of the council, in relation to the Better Care Fund for 17/18.

This paper seeks the same delegated authority to complete the Section 75 agreement on behalf of the council, in relation to the Better Care Fund for 18/19.

Recommendation(s)

It is recommended that the Executive:

1. Approve the s75 partnership agreement between Trafford CCG and the Council for the Better Care Fund and formalisation of the funding for 2018-19.
2. Note that the Trafford Clinical Commissioning Group will continue to host the s75 agreement.
3. Delegate authority to the Corporate Director for Governance and Community Strategy to complete the Agreements on behalf of the Council

Contact person for access to background papers and further information:

Name: Joanne Gibson
Extension: 4074

Background Papers: None

Implications:

| | |
|---|--|
| Relationship to Policy Framework/Corporate Priorities | The Better Care fund activity is integral to the delivery of our sustainable Transformation Plan. The Better Care Fund supports the integration of Health and Social Care Commissioning functions. |
| Financial | The Financial allocations are determined at a national level and have been agreed by Trafford Council and Trafford CCG on how they will be spent |
| Legal Implications: | The section 75 agreement is based on a nationally available model agreement devised by Bevan Brittan and has been assured by our legal department. |
| Equality/Diversity Implications | None |
| Sustainability Implications | The Better Care Fund activity contributes to the overall delivery of a sustainable health and social care system |
| Resource Implications e.g. Staffing / ICT / Assets | n/a |
| Risk Management Implications | Whilst the s75 agreement offers the opportunity to develop a risk share, this option has not been used, and each organisation will own the risks against their schemes. |
| Health & Wellbeing Implications | The Better Care Fund aims to improve the overall Health and Wellbeing of residents of Trafford. |
| Health and Safety Implications | n/a |

1.0 Background

1.1 The Better Care Fund was introduced by the Government from 1st April 2015 consolidating a number of previous funding streams into one single funding stream which is hosted by the CCG. This stream includes monies for the protection of adult social care, including the extra funding announced in the spring budget of 2017 and referred to as the improved Better Care Fund (iBCF). The expectations of the Government of having a Better Care Fund are to promote better integration of

health and social services for individuals and deliver cost benefits across the whole system.

- 1.2 The NHS published guidelines on how the BCF should be spent and managed for 2017 – 2019. Trafford Council and Trafford CCG produced a joint plan on how the money would be spent for 2017 to 2019. Trafford Health and Wellbeing board agreed this plan, as this was a national condition of receiving the money. There were a total of 4 national conditions that the plan had to meet before NHS England granted approval. NHS England granted approval to Trafford’s BCF plan in June 2017. NHS England also specified that the money should be pooled and managed using a section 75 agreement.

2.0 Section 75 Agreement (S75A)

- 2.1 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.
- 2.2 The purpose of the S75A is to set out the terms on which Trafford CCG and Council have agreed to collaborate and to establish a framework for the provision of health and social care services through a joint commissioning arrangement.
- 2.3 The intended benefits of the Section 75 agreement are to improve the quality and efficiency of the services and to make more effective use of resources. This will:
- Re-balance the local Health and Social Care Economy
 - Improve Health and Wellbeing
 - Develop Communication/ Relationships
 - Develop Integration
- 2.4 The pooled Better Care Fund allocations are made up of the Disabled Facilities Grant (DFG), the improved Better Care Fund (iBCF) and a minimum CCG contribution:

| | 2017/18 Gross Contribution | 2018/19 Gross Contribution |
|--|----------------------------|----------------------------|
| Total Local Authority Contribution (DFG) | £1,852,822 | £2,017,365 |
| Total iBCF Contribution | £4,254,403 | £5,725,357 |
| Total Minimum CCG Contribution | £14,661,678 | £14,940,250 |
| Total BCF pooled budget | £20,768,903 | £22,682,971 |

2.5 The S75A can be seen in full in appendix 1. This includes a breakdown of the schemes to be included in 18/19 and information on the governance for the fund. Two particular aspects to highlight are:

- The BCF will be hosted by Trafford CCG
- The risk share agreement is that each organisation will meet its own risks with regards to performance and any overspends for the schemes it has responsibility for. The pooled fund will be spent on a whole range of services, a breakdown of which can be found in the S75A in appendix 1. These schemes were fully agreed through the HWB.

3.0 Other Options

3.1 It is a requirement of the Better Care Fund national guidance to enter into a Section 75 agreement between the Council and the CCG. The guidance sets out the expectations of the required agreement and a national template provided on which the Trafford agreement is based. Therefore no other options were considered.

4.0 Consultation

4.1 This is a legal agreement between the Council and the CCG and does not require wider consultation

5.0 Reasons for Recommendation

5.1 The S75A between the CCG and Council is a requirement of the Better Care Fund national guidance and progress is reported quarterly to NHS England. It has been noted by NHS England that the S75 Agreement is not currently in place.

6.0 Recommendations

6.1 It is recommended that the Executive:-

1. Approve the s75 partnership agreement between Trafford CCG and the Council for the Better Care Fund and formalisation of the funding for 2018-19.
2. Note that the Trafford Clinical Commissioning Group will continue to host the s75 agreement.
3. Delegate authority to the Corporate Director for Governance and Community Strategy to complete the Agreements on behalf of the Council

Key Decision (as defined in the Constitution): Yes
If Key Decision, has 28-day notice been given? Yes

Finance Officer Clearance (type in initials)...NB.....
Legal Officer Clearance (type in initials)...JLF

A handwritten signature in black ink, appearing to read "Jaezatm".

[CORPORATE] DIRECTOR'S SIGNATURE (electronic)

To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

Appendix 1

Dated 1st April 2018

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**

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THIS AGREEMENT is made on the 1st day of April 2018

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.

Health and Social Care Commissioning Advisory Board means the board responsible for review of performance and oversight of this Agreement as set out in Schedule 1.

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 2018

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.

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 2019. This Agreement shall therefore continue until 31st March 2019 unless it is terminated beforehand in accordance with Clause 22. When the national position on the future of Better Care Fund beyond 31st March 2019 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 18/19 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 Health and Social Care Commissioning Advisory Board.

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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board. Quarterly reports (or more frequent reports if required by the Health and Social Care Commissioning Advisory Board) 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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board and shall be accountable to the Partners.
- 8.4 The Health and Social Care Commissioning Advisory Board 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.

- 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 Health and Social Care Commissioning Advisory Board 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 2018/19.

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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board.

- 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

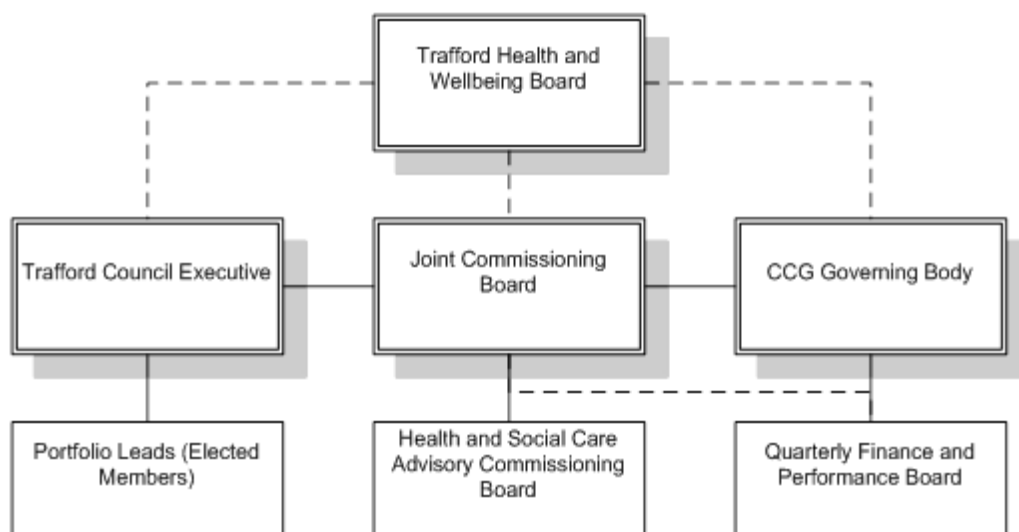
- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This 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 Health and Social Care Commissioning Advisory Board, 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

19.3 The Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board and the Health and Wellbeing Board.

20 REVIEW

20.1 Save where the Health and Social Care Commissioning Advisory Board 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 Health and Social Care Commissioning Advisory Board. 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 Health and Social Care Commissioning Advisory Board.
- 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 Health and Social Care Commissioning Advisory Board 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 Jim Taylor, the Chief Executive, Trafford Metropolitan Borough Council

Tel: 0161 912 1886

Fax: 0161 912 4199

E.Mail: jim.taylor@trafford.gov.uk

and

29.3.2 if to the CCG, addressed to Anthony Hassall, Interim Accountable Officer

Tel: 0161 873 9531

Fax: N/A

E.Mail: Anthony.hassall@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:)

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

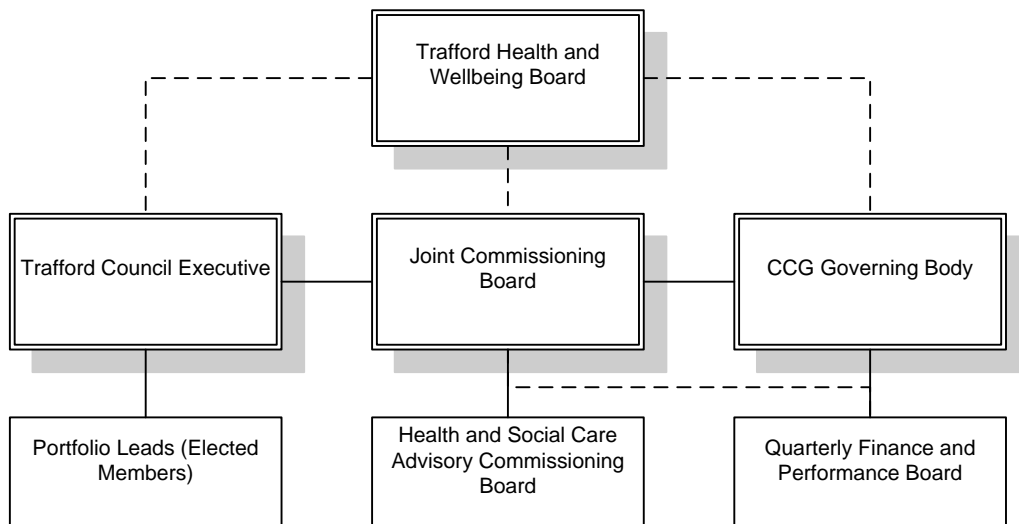
Authorised Signatory

SCHEDULE 1– GOVERNANCE

The Better Care Fund is accountable to:

- **NHS England:** The approval of the Better Care Fund for 17-19 will be required to go through the approval process as set out in the Better Care Fund guidance for 17-19. 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.
- **Health and Social Care Advisory Commissioning Board:** This board 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 on a quarterly basis. 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 quarterly finance performance board and the CCG governing body.

The diagram below illustrates the significant boards through which the Better Care Fund will be governed, and their relationships to one another.



SCHEDULE 2– RISK SHARE, OVERSPENDS AND UNDERSPENDS

Risk Share

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 Health and Social Care Commissioning Advisory Board where decisions on its investment will be made.

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

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 non-elective admissions
- Reduction in permanent residential and care home admissions
- Increased effectiveness of reablement
- Reduction in delayed transfers of care

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
- Managing Transfers of Care (a new condition introduced in 2017 to ensure peoples care transfers smoothly between services and settings)

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 Health and Social Care Commissioning Advisory Board on a quarterly basis.

SCHEDULE 5– BETTER CARE FUND PLAN

2018/19 Better Care Fund Plan

| Scheme Name | Area of Spend | Commissioner | 2018/19 £'000 |
|---|------------------|-----------------|------------------|
| Community Nursing | Health | CCG | 3,623 |
| End of Life Services | Health | CCG | 2,210 |
| Intermediate Care | Health | CCG | 900 |
| TCC | Health | CCG | 823 |
| Community geriatrics | Community Health | CCG | 100 |
| Nursing Homes | Primary Care | CCG | 1,103 |
| Alternative to treat (ATT) | Primary Care | CCG | 429 |
| Integrated crisis and rapid response services | Social Care | Local Authority | 600 |
| Early supported hospital discharge schemes | Social Care | Local Authority | 450 |
| Discharge to assess | Social Care | Local Authority | 1,042 |
| Capacity and flow in hospitals | Social Care | Local Authority | 300 |
| Joint health and care teams | Social Care | Local Authority | 559 |
| Stabilise and make safe | Social Care | Local Authority | 400 |
| Better care at home | Social Care | Local Authority | 450 |
| Community equipment & adaptations | Social Care | Local Authority | 550 |
| Asset based community capacity | Social Care | Local Authority | 195 |
| Quality assurance and improvement | Social Care | Local Authority | 72 |
| Carers | Social Care | Local Authority | 499 |
| Advocacy | Social Care | Local Authority | 91 |
| Market stabilisation | Social Care | Local Authority | 1,700 |
| Social care client packages | Social Care | Local Authority | 4,570 |
| Disabled facilities grant | Social Care | Local Authority | 2,017 |
| Total Better Care Fund | | | 22,683 |

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

SCHEDULE 6– POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

See current NHS Trafford Policy:

<http://www.traffordccg.nhs.uk/wp-content/uploads/2014/05/Conflicts-of-Interest-Policy-v1-270913.pdf>

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 Act 1998 and the Freedom of Information Act 2000. The parties are required to ensure that technical and organisational processes and procedures are in place to protect and secure personal confidential / sensitive data. The parties must only process personal confidential / sensitive data which are necessary. Key aspects of compliance include Information Governance / data protection training for all staff, incident reporting processes, technical / encryption tools to ensure personal confidential data (pcd) is stored and transported securely, assistance with Freedom of Information and Subject Access Requests when required, having an up to date Information Commissioners Office (ICO) notification, having a nominated data protection / Information Governance lead and maintenance of and / or progress to achieving level 2 for the Information Governance Toolkit. Further detailed information on the Trafford CCG policy can be found in the “Information Governance Clause”:

Information Governance Contract Clause

Trafford CCG

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INFORMATION GOVERNANCE CONTRACT CLAUSE

1. Introduction

The aim of this Information Governance Contract Clause is to ensure that a supplier / third party / contractor / provider who has access to personal confidential data (PCD) and / or sensitive information, via a service or support arrangement they provide to the CCG, has effective Information Governance requirements in place. This ensures that the confidentiality and security of personal and sensitive information is protected. This increases public confidence that the NHS and its partners can be trusted with personal confidential data and sensitive data.

The NHS holds the most sensitive and confidential information about individuals and is bound by the Data Protection Act 1998. When sharing data with external parties or is processed by a third party, we must adhere to Principle 7 which states that:

“Appropriate technical and organisational measures shall be taken against unauthorised and or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.”

Therefore all Data Processors acting on behalf of the CCG or under instruction from the CCG must adhere to the Data Protection Act 1998 and afford the appropriate security to the information it may hold/process where the CCG is the Data Controller. Measures include statements regarding information security, controls for physical security and access control, ensuring Business Continuity is implemented, information governance training for staff is in place and incident reporting procedures are followed and monitored. Failure to do so may lead to the CCG seeking damages if a breach/data loss occurs.”

On site contractors / third parties

Contractors, suppliers and / or third parties may be located on-site for a period of time as defined within their contract. They include the following types of staff:

- Hardware and software maintenance and support staff
- Cleaning, catering, security guards and any other outsourced support services
- Consultancy and IT contract support staff
- Temporary agency staff

It is important that those who work for contractors, suppliers and / or third parties are aware of Information Governance requirements; what you can and can't do and who you should contact if things go wrong. The CCG also needs to know what security arrangements / controls the third party has in place such as:

- Do you have adequate security controls, policies and training?
- Are your staff screened prior to commencing employment
- Do you have necessary skills to train your staff regarding confidentiality and data protection?

Data protection legislation (Data Protection Act 1998) imposes formal obligations on data controllers (the CCG) that use third party processors to ensure that the processing by the data processor is carried out under a contract, which is made or evidenced in writing, to state that the data processor is to act only on instructions from the data controller.

For the purposes of this document, the term 'contractor' applies to anybody undertaking

work for or with the CCG.

All personnel who may come into contact with any Personal Identifiable Data, Personal Confidential Data (PCD), sensitive or business confidential (definitions of each type of data are below) information must follow this agreement. This covers information held manually (for example, on paper) or electronically and also information heard during a visit to any CCG site or access to any systems containing PCD. It applies to any combination of information, which enables the identification of a patient or a member of staff, either directly or indirectly.

All third party contractors working on site must sign the Confidentiality Agreement for Third Parties.

Personal Data (Identifiable Data)

As per the Data Protection Act 1998, and defined by the ICO:

- “Personal data means data which relate to a living individual who can be identified:

- (a) from those data, or

- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.

The House of Lords decided a case which addressed a number of issues with a direct bearing on what constitutes personal information. It gives comfort to the view that:

“ . . . pseudonymous information may be disclosed like anonymous information so long as the key to the re-identification is only held by the discloser. This may be of considerable significance to those in the health sector, who often need access to uniquely coded data for research purposes, but where the recipient of the information does not need access to the code.”

Where identifiable data is required there should be consent from the patient or it will be clear that there is a secure statutory basis for the requirement such as Section 251 approval. Examples of identifiable data are:

- Name
- Address
- Postcode
- Date of Birth
- NHS Number

Sensitive Data

Sensitive personal data is different from Personal Data. Sensitive personal data means personal data consisting of information as to:

- (a) the racial or ethnic origin of the data subject,

- (b) their political opinions,
- (c) their religious beliefs or other beliefs of a similar nature,
- (d) whether a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) their physical or mental health or condition,
- (f) their sexual life,
- (g) the commission or alleged commission of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.

Personal Confidential Data (PCD)

This is a term used in the **Caldicott Information Governance Review** and describes personal information about identified or identifiable individuals, which should be kept private or secret and includes dead as well as living people.

The review interpreted 'personal' as including the Data Protection Act definition of personal data, but included data relating to the deceased as well as living people, and 'confidential' includes both information 'given in confidence' and 'that which is owed a duty of confidence' and is adapted to include 'sensitive' as defined in the Data Protection Act.

Business Confidential / Commercial Sensitive Data

This is data which is deemed by the organisation to be confidential and / or commercially sensitive regarding the business activities / reports / documents of the CCG.

The public entrust the NHS with, or allow us to gather, personal and sensitive information relating to the clinical and business activities of the NHS where this is justified. They do so in confidence and they have a legitimate expectation that all persons who may be exposed to, or process information will respect the confidentiality of that information and act appropriately. It is essential, if the legal requirements are to be met, that the NHS provides, and is seen to provide, a confidential service in all of their clinical and business activities.

2. Rationale

The CCG is under common law duty to ensure that confidential information is protected from inappropriate disclosure. Furthermore, under Principle 1 of the Data Protection Act 1998, personal information must be processed lawfully. This is also emphasised in the Information Governance Toolkit requirements, the NHS Confidentiality Code of Conduct (2003) and the HSCIC Guide to Confidentiality (2013).

The CCG will only be able to comply with these conditions where it has ensured that third parties with whom they have contracts with are subject to, and comply with, patient confidentiality, information security, freedom of information and data protection legislation and requirements.

3. Legislation and guidance

The following is a list of legislation and guidance for safeguarding personal confidential data and sensitive data:

- Information Governance Toolkit (Department of Health / Health and Social Care Information Centre)

- Data Protection Act 1998
- Freedom of Information Act 2000
- Environmental Information Regulations 2004
- Computer Misuse Act 1990
- Human Rights Act 1998
- Re-use of Public Sector Information Regulations 2005
- Privacy and Electronic Communications Regulations 2003
- A guide to confidentiality in health and social care (HSCIC) 2013
- Confidentiality: NHS Code of Practice 2003
- Caldicott Principles
- Common Law Duty of Confidentiality
- Records Management: NHS Code of Practice 2006
- NHS Care Records Guarantee, Commitment 9
- Information Security: NHS Code of Practice 2006
- NHS Information Risk Management 2009
- Checklist for the Reporting, Managing and Investigating Information Governance Serious Incident Requiring Investigation (IG SIRI's) 2013

4. Contractor / Suppliers responsibilities

Contractors / Suppliers must ensure that they have read and comply with this agreement and other relevant Information Governance policies and procedures. Contractors must comply with the following:

4.1 Information Governance Toolkit

The supplier / contractor shall work towards achieving standards outlined in the Information Governance Toolkit. This is a useful framework to help organisations comply with Information Governance legislation and the law such as the Data Protection Act 1998. It is expected that organisations attain a minimum level 2 performance against all relevant requirements applicable to it, if they:

- a) Have access to personal confidential data via N3 connection
- b) Have access to personal confidential data via other means of access – on site, paper copies

Where the supplier / contractor has not achieved the minimum requirement, the Data Controller (the CCG) may, in its sole discretion, agree a plan with the supplier / contractor which enables the CCG to obtain assurance that there are adequate data protection and security arrangements in place. This will be dependent upon the size and turnover of the organisation.

The CCG has the right to audit a contractors / suppliers Information Governance Toolkit assessment as and when required in order to provide assurance.

4.2 Data Protection and Information Security

4.2.1 Notification

The Contractor (where access is required to personal confidential data (PCD)) must certify that they are notified with the Information Commissioners Office under the Data Protection Act 1998. To check if you are required to notify, please visit the ICO website

(www.ico.gov.uk).

4.2.2 Technical and organisational measures

The Supplier / Contractor must put in place technical and organisational measures against any unauthorised or unlawful processing of personal data, and against any accidental loss or destruction of or damage to such personal data.

The Supplier / Contractor must take reasonable steps to ensure the reliability of staff who will have access to personal confidential data, and ensure that staff are aware of and trained in the policies and procedures relating to Information Governance.

4.2.2 Limitations on disclosure and use of personal confidential data

You must ensure that no personal confidential data (PCD) or sensitive data is transferred, transmitted, disclosed or transported inappropriately to any media, equipment and / or device unless the data is encrypted to the NHS standard and approved.

4.2.3 Security and Data Protection standards

When personal confidential data is in your custody, it must be kept secure and confidential at all times.

Any personal confidential data sent from one location to another by or for the contractor shall be carried out utilising safe haven locations and processes at all times. Areas must be risk assessed to ensure personal confidential data is received in a secure area where no unauthorised access may occur.

The CCG shall arrange for the equipment or software to be maintained, repaired or tested using dummy data that does not include the disclosure of any personal identifiable data.

If data is to be transferred overseas, then the eighth data protection principle must be observed: Personal data shall not be transferred to a country or territory outside the European Economic Area, unless that country ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data. (The EEA consists of the EU member states and Iceland, Norway and Liechtenstein). Before a transfer takes place, the Data Controller must be consulted.

4.2.4 Restrictions

The Contractor should only act on instructions from the CCG (data controller) regarding the use, transfer and / or storage of information it receives or has access to.

Changes regarding the use of information between the CCG and the contractor should only take place following authorisation by the Information Asset Owner for the system / information asset, or other accountable personnel within the CCG.

5. Freedom of Information

The Freedom of Information Act 2000 gives anyone the right to ask any public body for all the information they have on any subject. Unless there's a good reason, the CCG must provide the information within 20 working days.

Most third parties categorise all contracting documentation as confidential and not for disclosure outside of the contracting parties. In light of the Freedom of Information Act this

'confidentiality' may not apply.

As a contractor, you must be aware of the CCG's obligations and its responsibilities under the Freedom of Information Act 2000. This may mean that information which the CCG holds about your organisation may be subject to disclosure in response to a Freedom of Information request. A document may have been categorised as confidential but the CCG may be obliged to disclose the document, or parts of it, to an applicant making a request under the Freedom of Information Act 2000.

If you provide any information to the CCG in the expectation that it will be held in confidence then you must make clear in your documentation as to the information to which you consider a duty of confidentiality applies. The use of blanket protective markings such as "commercial in confidence" will no longer be appropriate and a clear indication as to what material is to be considered confidential and why should be provided.

In certain circumstances and in accordance with the code of practice issued under section 45 of the Freedom of Information Act 2000, the CCG may consider it appropriate to ask you for your views as to the release of any information before the CCG makes a decision as to how to respond to a request. In dealing with Freedom of Information requests, the CCG has to comply with strict timetable and it would therefore expect a timely response to any such consultation within the time period stated to you at the time.

The CCG cannot accept that trivial information or information which its very nature cannot be regarded as confidential should be subject to any obligation of confidence.

In certain circumstances where information has not been provided in confidence, the CCG may still wish to consult with you as to the application of any other exemption such as that relating to disclosure may prejudice the commercial interests of any party. However, the decision as to what information will be disclosed will be reserved with the CCG.

5.1 Records Management

A record is anything that contains information, in any media, which has been created or gathered as a result of any aspect of the work carried out. All records need to be managed in a way that allows the information contained within them to be available when they are needed, where they are needed, about whom they are needed by the person who needs them. Contractors must abide by the Records Management: NHS Code of Practice regarding the management of records. Further information can be sought in the CCG's Corporate Records Management Policy and Corporate Records Management Procedure.

6. Incident Reporting

If an Information Governance incident occurs whilst you are working for or on behalf of the CCG, you must report this as soon as possible to your management according to your incident reporting procedures. This must also be reported to the CCG as soon as possible. Please report to the Information Governance Team / Senior Information Governance Officer and / or the Caldicott Guardian. The incident must be formally documented using your organisations incident reporting processes. Any information security or confidentiality breaches made by supplier's employees, agents or sub-contractors must be immediately reported.

The CCG expects an escalation process and action plan in order to resolve problems relating to any incidents / breaches of security and / or confidentiality of personal information by the contractor.

It is imperative that incidents are reported in order:

1. To maintain the security of the CCG's information and information processing facilities that are accessed, processed, communicated to, or managed by external parties.
2. To implement and maintain the appropriate level of information security and service delivery in line with third party service delivery agreements.

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- All CCGs and those who work for or on behalf of the CCG are under a common law duty to ensure that confidential information is protected from inappropriate disclosure. Furthermore, under Principle 1 of the Data Protection Act 1998 personal information must be processed (disclosed) fairly and lawfully. The CCG will only be able to comply with these duties where it has ensured that third parties with whom it contracts are subject to, and comply with, patient confidentiality, information security and data protection requirements.

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- Definition of an Information Governance incident - An Information Governance incident is any incident involving the actual or potential loss of personal information that could lead to identify fraud or have an impact on staff or patients. They relate to any breach of security and / or confidentiality. Examples of such breaches are given below (this list is not intended to be exhaustive):

Breach of security:

- Loss of computer equipment due to crime or an individual's carelessness
- Loss of computer media e.g. memory stick, CD etc due to crime or individual's carelessness
- Trying to access a secure part of the CCG using someone's else's PIN Number, swipe card etc
- Finding the doors and / or windows have been broken and forced entry gained to a secure room / building
- Loss of patient / staff data due to IT software / hardware failure

Breach of confidentiality:

- Finding a computer printout with a header and a person's information on it at a location outside of an CCG premises / buildings
- Looking at confidential patient records on a NHS patient system when you are not directly involved in the care / treatment of that patients in question
- Finding any paper records about a patient / member of staff or business of the CCG in any location outside of the CCG premises / buildings
- Discussing patient or staff personal information with someone else in an open area where the conversation can be heard
- Sending information insecurely using email, post, fax
- A fax being received by an incorrect recipient
- A letter being received by an incorrect recipient

What may at first appear to be of minor importance may on further investigation be found to be serious and vice versa.

- The Information Commissioner's Office (ICO) can now issue monetary penalties to a data controller of up to £500,000 for serious breaches of the Data Protection Act 1998 and the Privacy and Electronic Communication Regulations 2003.

7. Monitoring and Review

The CCG reserve the right to audit the contractor or to have those audits carried out by a third party. Monitoring and reviews are designed to ensure that the services in question are being delivered securely and confidentially and that controls are adhered to.

On request, the contractor must supply or allow the CCG to view information governance and security policies, procedures, training records and / or controls to ensure they are acceptable, complete and up to date. If these are not in place, the CCG can audit current practices and / or assist with training and development of such policies / procedures.

Where a contractor has assessed itself meeting the Information Governance assurance requirements to an appropriate level and has recorded its assessment within the Information Governance Toolkit, this must be available for inspection by the CCG to obtain assurances that Information Governance standards are being met. Alternatively, an independent certificate could be provided by the contractor (for example, ISO 27001 certification).

