

| Dated 2016 |
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| [Local authority ][[1]](#footnote-1)  and  NHS [ ] CLINICAL COMMISSIONING GROUP |
| FRAMEWORK PARTNERSHIP AGREEMENT RELATING TO THE COMMISSIONING OF HEALTH AND SOCIAL CARE SERVICES [[2]](#footnote-2) |

**Contents**

| **Item** | **Page** |
| --- | --- |

[PARTIES 1](#_Toc455153915)

[BACKGROUND 1](#_Toc455153916)

[1 Defined Terms and Interpretation 2](#_Toc455153917)

[2 Term 7](#_Toc455153918)

[3 General Principles 7](#_Toc455153919)

[4 Partnership Flexibilities 7](#_Toc455153920)

[5 functions 9](#_Toc455153921)

[6 commissioning arrangements 9](#_Toc455153922)

[7 Establishment of a Pooled Fund 11](#_Toc455153923)

[8 Pooled Fund Management 12](#_Toc455153924)

[9 Non pooled funds 13](#_Toc455153925)

[10 Financial Contributions 13](#_Toc455153926)

[11 Non Financial Contributions 14](#_Toc455153927)

[12 Risk share arrangments, Overspends and Underspends 14](#_Toc455153928)

[13 Capital Expenditure 15](#_Toc455153929)

[14 VAT 15](#_Toc455153930)

[15 AUDIT AND RIGHT OF ACCESS 15](#_Toc455153931)

[16 Liabilities and Insurance and indemnity 15](#_Toc455153932)

[17 Standards of Conduct and Service 17](#_Toc455153933)

[18 Conflicts of Interest 17](#_Toc455153934)

[19 Governance 17](#_Toc455153935)

[20 Review 18](#_Toc455153936)

[21 Complaints 19](#_Toc455153937)

[22 Termination & Default 19](#_Toc455153938)

[23 Dispute Resolution 21](#_Toc455153939)

[24 Force Majeure 21](#_Toc455153940)

[25 Confidentiality 21](#_Toc455153941)

[26 Freedom of Information and Environmental INFORMATION Regulations 22](#_Toc455153942)

[27 Ombudsmen 22](#_Toc455153943)

[28 Information sharing 22](#_Toc455153944)

[29 Notices 23](#_Toc455153945)

[30 Variation 23](#_Toc455153946)

[31 Change in Law 24](#_Toc455153947)

[32 Waiver 24](#_Toc455153948)

[33 Severance 25](#_Toc455153949)

[34 Assignment and Sub Contracting 25](#_Toc455153950)

[35 Exclusion of Partnership and Agency 25](#_Toc455153951)

[36 Third Party Rights 25](#_Toc455153952)

[37 Entire Agreement 25](#_Toc455153953)

[38 Counterparts 25](#_Toc455153954)

[39 Governing Law AND JURISDICTION 25](#_Toc455153955)

[Schedule 1 – Scheme specification 28](#_Toc455153956)

[Part 1 – Template Services Schedule 28](#_Toc455153957)

[1 OVERVIEW OF INDIVIDUAL SERVICE 28](#_Toc455153958)

[2 AIMS AND OUTCOMES 28](#_Toc455153959)

[3 THE ArrANGEMENTS 28](#_Toc455153960)

[4 FUNCTIONS 28](#_Toc455153961)

[5 SERVICES 28](#_Toc455153962)

[6 COMMISSIONING, CONTRACTING, ACCESS 29](#_Toc455153963)

[7 FINANCIAL CONTRIBUTIONS 29](#_Toc455153964)

[8 FINANCIAL GOVERNANCE ARRANGEMENTS 30](#_Toc455153965)

[9 VAT 30](#_Toc455153966)

[10 [GOVERNANCE ARRANGEMENTS 30](#_Toc455153967)

[11 NON FINANCIAL RESOURCES 30](#_Toc455153968)

[12 STAFF 31](#_Toc455153969)

[13 ASSURANCE AND MONITORING 31](#_Toc455153970)

[14 LEAD OFFICERS 32](#_Toc455153971)

[15 INTERNAL APPROVALS 32](#_Toc455153972)

[16 RISK AND BENEFIT SHARE ARRANGEMENTS 32](#_Toc455153973)

[17 REGULATORY REQUIREMENTS 32](#_Toc455153974)

[18 INFORMATION SHARING AND COMMUNICATION 32](#_Toc455153975)

[19 DURATION and EXIT STRATEGY 32](#_Toc455153976)

[20 OTHER PROVISIONS 33](#_Toc455153977)

[Part 2 – agreed scheme specifications 34](#_Toc455153978)

[Schedule 2 – GOVERNANCE 35](#_Toc455153979)

[Schedule 3 – FINANCIAL ARRANGEMENTS, Risk share and OVERSPENDS 37](#_Toc455153980)

[Schedule 4 – JOINT WORKING OBLIGATIONS 39](#_Toc455153981)

[Part 1 – LEAD PARTNER OBLIGATIONS 39](#_Toc455153982)

[Part 2 – OBLIGATIONS OF THE OTHER PARTNER 40](#_Toc455153983)

[Schedule 5 – PERFORMANCE ARRANGEMENTS 41](#_Toc455153984)

[Schedule 6 – BETTER CARE FUND PLAN 42](#_Toc455153985)

[Schedule 7 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST 43](#_Toc455153986)

[Schedule 8 – INFORMATION GOVERNANCE PROTOCOL 44](#_Toc455153987)

**THIS AGREEMENT** is made on day of 201[ ]

PARTIES[[3]](#footnote-3)

1. [ local Authority ]of [ ](the "Council")
2. NHS [ ] CLINICAL COMMISSIONING GROUP of [ ](the "CCG")

BACKGROUND

1. The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of [ ].
2. The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of [ ].
3. 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.][[4]](#footnote-4)
4. 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.
5. 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.
6. The aims and benefits of the Partners in entering in to this Agreement are to:
   1. improve the quality and efficiency of the Services;
   2. meet the National Conditions and Local Objectives;[and]
   3. make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.[and]
   4. [INSERT AIMS][[5]](#footnote-5)
7. 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.
8. Defined Terms and Interpretation[[6]](#footnote-6)
   1. In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:
9. 1998 Act means the Data Protection Act 1998.
10. 2000 Act means the Freedom of Information Act 2000.
11. 2004 Regulations means the Environmental Information Regulations 2004.
12. 2006 Act means the National Health Service Act 2006.
13. 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
14. Agreement means this agreement including its Schedules and Appendices.
15. Annual Report means the annual report produced by the Partners in accordance with Clause 20 (Review)
16. Approved Expenditure means any expenditure approved by the Partners in writing or as set out in the Scheme Specification in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.
17. Authorised Officers means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement.
18. BCF Quarterly Report means the quarterly report produced by the Partners and provided to the Health and Wellbeing Board
19. BCF 2015 Agreement means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2015
20. 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.
21. Better Care Fund Plan means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund [as attached as Schedule 6].
22. Better Care Fund Requirements means any and all requirements on the CCG and Council in relation to the Better Care Fund set out in Law and guidance published by the Department of Health.
23. CCG Statutory Duties means the Duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act
24. 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 Commencement Date
25. Commencement Date means 00:01 hrs on [1 April 2016].[[7]](#footnote-7)
26. 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:
    * 1. which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;
      2. the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or
      3. which is a trade secret.
27. Contract Price means any sum payable under a Services Contract as consideration for the provision of goods, equipment or services as required as part of the Services and which, for the avoidance of doubt, does not include any Default Liability.
28. 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) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under a 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.[[8]](#footnote-8)
29. Financial Contributions means the financial contributions made by each Partner to a Pooled Fund in any Financial Year.
30. 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

1. Functions means the NHS Functions and the Health Related Functions
2. 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.[[9]](#footnote-9)
3. Host Partner means for each Pooled Fund the Partner that will host the Pooled Fund and for any Non Pooled Fund the Partner that will host the Non Pooled Fund
4. 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.
5. 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.
6. Individual Scheme means one of the schemes which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification.
7. Integrated Commissioning means arrangements by which both Partners commission Services in relation to an individual Scheme on behalf of each other in exercise of both the NHS Functions and Council Functions through integrated structures.
8. 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.
9. Law means:
   * 1. any statute or proclamation or any delegated or subordinate legislation;
     2. any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
     3. 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
     4. any judgment of a relevant court of law which is a binding precedent in England.
10. 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 Health Related Functions.
11. Lead Partner means the Partner responsible for commissioning an Individual Service under a Scheme Specification.
12. 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.
13. Month means a calendar month.
14. National Conditions mean the national conditions as set out in the National Guidance as are amended or replaced from time to time.
15. National Guidance means any and all guidance in relation to the Better Care Fund as issued from to time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately.
16. 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.
17. 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.
18. 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].
19. Overspend means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.
20. Partner means each of the CCG and the Council, and references to "Partners" shall be construed accordingly.
21. Partnership Board[[10]](#footnote-10) means the partnership board responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 2 or such other arrangements for governance as the Partners agree.
22. Partnership Board Quarterly Reports means the reports that the Pooled Fund Manager shall produce and provide to the Partnership Board on a Quarterly basis
23. 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.
24. Permitted Expenditure has the meaning given in Clause [7.3].
25. Personal Data means Personal Data as defined by the 1998 Act.
26. Pooled Fund means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations
27. 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].
28. Provider means a provider of any Services commissioned under the arrangements set out in this Agreement [including the Council where the Council is a provider of any Services].
29. Public Health England means the SOSH trading as Public Health England.
30. 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.

1. Regulations means the means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).
2. Scheme Specification means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement.
3. Sensitive Personal Data means Sensitive Personal Data as defined in the 1998 Act.
4. 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.
5. Services Contract means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme.
6. Service Users means those individual for whom the Partners have a responsibility to commission the Services.
7. SOSH means the Secretary of State for Health.
8. 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.][[11]](#footnote-11)
9. Underspend means any expenditure from the Pooled Fund in a Financial Year which is less than the aggregate value of the Financial Contributions for that Financial Year.
10. Working Day means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.
    1. 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.
    2. 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.
    3. Any reference to the Partners shall include their respective statutory successors, employees and agents.
    4. In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
    5. 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.
    6. 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.
    7. In this Agreement, words importing the singular only shall include the plural and vice versa.
    8. 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.
    9. 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.
    10. 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.
    11. 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.
11. Term[[12]](#footnote-12)
    1. This Agreement shall come into force on the Commencement Date[[13]](#footnote-13).
    2. This Agreement shall continue until it is terminated in accordance with Clause [21].[[14]](#footnote-14)
    3. The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners.[[15]](#footnote-15)
    4. This Agreement supersedes the BCF 2015 Agreement without prejudice to the rights and liabilities of the Partners under the BCF 2015 Agreement
12. General Principles[[16]](#footnote-16)
    1. Nothing in this Agreement shall affect:
       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
       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.
    2. The Partners agree to:
       1. treat each other with respect and an equality of esteem;
       2. be open with information about the performance and financial status of each; and
       3. provide early information and notice about relevant problems.
    3. For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.
13. Partnership Flexibilities[[17]](#footnote-17)
    1. This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:
       1. Lead Commissioning Arrangements;
       2. Integrated Commissioning;
       3. Joint (Aligned) Commissioning
       4. the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

* 1. Where there is Lead Commissioning Arrangements and the CCG is Lead Partner 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.
  2. Where there is Lead Commissioning Arrangements and the Council is Lead Partner, 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.
  3. 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.[[18]](#footnote-18)
  4. [At the Commencement Date the Partners agree that the following shall be in place:
     1. The following Individual Schemes with Lead Commissioning with Council as Lead Partner:
     2. The following Individual Schemes with Lead Commissioning with CCG as Lead Partner:
     3. The following Individual Schemes with Aligned Commissioning with Council as Lead Partner:
     4. The following Individual Schemes with Aligned Commissioning with CCG as Lead Partner.
     5. Integrated Commissioning:
     6. Integrated Commissioning Unit [with CCG/Council as Lead Partner] [under joint arrangements] [established using s.113 of the Local Government Act 1983][[19]](#footnote-19)

1. functions[[20]](#footnote-20)
   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.
   2. This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.
   3. The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1 Part 2[[21]](#footnote-21).
   4. Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by each Partner [in accordance with the variation procedure set out in Clause 30 (Variations)]. Each new Scheme Specification shall be substantially in the form set out in Schedule 1 Part 1.[[22]](#footnote-22)
   5. 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.
   6. The introduction of any Individual Scheme will be subject to business case approval bythe [Partnership Board][[23]](#footnote-23) [in accordance with the variation procedure set out in Clause 30 (Variations)].
2. commissioning arrangements

General

* 1. The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification
  2. The Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.
  3. The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
  4. Each Partner shall keep the other Partner and the Partnership 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.
  5. [Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
     1. how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
     2. whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.)]
  6. The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts.

Integrated Commissioning

* 1. Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:
     1. the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
     2. 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.

Appointment of a Lead Partner[[24]](#footnote-24)

* 1. Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
     1. exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
     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.
     3. commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
     4. contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
     5. comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
     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;
     7. [[25]](#footnote-25)undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;[[26]](#footnote-26)
     8. make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
     9. keep the other Partner and Partnership 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.

1. Establishment of a Pooled Fund[[27]](#footnote-27)
   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 agreed by the Partners. At the Commencement Date there shall be [a single Pooled Fund in respect of this Agreement]/ the following Pooled Funds: {Insert}[[28]](#footnote-28)
   2. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
   3. Subject to Clause 7.4, it is agreed that the monies held in a Pooled Fund may only be expended on the following:[[29]](#footnote-29)
      1. the Contract Price;
      2. where the Council is to be the Provider, the Permitted Budget;
      3. Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board
      4. Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board

("Permitted Expenditure")[[30]](#footnote-30)

* 1. 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 [or *Partnership Board]*.
  2. 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 in accordance with Clause 7.4.[[31]](#footnote-31)
  3. 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:
     1. holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
     2. providing the financial administrative systems for the Pooled Fund; and
     3. appointing the Pooled Fund Manager;
     4. ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

1. Pooled Fund Management
   1. When introducing a Pooled Fund, the Partners shall agree:
      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;
      2. which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
   2. The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:
      1. the day to day operation and management of the Pooled Fund;
      2. ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
      3. maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
      4. ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
      5. reporting to the Partnership Board as required by this Agreement and by the Partnership Board;
      6. ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
      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 returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance;
      8. preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.
   3. In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:
      1. have regard to National Guidance and the recommendations of the Partnership Board; and
      2. be accountable to the Partners for delivery of those responsibilities.
   4. The Partnership Board may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.
2. Non pooled funds[[32]](#footnote-32)
   1. Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. 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.
   2. When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
      1. which Partner if any[[33]](#footnote-33) shall host the Non-Pooled Fund
      2. how and when Financial Contributions shall be made to the Non-Pooled Fund.
   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.
   4. [Both Partners shall ensure that any Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification]
   5. Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
      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
      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.
3. Financial Contributions[[34]](#footnote-34)
   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 shall be as set out in Schedule 3.[[35]](#footnote-35)
   2. The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners [*Insert Provisions around how Financial Contributions will be determined going forward*][[36]](#footnote-36)
   3. Financial Contributions will be paid as set out in [Schedule [INSERT]. [[37]](#footnote-37)
   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 a 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.
4. Non Financial Contributions[[38]](#footnote-38)
   1. Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. [These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.][[39]](#footnote-39)
   2. Each 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 Services Contracts and the Pooled Fund).
5. Risk share arrangments, Overspends and Underspends[[40]](#footnote-40)

**Risk share arrangements**

* 1. The Partners have agreed risk share arrangements as set out in Schedule 3, which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds as set out in National Guidance.

**Overspends in Pooled Fund[[41]](#footnote-41)**

* 1. 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 use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
  2. The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure 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.[[42]](#footnote-42)
  3. 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][[43]](#footnote-43) and Schedule [3] shall apply.

**Overspends in Non Pooled Funds[[44]](#footnote-44)**

* 1. Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board.
  2. Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partner [and the Partnership Board].

**Underspend**

* 1. 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 or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Schedule 3 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

1. Capital Expenditure[[45]](#footnote-45)
   1. Except as provided in Clause 13.2, neither Pooled Funds nor 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.
   2. The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.
2. VAT

The Partners shall agree the treatment of each Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.[[46]](#footnote-46)

1. AUDIT AND RIGHT OF ACCESS
   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 appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.
   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 relevant 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.
   3. The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.
2. Liabilities and Insurance and indemnity[[47]](#footnote-47)
   1. [Subject to Clause 16.2, and 16.3, if a Partner (“First Partner”) incurs a Loss arising out of or in connection with this Agreement (including a Loos arising under an Individual Scheme) 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 any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
   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.
   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:
      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;
      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);
      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.
   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 and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement)[[48]](#footnote-48)]
   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.

**Conduct of Claims**

* 1. In respect of the indemnities given in this Clause 16:
     1. the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
     2. the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters.
     3. the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

1. Standards of Conduct and Service
   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).
   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.
   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.
   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.
2. Conflicts of Interest[[49]](#footnote-49)
   1. [The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 7.] **OR** [The Partners shall comply with the policy for identifying and managing conflicts of interest as agreed by the Partners from time to time.]
3. Governance[[50]](#footnote-50)
   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.
   2. The Partners have established a Partnership Board to[[51]](#footnote-51):

[ INSERT ]

* 1. 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.]
  2. The terms of reference of the Partnership Board shall be as set out in Schedule [2] as may be amended or varied by written agreed from time to time.
  3. [INCLUDE CONFIRMATION OF ANY OTHER GOVERNANCE GROUPS AND HOW THESE INTERACT]
  4. [WILL EACH INDIVIDUAL SCHEME HAVE A SCHEME LEAD? IF SO, INCLUDE HERE]
  5. [IS THERE AN OVERARCHING BCF LEAD? IF SO INCLUDE HERE AND SUMMARY OF RESPONSIBILITIES].
  6. 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.
  7. The [Partnership Board] [[52]](#footnote-52) shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 3.
  8. The [Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
  9. Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Partnership Board and Health and Wellbeing Board.

1. Review [[53]](#footnote-53)
   1. The Partners shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board
   2. 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 and Non Pooled Fund] and the provision of the Services within 3 Months of the end of each Financial Year.
   3. Subject to any variations to this process required by the Partnership Board, Annual Reviews shall be conducted in good faith[[54]](#footnote-54).
   4. The Partners shall within [20] Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Partnership Board.
   5. 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.[[55]](#footnote-55)
2. Complaints[[56]](#footnote-56)

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**

* 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.
  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:
     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;
     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;
     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;
     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.

1. Termination & Default[[57]](#footnote-57)
   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.
   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.]

***OR***

* 1. [Unless otherwise agreed in the relevant Scheme Specification, each Individual Scheme may be terminated by either Partner giving not less than [12] Months' notice in writing or such shorter notice period agreed between the Partners provided that:
     1. such termination is possible in accordance with the National Guidance and Law; and
     2. that the Partners ensure that the statutory Better Care Fund Requirements continue to be met, and

for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Services.][[58]](#footnote-58)

* 1. If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23. [[59]](#footnote-59)
  2. 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][[60]](#footnote-60)
  3. [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.][[61]](#footnote-61)
  4. Upon termination of this Agreement for any reason whatsoever the following shall apply:[[62]](#footnote-62)
     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;
     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;
     3. the Lead Partner 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 Partner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner 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.
     4. where a Service Contract held by a Lead Partner 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 Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
     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
     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.
  5. 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).

1. Dispute Resolution[[63]](#footnote-63)
   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.
   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.
   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.
   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.
   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.
2. Force Majeure[[64]](#footnote-64)
   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.
   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.
   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.
   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.
3. Confidentiality[[65]](#footnote-65)
   1. In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:
      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
      2. the provisions of this Clause 25 shall not apply to any Confidential Information which:
         1. is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
         2. is obtained by a third party who is lawfully authorised to disclose such information.
   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.
   3. Each Partner:
      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
      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;
      3. shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.
4. Freedom of Information and Environmental INFORMATION Regulations
   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 Regulations 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.
   2. Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.
5. 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.

1. 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 comply with Law, in particular the 1998 Act**. ] or** [The Partners will comply with the information governance protocol as agreed between the Partners from time to time]

1. Notices
   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:
      1. personally delivered, at the time of delivery;
      2. sent by facsimile, at the time of transmission;
      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
      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.
   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).
   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:
      1. if to the Council, addressed to the [ ];

Tel: [ ]

Fax: [ ]

E.Mail: [ ]

and

* + 1. if to the CCG, addressed to [ ];

Tel: [ ]

Fax: [ ]

E.Mail: [ ]

1. Variation [[66]](#footnote-66)
   1. [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.]

***OR***

* 1. [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 subject to approval by the Partnership Board as set out in this Clause.
  2. Where the Partners agree that there will be:
     1. a new Pooled Fund;
     2. a new Individual Scheme; or
     3. an amendment to a current Individual Scheme,

the Partnership Board shall agree the new or amended Individual Scheme and this must be signed by the Partners. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification may be made by any Partner but will require agreement from all of the Partners in accordance with the process set out in Clause 30.3. The notice period for any variation unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

* 1. The following approach shall, unless otherwise agreed, be followed by the Partnership Board:
     1. on receipt of a request from one Partners to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Partnership Board will first undertake an impact assessment and identify those Service Contracts likely to be affected;
     2. the Partnership Board will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Partners holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;
     3. wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and
     4. should this not be possible and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be [shared equally between the Partners[[67]](#footnote-67).]

1. Change in Law
   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.
   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.
   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.
2. 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.

1. 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.

1. 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.

1. Exclusion of Partnership and Agency
   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.
   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:
      1. act as an agent of the other;
      2. make any representations or give any warranties to third parties on behalf of or in respect of the other; or
      3. bind the other in any way.
2. 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.

1. Entire Agreement
   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.
   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.
2. 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.

1. Governing Law AND JURISDICTION
   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.
   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 arises 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[[68]](#footnote-68)

| THE CORPORATE SEAL of **THE** | ) |  |
| --- | --- | --- |
| **COUNCIL OF [ ]** | ) |  |
| was hereunto affixed in the presence of: | ) |  |
| Signed for on behalf of **[ ]**  **CLINICAL COMMISSIONING GROUP**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Authorised Signatory |  |  |
|  |  |  |
|  |  |  |

1. – Scheme specification
   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 [ ]*

1. AIMS AND OUTCOMES

*Insert agreed aims of the Individual Scheme*

1. 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.*

1. 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)*

1. 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? [[69]](#footnote-69)*

1. 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:*

relevant contracts

arrangements for contracting. Will terms be agreed by both partners or will the Lead *Partner* 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.*

1. FINANCIAL CONTRIBUTIONS

Financial Year 201…./201

|  | CCG contribution | Council Contribution |
| --- | --- | --- |
| Non-Pooled Fund A |  |  |
| Non-Pooled Fund B |  |  |
| Non-Pooled Fund C |  |  |
| Pooled Fund X |  |  |
| Pooled Fund Y |  |  |

Financial Year 201…./201

|  | CCG contribution | Council Contribution |
| --- | --- | --- |
| 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

1. FINANCIAL GOVERNANCE ARRANGEMENTS

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

*(2) Management of the Pooled Fund*

*If there is a Pooled Fund in respect of the Individual Scheme set out the protocol in respect of the pooled Fund.*

*(3) Audit Arrangements*

*What Audit arrangements are needed?*

*(4) Financial Management*

*Which financial systems will be used?*

*What monitoring arrangements are in place?*

*Who will produce monitoring reports?*

*What is the frequency of monitoring reports?*

*What are the rules for managing overspends?*

*Do budget managers have delegated powers to overspend?*

*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 closure of accounts arrangement need to be applied?]*[[70]](#footnote-70)

1. VAT

*Set out details of the treatment of VAT in respect of the Individual Scheme 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?*

1. [GOVERNANCE ARRANGEMENTS

*Is there a Scheme Lead*

*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?*

1. NON FINANCIAL RESOURCES

**Council contribution**

|  | Details | Charging arrangements[[71]](#footnote-71) | Comments |
| --- | --- | --- | --- |
| Premises |  |  |  |
| Assets and equipment |  |  |  |
| Contracts |  |  |  |
| Central support services |  |  |  |

**CCG Contribution**

|  | Details | Charging arrangements[[72]](#footnote-72) | Comments |
| --- | --- | --- | --- |
| Premises |  |  |  |
| Assets and equipment |  |  |  |
| Contracts |  |  |  |
| Central support services |  |  |  |

1. 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?*

**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.*

1. 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?*

1. LEAD OFFICERS

| Partner | Name of Lead Officer | Address | Telephone Number | Email Address | Fax Number |
| --- | --- | --- | --- | --- | --- |
| Council |  |  |  |  |  |
| CCG |  |  |  |  |  |

1. 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?*

1. 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.*

1. REGULATORY REQUIREMENTS

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

1. 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*

1. 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.*

1. 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

1. – GOVERNANCE[[73]](#footnote-73)
   * + 1. **Partnership Board**
          1. The membership of the Partnership Board will be as follows:

CCG:

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

the Council:

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

* + - 1. **Role of Partnership Board**
      2. [The Partnership Board shall:

Provide strategic direction on the Individual Schemes

receive the financial and activity information;

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

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

review and agree annually a risk assessment;

review and agree annually revised Schedules as necessary;

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;

cooperate with the Pooled Fund Manager in meeting reporting requirements in accordance with relevant National Guidance.

report directly to the H&WB on a Quarterly basis in accordance with relevant National Guidance.

[INSERT]]

* + - 1. **Partnership Board Support**

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

* + - 1. **Meetings**
         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.
         2. The quorum for meetings of the Partnership Board shall be a minimum of [one representative from each of the Partner organisations].
         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.
         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. Minutes of all decisions shall be kept and copied to the Authorised Officers within [seven (7)] days of every meeting.
      2. **Delegated Authority**
         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:

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

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

* + - 1. **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.

* + - 1. **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.

1. – FINANCIAL ARRANGEMENTS, Risk share and OVERSPENDS[[74]](#footnote-74)
   * + 1. Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.
       2. Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.

Financial Contributions

* + - 1. [Insert how and when financial contributions will be paid into the Pooled Fund]

[Refer to the withholding of any Risk Share Element and when this will be paid in once determined in accordance with Para 4 below].

Risk Share

* + - 1. [INSERT HERE HOW THE RISK SHARE ARRANGEMENT WILL WORK:
         1. How the value will be calculated
         2. how much will be withheld
         3. how it will be determined what will be paid in
         4. What will happen to the risk share element once paid into the Pooled Fund

Pooled Fund Management

* + - 1. *[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 Partner as a contributing factor to an overspend will that impact on the division of the overspend?

What actions can the Partnership Board 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

* + - 1. The Partnership Board shall consider what action to take in respect of any actual or potential Overspends
      2. 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 budgetary constraints agree appropriate action in relation to Overspends which may include the following:
         1. whether there is any action that can be taken in order to contain expenditure;
         2. whether there are any underspends that can be vired from any other fund maintained under this Agreement;
         3. how any Overspend shall be apportioned between the Partners, such apportionment to be just and equitable taking into consideration all relevant factors.
      3. The Partners agree to co-operate fully in order to establish an agreed position in relation to any Overspends.
      4. Overspends which occur in relation to any [*insert reference to any locally agreed performance arrangements*] shall be subject to alternative provisions in the relevant [insert reference to any locally agreed performance arrangements], 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.
      5. 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.
      6. 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.

Underspends

[Include what will happen if there is underspend in relation to

* 1. The Pooled Fund as a whole;
  2. Any particular Individual Scheme;
  3. Any contingency fund

Will unspent monies go back to the Lead Partner for the scheme that has underspent? If a Scheme does not get off the ground will the Lead Partner for that scheme get to retain the money or get the choice of where it is invested or will it go back to the Partnership Board? What happens to unspent contingency?

1. – JOINT WORKING OBLIGATIONS
   1. – LEAD PARTNER OBLIGATIONS[[75]](#footnote-75)

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 Partner shall notify the other Partners if it receives or serves:*
         1. *a Change in Control Notice;*
         2. *a Notice of an Event of Force Majeure;*
         3. *a Contract Query;*
         4. *Exception Reports*

*and provide copies of the same.*

* + - 1. *The Lead Partner shall provide the other Partners with copies of any and all:*
         1. *CQUIN Performance Reports;*
         2. *Monthly Activity Reports;*
         3. *Review Records; and*
         4. *Remedial Action Plans;*
         5. *JI Reports;*
         6. *Service Quality Performance Report;*
      2. *The Lead Partner shall consult with the other Partners before attending:*
         1. *an Activity Management Meeting;*
         2. *Contract Management Meeting;*
         3. *Review Meeting;*

*and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.*

* + - 1. *The Lead Partner shall not:*
         1. *permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;*
         2. *vary any Provider Plans (excluding Remedial Action Plans);*
         3. *agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;*
         4. *give any approvals under the Service Contract;*
         5. *agree to or propose any variation to the Service Contract (including any Schedule or Appendices);*
         6. *suspend all or part of the Services;*
         7. *serve any notice to terminate the Service Contract (in whole or in part);*
         8. *serve any notice;*
         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.*

* + - 1. *The Lead Partner 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.*
      2. *The Lead Partner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution*
      3. *The Lead Partner shall share copies of any reports submitted by the Service Provider to the Lead Partner pursuant to the Service Contract (including audit reports)*
      4. *[INSERT]*
  1. – OBLIGATIONS OF THE OTHER PARTNER[[76]](#footnote-76)

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 Partner (including the provision of data and other information) as is reasonably necessary to enable the Lead Partner to:*
         1. *resolve disputes pursuant to a Service Contract;*
         2. *comply with its obligations pursuant to a Service Contract and this Agreement;*
         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 Partner.*
      3. *Each Partner (other than the Lead Partner) shall:*
         1. *comply with the requirements imposed on the Lead Partner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;*
         2. *notify the Lead Partner of any matters that might prevent the Lead Partner from giving any of the warranties set out in a Services Contract or which might cause the Lead Partner to be in breach of warranty.*
      4. *[INSERT]*

1. – PERFORMANCE ARRANGEMENTS
2. – BETTER CARE FUND PLAN
3. – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST
4. – INFORMATION GOVERNANCE PROTOCOL

1. Complete the parties names. Are there any other parties to be involved – who must be eligible bodies for S75 purposes if they participate in the pooled fund or lead commissioning. [↑](#footnote-ref-1)
2. Parties may wish to include a reference to the Better Care Fund [↑](#footnote-ref-2)
3. See previous note about parties [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. Consider and provide any additional aims/objectives. [↑](#footnote-ref-5)
6. Definitions should be finalised once main body of Agreement is finalised. [↑](#footnote-ref-6)
7. Partners to confirm. This is likely to be 1 April 2016 [↑](#footnote-ref-7)
8. Default Liability are costs incurred by a lead partner as a result of that Partner breaching a contract. Will the Lead Partner be able to use Pooled Fund monies to cover these costs? Should this be expanded to cover other liabilities such as Judicial Review liabilities of either Partner? Further consideration will always be needed on this. [↑](#footnote-ref-8)
9. Here and in the definition of NHS functions the widest definition is used. This should be cut down in the relevant specification to identify the function being undertaken in the commissioning of the particular service. [↑](#footnote-ref-9)
10. We have called the lead governance group the Partnership Board throughout the Agreement. Where this is called something different then the we recommend using the find and replace option to make the changes throughout the document. [↑](#footnote-ref-10)
11. For discussion between the Parties. These are costs incurred by a Lead Partner such as legal fees and any other professional fees that have to be paid to a third party. The Parties should consider whether any third party costs can be paid for using Pooled Funds. For discussion between the Parties. The current drafting provides that these can be charged where it is agreed specifically in a Service Specification or with prior agreement of both parties. [↑](#footnote-ref-11)
12. Consider the term and arrangements for dealing with termination. [↑](#footnote-ref-12)
13. Parties to consider and confirm whether existing partnership arrangements (Section 75 or otherwise) will be affected by this Agreement. [↑](#footnote-ref-13)
14. 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. [↑](#footnote-ref-14)
15. 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. [↑](#footnote-ref-15)
16. 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. [↑](#footnote-ref-16)
17. 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. [↑](#footnote-ref-17)
18. Parties should always check that the proposed services can be delegated before incorporating. [↑](#footnote-ref-18)
19. In a number of agreements it has been difficult to establish exactly what arrangements are in place. As such we have inserted an optional clause which would enable the Partners to set out what schemes are using what flexibilities. Please see the Explanatory Memorandum for further information and guidance. [↑](#footnote-ref-19)
20. This provision highlights how the framework can incorporate other schemes and funding arrangements. [↑](#footnote-ref-20)
21. 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. [↑](#footnote-ref-21)
22. We have suggested a template Scheme Specification as a starting point for discussion. [↑](#footnote-ref-22)
23. 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. [↑](#footnote-ref-23)
24. Parties should consider overarching obligations on Lead Commissioners, including whether any further duties will be assigned to the Lead Commissioner. [↑](#footnote-ref-24)
25. Consider adding in further obligations around contract management and the requirement of the Lead Commissioner to take enforcement action. [↑](#footnote-ref-25)
26. How will the Parties deal with performance monitoring and accountability/assurance frameworks? [↑](#footnote-ref-26)
27. 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. [↑](#footnote-ref-27)
28. Please include confirmation of what Pooled Funds will be held under this Agreement. Is there a single Pooled Fund for BCF or separate Pooled Funds? [↑](#footnote-ref-28)
29. 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. [↑](#footnote-ref-29)
30. 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. If management costs and costs for hosting a Pooled Fund such as audit costs are to be charged to the Pooled fund this should be included as an additional point at clause 7.3. [↑](#footnote-ref-30)
31. This links liabilities of the Host Partner for default to the indemnity provisions. [↑](#footnote-ref-31)
32. 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. [↑](#footnote-ref-32)
33. 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. [↑](#footnote-ref-33)
34. 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? [↑](#footnote-ref-34)
35. 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. [↑](#footnote-ref-35)
36. Include any information that the Partners have agreed as to how future contributions will be agreed. [↑](#footnote-ref-36)
37. If there is to be a set mechanism for funding to be paid this needs to be inserted here [↑](#footnote-ref-37)
38. As set out in this Clause 11, these arrangements may 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. [↑](#footnote-ref-38)
39. If the general position is that non-financial contributions are not charged to the Pooled Fund then include the bit in square brackets. [↑](#footnote-ref-39)
40. We have provided a suggested approach to overspends and underspends, however, the details will need to considered by the Partners in the context of the specific risk sharing arrangements agreed between the Partners. [↑](#footnote-ref-40)
41. 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. [↑](#footnote-ref-41)
42. 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? [↑](#footnote-ref-42)
43. Consider whether the Overspend provisions will be the same across all of the different Services [↑](#footnote-ref-43)
44. 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 [↑](#footnote-ref-44)
45. Once the arrangements are confirmed, a reference to s. 256 grants can be included if relevant. [↑](#footnote-ref-45)
46. Partners to consider their respective positions regarding VAT. [↑](#footnote-ref-46)
47. 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. [↑](#footnote-ref-47)
48. 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. [↑](#footnote-ref-48)
49. The Partners could include a procedure in this Agreement for the resolution of conflicts of interest. [↑](#footnote-ref-49)
50. 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. [↑](#footnote-ref-50)
51. The Partners will need to determine the specific functions and objectives of the Partnership Board. [↑](#footnote-ref-51)
52. Who signs off on the addition of new services to the scheme? [↑](#footnote-ref-52)
53. 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. [↑](#footnote-ref-53)
54. Is there anything that can be included to set out how Annual Reviews will be undertaken? How was this done for 2015/2016? Was this successful? If it could be improved consider including minimum requirements for an annual review here. [↑](#footnote-ref-54)
55. What level will any discussions be here? [↑](#footnote-ref-55)
56. 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. [↑](#footnote-ref-56)
57. We have set out a suggested approach to termination and default here as a basis for discussion. [↑](#footnote-ref-57)
58. This Clause can be adopted where the Scheme Specifications do not set out termination provisions for the relevant Individual Scheme. [↑](#footnote-ref-58)
59. In this template there is no right to terminate this Agreement as a result of breach by either Partner. [↑](#footnote-ref-59)
60. This provision will be populated in the final draft of the Agreement. [↑](#footnote-ref-60)
61. Consider whether this obligation is acceptable to the Partners. [↑](#footnote-ref-61)
62. 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. [↑](#footnote-ref-62)
63. 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? [↑](#footnote-ref-63)
64. Consider whether the suggested procedure (including the definition of Force Majeure Event and timescales) is acceptable. [↑](#footnote-ref-64)
65. Confidential information and the sharing of information will need to be considered since the partners have different rules that apply. [↑](#footnote-ref-65)
66. The Partners may find it helpful to set out a procedure for agreeing to add a new scheme to the framework arrangement and the alternative drafting in Clauses 30.1 to 30.3 sets out an example of a more detailed variation procedure. [↑](#footnote-ref-66)
67. Risk sharing arrangements will be for local agreement between the Partners. [↑](#footnote-ref-67)
68. Partners to confirm execution blocks [↑](#footnote-ref-68)
69. 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 [↑](#footnote-ref-69)
70. 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. [↑](#footnote-ref-70)
71. 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 [↑](#footnote-ref-71)
72. 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 [↑](#footnote-ref-72)
73. 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. [↑](#footnote-ref-73)
74. 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. [↑](#footnote-ref-74)
75. 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) [↑](#footnote-ref-75)
76. 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) [↑](#footnote-ref-76)