

SUPPLEMENT TO THE AGENDA FOR

Cabinet

Thursday 17 March 2016

2.00 pm

**The Council Chamber - The Shire Hall, St. Peter's Square,
Hereford, HR1 2HX**

	Pages
3. MINUTES To approve and sign the minutes of the meeting held on 10 March 2016.	3 - 4
5. AGREEMENT OF SECTION 75 Please find attached Appendix 2 to the report on a proposal for an extension to the section 75 agreement between the local authority and Herefordshire clinical commissioning group, marked as to follow in the previously published Agenda.	5 - 66

HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Cabinet held at Council Chamber, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Thursday 10 March 2016 at 2.00 pm

Present: Councillor AW Johnson (Chairman)
Councillor PM Morgan (Vice Chairman)

Councillors: H Bramer, JG Lester, GJ Powell, PD Price and P Rone

In attendance: Councillors WLS Bowen, JA Hyde, TM James, RI Matthews, AJW Powers, FM Norman, D Summers and CR Butler

136. APOLOGIES FOR ABSENCE

There were no apologies for absence.

137. DECLARATIONS OF INTEREST

There were no declarations of interest.

138. MINUTES

RESOLVED: That the Minutes of the meeting held on 11 February 2016 be approved as a correct record and signed by the Chairman.

139. MUSEUM AND ARCHIVE SERVICES

The cabinet member contracts & assets presented the report on the initial options for the future operation of the museum and archive service. The report addressed the first two years of budget reductions and a further one on longer term options would be developed.

The assistant director communities provided an overview of the initial operations of the museum and archive service.

In response to questions from cabinet members, the following points were noted:

- That the archive budget had not been reduced substantially over the period as the service was a statutory function and was housed in a new building in order to reduce costs.
- That consultation with external bodies over the plans had been positive.

In response to questions raised by members in attendance, the following points were made:

- That the proposed charging structure for the Old House was not a commercial decision, but was designed to defray costs to the council. Disabled access to the building had always been an issue, but the ground floor displays would highlight the interpretation of the rest of the building.

- Whilst there was a statutory obligation to store archaeological finds in the Museum Resource and Learning Centre in Friar Street, there was no obligation to display the objects.

Resolved that:

- (a) the savings and income plan (outlined in paragraphs 17 to 29 of the report) be implemented;**
- (b) £80k be invested in improvements to the Old House, stock and marketing as outlined at paragraph 44;**
- (c) a further report on longer term options for future sustainable delivery of the service be developed to include exploration of trust, transfer and shared service arrangements with suitable heritage partners; and;**
- (d) the principles of allocating library and museum support fund (outlined at paragraphs 30/31 of the report) be agreed.**

140. APPROVAL OF STRATEGIC HOUSING DOCUMENTS

The joint commissioning manager provided cabinet with an overview of the strategic housing documents.

In response to questions from members in attendance, the following points were noted:

- That whilst the numbers on the Housing Register had fallen from 5000 to 500, they currently stood at 1,160.
- That there was a strict view taken on provision of housing for those with local connections. Changes to policy had been driven by case law in this area which meant that those with no local connections were now given a low priority on the list. This also applied to those not living in the county but with the offer of a job in Herefordshire.
- It was unclear as to where the 4000 people who had previously been on the register were now, but some who were being re-introduced to the housing register had some housing needs.
- That bed and breakfast accommodation had not been used since November 2012 and it was hoped that there would be no recourse to this position. It was expected, however, that more people would present as homeless.
- That the Syrian refugees that the county had offered to house would not have an impact on the housing register, as they would be placed by central government with private landlords.

Resolved that:

- (a) the allocations policy for Herefordshire 2016 (at appendix 1 to the report) be approved;**
- (b) the homelessness review and prevention strategy for 2016 to 2020 (at appendix 2 to the report) be approved; and;**
- (c) the interim housing strategy for 2016 to 2020, incorporating the tenancy strategy for 2016 to 2020 (at appendix 3 to the report) be approved.**

The meeting ended at 3.17 pm

CHAIRMAN

Dated _____ **2015**

THE COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL
and
NHS HEREFORDSHIRE CLINICAL COMMISSIONING GROUP

**FRAMEWORK PARTNERSHIP AGREEMENT RELATING TO THE
COMMISSIONING OF HEALTH AND SOCIAL CARE SERVICES IN
CONNECTION WITH THE BETTER CARE FUND**

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2006 Act means the National Health Service Act 2006.

2014 Act means the Care Act 2014

Affected Partner means, in the context of Clause 26, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event

Agreement means this agreement including its Schedules and Appendices.

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

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

Better Care Fund (BCF) 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.

BCF Partnership Group: means the Steering Group for the operational delivery of the BCF Plan. Members of the group take responsibility for delivery of the Individual Schemes and Services.

Better Care Fund Plan means the plan attached at Schedule 6 setting out the Partner's plan for the use of the Better Care Fund.

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

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

Chief Financial Officer means the Chief Financial Officer of the CCG

Commencement Date means 00:01 hrs on 1st April 2015.

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

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

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

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

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

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

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;
- (c) acts of God;
- (d) fire or flood;
- (e) industrial action;
- (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
- (g) any form of contamination or virus outbreak; and
- (h) any other event,

in each case where such event is beyond the reasonable control of the Partner claiming relief

Functions means the NHS Functions and the Health Related Functions

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

Host Partner means for each Pooled Fund the Partner that will host the Pooled Fund and for each Non Pooled/Aligned Fund the Partner that will host the Non Pooled /Aligned Fund

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

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

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

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

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

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

Law means:

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

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

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

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

Local Authority means The County of Herefordshire District Council also referred to as "the Council"

Local Objectives means the local objectives to be met in Herefordshire as are more particularly set out in the Better Care Fund Plan

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

Month means a calendar month.

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

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

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

Non-Recurrent Payments means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 10.6.

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

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

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

Permitted Expenditure has the meaning given in Clause 7.2.

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

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

Pooled Fund Manager means such officer of the Host Partner which includes a Section 113 Officer (Local Government Act 1972) 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 8.

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

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

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

Section 151 Officer means the Chief Financial Officer of the Council

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

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

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

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

SOSH means the Secretary of State for Health.

Third Party Costs means all such third party costs (including legal and other professional fees) as agreed by the Joint Commissioning Board on an individual scheme basis.

Underspend means any expenditure from a Pooled Fund or Non Pooled/Aligned Fund in a Financial Year which is below the Financial Contributions for that Financial Year.

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. For the avoidance of doubt additional non-working days for Council employees (contractual unpaid leave to which they are entitled) will be treated as bank holidays for the purposes of social care support and cover and as such, shall not constitute "Working Days".

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.

- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date.
- 2.2 This Agreement shall continue until 31st March 2018 unless terminated earlier in accordance with Clause 24.
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

3 GENERAL PRINCIPLES

- 3.1 Nothing in this Agreement shall affect:
 - 3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or
 - 3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any Council function.
- 3.2 The Partners agree to:
 - 3.2.1 treat each other with respect and an equality of esteem;
 - 3.2.2 be open with information about the performance and financial status of each; and
 - 3.2.3 provide early information and notice about relevant problems.
- 3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

3.4 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.

4 PARTNERSHIP FLEXIBILITIES

4.1 This Agreement sets out the mechanisms through which the Partners have agreed that they may implement the Better Care Fund Plan. These are:

4.1.1 The establishment of one or more Pooled Funds;

4.1.2 Lead Commissioning Arrangements;

4.1.3 Joint (Aligned) / Co-Commissioning; and

4.1.4 Integrated Commissioning.

As more particularly described in the Scheme Specifications in relation to Individual Schemes (the "Flexibilities")

4.2 At the Commencement Date, there are no Health Related Functions to be delegated by the Council for the CCG to exercise. In the event that, during the term of this Agreement, the Partners identify the need for the Council to delegate Health Related Functions to the CCG, and the CCG agrees to exercise those, to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions, this delegation shall be preceded by:

- The identification of the Functions to be delegated;
- The undertaking of any necessary consultation;
- The seeking of legal advice
- The Council constitution and schemes of delegation being updated to reflect the changes required; and
- A deed of variation being signed by the Partners to effect a variation of this Agreement,

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

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

5 FUNCTIONS

5.1 This Agreement shall include such functions as shall be agreed from time to time by the Partners, having followed the governance processes required by each of their constitutions and in response to any recommendations made by the Joint Commissioning Board.

5.2 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed in the form set out in Part 2 of Schedule 1 and agreed between the Partners. The initial Scheme Specifications, as at the Commencement Date, are set out in Part 3 of Schedule 1.

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

- 5.4 The introduction of any Individual Scheme will be subject to business case approval by the Partners, following the governance processes required by each Partner's Constitution, on the recommendation of the Joint Commissioning Board.

6 COMMISSIONING ARRANGEMENTS

Integrated/Joint Aligned/Co- Commissioning

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

Appointment of a Lead Commissioner

- 6.7 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
- 6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.7.2 ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - 6.7.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.7.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 6.7.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 6.7.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 6.7.7 undertake performance management and contract monitoring including any enforcement action required of all Service Contracts;
 - 6.7.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.

6.7.9 keep the other Partner and the Joint Commissioning Board regularly informed in writing of the effectiveness of the arrangements including the Better Care Fund and as soon as practicable after becoming aware of any projected Overspend or Underspend in a Pooled Fund or Non Pooled/Aligned Fund.

6.8 Detailed commissioning obligations where Lead Commissioning Arrangements apply are set out in Schedule 4.

7 ESTABLISHMENT OF A POOLED FUND

7.1 At the Commencement Date and in exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain the Pooled Funds that are described in Part 1 of Schedule 1 and to utilise those Pooled Funds in connection with the Individual Schemes in the manner set out in Part 1 of Schedule 1 and in the Scheme Specifications. For the avoidance of doubt, the Partners may agree variations to the Pooled Funds and may add additional Pooled Funds during the term of this Agreement which will be recorded using the variation template (Schedule 9). Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and Regulation 7 of the Regulations.

7.2 It is agreed that the monies held in a Pooled Fund may only be expended on the following "Permitted Expenditure":

7.2.1 the Contract Price;

7.2.2 the Permitted Budget where the Council is to be the Provider;

7.2.3 Performance Payments;

7.2.4 Third Party Costs ; and

7.2.5 Approved Expenditure.

7.3 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 and for the avoidance of doubt there is no obligation on either Partner to agree to any such expenditure not constituting Permitted Expenditure. Management overheads, accommodation costs and other administrative support costs shall not constitute Approved Expenditure unless otherwise agreed by the Partners in writing.

7.4 Monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.

7.5 At the Commencement Date, the Partners have agreed to appoint the Council as Host Partner for the Pooled Funds. The Host Partner shall be the Partner responsible for:

7.5.1 Reporting on / holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;

7.5.2 providing the overall financial analysis including supporting administrative systems for the Pooled Fund;

7.5.3 appointing the Pooled Fund Manager; and

7.5.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement as detailed in Clause 8

7.6 The minimum fund capital expenditure for the BCF which is constituted by the Disabled Facilities Grant and Social Care Capital Grant will be included within the Scheme Specifications in so far as it is required to be allocated to a Pooled Fund, but will be devolved to the Council for administration. The Council will report to the Joint Commissioning Board, details of capital expenditure made from the Pooled Fund, including in respect of the Social Care Capital Grant and Disabled Facilities Grant.

8 POOLED FUND MANAGEMENT

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

- 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund; and
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager shall have the following duties and responsibilities:
- 8.2.1 To develop and implement an overarching Commissioning Project Plan for the BCF, to maximize Joint (Aligned)/Co commissioning and Integrated Commissioning opportunities allied to the Pooled Fund working in conjunction with the lead officers of each Partner organisation.
 - 8.2.2 To lead on the delivery of the joint procurement and management of the Residential and Nursing Care Home Market to ensure effectiveness and efficiency of such procurements across health and social care.
 - 8.2.3 To support the development of Joint (Aligned) Co-commissioning/Integrated Commissioning strategies for Learning Disability and Mental Health.
 - 8.2.4 To embed the governance structure set out in Schedule 2 of this Agreement within both organisations and to develop and deliver a work plan for the BCF for 2015/16.
 - 8.2.5 Oversee the performance management arrangements for the BCF.
 - 8.2.6 To oversee the day to day operation and management of the Pooled Funds established pursuant to this Agreement, ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification.
 - 8.2.7 Reporting and ensuring action is taken to manage any projected Underspends or Overspends in accordance with this Agreement.
 - 8.2.8 Preparing and submitting to the Joint Commissioning Board monthly summary reports, full Quarterly reports and an annual return regarding the income and expenditure from the Pooled Funds in accordance with the Partners instructions. Such reports to include any other information as may be required by the Partners and the Joint Commissioning Board to monitor the effectiveness of the delivery of the Services and the operation of the Pooled Funds and to enable the Partners to complete their own financial accounts and returns. For the avoidance of doubt, the Partners will supply all necessary information to the Pooled Fund Manager to enable the reports to be prepared.
 - 8.2.9 To liaise with the Commissioning Lead for each Individual Scheme to ensure that Quarterly reports are submitted to the Health and Wellbeing Board.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Fund Manager shall have regard to the recommendations of the Joint Commissioning Board and shall be accountable to the Partners.
- 8.4 The Pooled Fund(s) will be managed and operated in accordance with the Finance Protocol set out in Part 1 of Schedule 1 and in accordance with the Management Arrangements set out in Schedule 10.
- 8.5 The Joint Commissioning Board may agree to the viring of financial contributions between Pooled Funds and Individual Schemes (subject to presentation and approval of a business case by the Partners), in so far as it is permitted to do so and not restricted by any ring fencing or specific conditions which apply to Financial Contributions under consideration for virement. For the avoidance of doubt any proposed virements must be compliant with the virement rules of the Partner organisations.

9 NON POOLED/ALIGNED FUNDS

- 9.1 Any Financial Contributions agreed to be held within a Non Pooled/Aligned Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Scheme Specification. For the avoidance of doubt, a Non Pooled/Aligned Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.
- 9.2 When introducing a Non Pooled/Aligned Fund in respect of an Individual Scheme, the Partners shall agree:
- 9.2.1 which Partner if any shall host the Non-Pooled Fund; and
- 9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
- 9.4 Both Partners shall ensure that in the event that any Services are commissioned using a Non Pooled /Aligned Fund these Non Pooled/Aligned Funds will be commissioned solely in accordance with the relevant Scheme Specification and following joint written agreement of both Partners and agreed through the Joint Commissioning Board.
- 9.5 Where there are Joint (Aligned) Co-Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
- 9.5.1 the NHS Functions funded from a Non-Pooled Fund are carried out within the CCG Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
- 9.5.2 the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

10 FINANCIAL CONTRIBUTIONS

- 10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation of each Individual Scheme shall be as set out Part 1 of Schedule 1 and in the relevant Scheme Specification.
- 10.2 In subsequent Financial Years, the BCF Partnership Group shall commence discussions in September of each Financial Year in order to make recommendations which will be presented to the Partnership Board to enable it to agree the Financial Contributions to be made by each Partner to Individual Schemes in the following Financial Year. The Partners shall endeavour to reach agreement on such Financial Contributions via the Partnership Board by no later than 31st October in the relevant Financial Year in order to enable the Partners to include and reflect their financial commitments, budget adjustments and delivery plans for the Better Care Fund in their annual budget setting process for the following Financial Year.
- 10.3 The Financial Contributions from the Partners required for each Individual Scheme in each Financial Year will be assumed to be based upon the expenditure incurred by them in relation to those Individual Schemes during the previous Financial Year.
- 10.4 In the event that the Joint Commissioning Board is unable to agree the contributions to the Individual Schemes and the Pooled Funds in any Financial Year, the matter will be escalated to the Authorised Officers for resolution as between the Partners. If the Partners are unable to agree the Financial Contributions, the dispute resolution procedures in Clause 25 shall be applied.
- 10.5 The creation of the Better Care Fund Pooled Fund does not remove the statutory duties of the Council's Section 151 Officer and the CCG's Chief Financial Officer to retain accountability and responsibility for their organisation's use of financial resources, including those Financial Contributions made to the Pooled Fund. Apart from Pooled Funds where agreed, health and social

care funding will be held by the relevant Partner organisation and may be managed in an aligned way between the Partners in order to facilitate joint approaches by them.

- 10.6 Financial Contributions will be paid as set out in each Scheme Specification.
- 10.7 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Joint Commissioning Board minutes and recorded in the budget statement as a separate item.

11 NON FINANCIAL CONTRIBUTIONS

- 11.1 Unless otherwise detailed in a Scheme Specification non-financial contributions which include, but are not necessarily limited to, staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform a Partner's obligations pursuant to this Agreement (including, but not limited to, the management of Service contracts and the hosting of a Pooled Fund) will be funded by and remain in the ownership of the contributing Partner.

12 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The Partners have agreed risk share arrangements as set out in Schedule 3 (Memorandum of Understanding Risk Share) which provides for financial, operational, reputational and quality risks arising in connection with the commissioning of Services from the Pooled Funds and the financial risk to the Pooled Funds arising from the payment for performance element of the Better Care Fund.

Overspends in Pooled Fund

- 12.2 Subject to Clause 12.4, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.
- 12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Joint Commissioning Board in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Joint Commissioning Board, the Section 151 Officer and Chief Financial Officer, are informed as soon as reasonably possible and the provisions of Part 1 of Schedule 1 "Financial Protocol" and Schedule 3 shall apply.

Overspends in Non Pooled/Aligned Funds

- 12.5 Where in Joint (aligned) / Co-commissioning Arrangements either Partner forecasts an overspend in relation to a Partner's Financial Contribution to a Non-Pooled/Aligned Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Joint Commissioning Board. The Lead Officers, named in Part 1 of Schedule 1 shall also have responsibility for ensuring that any such predicted Overspends are notified to the Accountable Officer of the CCG and the Section 151 Officer for the Council as soon as they are identified in order that each Partner's governing bodies are informed of the position.
- 12.6 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled / Aligned Fund. If the Lead Commissioner forecasts an Overspend in relation to a Non-Pooled / Aligned Fund, they shall as soon as reasonably practicable inform the other Partner and the Joint Commissioning Board.

Underspend

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

13 CAPITAL EXPENDITURE

13.1 Neither Pooled Funds nor Non Pooled/Aligned Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit to a Partner and which would historically have been funded from the capital budgets of one of the Partners. If a need for additional capital expenditure is identified this must be agreed by the Partners as being a capital cost in accordance with the generally accepted accounting principles of the Partners, and be subject to the same business case justification as for revenue proposals in accordance with the governance procedures set out in this Agreement.

14 VAT

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

14.2 The Partners shall agree that subject to clause 14.1:

- i) In considering the VAT regime to be applied to the Pooled Fund they will seek to maximise the recovery of tax incurred; and
- ii) They will jointly endeavour to minimise the complexity of VAT and other taxation.

15 AUDIT AND RIGHT OF ACCESS

15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner(s) shall arrange for the audit of the accounts of the relevant Pooled Fund(s) and shall require the Audit Commission to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998 (as amended by forthcoming legislation including the Audit and Accountability Act 2014).

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

16 LIABILITIES AND INSURANCE AND INDEMNITY

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

16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner or anyone within its control or acting on its behalf contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Joint Commissioning Board.

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

Partner that may claim against the other indemnifying Partner will:

- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
 - 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall:
- 16.4.1 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
 - 16.4.2 where it is the commissioner of Services, use its reasonable endeavours to ensure that Service Contracts contain:
 - (a) appropriate insurance obligations which as a minimum require the relevant Service provider to obtain and maintain in force, for an appropriate period, policies of insurance which reflect the Service provider's risks under the Services Contract; and
 - (b) indemnities from the Service provider which provide appropriate protection for both the Partner commissioning the Services Contract, and the other Partner and also for Service Users.
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

18 CONFLICTS OF INTEREST

- 18.1 The Partners shall comply with the agreed policies for their respective organisations for identifying and managing conflicts of interest as set out in Schedule 7 through the Joint Commissioning Board. Any such conflicts of interest identified will be recorded and referenced in any decision report, and

registered within the Partner organisations in accordance with each Partner's governance regulations.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 Governance and oversight in relation to the subject matter of this Agreement will be undertaken by the Joint Commissioning Board which
- 19.3 is based on a joint working group structure. Each member of the Joint Commissioning 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 Joint Commissioning Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.
- 19.4 This Agreement requires Partners to comply with best practice principles in relation to, including but not limited to, decision making, information access, data protection, accountability, transparency and openness.
- 19.5 The terms of reference of the Joint Commissioning Board shall be as set out in Schedule 2.
- 19.6 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.
- 19.7 The Joint Commissioning Board following consultation with the Health and Wellbeing Board (where required) shall be responsible for the overall approval of the Individual Schemes, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund and approval of new Individual Schemes.
- 19.8 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Joint Commissioning Board and Health and Wellbeing Board.

20 REVIEW

- 20.1 Save where the Joint Commissioning 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/Aligned Fund and the provision of the Services within three (3) Months of the end of each Financial Year.
- 20.2 Subject to any variations to this process required by the Joint Commissioning Board, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.3 The Partners shall within 20 Working Days of the Annual Review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Joint Commissioning Board.
- 20.4 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

- 21.1 During the first Financial Year of this Agreement, the Partners' agree that they shall apply their own complaints procedures to the matters which are the subject of this Agreement, however they agree that they shall assist one another where required in the management of such complaints including those arising from the provision of the Services.

- 21.2 During the term of the Agreement, the Partners will develop a joint complaints system which shall be applied by Partners following expiry of the period set out in clause 21.1. The application of a joint complaints system will be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.
- 21.3 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply:
- 21.3.1 where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;
- 21.3.2 where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG;
- 21.3.3 in the event that one Partner receives a complaint about a Service provided by the other Partner through an Individual Scheme included within this Agreement it will raise this with the other Partner for resolution through the other Partner's complaints procedure until such time as a joint complaints system has been put in place.
- 21.3.4 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 to be jointly developed by the Partners during the first year of this Agreement; and
- 21.3.5 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 Joint Commissioning Board will set up a complaints subgroup to examine the complaint and recommend remedies to the Partners.
- 21.3.6 All complaints received by the Partners in connection with this Agreement and the Services shall be reported to the Joint Commissioning Board.

22 HEALTHWATCH

- 22.1.1 The Partners shall co-operate with each other to enable each Partner to comply with its duties under Part 14 of the Local Government and Public Involvement in Health Act 2007 as amended ("2007 Act"). Such co-operation shall include, but shall not be limited to the following:
- i. allowing Healthwatch organisations to view and observe the carrying-on of activities on premises within the relevant Partners' control from which the Services are provided;
 - ii. assisting one another with responding to requests for information made by Healthwatch organisations and making requested information available;
 - iii. promoting and facilitating the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements as may be required by Healthwatch organisations; and .
 - iv. ensuring that contracts for Services require the relevant Service Provider to co-operate with HealthWatch organisations as required.

23 HEALTH AND SOCIAL CARE OVERVIEW AND SCRUTINY COMMITTEE

- 23.1 The Partners shall co-operate fully with the Health and Social Care Overview and Scrutiny Committee and shall comply with any reasonable requests for information and reports which are requested by the Committee in fulfilment of their role.

24 TERMINATION & DEFAULT

- 24.1 This Agreement may be terminated by any Partner giving not less than six 6 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes
- 24.2 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.
- 24.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partner may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partner may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be dealt with in accordance with Clause 25.
- 24.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clauses 16.1.
- 24.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their reasonable endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 24.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 24.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 24.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 24.6.3 the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;
- 24.6.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
- 24.6.5 the Joint Commissioning 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
- 24.6.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 24.7 In the event of termination in relation to an Individual Scheme the provisions of Clause 24.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

25 DISPUTE RESOLUTION

- 25.1 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.
- 25.2 The Authorised Officers of both Partners 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 25.1, at a meeting convened for the purpose of resolving the dispute.
- 25.3 If the dispute remains after the meeting detailed in Clause 25.2 has taken place, the Partners' respective Chief Executives /Chief Accountable Officers or their 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.
- 25.4 If the dispute remains after the meeting detailed in Clause 25.3 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.
- 25.5 Nothing in the procedure set out in this Clause 25 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.

26 FORCE MAJEURE

- 26.1 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.
- 26.2 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.
- 26.3 As soon as practicable, following notification as detailed in Clause 26.2, 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 26.4, facilitate the continued performance of the Agreement.
- 26.4 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.

27 CONFIDENTIALITY

- 27.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 27, 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:
- 27.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and

- 27.1.2 the provisions of this Clause 27 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - (b) is obtained by a third party who is lawfully authorised to disclose such information.

27.2 Nothing in this Clause 27 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.

27.3 Each Partner:

27.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and

27.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 27.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 27;

27.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

28 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

28.1 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.

28.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 27 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

29 OMBUDSMEN

29.1 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.

30 INFORMATION SHARING (DATA PROTECTION ACT)

30.1 The Partners will follow the Information Governance Protocol set out in schedule 8, and in so doing will ensure that the operation of this Agreement complies with Law, in particular the 1998 Act.

31 NOTICES

31.1 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 31.3 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:

31.1.1 personally delivered, at the time of delivery;

31.1.2 sent by facsimile, at the time of transmission;

31.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and

31.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

31.2 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).

31.3 The address for service of notices as referred to in Clause 31.1 shall be as follows unless otherwise notified to the other Partner in writing:

31.3.1 if to the Council, addressed to the Director of Adults and Wellbeing

Tel: 01432 260048

E.Mail: helen.coombes@herefordshire.gov.uk

and

31.3.2 if to the CCG, addressed to The Chief Accountable Officer;

Tel: 01432 383862

E.Mail: Jo.Whitehead@herefordshireccg.nhs.uk

32 VARIATION

No variations to this Agreement will be valid unless they have been agreed in accordance with the governance process of each Partners' constitution and are then recorded in writing and signed for and on behalf of each of the Partners. A variation template is set out in Schedule 9, and having followed any required governance process of each Partner's Constitution..

33 CHANGE IN LAW

33.1 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.

33.2 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.

33.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 25 (Dispute Resolution) shall apply.

34 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.

35 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.

36 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.

37 EXCLUSION OF PARTNERSHIP AND AGENCY

- 37.1 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.
- 37.2 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:
- 37.2.1 act as an agent of the other;
 - 37.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 37.2.3 bind the other in any way.

38 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.

39 ENTIRE AGREEMENT

- 39.1 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.
- 39.2 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.

40 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.

41 GOVERNING LAW AND JURISDICTION

- 41.1 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.
- 41.2 Subject to Clause 25 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

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

THE CORPORATE SEAL of **THE**)
COUNTY OF HEREFORDSHIRE)
DISTRICT COUNCIL)
was hereunto affixed in the presence of:)



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



Authorised Signatory

Phil Milligan

Interim Chief Accountable Officer

SCHEDULE 1

PART 1

Establishment of Pooled Funds and Financial Protocol

41.3 Details of the provisional Pooled Funds to be established and the Financial Contributions to be made during the first Financial Year of the term of the Agreement are set out below:

Pool 1 – Minimum Fund & Community Health & Social Care Services Redesign			
POOL		Individual Scheme	2015/16 £000
1.	1.1	Minimum Fund Protection of Social Care	4,520
	1.2	Community Health & Social Care Services Redesign <i>-Early intervention and Rapid Response - Falls Response Service (123k)</i> <i>-Early intervention & Rapid Response -Risk Stratification (800k)</i> <i>-Early intervention & Rapid Response – Hospital at Home (800k)</i> <i>-Intermediate Care – Step up / down community bed provision (153k)</i> <i>-Intermediate Care Re-ablement (484k)</i> <i>-Integrated Community Care - Community Health Services (3,879k)</i> <i>- Prevention - Carers Support (477k)</i>	6,716
		Sub Total	11,236
	1.3	Implementation of Care Act - Indicative allocation. (No Scheme document required)	458
		Total Revenue	11,694
2	2.1	Managing the Care Home Market	34,540
		Pool 2 Total	34,540
		Total BCF Pooled Fund (Revenue & Capital)	46,234

41.4 Funding for the payment for performance element of the Pooled Fund is contained within the Community Health & Social Care Services Redesign Scheme set out in part 1.2 of the table above. The maximum amount of the payment for performance in 2015/16 is £392k which is to be delivered through the Falls Response Service.

41.5 The CCG has responsibility for monitoring and paying / withholding funding for the payment for performance (PfP) in accordance with the requirements and conditions of the Better Care Fund, and managing any risk associated with under performance.

41.6 The following capital schemes will also be reported to the Joint Commissioning Board as components of the minimum Better Care Fund.

	Individual Scheme	2015/16 £000
1.4	Disabled Facilities Grant	866
1.5	Social Care Capital	490
	Total Capital	1,356

42 FINANCIAL CONTRIBUTIONS

42.1 Financial Year 2015/2016

Pool 1 – Minimum Fund & Community Health & Social Care Services Redesign			
POOL		Individual Scheme	2015/16 £000
1.	1.1	Minimum Fund Protection of Social Care	4,520
	1.2	Community Health & Social Care Services Redesign <i>-Early intervention and Rapid Response - Falls Response Service (123k)</i> <i>-Early intervention & Rapid Response -Risk Stratification (800k)</i> <i>-Early intervention & Rapid Response – Hospital at Home (800k)</i> <i>-Intermediate Care – Step up / down community bed provision (153k)</i> <i>-Intermediate Care Re-ablement (484k)</i> <i>-Integrated Community Care - Community Health Services (3,879k)</i>	6,716

		- Prevention - Carers Support (477k)	
		Sub Total	11,236
	1.3	Implementation of Care Act - Indicative allocation. (No Scheme document required)	458
		Total Revenue	11,694
		Please Note Capital (No separate scheme documents)	
	1.4	Disabled Facilities Grant	866
	1.5	Social Care Capital	490
		Pool 1 Total	13,050
2	2.1	Managing the Care Home Market	34,540
		Pool 2 Total	34,540
		Total BCF Pooled Fund (Revenue & Capital)	47,590

42.2 Pool 1 has two components

42.2.1 The funding for the protection of social care (Council is Lead Commissioner)

42.2.2 The community health and social care redesign (CCG is Lead Commissioner)

42.3 Pool 2 – is a Pooled Fund to fund expenditure on residential placements including continuing health care placements (CHC) and funded (free) nursing care (FNC). At the Commencement Date, the Services are commissioned by the Partners separately, however the Partners intend to work towards implementing Integrated Commissioning Arrangements.

42.4 Agreement of Financial Contributions

42.4.1 Financial Contributions have been agreed (draft figures) for Financial Year 2015/16 as summarised in the table below:

Scheme / Pool	LA contribution	CCG Contribution	Total Scheme / Pool
Minimum Fund (Protection of Social Care)		4,520	4,520
Sub Total Pool 1		4,520	4,520
Community Health & Social Care Services Redesign		6,716	6,716
Total Pool 1		11,236	11,236
Managing the Care Home Market (Pool 2)	21,729	12,811	34,540
DFG / Social Care Capital	1,356	0	1,356
Implementation of Care Act		458	458
TOTAL FUNDING (BCF 2015/16)	23,085	24,505	47,590

43 FINANCIAL GOVERNANCE ARRANGEMENTS

43.1 The following financial governance arrangements have been agreed by the Partners in respect of the Pooled Funds and shall be reviewed and updated by them as required prior to the commencement of each Financial Year during the term of this Agreement.

44 HOSTING OF THE POOLED FUND

44.1 The Council will act as Host Partner for Pooled Fund 1 and Pooled Fund 2 and shall have overarching responsibility for financial reporting and financial governance in respect of those Pooled Funds.

44.2 Changes to levels of Financial Contributions / budgets

- 44.2.1 Financial Contributions to Pooled Funds in Financial Years subsequent to Financial Year 2015/2016 will be determined by the Partners in accordance with the Agreement.

44.3 Payment of Financial Contributions

- 44.3.1 At the beginning of each Quarter the Council will present an invoice to the CCG for one quarter of the Financial Contribution due from the CCG to Pooled Fund 1a (Individual Scheme 1 (Protection of Social Care and the Care Act) The CCG will pay the invoices on the due dates for payment, being 1st April, 1st July, 1st October, 1st January of each Financial Year.
- 44.3.2 At the beginning of each month the Council will present an invoice to the CCG for one twelfth of the agreed Financial Contributions due from the CCG to Pooled Fund 1b (Individual Scheme 2) and Pool Fund 2 (Individual Scheme 3), this invoice will exclude the amount attributable to the pay for performance element of the Pooled Fund (which shall be dealt with by the CCG in accordance with the National Conditions and which shall only be released into the Pooled Fund by the CCG if performance conditions are met). The CCG will pay the invoice on the due date for payment being the 1st of each month.
- 44.3.3 Each month the CCG will present an invoice to the Council in order to remit back to the CCG the monies transferred to it on the 1st of the month in relation to the Individual Schemes. The Council will pay the invoice submitted by the CCG from the Pooled Funds ensuring that payment is to be received by the CCG on the 26th day of the same month.
- 44.3.4 In order to ensure that the CCG complies with national requirements in respect of the carry forward of Financial Year end cash balances, any payments due to the CCG in respect of expenditure from the Pooled Fund during the last month of the Financial Year (March) will be reviewed by the Partners and agreed to be rescheduled for payment to the CCG where indicated by evidence of projected cash balances.
- 44.3.5 The invoicing and payment arrangements in respect of the CCG's Financial Contributions to Pooled Fund 2 (Individual Scheme 3).will remain in place until such time as new purchasing and payment mechanisms are agreed to be implemented by the Partners. It is intended that during the first Financial Year of this Agreement the Partners will put in place Integrated Commissioning arrangements in respect of Individual Scheme 3 and following conclusion of the first Financial Year, if Service re-design and integration is successful, the invoicing and payment arrangements may be changed accordingly.
- 44.3.6 All invoices delivered pursuant to this Agreement are to be settled within 5 working days of being issued. In the event that an invoice is disputed and remains unresolved after 60 days of it being disputed, the matter shall be raised for resolution at the next Quarterly finance review undertaken by the Partners.
- 44.3.7 The Partners agree that they shall review and revise the invoicing and payment arrangements set out in this Agreement in line with any guidance issued by NHS England from time to time.

44.4 Eligibility Criteria

- 44.4.1 Scheme Specifications contain the eligibility criteria for Service Users that relate to each Individual Scheme.
- 44.4.2 Where Service Users may be charged for Services, financial assessments will be undertaken by the Council's welfare and financial assessments team to ensure that income is collected where appropriate and in accordance with local/national charging policies and guidance.

44.5 Access to the Pooled Fund

- 44.5.1 The Financial Contributions to minimum fund – Pooled Fund 1a (Protection of Social Care) will be accessible by the Council as Lead Commissioner.
- 44.5.2 Financial Contributions to minimum fund - Pooled Fund 1b (Community Health & Social Care Services Redesign) will be accessible by the CCG as Lead Commissioner.
- 44.5.3 Access to Pooled Fund 2's Financial Contributions will depend on the Commissioning Arrangements implemented by the Partners but expenditure shall in any event be limited by Service User eligibility for the Services.
- 44.5.4 It has been agreed that where savings are made in Pooled Fund 2 from the delivery of the Management of the Care Home Market Scheme, those savings, up to the value of £1.2 million will be vired to Pooled Fund 1a, subject to the monitoring and review of the Joint Commissioning Board for use by the Council as an additional Financial Contribution to the Protection of Social Care Scheme.
- 44.5.5 The Joint Commissioning Board shall be entitled to direct how Financial Contributions to Pooled Funds should be spent, operating in accordance with its terms of reference.

44.6 Pooled Fund Manager

- 44.6.1 It has been jointly agreed that a Commissioning and Pooled Fund Manager who is an employee of the Council will be appointed by the Council from the Commencement Date, to oversee Pooled Funds 1 and 2 and the delivery of Individual Schemes funded from those Pooled Funds pursuant to this Agreement. The cost of employing the Pooled Fund Manager will be funded from any interest accrued on the Financial Contributions made by the CCG to the Pooled Funds. The scope and extent of the authority of the Pooled Fund Manager will be determined by the Joint Commissioning Board and shall otherwise be as is set out in this Agreement.

45 AUDIT ARRANGEMENTS

45.1 Audit requirements

- 45.1.1 The Host Partner has responsibility for the audit of the relevant Pooled Fund.

45.2 Appointment of Internal Auditor

- 45.2.1 The internal auditor for Pooled Funds 1a and 2 will be the Council auditor South West Partnership. The internal auditor for Pooled Fund 1b is Baker Tilly

45.3 Liaison / Management of Auditors

- 45.3.1 Will be undertaken by the Council deputy section 151 officer and the management accountant for Adults and Wellbeing

45.4 External Audit

- 45.4.1 The audit regime of the organisation who is acting as Host Partner will apply to the relevant Pooled Fund.
- 45.4.2 The Council's and CCG's external auditors are Grant Thornton.

46 FINANCIAL MANAGEMENT

46.1 Financial Systems

- 46.1.1 For Individual Schemes funded from the Financial Contributions made to Pooled Fund 1, Lead Commissioning Arrangements will be utilised as set out above.

46.1.2 For Pooled Fund 2 any changes to the long term systems and commissioning arrangements will be jointly confirmed following the completion of a mobilisation project. Current arrangements will continue in the interim period, whereby the Council records transactions for residential care within the Council system and the CCG records the transactions for Funded Nursing Care and Continuing Health Care with the CCG financial system.

46.2 Monitoring Arrangements

46.2.1 Monitoring of financial performance of the Pooled Fund will be through the Joint Commissioning Board as outlined in Clause 19, and Schedule 5 of this Agreement.

46.3 Monitoring Reports

46.3.1 Monitoring reports will be produced by the Host Partner in the format specified in Schedule 5.

46.3.2 The CCG will be required to submit timely reports on expenditure and Individual Scheme performance under the management of the CCG to the Council where the Council is acting as Host Partner in order to enable the Council to prepare full reports for the Joint Commissioning Board.

46.3.3 Reports will be prepared monthly for review by the BCF Partnership Group and for summary review by the Joint Commissioning Board, or where variation in performance requires, more frequently.

46.4 Annual Accounts

46.4.1 The respective Partners will report the expenditure incurred by them in connection with this Agreement in their annual accounts in accordance with all applicable Laws and relevant guidance.

46.5 Managing Overspends

46.5.1 No Individual Scheme is expected to Overspend in terms of the Financial Contributions made to it but in the event that an Overspend is predicted to arise the commissioning Partner should take whatever mitigating action is practicable to minimise the impact of such Overspend on the Financial Contributions to the BCF.

46.5.2 Overspends shall be managed in accordance with Part 2 of Schedule 3.

46.5.3 The risk share agreement at Schedule 3 specifies that for Financial Contributions to Pooled Fund 1a the Council and for Financial Contributions made to Pooled Fund 1b, the CCG, respectively will carry the risk in the event that Overspends arise.

46.5.4 For Pooled Fund 2 Overspend shall be met by the Partners in proportion to actual contributions to the Pooled Fund (reflecting the savings targets of each Partner) as detailed in the risk share agreement (Schedule 3).

46.5.5 Through the risk sharing agreement at Schedule 3, both Partners recognise that there may be significant unanticipated pressures falling on one or other of the Partners. In such cases this will be brought to the attention of the Joint Commissioning Board for a joint solution to be found between the Partners.

46.6 Delegated Authority

46.6.1 The Lead Officers for Individual Schemes shall manage budgets in accordance with the schemes of delegation of the relevant Partners and shall be required to report to the Pooled Fund Manager on all expenditure and commitments made in respect of Financial Contributions to the Pooled Funds.

- 46.6.2 The terms of the schemes of delegation of each Partner under which the members of the Joint Commissioning Board and Lead Officers receive delegated authority from the Partners are as recorded in Clause 46.6.4 for the Council and Clause 46.6.5 for the CCG.
- 46.6.3 The Council constitution and financial procedures do not permit its Partnership Board representatives or the Pooled Fund Manager to Overspend on its behalf without authorisation. The Joint Commissioning Board has a monitoring and oversight role to ensure compliance but shall be required to obtain prior authorisation from the Council to approve any Overspends.
- 46.6.4 The Council Scheme of Delegation delegates to the Director of Adults and Wellbeing authority for :
- (a) Joint working with the CCG and other commissioners;
 - (b) Specific/joint service re-design and improvement
- 46.6.5 The CCG scheme of delegation delegates to the Governing Body through the Accountable Officer authority for:
- (a) Joint working with the Council and other commissioners;
 - (b) Specific/joint service re-design and improvement

46.7 Budget Virements – In Year

- 46.7.1 For Pooled Fund 1, the Host Partner will, following receipt of consent from the Joint Commissioning Board, be permitted to vire funds within the Financial Contributions made to the sub pools 1a and 1b so that Underspends in one sub pool of the Pooled Fund can be utilised to mitigate Overspends elsewhere within the Pooled Fund.
- 46.7.2 Budget virements between Pooled Funds and Individual Schemes will be subject to presentation of a business case and approval by the Joint Commissioning Board. The impact of agreed virements will be reported through the agreed monitoring arrangements.

46.8 Treatment of Budget Underspends – Year End

- 46.8.1 It is recognised that Underspends may arise for a variety of reasons including:
- lower than predicted demand for Services
 - greater effectiveness than planned for savings schemes within the Services
 - Service redesign efficiencies
- 46.8.2 In the event that any or all of the Pooled Funds are expected to deliver an Underspend which has not been allocated to support other Individual Schemes the following options will be considered by the Joint Commissioning Board and the approach agreed prior to Financial Year end closedown procedures being completed:
- (a) Underspends in Pooled Funds 1a / 1b may be retained by Host Partner, or
 - (b) Underspends in Pooled Funds 1a /1b may be shared between Partners in a ratio to be agreed at the relevant time, or
 - (c) Underspends which are unspent Financial Contributions may be carried forward to fund the delivery of Individual Schemes in future Financial Years.

46.9 Creation of Reserves

- 46.9.1 In the event that a carry forward of Underspends is agreed by the Joint Commissioning Board, all Financial Contributions will need to be remitted to the Council before the Financial Year end to enable the relevant reserve to be created.
- 46.9.2 The creation of reserves will require the agreement of both Partners and shall be subject to approval through the relevant Organisation's governance processes. The creation of reserves may be either for a specific purpose (business case required) or for a general/contingency reserve.
- 46.9.3 Reserves created pursuant to this Agreement, will be held and managed by the Council as both Host Partner and the only Partner with the necessary financial governance mandate to do so.
- 46.9.4 Subject to paragraph 46.9.5, the release/use of reserves will require a business case and the agreement of the Joint Commissioning Board.
- 46.9.5 Reserves agreed to be created for specific purposes will not require additional Joint Commissioning Board approval for release, provided the reserve is authorised for release within 12 months of it having been created. Specific reserves to be retained for more than 12 months will require review and re-validation by the Joint Commissioning Board as part of Financial Year end sign off procedures.

46.10 Treatment of Inflation

- 46.10.1 In so far as any of the Pooled Fund expenditure relates to staff costs it will be the responsibility of the employing organisation to make provision for pay inflation.
- 46.10.2 For Pooled Fund 1, the determination and application of non pay inflation will remain with the relevant Host Partner.
- 46.10.3 Pool 2 includes expenditure commitments from both Partners with the same Service providers. The Council will assess the requirement to award an inflation uplift and present the recommendation for joint agreement by both Partners. In the event that an inflation award is agreed it will be funded by both Partners in relation to budget contributions to Pooled Fund 2.

46.11 Treatment of Interest Received

- 46.11.1 Cash transfers of Financial Contributions to the Pooled Fund by the CCG made in accordance with clause 44.3 will be invested by the Council to enable interest to be received on the Pooled Funds, in so far as the Pooled Funds have not been paid out or are required to be paid out in reimbursement of Permitted Expenditure.
- 46.11.2 The Council will make available, as an additional Financial Contribution to the Pooled Funds such net interest received from investments made pursuant to clause 46.10.1 which shall be utilised to fund the costs associated with the Council employing or engaging the Pooled Fund Manager and to pay for audit fees associated with management of the Pooled Fund.
- 46.11.3 In the event that the Council is unable to generate sufficient interest by investing the Pooled Funds in accordance with this Clause 46.10 to meet the full cost of the employment or engagement of the Pooled Fund Manager and the audit fees the Partners agree that they will meet any shortfall jointly and in equal proportions.
- 46.11.4 Any surplus interest remaining after deduction of the costs set out in clause 46.10.2 will be credited to the reserve/contingency fund to be established in accordance with Schedule 3.

46.12 Reserve/Contingency Fund

- 46.12.1 Financial Contributions for Financial Year 1 (2015/16) of this Agreement do not make provision for the formation of a reserve/contingency fund.
- 46.12.2 As part of the development of enhanced risk sharing arrangements in Financial Year 2 of the term of this Agreement and beyond, consideration will be given by the Partners to the creation of a reserve/contingency fund within the Pooled Funds.
- 46.12.3 In the event that a general contingency reserve is created as outlined in paragraph 46.9 of this Schedule, this reserve may be utilised to provide non-recurrent funding to Individual Schemes with the approval of the Joint Commissioning Board.

46.13 Year End Accounting Principles

- 46.13.1 Accounts for the Pooled Funds will be produced under accruals accounting methodology
- 46.13.2 The Partners will confirm year end reporting timetables and requirements to the Pooled Fund Manager in a timely manner to ensure all necessary information can be exchanged to meet accounting deadlines.

46.14 Capital Investment

- 46.14.1 In so far as there are any assets which are utilised by the Partners to support the delivery of the BCF, the Partners do not intend to pool those existing capital assets. Each Partner will retain ownership of its existing assets.
- 46.14.2 Assets created from the capital elements of the BCF, namely the Disabled Facilities Grant and Social Care capital will be recorded as assets in the balance sheet of the Council. This is a continuation of current practice.
- 46.14.3 Use of the Social Care (community capacity) grant requires submission and approval of a business case within the Council.
- 46.14.4 In the event that future developments BCF require a capital investment a business case will be required for consideration for funding from the social care capital fund.

46.15 Management Costs and Overheads

- 46.15.1 The Partners have jointly agreed that management costs and overheads will not be charged to the Pooled Fund but carried by the relevant Host Partner.
- 46.15.2 The Partners will discuss appropriate and sufficient arrangements to support delivery of their shared objectives pursuant to this Agreement. This may include joint funding of pooled/joint posts including a Pooled Fund Manager, and/or the creation of a joint team. The BCF Partnership Group will develop any proposals for this which shall be subject to approval by the Joint Commissioning Board

47 VAT

- 47.1.1 The Council's VAT regime will apply for Individual Schemes funded from Pooled Fund 1a and Pooled Fund 2. The CCG's VAT regime will apply for the Individual Schemes funded from Pooled Fund 1b.

48 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

- 48.1.1 The governance arrangements for the Partnership, including the terms of reference for the Joint Commissioning Board are included in Schedule 2 of this Agreement.

49 NON FINANCIAL RESOURCES

- 49.1.1 Council contribution**

	Details	Charging arrangements	Comments
Premises		To be provided free of charge to BCF by each Partner	
Assets and equipment			
Contracts			
Central support services			

49.1.2 CCG Contribution

	Details	Charging arrangements	Comments
Premises		To be provided free of charge to BCF by each Partner	
Assets and equipment			
Contracts			
Central support services			

50 STAFF

50.1 The Council and the CCG will provide staff to work on the Individual Schemes and in connection with the management of the Pooled Funds as required.

50.2 For the first Financial Year all staff will remain as employees of their current Partner organisation. As working arrangements develop through the first Financial Year, staff roles will be aligned as they are required to work jointly on Individual Schemes and in terms of ensuring monitoring and reporting on future developments. This may include secondment arrangements for a small number of staff, but these will not be in place from the Commencement Date.

50.3 Consideration will be given during Financial Year 2015/16 to any required transfer of staff between Partner organisations. This will include consideration of TUPE, pension arrangements and pay awards.

50.4 Council staff to be made available to the arrangements

50.4.1 The staff listed below are the lead professionals who will be made available to assist with delivery of the BCF Plan but this will form part of their existing roles. Additional members of the wider teams will be engaged as service delivery and developments require.

<i>Post</i>	<i>Name</i>	<i>FTE</i>	<i>Status</i>	<i>Date of TUPE / Secondment</i>
Assistant Director	Robert Vickers	1.0	Council interim	N/A
Business Partner	Ruth Taylor	1.0	Council permanent	N/A

50.5 CCG staff to be made available to the arrangements

50.5.1 The staff listed below are the lead professionals who will be made available to assist with delivery of the BCF Plan but this will form part of their existing roles. Additional members of the wider teams will be engaged as service delivery and developments require.

<i>Post</i>	<i>Name</i>	<i>FTE</i>	<i>Status</i>	<i>Date of TUPE / Secondment</i>
Operations Director	Hazel Braund	1.0	CCG permanent	N/A
Chief Financial Officer	Jill Sinclair	1.0	CCG permanent	N/A

51 ASSURANCE AND MONITORING

51.1 Details of assurance and monitoring arrangements including performance measures are included within Scheme Specifications.

52 LEAD OFFICERS FOR INDIVIDUAL SCHEMES (BY PARTNER ORGANISATION)

Partner	Name of Lead Officer	Address	Telephone Number	Email Address
Council	Robert Vickers Interim Assistant Director Homes and Community Services	Plough Lane Hereford	01432 260368	Robert.vickers@herefordshire.gov.uk
CCG	Hazel Braund Operations Director Herefordshire CCG	Plough Lane Hereford	01432 383861	hazel.braund@herefordshireccg.nhs.uk

53 INTERNAL APPROVALS

53.1 This Agreement will be ratified on behalf of the CCG by the CCG's Governing Body and on behalf of the Council by Cabinet in accordance with the constitution, standing orders and schemes of delegation in the Partner organisations.

54 RISK AND BENEFIT SHARE ARRANGEMENTS

54.1 The risk share arrangements are detailed in the memorandum of understanding / risk share agreement (Schedule 3)

55 REGULATORY REQUIREMENTS

55.1 In the event that there are regulatory requirements in relation to any Individual Scheme these will be noted within the Scheme Specification.

56 INFORMATION SHARING AND COMMUNICATION

56.1 The information sharing protocol is documented under Schedule 8.

57 DURATION AND EXIT STRATEGY

57.1 The duration and exit strategy in relation to any Individual Scheme will be noted within the Scheme Specification

58 OTHER PROVISIONS

58.1 There are no other provisions.

SCHEDULE 1
PART 2
TEMPLATE SCHEME SPECIFICATION

SCHEDULE 1

PART 3

INDIVIDUAL SCHEME SPECIFICATIONS

PROTECTION OF SOCIAL CARE MINIMUM FUND

Scheme Name	Protection of Social Care
Pooled Fund Ref	Pool 1a
<i>The Host Partner for Pooled Fund is</i>	Herefordshire Council
<i>The Pooled Fund Manager, being an officer of the Host Partner is</i>	Robert Vickers
<p>Scheme Background / Context</p> <p>Prior to the implementation of the BCF the Council has received funding for the protection of social care under section 256 arrangements via transfer from the Department of Health via local area team (LAT) together with funding to support reablement activity (received from the CCG. Under the BCF arrangements these funds form part of the minimum BCF fund.</p>	
<p>Aims and Anticipated Outcomes of Scheme</p> <p><i>Insert agreed aims of the Individual Scheme</i></p> <p>The purpose of the funding is to protect social care to enable continuation of activities within social care that provide benefits to health and which would otherwise not be maintained as a result of local government funding cuts. Such a position recognises changing demographic pressures and increasing complexity of conditions people are living with. This funding will enable the protection of those most vulnerable and the promotion and maximisation of peoples potential for continued independent living with appropriate and tailored levels of support.</p>	
<p>Alignment of Scheme to BCF</p> <p><i>Describe how this scheme aligns to BCF priorities</i></p> <p>The protection of social care is one of the seven national conditions of the BCF. Included within this activity pool are support to carers and reablement, both of which are specifically identified within the overarching BCF principles. The loss or removal of any part of this funding will compromise the council's ability to both protect and promote outcomes that realise potential for continued living at home or within a community setting. Such a position would impact upon the CCG's ability to progress the key imperatives within the BCF.</p>	
<p>Commissioning Arrangements (<i>select and describe for scheme</i>)</p> <p><i>Set out what arrangements will be in place in relation to Lead Commissioning/Joint (aligned) / co-commissioning/Integrated Commissioning. How will these arrangements work?</i></p> <p>The Council will initially be the Lead Commissioner for all the activity within this Scheme, however areas for consideration for aligned or integrated commissioning in future include:</p> <ul style="list-style-type: none"> • Step up / step down intermediate care beds • Mental health services • Carers support • Learning disability services. 	

Scheme Name	Protection of Social Care
<p>Pooled Fund Arrangements for Scheme</p> <p>The pool will be hosted and managed by Herefordshire Council.</p>	
<p>Financial Contributions</p> <p><i>Set out contributions to the scheme by each partner</i></p> <p>The financial contributions for this scheme have a total value of £4,520k.</p> <p>Funding will be received by the CCG and transferred from the CCG to the Council</p> <p><i>Set out funding mechanism / invoicing / payment arrangements</i></p> <p>Services will be commissioned and paid for by the Council.</p> <p>Funds will be remitted to the Council Quarterly at the beginning of each financial Quarter</p>	
<p>Functions</p> <p><i>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.</i></p> <p>As indicated above, those Schemes contained within the protection of social care will be commissioned by the Council, who will provide management oversight to enable effective monitoring, review and reporting to inform future commissioning intentions allied to the BCF. This will involve feedback from all key stakeholders to enable co-production that leads to better service user and carer outcomes and the best use of available resources.</p> <p><i>Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)</i></p> <p>There are no exclusions</p>	
<p>Services Provided</p> <p><i>What Services are going to be provided within this Scheme.</i></p> <p>The Services provided by the Council under this Scheme include:</p> <ul style="list-style-type: none"> • Community Equipment • Social care workforce • Support to Adult Carers • Step up / down beds • Reablement • Mental health services • Learning disability (health) services • Telecare <p><i>Are there any plans or agreed actions to change the Services?</i></p> <p>This funding will be used to maintain current service levels within social care. All services are continuously under review to ensure efficient and effective operation and delivery of VfM.</p>	
<p>Contractual Arrangements</p> <p><i>Insert the following information about the Individual Scheme:</i></p> <p>1. Relevant contracts</p>	

Scheme Name	Protection of Social Care
<p>1.1. 2Gether – Mental Health Services / Learning disability health</p> <p>1.2. Herefordshire Housing – Reablement Services</p> <p>1.3. NRS – community equipment</p> <p>1.4. Other Services are provided either in house, or through spot contracts or through personal budgets with direct payments which enable clients to select how to use the available funds to best meet their eligible needs.</p> <p>Arrangements for contracting.</p> <p><i>Will terms be agreed by both Partners or will the Lead Commissioner have authority to agree terms</i></p> <p><i>What contract management arrangements have been agreed?</i></p> <p><i>What happens if the Agreement terminates?</i></p> <p><i>Can the partner terminate the Contract in full/part?</i></p> <p><i>Can the Contract be assigned in full/part to the other Partner?</i></p> <p>The Lead Commissioner will agree the terms applicable and contract management will be within the remit of the Council's corporate procurement and contract unit. These schemes are embedded within the monitoring and review process for commissioning and contracts, this provides monthly oversight or reporting by exception to ensure performance and compliance allied to service specification. In the event that the Agreement terminates, the contract between the Council and the Service provider(s) would continue unless formal notice is given by either party, subject to contractual requirements. This recognises that those schemes within the protection of social care are core in nature to assure business continuity and the protection of vulnerable adults .Therefore the Services contract cannot be terminated by the Partner, either in full or part and equally the contract cannot be assigned, either in full or part.</p>	
<p>Beneficiaries</p> <p><i>Who are the beneficiaries of the Services?</i></p> <p>The beneficiaries of the services are Service Users who are Herefordshire citizens who meet the national eligibility criteria for social care support.</p>	
<p>Access / Eligibility</p> <p><i>Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible?</i></p> <p>Service Users will access the Services following an assessment of need to determine eligibility. This will be undertaken by appropriate professionals using national eligibility criteria as specified within the Care Act (2014) and further regulations and guidance issued in October 2014.</p>	
<p>Risk Sharing Arrangement for Scheme</p> <p><i>Set out details of risk share arrangements for scheme</i></p> <p>These are in accordance with the risk share agreement contained in Schedule 3 of this Agreement.</p>	

Scheme Name	Protection of Social Care
<p>Performance Measures for Scheme</p> <p><i>Set out performance measures which have been agreed for the scheme</i></p> <p>Measures to be monitored and reported</p> <ol style="list-style-type: none"> 1. Number of permanent residential admissions 2. Number of clients re-abled 3. Delayed transfers of Care (attributable to social care) 4. Carer survey (annual) <p>Frequency / Format of Reporting</p> <p>As part of the Joint Commissioning Board governance, a coordinated performance data set will be developed and this will be reported quarterly. Scheme performance and progress will be reported monthly to the BCF Partnership Group.</p> <p>Who prepares the performance information / who receives it?</p> <p>Performance information will be collated by both Council/CCG Performance Leads assisted by Scheme/Project Leads</p>	
<p>Planned Duration of Scheme</p> <p>This Scheme is ongoing as it relates to the protection of social care.</p>	
<p>Planned Exit Strategy</p> <p><i>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</i></p> <p>There is no exit strategy required as this funding supports the protection of social care scheme which is an ongoing requirement of the Better Care Fund</p>	

COMMUNITY HEALTH AND SOCIAL CARE REDESIGN

Scheme Name	Community health and social care redesign
Pooled Fund Ref	Pool 1b
<i>The Host Partner for Pooled Fund is</i>	Herefordshire CCG
<i>The Pooled Fund Manager, being an officer of the Host Partner is</i>	Hazel Braund
Scheme Background / Context	
<p>The strategic objective of the redesign of community health and social care services is to develop Integrated Care Co-ordination Teams that will deliver high quality, person-centred, integrated community services based around GP practice populations. This will enable the Partners to:</p> <ul style="list-style-type: none"> • provide more comprehensive care closer to home, with the reduction in the time spent avoidably in hospital. • reduce inequalities in health (both physical and mental) across and within communities in Herefordshire and ensure additional years of life and disability free life for citizens with treatable mental and physical conditions: • support people to self-manage their conditions, and in doing so exercise choice and control. • achieve greater efficiency and effectiveness by making better use of resources across health and social care, ensuring care is provided in the most appropriate cost effective settings, reducing duplication, eliminating waste and increasing the use of technology <p>The concept of Integrated Health and Social Care maximises support for people to promote health and wellbeing, to sustain independent living, to embed enablement and asset based approaches and to avoid a hospital or care home admission or if already admitted, support timely discharge out of hospital.</p>	
Aims and Anticipated Outcomes of Scheme	
<p>The aim of the Integrated Care Coordination Teams (ICCT) is to provide integrated stepped approach for both planned and unplanned care at home which is person-centred and responsive to an individual's health and social care needs. This will be delivered by:</p> <ul style="list-style-type: none"> • Single gateway for referrals with triage to urgent or timely • Single referral and screening form • Skilled competent autonomous practitioners • Co-located staff where possible • Coordination of care model • Coordinated weekly ICCT meetings to facilitate integrated care • Informal daily catch up meetings (face to face or virtual) with reporting and task management • Administrative management of referrals for ICCT meetings • Coordinating relevant personnel to deliver actions to manage and coordinate care • Recording all communications and discharge information from ICCT • Coordinating care planning for health and social care using agreed documentation • Access to timely and responsive satellite support services to support patients/service users at home 	

Scheme Name	Community health and social care redesign
<p>Alignment of Scheme to BCF</p> <p>The redesign of community health and social care services is fundamental to the BCF in terms of the imperatives to maximise available resources, to promote independence, self-management and to prevent and avoid inappropriate admissions and to enable appropriate and timely discharges back home, with support where necessary. The cornerstone of this redesign is working together to ensure effective care coordination and the best use of resources to assure seamless service user pathways.</p>	
<p>Commissioning Arrangements (<i>select and describe for scheme</i>)</p> <p><i>Set out what arrangements will be in place in relation to Lead Commissioning/Joint (aligned) / co-commissioning/Integrated Commissioning. How will these arrangements work?</i></p> <ul style="list-style-type: none"> a) Lead Commissioning b) Integrated Commissioning – the redesign of community services will be jointly owned and Lead Commissioners, working together from each Partner organisation will ensure the model and commissioning intention is delivered c) Joint (aligned)/Co-Co Commissioning 	
<p>Pooled Fund Arrangements for Scheme</p> <p>The CCG will act as Host Partner for Pooled Fund 1b</p>	
<p>Financial Contributions</p> <p>Early Intervention and Rapid Response - Falls Response Service (123k) Early Intervention & Rapid Response - Risk Stratification (800k) Early intervention & Rapid Response - Hospital at Home (800k) Intermediate Care - Step up / down community bed provision (153k) Intermediate Care - Reablement (484k) Integrated Community Care - Community Health Services (3,879k) Integrated Community Care – Carers (477k) TOTAL £6,716k</p> <p><i>Set out funding mechanism / invoicing / payment arrangements</i></p> <p>The CCG will remit to the Council at the beginning of each Quarter the funds associated with this Scheme excluding the element for pay for performance. The CCG will receive funding at the end of each financial Quarter to recompense them for disbursements made during the Quarter following presentation of an invoice.</p> <p>The CCG will be responsible for monitoring and paying / withholding funding for the payment for performance (PbR) in accordance with the requirements and conditions of the Better Care Fund</p>	
<p>Functions</p> <p><i>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.</i></p> <p>As indicated above the redesign of community health and social care services and the establishment of Integrated Care Coordination Teams will be jointly commissioned and reporting will be to the BCF Partnership Group, the Joint Commissioning Board and the Community Collaborative Transformation Group.</p> <p><i>Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)</i></p> <p>There are no exclusions</p>	

Scheme Name	Community health and social care redesign
<p>Services Provided</p> <p><i>What Services are going to be provided within this Scheme.</i></p> <p>Existing services included within this Scheme are as summarised under financial contributions above.</p> <p><i>Are there any plans or agreed actions to change the Services?</i></p> <p>This is a service redesign programme and current community health and social care resources and functions will be reconfigured to establish Integrated Care Coordination Teams based upon GP populations</p>	
<p>Contractual Arrangements</p> <p><i>Insert the following information about the Individual Scheme:</i></p> <p>1. Relevant contracts</p> <p> 1.1. The key contracts for these services are with Wye Valley NHS Trust</p> <p>Arrangements for contracting.</p> <p><i>Will terms be agreed by both Partners or will the Lead Commissioner have authority to agree terms</i></p> <p>The terms for existing contractual arrangements for current Services will be agreed by the CCG as Lead Commissioner. As Services are redesigned this will be undertaken jointly but contractual terms will be made in compliance with NHS contract regulations.</p> <p><i>What contract management arrangements have been agreed?</i></p> <p>These will be in accordance with current CCG contract monitoring arrangements</p> <p><i>What happens if the Agreement terminates?</i></p> <p><i>Can the partner terminate the Contract in full/part?</i></p> <p><i>Can the Contract be assigned in full/part to the other Partner?</i></p>	
<p>Beneficiaries</p> <p><i>Who are the beneficiaries of the Services?</i></p> <p>Service Users who are part of the registered and resident populations of Herefordshire</p>	
<p>Access</p> <p><i>Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible?</i></p> <p>Those individuals resident and registered within Herefordshire, the ICCT will accept referrals from anyone for anyone who has a health and social care need, provided they are as indicated registered with a Herefordshire GP, including self- referrals. The risk stratification tool will also identify patients/service users who will benefit from the ICCT.</p> <p>The following exclusions will apply:</p> <ul style="list-style-type: none"> • Patients not registered or temporarily registered with a Herefordshire GP • Patients with life threatening illness for whom only acute hospital care is appropriate <p>Patients under 18 years old</p>	
<p>Risk Sharing Arrangement for Scheme</p> <p><i>Set out details of risk share arrangements for scheme</i></p> <p>These are in accordance with the risk share agreement contained in Schedule 3 of this Agreement.</p>	

Scheme Name	Community health and social care redesign
<p>Performance Measures for Scheme</p> <p><i>Set out performance measures which have been agreed for the scheme</i></p> <p>Measures to be monitored and reported</p> <ol style="list-style-type: none"> 1. Non Elective Admissions 2. Delayed transfers of Care 3. Number 65+ ambulance attendances for a fall <p>Frequency / Format of Reporting</p> <p>As part of the Joint Commissioning Board governance, a coordinated performance data set will be developed and this will be reported quarterly. Scheme performance and progress will be reported monthly to the BCF Partnership Group</p> <p>Who prepares the performance information / who receives it?</p> <p>Performance information will be collated by both Council/CCG Performance Leads assisted by Scheme/Project Leads</p>	
<p>Planned Duration of Scheme</p> <p><i>Set out the duration of the scheme</i></p> <p>The redesign of community health and social care services is contained within a Project Brief that sets the context for progression and delivery, the scale and scope would see implementation through Financial Year 15/16, Scheme Specification/model will be completed end of January 2015.</p>	
<p>Planned Exit Strategy</p> <p><i>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</i></p> <p><i>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?</i></p> <ol style="list-style-type: none"> (1) <i>maintaining continuity of Services;</i> (2) <i>allocation and/or disposal of any equipment relating to the Individual Scheme;</i> (3) <i>responsibility for debts and on-going contracts;</i> (4) <i>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);</i> (5) <i>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.</i> <p>This is not applicable because the commissioning intention is the redesign of current community health and social care services based upon service specification to be mobilised.</p> <p><i>Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement.</i></p> <p>Arrangements for premises, staffing, records etc within the redesigned services will be agreed as part of the redesign process.</p>	

CARE HOME MARKET MANAGEMENT

Scheme Name	Care Home Market Management
Pooled Fund Ref	Pool 2
<i>The Host Partner for Pooled Fund is</i>	The Council
<i>The Pooled Fund Manager, being an officer of the Host Partner is</i>	Robert Vickers
<p>Scheme Background / Context</p> <p>This Scheme brings together Council adult social care spot purchase residential and nursing placements (including jointly funded packages) together with CCG funded CHC placements and funded nursing care budgets.</p> <p>Both organisations have excluded high cost out of county placements from the scheme as these tend to be specialist in nature and require specialist input.</p> <p>The Council will be the Lead Commissioner for this Scheme and will work closely with the local market providers to ensure that there is consistency of fees across both health and social care placements with the same Service providers.</p> <p>All age group adult placements will be included within the Scheme.</p> <p>Council social care staff and CHC assessors will be aligned to deliver jointly agreed packages of care which will be micro commissioned within the current framework agreements.</p>	
<p>Aims and Anticipated Outcomes of Scheme</p> <p><i>Insert agreed aims of the Individual Scheme</i></p> <p>The strategic purpose of this Scheme is to deliver more effective market management across Herefordshire to enable more cost effective purchasing of placements. This will release funding in order to provide further protection of social care above the minimum fund already agreed.</p>	
<p>Alignment of Scheme to BCF</p> <p><i>Describe how this scheme aligns to BCF priorities</i></p> <p>The protection of social care is one of the seven national conditions of the BCF. Included within this activity pool are support to carers and reablement, both of which are specifically identified within the overarching BCF principles. The loss or removal of any part of this funding will compromise the Council's ability to both protect and promote outcomes that realise potential for continued living at home or within a community setting. Such a position would impact upon the CCG's ability to progress the key imperatives within the BCF.</p> <p>Funding released through this Scheme will be utilised to provide additional protection to social care above the minimum funding already agreed. The aim is to release up to £1.2m of funding to meet the additional in year growth above demographic projections experienced to date in 2014/15 (£0.7m) and to protect social care by providing funds to enable the Council to meet the national requirements for 7 day working (£0.3m) and further expand telecare support (£0.2m) to clients to avoid needs escalating and enable clients to continue to live safely at home without the need place them in a residential setting thereby preventing a further escalation of demand pressures. Without funding for these services the Council would be forced to make cuts elsewhere to meet the national condition / deliver appropriate support to clients.</p>	
<p>Commissioning Arrangements (<i>select and describe for scheme</i>)</p> <p><i>Set out what arrangements will be in place in relation to Lead Commissioning/Joint (aligned) / co-commissioning/Integrated Commissioning. How will these arrangements work?</i></p> <ul style="list-style-type: none"> a) Lead Commissioning b) Integrated Commissioning c) Joint (Aligned)/ Co- Commissioning <p>The Council will initially be the Lead Commissioner for all the activity within this Individual Scheme,</p>	

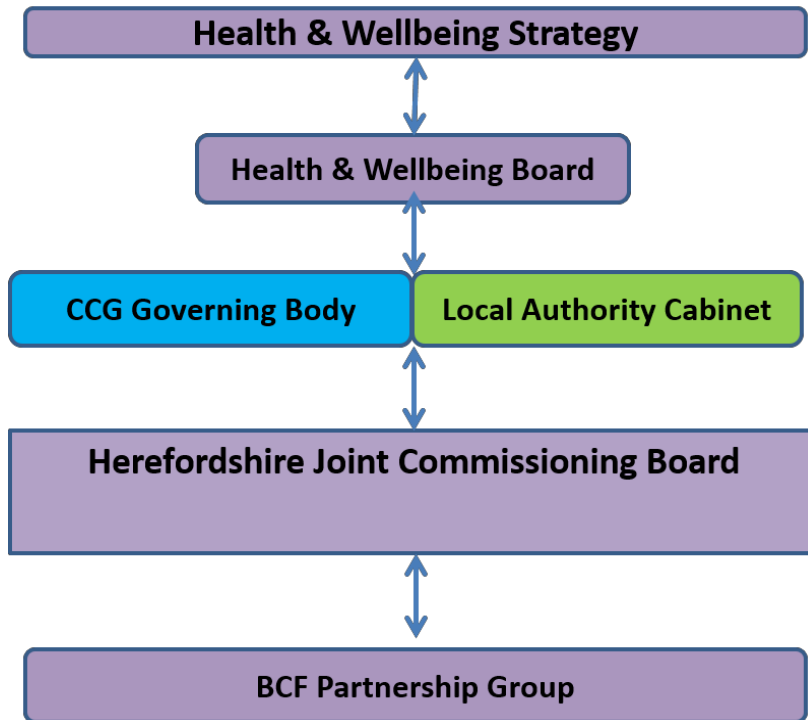
Scheme Name	Care Home Market Management
Pooled Fund Arrangements for Scheme The Pooled Fund will be hosted and managed by The Council.	
Financial Contributions <i>Set out contributions to the scheme by each partner</i> Estimated contributions are Council £21.729m CCG 12.811m TOTAL £34.540m Budget to be confirmed on completion of 15/16 budget setting <i>Set out funding mechanism / invoicing / payment arrangements</i> Funding for the CCG element will be remitted to the Council at the beginning of each Quarter. As an interim arrangement funds will be remitted back to the CCG at the end of each Quarter to recompense them for payments made in respect of CHC clients. At such agreed date that all transactions for Pooled Fund 2 are agreed to be processed by the Council the funds will be retained to make the necessary payments.	
Functions <i>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.</i> As indicated above, those Services contained within the protection of social care will be commissioned by the Council, who will provide management oversight to enable effective monitoring, review and reporting to inform future commissioning intentions allied to the BCF. This will involve feedback from all key stakeholders to enable co-production that leads to better service user and carer outcomes and the best use of available resources. <i>Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)</i> There are no exclusions	
Services Provided <i>What Services are going to be provided within this Scheme. Are there any plans or agreed actions to change the Services? The</i> services provided by the Council under this Scheme include: <ul style="list-style-type: none"> • Residential spot purchase placements • Nursing sport purchase placements • Dementia residential care spot purchase placements • Continuing health care placements 	
Contractual Arrangements <i>Insert the following information about the Individual Scheme:</i> 1. Relevant contracts <ol style="list-style-type: none"> 1.1. Various spot purchase contracts with care homes across Herefordshire. Arrangements for contracting. <i>Will terms be agreed by both partners or will the Lead Commissioner have authority to agree terms</i>	

Scheme Name	Care Home Market Management
<p><i>What contract management arrangements have been agreed?</i></p> <p>Contracts are in place with the residential and nursing care homes in Herefordshire to purchase care on a spot purchase basis using a combination of usual price for social care needs, and agreed funding amount per client/week for funded nursing care and spot rates necessary to meet continuing health care needs</p> <p><i>What happens if the Agreement terminates?</i></p> <p><i>Can the partner terminate the Contract in full/part?</i></p> <p><i>Can the Contract be assigned in full/part to the other Partner?</i></p> <p>The Lead Commissioner will agree the terms applicable and contract management will be within the remit of the Council's corporate procurement and contract unit. These Schemes are embedded within the monitoring and review process for commissioning and contracts, this provides monthly oversight or reporting by exception to ensure performance and compliance allied to Scheme Specification. In the event that the Agreement terminates, the contract between the Council and the Service provider(s) would continue unless formal notice is given by either party, subject to contractual requirements. This recognises that those Schemes within the protection of social care are core in nature to assure business continuity and the protection of vulnerable adults .Therefore the contract cannot be terminated by the Partner, either in full or part and equally the contract cannot be assigned, either in full or part.</p>	
<p>Beneficiaries</p> <p><i>Who are the beneficiaries of the Services?</i></p> <p>The beneficiaries of the services are Herefordshire citizens who meet the national eligibility criteria for social care support or have been assessed as requiring continuing health care support</p>	
<p>Access / Eligibility</p> <p><i>Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible?</i></p> <p>Service Users will access Services following an assessment of need to determine eligibility. This will be undertaken by appropriate professionals using national eligibility criteria as specified within the Care Act (2014) and further regulations and guidance issued in October 2014</p>	
<p>Risk Sharing Arrangement for Scheme</p> <p><i>Set out details of risk share arrangements for scheme</i></p> <p>These are in accordance with the risk share agreement contained in Schedule 3 of this Agreement.</p>	
<p>Performance Measures for Scheme</p> <p><i>Set out performance measures which have been agreed for the scheme</i></p> <p>Measures to be monitored and reported</p> <ol style="list-style-type: none"> 1. The number of people in residential settings 2. The number of jointly funded packages of care 3. The average cost of care <p>Frequency / Format of Reporting</p> <p>As part of the Joint Commissioning Board governance, a coordinated performance data set will be developed and this will be reported quarterly. Scheme performance and progress will be reported monthly to the BCF Joint Commissioning Board.</p> <p>Who prepares the performance information / who receives it?</p> <p>Performance information will be collated by both Council/CCG Performance Leads assisted by Scheme/Project Leads</p>	

Scheme Name	Care Home Market Management
<p>Planned Duration of Scheme</p> <p><i>Set out the duration of the Scheme</i></p> <p>There is no planned end date for this Scheme as it is an ongoing requirement for the Council to provide residential care (where needed) and the CCG to provide FNC and CHC (where needed)</p>	
<p>Planned Exit Strategy</p> <p><i>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</i></p> <p>In the unlikely event that this Scheme was terminated the pre BCF arrangements would be reinstated whereby the Council negotiates and pays for residential and nursing care and the CCG re-assumes the role of paying for CHC and FNC placements directly.</p> <p><i>Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement).</i></p>	

SCHEDULE 2 – GOVERNANCE

GOVERNANCE STRUCTURE



DRAFT TERMS OF REFERENCE FOR Joint Commissioning Board (Partnership Board)

SCHEDULE 3 – RISK SHARE

SCHEDULE 4 – JOINT WORKING OBLIGATIONS

COMMISSIONING OBLIGATIONS

Health and social care commissioners in Herefordshire recognise that they have individual principles and commissioning cycles, below is a broad set of obligations that underpin the commissioning process:

- Effective leadership is key in commissioning and de-commissioning services, with transparency and accountability in decision-making process;
- Commissioning takes place within relevant legislative and regulatory frameworks;
- Person-centred service models are at the heart of the commissioning cycle, with genuine involvement and consultation with local people and their carers who use commissioned services;
- The commissioning process is based on local data, such as the Joint Strategic Needs Assessment, providing information about local population needs;
- Commissioning and investment decisions ensure services are value for money and will achieve the best possible outcomes for local people;
- There is a focus on quality and outcomes for patients/service users and their carers. Innovation and new ways of working together are welcomed within a service framework that offers quality and improved outcomes. This includes commissioners agreeing with and services abiding by their agreed policies and procedures including staff recruitment, training and supervision, appraisal, managing allegations against staff/volunteers, whistleblowing, complaints and serious case reviews/incident reports.
- There is a robust performance management framework which monitors service provision including outcomes, and supports the delivery of high quality services with best value for money. This includes listening to concerns expressed by patients/service users and carers, about specific service delivery issues, early recognition and intervention with services which are struggling to provide agreed standards of care and support;
- Ensuring commissioners develop competencies and procurement skills that promote good working relations with service providers and achieve expected outcomes.

SUMMARY

Our commitment, embedded within our obligations is to strive to achieve commissioning that is intelligent and outcomes based, demonstrating:

- Person-centred and focuses on outcomes
- Promotes health and wellbeing for all
- Delivers social value
- Coproduced with people, their carers and their communities
- Promotes positive engagement with providers
- Promotes equality
- Will be jointly led
- Demonstrates a whole systems approach
- Uses evidence about what works
- Ensures diversity, sustainability and quality of the market
- Provides value for money
- Develops the commissioning and provider workforce

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.

Where Lead Commissioning Arrangements are in place, the following provisions shall apply:

Specific Duties of the Lead Commissioner are as follows:

The Lead Commissioner shall notify the other Partner if it receives or serves:

- a) a Change in Control Notice;
- b) a Notice of an Event of Force Majeure;
- c) a Contract Query;
- d) Exception Reports

and provide copies of the same.

The Lead Commissioner shall provide the other Partner with copies of any and all monitoring reports, performance reports, action plans in accordance with monitoring arrangements set out in this agreement:

The Lead Commissioner shall consult with the other Partner before attending:

An Activity Management Meeting;

Contract Management Meeting;

Review Meeting;

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

The Lead Commissioner shall not:

Permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;

Vary any Provider Plans (excluding Remedial Action Plans);

Agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;

Give any approvals under the Service Contract;

Agree to or propose any variation to the Service Contract (including any Schedule or Appendices);

Suspend all or part of the Services;

Serve any notice to terminate the Service Contract (in whole or in part);

Serve any notice;

Agree (or vary) the terms of a Succession Plan;

Without the prior approval of the other Partner (acting through the Joint Commissioning Board) such approval not to be unreasonably withheld or delayed.

The Lead Commissioner shall advise the other Partner 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 Partner as part of that process.

The Lead Commissioner shall notify the other Partner of the outcome of any Dispute that is agreed or determined by Dispute Resolution

The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

– OBLIGATIONS OF THE OTHER PARTNER

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

The other Partner shall (at its own cost) provide such cooperation, assistance and support to the Lead Commissioner (including the provision of data and other information) as is reasonably necessary to enable the Lead Commissioner to:

Resolve disputes pursuant to a Service Contract;

Comply with its obligations pursuant to a Service Contract and this Agreement;

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;

No Partner shall unreasonably withhold or delay consent requested by the Lead Commissioner.

Each Partner (other than the Lead Commissioner) shall:

Comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;

Notify the Lead Commissioner of any matters that might prevent the Lead Commissioner from giving any of the warranties set out in a Services Contract or which might cause the Lead Commissioner to be in breach of warranty.

SCHEDULE 5 – PERFORMANCE ARRANGEMENTS

Better Care Fund Performance Management Framework

Introduction

The Better Care Fund (BCF) Performance Management Framework works within the governance, management and project assurance requirements of the commissioning Partners and therefore aims not to create a separate process, but to ensure that the role of the BCF as a significant lever for transformation through collaboration and integration is effectively planned, delivered, monitored, reviewed and redirected as appropriate within existing arrangements.

Roles and Responsibilities

The diagram at Appendix One illustrates the key groups and boards with responsibilities within this framework and the reports that will be utilised. The boards and groups mentioned will have broader responsibilities than BCF but this document only refers to the specific Herefordshire BCF requirements.

The Health and Wellbeing Board will

- **receive quarterly reports** on the progress of the BCF implementation
- and **scrutinise delivery** against the expectations of the Health and Wellbeing Strategy and the BCF outcomes set out in the BCF plan.

The Joint Commissioning Board (Partnership Board) may exercise all powers available to individual members, within the authority delegated by existing HC and HCCG governance arrangements, and in accordance with any constitutional or legislative requirements and will:

- **receive a monthly Summary Highlight Report** on the progress of BCF implementation
- specifically **challenge progress** against the Joint Commissioning Plan
- **review the Performance Dashboard** and the achievement of agreed outcomes
- **review the Risk and Issues Log** and agree appropriate mitigation requirements
- **Take and record decisions made** in order to ensure delivery against the plan and or changes to the plan that improve the opportunity to deliver the required outcomes

Note the Joint Commissioning Board (Partnership Board) also has responsibility for the monitoring of the Section 75, Risk Share and Contingency Plan for the Pooled Fund arrangements. The process for this is covered within the separately documented Governance arrangements but the agendas will run in parallel to ensure that the board has the full picture for decision making.

The System Transformation Board is primarily the board for the System Transformation Programme and will not operate as a direct board for the BCF. BCF Schemes and Projects that are working within the programme workstreams or have high interdependencies with the programme will be reported to this Board (that meets on a monthly basis) as required by the Senior Responsible Officers for the relevant workstreams.

The System Transformation Board will have access to the same information as the Joint Commissioning board as relevant to the workstream detail that is being presented. The only exceptions to this will be any commercial or confidential commissioning information that could give an advantage or create a conflict of interest for providers who sit on the board.

The BCF Partnership Group is the Steering Group for the delivery of the BCF Plan. The membership is commissioners and providers at a senior management level. Members of the group take responsibility for delivery of the schemes or projects that they are leading and communications into and across their organisations in order to ensure effective understanding of the planned activity and outcomes and support for identifying interdependencies and opportunities to great greater benefits.

The group will meet on a weekly basis and operate a four weekly agenda cycle to cover Implementation, Outcomes, Finance & Legal Agreements, Delivery Review. Through this cycle the group will

- specifically **challenge progress** against the Individual Schemes
- **review the Performance Dashboard** and the achievement of agreed outcomes
- review the **delivery against Section 75, allied agreements** and Pooled Fund responsibilities

- **receive a monthly Highlight Report** from each scheme indicating progress on implementation and achievement against the required outcomes
- **review the Risk and Issues Log** and agree appropriate mitigation requirements
- **take and record decisions made** (within given authority) in order to ensure delivery against the plan and or changes to the plan that improve the opportunity to deliver the required outcomes
- **agree the summary report** for presentation at Joint Commissioning Board (Partnership Board)

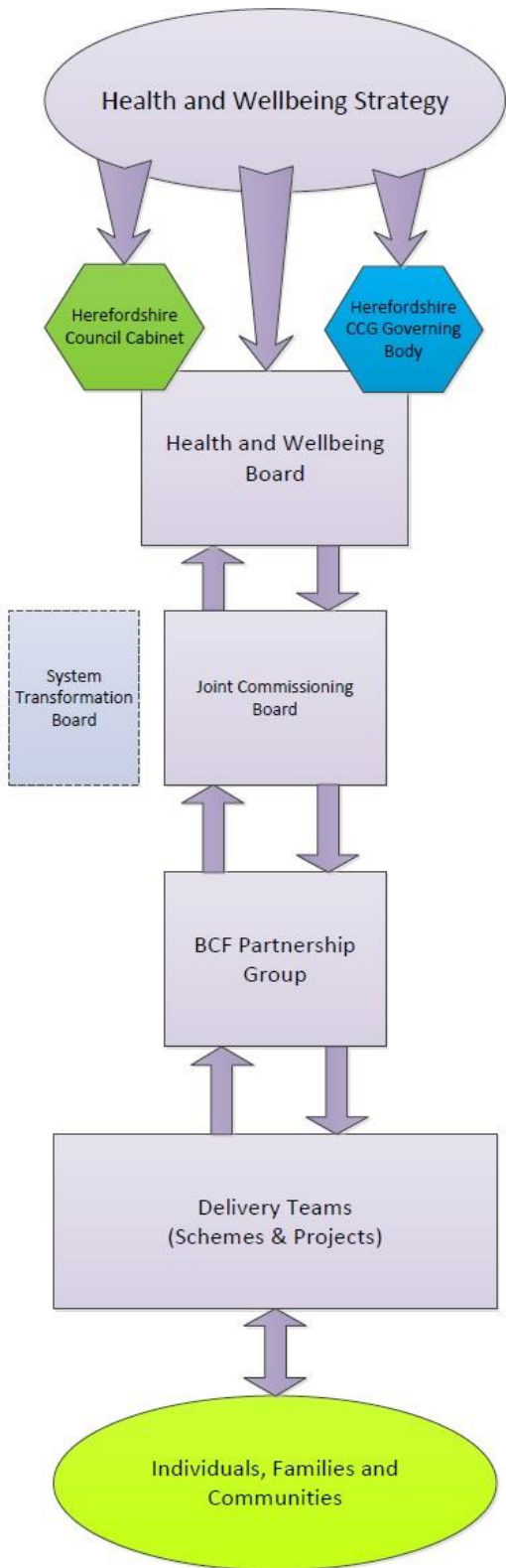
Delivery Teams may be in the form of existing service delivery teams project teams or task and finish groups. For BCF Plan delivery they will utilise the BCF delivery plan and tracker template (below) to ensure consistency of approach and ease of review by the BCF Partnership group and Joint Commissioning Board. Each team will have a lead officer who will be responsible for

- creation and sign off of the delivery plan
- development of the performance dashboard for the scheme/project
- maintaining delivery momentum
- Maintaining the Decision Log and Risk and Issues Log
- Attendance at the BCF Partnership Group and keeping the group advised of any delivery issues or development opportunities and preferred solutions
- Drafting of the monthly highlight report for the BCF Partnership group

Documents

Standard templates have been put in place to support consistent planning recording of progress and ease of performance analysis. The key documents are
 Quarterly BCF Performance Summary Report
 BCF Delivery – Monthly Highlight Report Template
 BCF Delivery Plan & Tracker Template
 Performance Dashboard

Better Care Fund Performance Management Framework



- BCF National Conditions**
- Protecting Social Care Services
 - Implementation of the Care Act
 - 7 day services to support discharge
 - NHS Number as the primary identifier
 - Joint Assessment and Accountable Lead Professional for high risk populations

- BCF Metrics**
- (P4P) Non elective admissions
 - Residential Care Admissions
 - Reablement
 - Delayed Transfers of Care
 - Patient/Service User experience
 - Local Metric – Falls - a lower incidence of admissions for falls (proportionally).

Key Tools and Documents



SCHEDULE 6 – BETTER CARE FUND PLAN

SCHEDULE 7 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Herefordshire CCG Conflicts of Interest Policy

Herefordshire Council – Code of Conduct Policy

SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL

The terms in the attached Information Governance Protocol shall apply to this Agreement mutatis mutandis as between the CCG and the Council:

SCHEDULE 9 – VARIATION TEMPLATE

SCHEDULE 10 – SUMMARY OF INTERIM / PERMANENT MANAGEMENT ARRANGEMENTS

