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**THIS AGREEMENT** is made on                    day of                    2014

**PARTIES<sup>3</sup>**

(1)     **[ local Authority                    ]** of [                    ](the "**Council**")

(2)     **NHS [                    ] CLINICAL COMMISSIONING GROUP** of [                    ](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 [                    ].
- (B)     The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of [                    ].
- (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. [The Partners wish to extend the use of pooled funds to include funding streams from outside of the Better Care Fund.]<sup>4</sup>
- (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 means through which the Partners will to 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;[and]
  - c)     make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.[and]
  - d)     [INSERT AIMS]<sup>5</sup>
- (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.<sup>6</sup>
- (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.

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<sup>3</sup> See previous note about parties

<sup>4</sup> Consider whether this will be the case or whether the services that will initially be commissioned using Better Care Fund monies will not have supplemental funding from 'non Better Care Fund' resources.

<sup>5</sup> Consider and provide any additional aims/objectives.

<sup>6</sup> The CCG/Council will need to be satisfied that consultation occurred as stated (and as required by the Regulations).

## 1 DEFINED TERMS AND INTERPRETATION<sup>7</sup>

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.

**[Approved Expenditure** means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price and Performance Payments.]

**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 6 setting out the Partners plan for the use of the Better Care Fund.

**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 [                      ].<sup>8</sup>

**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].<sup>9</sup>

**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

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<sup>7</sup> Definitions should be finalised once main body of Agreement is finalised.

<sup>8</sup> Partners to confirm. This should be no later than 1 April 2015 but may be earlier

<sup>9</sup> TBC

*(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 Provider.<sup>10</sup>*

**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.<sup>11</sup>

**Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund [and for each Aligned Fund the Partner that will host the Aligned 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;

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<sup>10</sup> Further consideration will always be needed on this.

<sup>11</sup> Here and in the definition of NHS functions the widest definition is used; this needs to be cut down in the relevant specification so that the purpose must be fulfilled by use of the function

- (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 [8.4].

**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.

**Partnership Board** means the partnership board responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

**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.

**Permitted Expenditure** has the meaning given in Clause [7.3].

**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).

**Performance Payment Arrangement** means any arrangement agreed with a Provider and one of more Partners in relation to the cost of providing Services on such terms as agreed in writing by all Partners.<sup>12</sup>

**Performance Payments** means any sum over and above the relevant Contract Price which is payable to the Provider in accordance with a Performance Payment Arrangement.

**Scheme Specification** means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement.

**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.]*<sup>13</sup>

**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.

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<sup>12</sup> The Performance Payment Arrangements and how they will be addressed in this Agreement will need to be revisited once the Performance Payment arrangements have been considered.

<sup>13</sup> For discussion between the Parties.



- 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<sup>14</sup>**

- 2.1 This Agreement shall come into force on the Commencement Date<sup>15</sup>.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause [21].<sup>16</sup>
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.<sup>17</sup>

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<sup>14</sup> Consider the term and arrangements for dealing with termination.

<sup>15</sup> Parties to consider and confirm whether existing partnership arrangements (Section 75 or otherwise) will be affected by this Agreement.

<sup>16</sup> Parties will need to consider how termination will work in relation to this Agreement given that it is unlikely that the CCG/Council would be able to terminate a Better Care Pooled Fund.

<sup>17</sup> This is on the basis that the Agreement is a framework arrangement so the details of each Service will be set out in the relevant Scheme Specification.

### **3 GENERAL PRINCIPLES<sup>18</sup>**

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<sup>19</sup>**

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 [Integrated Commissioning];

4.1.3 Joint (Aligned) Commissioning

4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

4.2 [The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.

4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.

4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.]<sup>20</sup>

### **5 FUNCTIONS<sup>21</sup>**

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<sup>18</sup> Consider any overarching principles for insertion here. We have provided a list for consideration, however, this will be varied on the basis of the principles agreed between the Partners.

<sup>19</sup> This Agreement has been drafted to cover a range of flexibilities to incorporate the framework approach. Drafting here will need to reflect any lead commissioning arrangements.

<sup>20</sup> Parties should always check that the proposed services can be delegated before incorporating.

<sup>21</sup> This provision highlights how the framework can incorporate other schemes and funding arrangements.

- 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 Schedule 1 shall be completed and agreed between the Partners. The initial scheme specification is set out in schedule 1 part 2<sup>22 23</sup>
- 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 and the [Partnership Board]<sup>24</sup>

## **6 COMMISSIONING ARRANGEMENTS**

### Integrated Commissioning

- 6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, both Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 6.2 Both Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
- 6.3 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
- 6.4 The Partners shall comply with the arrangements in respect of the Joint (Aligned) Commissioning as set out in the relevant Scheme Specification.
- 6.5 Each Partner shall keep the other Partners and the Joint Adult Commission Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.
- 6.6 The Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.

### Appointment of a Lead Commissioner<sup>25</sup>

- 6.7 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
  - 6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;

<sup>22</sup> This will be taken from the Better Care plan; other schemes may be included later. Consideration should be given as to whether existing schemes should be moved under this scheme.

<sup>23</sup> We have suggested a template Scheme Specification as a starting point for discussion.

<sup>24</sup> Clause 19 relates to the governance structure including the role of the Health and Wellbeing Board. See comments below at Clause 30 relating to the inclusion of a procedure for the proposal and approval of Individual Schemes.

<sup>25</sup> Parties should consider overarching obligations on Lead Commissioners, including whether any further duties will be assigned to the Lead Commissioner.

- 6.7.2 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.
- 6.7.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 6.7.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
- 6.7.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 6.7.6 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;
- 6.7.7 <sup>26</sup>undertake performance management and contract monitoring of all Service Contracts;<sup>27</sup>
- 6.7.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 6.7.9 keep the other Partner and the Joint Adult Commission Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

## **7 ESTABLISHMENT OF A POOLED FUND<sup>28</sup>**

- 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:<sup>29</sup>
  - 7.3.1 *the Contract Price;*
  - 7.3.2 [where the Council is to be the Provider, the Permitted Budget];
  - 7.3.3 *Performance Payments;*
  - 7.3.4 *[Third Party Costs];*
  - 7.3.5 *Approved Expenditure*

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<sup>26</sup> Consider adding in further obligations around contract management and the requirement of the Lead Commissioner to take enforcement action.

<sup>27</sup> How will the Parties deal with performance monitoring and accountability/assurance frameworks?

<sup>28</sup> Pooled Funds can be used for Lead Commissioning or Integrated Commissioning arrangements. Furthermore, each Service, can have different Lead Commissioners. The host arrangements for pooled funding is for ensuring that there is streamlined management and accountability of the Pooled Funds with the Host Partner being the accounting body and having responsibility for appointing a Pooled Fund Manager.

<sup>29</sup> This dictates what can be funded out of the Pooled Fund and, therefore, what would constitute an overspend if it exceeded the amount in the Pool. Money spent on other things would be in breach of this agreement and, therefore not recoverable by the Host Partner.

*("Permitted Expenditure")<sup>30</sup>*

- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.5 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.<sup>31</sup>
- 7.6 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:
  - 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
  - 7.6.2 providing the financial administrative systems for the Pooled Fund; and
  - 7.6.3 appointing the Pooled Fund Manager;
  - 7.6.4 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 Partnership Board as required by the Partnership 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 Partnership Board Quarterly reports (or more frequent reports if required by the Partnership 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 Partnership Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and

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<sup>30</sup> Parties should discuss how to deal with management costs in relation to hosting arrangements. For example, should these be charged or will each Party provide the services without recharging.

<sup>31</sup> This links liabilities of the Host Partner for default to the indemnity provisions.

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 Partnership Board and shall be accountable to the Partners.

8.4 The Partnership Board may agree to the viring of funds between Pooled Funds.

## **9 NON POOLED FUNDS<sup>32</sup>**

9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Scheme Specification. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.

9.2 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:

9.2.1 which Partner if any<sup>33</sup> shall host the Non-Pooled Fund

9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.

9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.

9.4 [Both Partners shall ensure that Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification]

9.5 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:

9.5.1 the NHS Functions funded from a Non-Pooled Fund are carried out within the CCG Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and

9.5.2 the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

## **10 FINANCIAL CONTRIBUTIONS<sup>34</sup>**

10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification.<sup>35</sup>

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<sup>32</sup> These are funds that are notionally held in a joint fund but are not a pooled fund. If there are Lead Commissioner/Integrated Commissioner arrangements, the funds need to be held but they will be separately accounted for. The Lead Commissioner will still be responsible for managing the fund effectively.

<sup>33</sup> The non pooled fund can be a virtual pool with contributions identified but held separately. Transfers between partners for non pooled funds need to be made by S76/256 of the 2006 Act.

<sup>34</sup> Partners should consider how to deal with financial contributions. The starting point is the NHS Better Care contribution, net of any amounts retained pending reductions in emergency admissions. Is either Partner able to commit a minimum amount per year? When and how will the Partners agree the contributions each year? What happens if the Partners disagree? Are there any particular factors that must be taken into consideration when establishing the level of commitment for subsequent years?

<sup>35</sup> Parties need to deal with the fact that some services will not have pooled funds. In respect of this, parties should decide how the invoicing/payment arrangements will work and whether this will vary from service to service.

- 10.2 *[Insert Provisions around how Financial Contributions will be determined going forward]*
- 10.3 Financial Contributions will be paid as set out in the each Scheme Specification.<sup>36</sup>
- 10.4 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 [Partnership Board] minutes and recorded in the budget statement as a separate item.

## 11 NON FINANCIAL CONTRIBUTIONS<sup>37</sup>

- 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<sup>38</sup>

### Risk share arrangements

- 12.1 The partners have agreed risk share arrangements as set out in schedule 3 , which provide for financial risks arising within the commissioning of services from the pooled funds and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.

### Overspends in Pooled Fund<sup>39</sup>

- 12.2 Subject to Clause [12.2], 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 Permitted 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 Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 12.4.<sup>40</sup>
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and the provisions of the [relevant Scheme Specification]<sup>41</sup> and Schedule [3] shall apply.

### Overspends in Non Pooled Funds<sup>42</sup>

- 12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund or Aligned Fund that Partner shall as soon as reasonably practicable inform the other Partner and the [Partnership Board].

<sup>36</sup> If there is to be a set mechanism for funding to be paid this needs to be inserted here

<sup>37</sup> As set out in this Clause 11, these arrangements will need to be considered on a scheme by scheme basis. Consider whether there are any practical arrangements that could be set out as overarching principles.

<sup>38</sup> We have provided a suggested approach to overspends and underspends, however, the details will need to be considered by the Partners in the context of the Performance Payment arrangements.

<sup>39</sup> Although the contributions are being calculated by reference to the agreed contract value, there are a number of variables that could still contribute to an overspend.

<sup>40</sup> In this example, this is drafted like this because such expenditure is permitted and, therefore, although an Overspend occurs it is not because of a breach by the Lead Commissioner of its obligations. It is legitimate expenditure for which there are insufficient Financial Contributions. However parties may want to consider whether there should be an obligation on the Host Partner to ensure that demand is appropriately managed and so include a provision that the Host Partner would be in breach if they failed to take the requisite steps to notify the other Partner/JCB of the potential overspend and arrange an action plan?

<sup>41</sup> Consider whether the Overspend provisions will be the same across all of the different Services

<sup>42</sup> This is just a suggestion of how overspends in relation to non-pooled funds may be dealt with. It may be that this needs to be set out in each individual Scheme Specification and there is not a generic approach

- 12.6 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund and Aligned Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner [and the Partnership Board].

#### Underspend

- 12.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

### **13 CAPITAL EXPENDITURE<sup>43</sup>**

Neither Pooled Funds or Non Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a 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.<sup>44</sup>

### **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<sup>45</sup>**

- 16.1 [Subject to Clause 16.2, and 163, 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 Partnership Board.

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<sup>43</sup> Once the arrangements are confirmed, a reference to s. 256 grants can be included if relevant.

<sup>44</sup> Partners to consider their respective positions regarding VAT.

<sup>45</sup> This is a sample clause which will need to be discussed. What about any liabilities to third parties that a Partner incurs as a result of a breach by the Provider but in respect of which the Lead Commissioner/relevant Partner is unable to recover from the Provider. Should such loss be shared amongst the Partners? Perhaps apportioned by reference to the value of their respective Financial Contributions? This could be dealt with by way of indemnity or by permitting the Lead Commissioner to take this out of the Pooled Fund, thereby triggering the Overspend provisions.



- 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.<sup>46]</sup>
- 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<sup>47</sup>**

The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 7.

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<sup>46</sup> Partners shall consider their respective insurance position and take advice from insurance advisers. Do they wish to consider whether you would like to include obligations to maintain specific insurance such as appropriate levels of as employers' liability, liability to third parties and other relevant insurance arrangements to cover its liability under this Agreement.

There has previously been some debate about the availability of NHSLA cover for health bodies performing Council Health Related Functions. The Council should check whether their insurance will cover the circumstances when they are commissioning services related to NHS Functions.

<sup>47</sup> The Partners could include a procedure in this Agreement for the resolution of conflicts of interest.

## 19 GOVERNANCE<sup>48</sup>

- 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 Partnership Board to<sup>49</sup>:  
[ INSERT ]
- 19.3 The Partnership Board is based on a joint working group structure. Each member of the Partnership 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 Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.]
- 19.4 The terms of reference of the Partnership Board shall be as set out in Schedule [ 2]
- 19.5 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.
- 19.6 The [Partnership Board] [Health and Wellbeing Board]<sup>50</sup> 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.
- 19.7 Each Services Schedule shall confirm the governance arrangements in respect of the Individual Service and how that Individual Services is reported to the Partnership Board and Health and Wellbeing Board.
- 19.8 Each Services Schedule shall confirm the governance arrangements in respect of the Individual Service and how that Individual Services is reported to the Partnership Board and Health and Wellbeing Board.

## 20 REVIEW<sup>51</sup>

- 20.1 Save where the Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any [Pooled Fund, Non Pooled Fund and Aligned Fund] 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 Partnership Board, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule [ ].

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<sup>48</sup> We have set out a proposed approach to governance with an officer working group structure has been suggested. There are three separate functions here which need to be addressed: First Strategic overview of partnership working which is the responsibility of the Health and Wellbeing Board and outside this agreement save to the extent that the HWB signs off the Better care plan and variations to is. Secondly oversight and holding to account the management structures for delivery of the schemes; we have suggested a partnership board to avoid CCG accountability running through the HWB; finally there is the management of the individual schemes. Depending on complexity this could be the pooled fund manager or a commissioning officer, but may be a management group

The Partners will need to go through the detail of how the governance structure will work; the terms of reference for the Board; and wider discussions about whether it would be helpful to set out how the Board will deal with situations where a particular decision falls outside of the scope of delegated authority of the relevant officers.

<sup>49</sup> The Partners will need to determine the specific functions and objectives of the Project Management Board.

<sup>50</sup> Who signs off on the addition of new services to the scheme?

<sup>51</sup> We have provided a suggested approach for the Partners to consider. We suggest that the Partners consider the practical arrangements for the review and any overarching performance management of the operation of these arrangements.

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 Partnership 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.<sup>52</sup>

## **21 COMPLAINTS<sup>53</sup>**

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.

### **OR**

21.1 During the [term of the Agreement], the Partners will develop and operate a joint complaints system. The application of a joint complaints system will be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.

21.2 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply:

21.2.1 where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;

21.2.2 where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG;

21.2.3 where a complaint relates partly to one or more of the Council's Health Related Functions and partly to one or more of the CCG's NHS Functions then a joint response will be made to the complaint by the Council and the CCG, in line with local joint protocol;

21.2.4 where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, then the Partnership Board will set up a complaints subgroup to examine the complaint and recommend remedies. All complaints shall be reported to the Partnership Board.

## **22 TERMINATION & DEFAULT<sup>54</sup>**

22.1 This Agreement may be terminated by any Partner giving not less than [3] 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

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<sup>52</sup> What level will any discussions be here?

<sup>53</sup> Consider whether the Partners will develop a joint complaints procedure. If not, we have suggested an approach for each Partner to use its own complaints procedure with cooperation from the other Party. NB there may be changes in the law relating to this prior to 1 April 2015

<sup>54</sup> We have set out a suggested approach to termination and default here as a basis for discussion.

Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.<sup>55</sup>

- 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 and the provisions of Clauses [INSERT]<sup>56</sup>
- 22.5 [In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.]<sup>57</sup>
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:<sup>58</sup>
- 22.6.1 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;
  - 22.6.2 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;
  - 22.6.3 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.
  - 22.6.4 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.
  - 22.6.5 the Partnership 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
  - 22.6.6 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.
- 22.7 In the event of termination in relation to an Individual Scheme the provisions of Clause 22.6 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<sup>59</sup>**

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<sup>55</sup> In this template there is no right to terminate this Agreement as a result of breach by either Partner.

<sup>56</sup> This provision will be populated in the final draft of the Agreement.

<sup>57</sup> Consider whether this obligation is acceptable to the Partners.

<sup>58</sup> These provision sets out a suggested approach to what happens if the Agreement terminates particularly where there are contracts still in place. The Partners will need to address this in each service contract and also in the individual Scheme Specifications.

<sup>59</sup> A sample dispute resolution procedure has been included. Consider for example whether a referral of the dispute will be made to the Board and it should. Would arbitration proceedings be a preferred method of 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 Officer 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 executives][*insert position*] 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<sup>60</sup>**

- 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<sup>61</sup>**

- 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

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<sup>60</sup> Consider whether the suggested procedure (including the definition of Force Majeure Event and timescales) is acceptable.

<sup>61</sup> Confidential information and the sharing of information will need to be considered since the partners have different rules that apply.

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 8, 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 the [ ];

Tel: [ ]  
Fax: [ ]  
E.Mail: [ ]

and

29.3.2 if to the CCG, addressed to [ ];

Tel: [ ]  
Fax: [ ]  
E.Mail: [ ]

### 30 VARIATION <sup>62</sup>

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.

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<sup>62</sup> The Partners may find it helpful to set out a procedure for agreeing to add a new scheme to the framework arrangement.

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<sup>63</sup>

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

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

\_\_\_\_\_

Authorised Signatory

<sup>63</sup> \_\_\_\_\_  
Partners to confirm execution blocks

## SCHEDULE 1 – SCHEME SPECIFICATION

### Part 1 – Template Services Schedule

#### TEMPLATE SERVICE SCHEDULE

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

#### 1 OVERVIEW OF INDIVIDUAL SERVICE

*Insert details including:*

- (a) *Name of the Individual Scheme*
- (b) *Relevant context and background information*
- (c) *Whether there are Pooled Funds:*

*The Host Partner for Pooled Fund X is [ ] and the Pooled Fund Manager, being an officer of the Host Partner is [ ]*

#### 2 AIMS AND OUTCOMES

*Insert agreed aims of the Individual Scheme*

#### 3 THE ARRANGEMENTS

*Set out which of the following applies in relation to the Individual Scheme:*

- (1) *Lead Commissioning;*
- (2) *Integrated Commissioning;*
- (3) *Joint (Aligned) Commissioning;*
- (4) *the establishment of one or more Pooled Funds and/or Non Pooled Funds as may be required.*

#### 4 FUNCTIONS

*Set out the Council's Functions and the CCG's Functions which are the subject of the Individual Scheme including where appropriate the delegation of such functions for the commissioning of the relevant service.*

*Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)*

#### 5 SERVICES

*What Services are going to be provided within this Scheme. Are there contracts already in place? Are there any plans or agreed actions to change the Services? Who are the beneficiaries of the Services? <sup>64</sup>*

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<sup>64</sup> This may be limited by service line –i.e. individuals with a diagnosis of dementia. There is also a significant issue around individuals who are the responsibility of the local authority but not the CCG and Vice versa See note [ ] above

## 6 COMMISSIONING, CONTRACTING, ACCESS

### **Commissioning Arrangements**

*Set out what arrangements will be in place in relation to Lead Commissioning/Joint (Aligned) commissioning. How will these arrangements work?*

### **Contracting Arrangements**

*Insert the following information about the Individual Scheme:*

- (a) relevant contracts
- (b) *arrangements for contracting. Will terms be agreed by both partners or will the Lead Commissioner have authority to agree terms*

*what contract management arrangements have been agreed?  
What happens if the Agreement terminates? Can the partner terminate the Contract in full/part?  
Can the Contract be assigned in full/part to the other Partner?*

### **Access**

*Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible.*

## 7 FINANCIAL CONTRIBUTIONS

Financial Year 201..../201

	<b>CCG contribution</b>	<b>Council Contribution</b>
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial Year 201..../201

	<b>CCG contribution</b>	<b>Council Contribution</b>
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial resources in subsequent years to be determined in accordance with the Agreement

## **8 FINANCIAL GOVERNANCE ARRANGEMENTS**

*[(1) As in the Agreement with the following changes:*

### *(2) Management of the Pooled Fund*

*Are any amendments required to the Agreement in relation to the management of Pooled Fund  
Have the levels of contributions been agreed?  
How will changes to the levels of contributions be implemented?  
Have eligibility criteria been established?  
What are the rules about access to the pooled budget?  
Does the pooled fund manager require training?  
Have the pooled fund managers delegated powers been determined?  
Is there a protocol for disputes?*

### *(3) Audit Arrangements*

*What Audit arrangements are needed?  
Has an internal auditor been appointed?  
Who will liaise with/manage the auditors?  
Whose external audit regime will apply?*

### *(4) Financial Management*

*Which financial systems will be used?  
What monitoring arrangements are in place?  
Who will produce monitoring reports?  
Has the scale of contributions to the pool been agreed?  
What is the frequency of monitoring reports?  
What are the rules for managing overspends?  
Do budget managers have delegated powers to overspend?  
Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?  
How will overspends and underspends be treated at year end?  
Will there be a facility to carry forward funds?  
How will pay and non pay inflation be financed?  
Will a contingency reserve be maintained, and if so by whom?  
How will efficiency savings be managed?  
How will revenue and capital investment be managed?  
Who is responsible for means testing?  
Who will own capital assets?  
How will capital investments be financed?  
What management costs can legitimately be charged to pool?  
What re the arrangement for overheads?  
What will happen to the existing capital programme?  
What will happen on transfer where if resources exceed current liability (i.e. commitments exceed budget) immediate overspend secure?  
Has the calculation methodology for recharges been defined?  
What closure of accounts arrangement need to be applied?]*

## **9 VAT**

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<sup>65</sup> We note that some of the information overlaps with the information that is included in the main body of Agreement, however, we consider it is appropriate that this is considered for each Scheme in order to determine whether the overarching arrangements should apply.

Set out details of the treatment of VAT in respect of the Individual Service consider the following:

- Which partner's VAT regime will apply?
- Is one partner acting as 'agent' for another?
- Have partners confirmed the format of documentation, reporting and accounting to be used?

## 10 [GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

Will there be a relevant Committee/Board/Group that reviews this Individual Scheme?

Who does that group report to?

Who will report to that Group?

Pending arrangements agreed in the Partnership Agreement, including the role of the Health & Wellbeing Board, Partners to confirm any bespoke management arrangements for the Individual Scheme

## 11 NON FINANCIAL RESOURCES

### Council contribution

	Details	Charging arrangements <sup>66</sup>	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

### CCG Contribution

	Details	Charging arrangements <sup>67</sup>	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

## 12 STAFF

Consider:

- Who will employ the staff in the partnership?
- Is a TUPE transfer secondment required?
- How will staff increments be managed?
- Have pension arrangements been considered?

<sup>66</sup> Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

<sup>67</sup> Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

### **Council staff to be made available to the arrangements**

*Please make it clear if these are staff that are transferring under TUPE to the CCG.*

*If the staff are being seconded to the CCG this should be made clear*

### **CCG staff to be made available to the arrangements**

*Please make it clear if these are staff that are transferring under TUPE to the Council.*

*If the staff are being seconded to the Council this should be made clear.*

## **13 ASSURANCE AND MONITORING**

*Set out the assurance framework in relation to the Individual Scheme. What are the arrangements for the management of performance? Will this be through the agreed performance measures in relation to the Individual Scheme.*

*In relation to the Better Care Fund you will need to include the relevant performance outcomes. Consider the following:*

- *What is the overarching assurance framework in relation to the Individual Scheme?*
- *Has a risk management strategy been drawn up?*
- *Have performance measures been set up?*
- *Who will monitor performance?*
- *Have the form and frequency of monitoring information been agreed?*
- *Who will provide the monitoring information? Who will receive it?*

## **14 LEAD OFFICERS**

<b>Partner</b>	<b>Name of Lead Officer</b>	<b>Address</b>	<b>Telephone Number</b>	<b>Email Address</b>	<b>Fax Number</b>
Council					
CCG					

## **15 INTERNAL APPROVALS**

- *Consider the levels of authority from the Council's Constitution and the CCG's standing orders, scheme of delegation and standing financial instructions in relation to the Individual Scheme;*
- *Consider the scope of authority of the Pool Manager and the Lead Officers*
- *Has an agreement been approved by cabinet bodies and signed?*

## **16 RISK AND BENEFIT SHARE ARRANGEMENTS**

*Has a risk management strategy been drawn up?*

*Set out arrangements, if any, for the sharing of risk and benefit in relation to the Individual Scheme.*

## **17 REGULATORY REQUIREMENTS**

*Are there any regulatory requirements that should be noted in respect of this particular Individual Scheme?*

## **18 INFORMATION SHARING AND COMMUNICATION**

*What are the information/data sharing arrangements?  
How will charges be managed (which should be referred to in Part 2 above)  
What data systems will be used?*

*Consultation – staff, people supported by the Partners, unions, providers, public, other agency  
Printed stationary*

## **19 DURATION AND EXIT STRATEGY**

*What are the arrangements for the variation or termination of the Individual Scheme.  
Can part/all of the Individual Scheme be terminated on notice by a party? Can part/all of the Individual Scheme be terminated as a result of breach by either Partner?  
What is the duration of these arrangements?*

*Set out what arrangements will apply upon termination of the Individual Service, including without limitation the following matters addressed in the main body of the Agreement*

- (1) maintaining continuity of Services;*
- (2) allocation and/or disposal of any equipment relating to the Individual Scheme;*
- (3) responsibility for debts and on-going contracts;*
- (4) responsibility for the continuance of contract arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the contract arrangements);*
- (5) where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners.*

*Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement.*

## **20 OTHER PROVISIONS**

Consider, for example:

- Any variations to the provisions of the Agreement*
- Bespoke arrangements for the treatment of records*
- Safeguarding arrangements*



## **PART 2 – AGREED SCHEME SPECIFICATIONS**

## SCHEDULE 2 – GOVERNANCE<sup>68</sup>

### **1 Partnership Board**

1.1 The membership of the Partnership Board will be as follows:

1.1.1 CCG:

or a deputy to be notified to the other members in advance of any meeting;

1.1.2 the Council:

or a deputy to be notified in writing to Chair in advance of any meeting;

### **2 Role of Partnership Board**

3 [The Partnership Board shall:

3.1.1 Provide strategic direction on the Individual Schemes

3.1.2 receive the financial and activity information;

3.1.3 review the operation of this Agreement and performance manage the Individual Services;

3.1.4 agree such variations to this Agreement from time to time as it thinks fit;

3.1.5 review and agree annually a risk assessment and a Performance Payment protocol;

3.1.6 review and agree annually revised Schedules as necessary;

3.1.7 request such protocols and guidance as it may consider necessary in order to enable teach Pooled Fund Manager to approve expenditure from a Pooled Fund;

3.1.8 [INSERT]]

### **4 Partnership Board Support**

The Partnership Board will be supported by officers from the Partners from time to time.

### **5 Meetings**

5.1 The Partnership Board will meet Quarterly at a time to be agreed within following receipt of each Quarterly report of the Pooled Fund Manager.

5.2 The quorum for meetings of the Partnership Board shall be a minimum of [one representative from each of the Partner organisations].

5.3 Decisions of the Partnership Board shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Partnership Board. If no unanimity is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.

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<sup>68</sup> This is only an initial example. Other options include a formal Regulation 10 Committee ( suitable only where pooled fund with Lead commissioning and no non S75 matters) or a parallel committee structure if the local Authority has opted back to committee governance.

5.4 Where a Partner is not present and has not given prior written notification of its intended position on a matter to be discussed, then those present may not make or record commitments on behalf of that Partner in any way.

5.5 Minutes of all decisions shall be kept and copied to the Authorised Officers within [seven (7)] days of every meeting.

## **6 Delegated Authority**

6.1 The Partnership Board is authorised within the limited of delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

6.1.1 to authorise commitments which exceed or are reasonably likely to lead to exceeding the contributions of the Partners to the aggregate contributions of the Partners to any Pooled Fund; and

6.1.2 to authorise a Lead Commissioner to enter into any contract for services necessary for the provision of Services under an Individual Scheme

## **7 Information and Reports**

Each Pooled Fund Manager shall supply to the Partnership Board on a Quarterly basis the financial and activity information as required under the Agreement.

## **8 Post-termination**

The Partnership Board shall continue to operate in accordance with this Schedule following any termination of this Agreement but shall endeavour to ensure that the benefits of any contracts are received by the Partners in the same proportions as their respective contributions at that time.

### SCHEDULE 3 – RISK SHARE AND OVERSPENDS<sup>69</sup>

1 To the extent that the pay for performance element of the Better Care fund is not available to the Pooled fund the partners have agreed :-

[ A proportion of this may be recouped by the non payment of the Performance payment of the providers under the services commissioned under this scheme]

virement from other funds established under this agreement to the extent that their budget can be reduced

an agreement with the Acute provider to contribute to the pooled fund the amount of x% of the additional sums paid to them as a result of the Better care Performance Payment<sup>70</sup>

an additional contribution from [ CCG/ Local Authority] of an amount required to meet the shortfall in the expected outcome.

2 The Partners agree that Overspends shall be apportioned in accordance with this Schedule 3.

#### Pooled Fund Management

3 *[INSERT PROCESS BY WHICH AN POTENTIAL OVERSPEND SHOULD BE IDENTIFIED, REPORTED AND ACTION TAKEN TO EITHER REMOVE RISK OR AGREE OVERSPEND]*

The Partners to consider whether this should be a general principle that any overspend will be determined by the Partnership Board in an equitable manner. Is there any principles behind how the overspend will be divided?

If the Partnership Board identifies a poor management by a Lead Commissioner as a contributing factor to an overspend will that impact on the division of the overspend?

What actions can the JAPB recommend/suggest? Some examples could include:

- agreeing an action plan to reduce expenditure;
- identifying underspends that can be vired from any other Fund maintained under this agreement or outside of this agreement
- asking for more money from the respective Partners; and
- if no more money is available agreeing a plan of action, which may include decommissioning all or any part of the Individual Service to which the Fund relates.

#### Overspend

4 The Partnership Board shall consider what action to take in respect of any actual or potential Overspends

5 The Partnership Board shall acting reasonably having taken into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other

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<sup>69</sup> The Partners will need to carefully consider how to deal with Overspends and whether this will be an Agreement wide arrangement or different for each Individual Scheme.

<sup>70</sup> In this case it would be sensible to include the acute provider as a party to the Agreement for these purposes

budgetary constraints agree appropriate action in relation to Overspends which may include the following:

- 5.1 whether there is any action that can be taken in order to contain expenditure;
- 5.2 whether there are any underspends that can be vired from any other fund maintained under this Agreement;
- 5.3 how any Overspend shall be apportioned between the Partners, such apportionment to be just and equitable taking into consideration all relevant factors.
- 6 The Partners agree to co-operate fully in order to establish an agreed position in relation to any Overspends.
- 7 Overspends which occur in relation to any Performance Payments shall subject to alternative provisions in the relevant Performance payment Arrangement, be apportioned between the Partners pro rata to the value of their respective Financial Contributions *[excluding Non-Recurrent Payments]* for the Financial Year in respect of which the Overspend occurs.
- 8 Where is an overspend in a Non Pooled Fund at the end of the Financial Year or at termination of the Agreement such overspend shall be met by the Partner whose financial contributions to the relevant Non Pooled Fund were intended to meet the expenditure to which the overspend relates save to the extent that such overspend is not the fault of the other Partner.
- 9 Subject to any continuing obligations under any Service Contract entered into by either Partner, either Partner may give notice to terminate a Service of Individual Scheme where the Scheme Specification provides and where the Service does not form part of the Better Care Fund Plan.

## **SCHEDULE 4– JOINT WORKING OBLIGATIONS**

### **Part 1 – LEAD COMMISSIONER OBLIGATIONS<sup>71</sup>**

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 Reports*  
*and 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 *Monthly 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;*

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<sup>71</sup> These are illustrative only of the sorts of things that the Partners may want to have reported, agreed etc. It is based on the NHS Standard Contract so will need to be amended to reflect the fact that Councils are likely to commission some services on their own contracts. The Partners need to consider/amend these and consider whether there are other restrictions or requirements that need to be imposed. Also consider if consent would be needed from all Partners or just relevant Partners (e.g. dependant on the type of services affected)

- 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)*
- 8 *[INSERT]*

## **Part 2 – OBLIGATIONS OF THE OTHER PARTNER<sup>72</sup>**

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.*
- 4 *[INSERT]*

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<sup>72</sup> These are illustrative only of the sorts of things that the Partners may want to have reported, agreed etc. The Partners need to consider/amend these and consider whether there are other restrictions or requirements that need to be imposed. Also consider if consent would be needed from all Partners or just relevant Partners (e.g. dependant on the type of services affected)

## **SCHEDULE 5 – PERFORMANCE ARRANGMENTS**



**SCHEDULE 6 – BETTER CARE FUND PLAN**

**SCHEDULE 7 – POLICY FOR THE MANAGEMENT OF CONFLCITS OF INTEREST**

**SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL**