

Dated

2019

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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THIS AGREEMENT is made on **day of** **2019**

PARTIES

- (1) **COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL** of Plough Lane, Hereford, HR4 0LE (the "Council")
- (2) **NHS HEREFORDSHIRE CLINICAL COMMISSIONING GROUP** of Plough Lane, Hereford, HR4 0LE (the "CCG")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the county of Herefordshire.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the county of Herefordshire.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose. The Partners have chosen to extend the use of pooled funds to include funding streams beyond the minimum fund required by the Better Care Fund
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also the means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
 - a) improve the quality and efficiency of the Services;
 - b) meet the National Conditions and Local Objectives;
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.
- (I) Partners have agreed to enter into this Agreement with effect from 1 April 2019 to 31 March 2020. The provisions of this Agreement shall replace and supersede the provisions of the previous section 75 arrangements entered into by the Council and the CCG, originally on 24 June 2013 and also on 1 April 2015 in relation to the Better Care Fund.

1 DEFINED TERMS AND INTERPRETATION

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

2018 Act means the Data Protection Act 2018

2000 Act means the Freedom of Information Act 2000.

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 expenditure approved by the Partners in writing or as set out in a Scheme Specification in relation to a Service above any Contract Price, Permitted Budget, Third Party Costs 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 in accordance with the governance arrangements set out in Schedule 6.

Better Care Fund (BCF) Plan means the plan attached at Schedule 7 setting out the Partner's plan for the use of the Better Care Fund.

Better Care Fund Requirements means any and all requirements on the CCG and Council in relation to the Better Care Fund set out in Law and guidance published by the Department of Health.

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 Commencement Date.

Chief Financial Officer means the Chief Financial Officer of the CCG

Commencement Date means 00:01 hrs on 1 April 2019

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 under a Service Contract as consideration for the provision of goods, equipment or services required as part of the 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) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part or (ii) any act or omission of a third party for which any or all of the Partners are liable, under the terms of the relevant Services Contract.

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 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.

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

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 of the 2006 Act 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 Health Related 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 of the 2006 Act.

Joint Commissioning Board means the partnership board responsible for review of performance and oversight of this Agreement, the governance arrangements for which are as set out in Schedule 6.

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 Health Related Functions.

Lead Commissioner means the Partner responsible for commissioning a 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 National Guidance.

National Guidance means any and all guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately.

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 10.7.

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.

Partnership Arrangements means the arrangements made between the Partners for the pooling of funds and commissioning of Services in accordance with the Regulations and as further set out in this Agreement.

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.

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 (including where the Council is acting as in house Provider of the Services) .

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).

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 2018 Act.

Commented [TC1]: This should be up-dated

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 and/or who are eligible to receive 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 2020 unless terminated earlier in accordance with Clause 24.
- 2.3
- 2.4 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 commission the Services and 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 and Schedule 1 (Financial Contributions and Financial Governance) 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 Health Related and/or NHS 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, that shall be by way of a variation to this Agreement in accordance with Clause 32, and a Scheme Specification for each Individual Scheme shall be completed in the form set out in Schedule 3 and agreed between the Partners. The initial Scheme Specifications, as at the Commencement Date, are set out in Schedule 3.

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 The Partner or Partners acting as commissioner(s) of the relevant Service shall be responsible for ensuring the making of payments to the Provider under the relevant Services Contract. Both Partners will work together to ensure that the commissioning Partner(s) is/are able to comply with the obligations held by them under Services Contracts with Providers. Where Integrated Commissioning Arrangements are put in place, the Partners will agree which Partner(s) shall make payments to the relevant Provider(s).
- 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 5.

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 Schedules 1,4 and 6 of this Agreement within both organisations and to develop and deliver a work plan for the BCF for 2019/20.

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 and in the format set out in Schedule 6. 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 6.

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 Contributions from the Partners required for each Individual Scheme in each Financial Year will be dependant upon the allocation of the Better Care Fund funding by NHS England and the agreement of partners on the values of any additional pool contributions, the centrally awarded disabled facilities grant, and the outcomes of budget setting by both partners for 2019/20..
- 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 Joint Commissioning 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 Joint Commissioning Board by no later than 31st December 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 Schedule 1 and 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.
- 10.8 Each Partner shall bear its own costs of the establishment of the Partnership Arrangements under this Agreement.

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. Non-Financial Contributions agreed at the Commencement Date are set out in Schedule 2.

12 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The Partners have agreed risk share arrangements as set out in Schedule 4 (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.

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, listed in Schedule 2, 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 approved by the Joint Commissioning Board, in accordance with the Financial Governance arrangements at Schedule 1 and the Risk Share arrangements set out in Schedule 4, 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 and where appropriate:
- 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 that applies to the Services or management of Financial Contributions under this Agreement.

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 make arrangements to certify an annual return of those accounts The Accounts and Audit Regulations 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 acting within its control or 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 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 and in the event of Losses arising, shall seek to recover such Loss through the relevant policy of insurance or equivalent arrangement.

Conduct of Claims

16.6 In respect of the indemnities given in this Clause 16:

16.6.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;

16.6.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters;

16.6.3 the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by the relevant indemnity.

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.
- 17.5 The Partners will make arrangements via the Joint Commissioning Board to ensure that all Service Users are safeguarded and their welfare is promoted in accordance with the respective Partners' legal obligations. The Partners will lead and support the organisation and development of the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board. They will ensure services commissioned have clear safeguarding policies with policies/procedures agreed by the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board.
- 17.6 Partners will ensure services commissioned adhere to safeguarding policies, and procedures which will be made clear in all Services Contracts. These will be monitored by the Joint Commissioning Board and action will be taken where breaches occur.
- 17.7 The Partners will also be able to demonstrate in commissioning and/or providing the Services and where required by Law, that they have:
- 17.7.1 Clear priorities for early intervention, safeguarding and promoting the welfare of children, young people and vulnerable adults in their strategic plans.
- 17.7.2 A clear commitment by senior managers to the importance of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare and the need to work across organisations to be effective in safeguarding the public.
- 17.7.3 responsibilities to safeguarding and promoting the welfare of children, young people and adults are integral to each member of staff's work and are integrated into corporate plans.
- 17.7.4 A culture of listening to and engaging dialogue with children, young peoples and vulnerable adults seeking their views in ways appropriate to their age and competency and taking account of these in individual decisions and the establishment or development and improvement of services
- 17.7.5 Clear plans (whether corporate or for individual Service Users) which demonstrate that personalised care is central to all clinical or social interventions
- 17.7.6 Clear lines of accountability and governance across the organisation for the provision of services which take account of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare
- 17.7.7 Arrangements to work effectively across organisations including clear policies and protocols regarding sharing information to enable staff to safeguarding and promoting the welfare of children, young people and vulnerable adults
- 17.7.8 Clear policies to safeguard and promote the welfare of children, young people and vulnerable adults including effective complaints policies, whistle blowing policies and procedures for dealing with allegations against a member of staff or volunteers which members of staff/volunteers are made aware of.
- 17.7.9 clear care pathways and care plans for times of transitions for children/young people and adults who receive treatment both within and outside Herefordshire.
- 17.7.10 Arrangements to ensure all staff receive the appropriate training (and refresher training) to equip them to carry out their responsibilities with regard to safeguarding effectively.
- 17.7.11 an effective complaints process in place and available to all staff and Service Users.

17.7.12 a process for recording incidents, concerns and referrals in relation to children, young people and vulnerable adults and the actions that result from these

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 8 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 Wellbeing 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 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 6.

19.3 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.

19.4 The terms of reference of the Joint Commissioning Board shall be as set out in Schedule 6.

19.5 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.6 The 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.

19.7 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 The Partners shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance.

20.2 Save where the Health and Wellbeing 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. 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 6.

20.3 The Partners shall within 20 Working Days of the Annual Review prepare a joint annual report documenting the matters referred to in Clause 20.2. 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 Partners agree that they shall apply their own complaints procedures to complaints which they receive in respect of matters which are the subject of this Agreement, however they agree that they shall consult with and assist one another where required in the management of such complaints including those arising from the provision of the Services or the commissioning thereof.
- 21.2 Complaints will be handled as follows:
- 21.2.1 where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;
 - 21.2.2 where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG;
 - 21.2.3 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;
 - 21.2.4 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 which shall be jointly developed by the Partners by 31 March 2019; and
 - 21.2.5 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, and then the Joint Commissioning Board will set up a complaints subgroup to examine the complaint and recommend remedies to the Partners.
 - 21.2.6 complaints received by the Partners in connection with this Agreement and the Services shall be reported to the Joint Commissioning Board.
- 21.3 The Partners shall each, and shall use their reasonable endeavours to ensure any Provider shall, fully comply with any investigation undertaken by any properly appointed Ombudsman ("the Ombudsman"), including providing access to Information and making staff available for interview.

22 HEALTHWATCH

- 22.1 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 Health Watch organisations as required.

23 SCRUTINY

- 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.

- 23.2 The Partners acknowledge that the Partnership Arrangements and Services shall be monitored and reviewed by the Health and Wellbeing Board, as well as any properly authorised regulator.
- 23.3 The Partners will make senior officers available, where reasonably required and subject to reasonable notice having been received, to attend each other's committees and boards with responsibility for the development of policy and the scrutiny of commissioning decisions taken in relation to the Services.
- 23.4 The Partners will also supply monitoring information for consideration by such committees and boards, and will also comply with any other reasonable request for information from those committees and boards.
- 23.5 The Partners shall maintain and comply with their own separate whistleblowing policies in regard to this Agreement.

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 endeavors 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).

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

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 within 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 INFORMATION 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 Regulations. 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 9, and in so doing will ensure that the operation of this Agreement complies with Law, in particular the 2018 Act.

Commented [TC2]: Should be up-dated

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 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 for Adults and Wellbeing

Tel: 01432 260339

Email: awbcommissioning@herefordshire.gov.uk

and

31.3.2 if to the CCG, addressed to The Accountable Officer; Tel:

01432 383308

Email: enquiries@herefordshireccg.nhs.uk

32 VARIATION

32.1 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 10, 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

- 34.1 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

- 35.1 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

- 36.1 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

- 38.1 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

- 40.1 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).

42 PUBLICITY

- 42.1 The Partners shall consult one another before making any press announcements concerning the Services or the discharge of either Partner's functions under this Agreement.

43 FAIR DEALINGS

- 43.1 The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention to carry out their obligations pursuant to this Agreement in good faith and where possible, without detriment to the interests of either of them. If in the course of the performance of this Agreement, unfairness to either Partner does or may arise then the other Partner shall use its reasonable endeavours, where practicable, to agree upon such action as may be necessary to remove or reduce the cause or causes of such unfairness.

44 INTERNAL APPROVALS

- 44.1 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.

45 RISK AND BENEFIT SHARE ARRANGEMENTS

- 45.1 The risk share arrangements which apply to the Financial Contributions are detailed in the memorandum of understanding / risk share agreement set out in Schedule 4.

46 REGULATORY REQUIREMENTS

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

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

Signed for on behalf of **THE COUNTY OF
HEREFORDSHIRE DISTRICT COUNCIL**

PRINT NAME:.....

JOB TITLE:.....

DATE:.....

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

PRINT NAME:.....

JOB TITLE:.....

DATE:.....

DRAFT

SCHEDULES

- SCHEDULE 1 FINANCIAL CONTRIBUTIONS AND FINANCIAL GOVERNANCE**
- SCHEDULE 2 NON FINANCIAL RESOURCES**
- SCHEDULE 3 SCHEME TEMPLATE AND SCHEDULES**
- SCHEDULE 4 RISK SHARE**
- SCHEDULE 5 JOINT WORKING OBLIGATIONS**
- SCHEDULE 6 PERFORMANCE ARRANGEMENTS**
- SCHEDULE 7 BETTER CARE FUND PLAN 2019/20**
- SCHEDULE 8 POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST**
- SCHEDULE 9 INFORMATION GOVERNANCE PROTOCOL**
- SCHEDULE 10 VARIATION TEMPLATE**

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