

Dated

2018

SOUTHEND-ON-SEA BOROUGH COUNCIL

and

NHS SOUTHEND CLINICAL COMMISSIONING GROUP

**FRAMEWORK PARTNERSHIP AGREEMENT RELATING
TO THE COMMISSIONING OF HEALTH AND SOCIAL
CARE SERVICES**

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THIS AGREEMENT is made on day of

2018

PARTIES

- (A) **SOUTHEND-ON-SEA BOROUGH COUNCIL** of Civic Centre, Victoria Avenue, Southend on Sea, Essex, SS2 6ER (the "**Council**")
- (B) **NHS SOUTHEND CLINICAL COMMISSIONING GROUP** of Harcourt House, 5-15 Harcourt Avenue, Southend on Sea, SS2 6HE (the "**CCG**")

BACKGROUND

- The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Southend-on-Sea.
- The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Southend-on-Sea.
- 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 may wish to extend the use of pooled funds to include funding streams from outside of the Better Care Fund.
- 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.
- The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also means through which the Partners will pool funds and align budgets as agreed between the Partners.
- 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 and capital expenditure on the Services,for the benefit of the population of Southend on Sea.
- The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION

- 1.1 In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:
- (1) **2000 Act** means the Freedom of Information Act 2000.

- (2) **2004 Regulations** means the Environmental Information Regulations 2004.
- (3) **2006 Act** means the National Health Service Act 2006.
- (4) **Affected Partner** means, in the context of Clause 24, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event.
- (5) **Agreement** means this agreement including its Schedules and Appendices.
- (6) **Approved Expenditure** means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price and Performance Payments pursuant to clause 7.4
- (7) **Authorised Officers** means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement.
- (8) **Better Care Fund** means the Better Care Fund as described in NHS England Publications Gateway Ref. No.00314 and NHS England Publications Gateway Ref. No.00535 as relevant to the Partners.
- (9) **Better Care Fund Plan** means the plan attached at Schedule 6 setting out the Partners' plan for the use of the Better Care Fund.
- (10) **BCF Contribution** means the Financial Contribution made by the CCG under the provision of Section 223GA(3) of the 2006 Act.
- (11) **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.
- (12) **BCF guidance means** such guidance in relation to the Better Care Fund as issued from time to time by the department of Health, the department of communities and local Government, NHS England or the Local Government Association either in concert or separately.
- (13) **CCG Statutory Duties** means the Duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act
- (14) **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
- (15) **Commencement Date** means 00:01 hrs on 1 April 2017

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:

- i) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;
 - ii) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or
 - iii) which is a trade secret.
- (16) **Contract Price** means any sum payable to a Provider of the delivery of an Individual Scheme 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
 - (17) **Data Controller** has the meaning set out in the Data Protection Legislation
 - (18) **Data Protection Legislation** means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation

of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

(19) **Financial Contributions** means the financial contributions made by each Partner to a Pooled Fund in any Financial Year.

(20) **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

(21)

(22) **Functions** means the NHS Functions and the Social Care Functions

(23)

(24) **GDPR** means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);

(25) **Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund and for each Non Pooled Fund the Partner that will host the Non Pooled Fund

(26) **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.

(27) **Improved Better Care Fund** means the direct grant to local government described in *Integration and Better Care Fund Planning requirements for 2017 - 19*.

(28) **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.

(29) **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.

(30) **Information Governance Protocol** means the information governance protocol as agreed between the Partners from time to time.

(31) **Investment Schemes** means schemes developed by either of the Partners which the other Partners has agreed to invest in using the powers under Section 75 and upon such terms as agreed between the Partners in accordance with Clause 10A.

(32) **Joint (Aligned) Commissioning** means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75 of the 2006 Act.

- (33) **Law** means:
- i) any statute or proclamation or any delegated or subordinate legislation;
 - ii) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
 - iii) 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
 - iv) any judgment of a relevant court of law which is a binding precedent in England.
- (34) **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.
- (35) **Lead Commissioner** means the Partner responsible for commissioning an Individual Service under a Scheme Specification.
- (36) **Locality Transformation Group** means the Locality Transformation Group responsible for the review of performance and oversight of this Agreement as set out in Schedule 2.
- (37) **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.
- (38) **Month** means a calendar month, and Monthly shall be interpreted accordingly.
- (39) **National Conditions** mean the national conditions as set out in the NHS England Planning Guidance as are amended or replaced from time to time.
- (40) **National Guidance** means any and all guidance in place from time to time published by the NHS Commissioning Board in relation to the Better Care Fund.
- (41) **NHS Functions** means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the CCG as are relevant to the commissioning of the Services and which may be further described in each Service Schedule
- (42) **Non Pooled Fund** means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification
- (43) **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 10.4.
- (44) **Overspend** means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.
- (45) **Partner** means each of the CCG and the Council, and references to "**Partners**" shall be construed accordingly.
- (46) **Performance Target** means the performance target in respect of non-elective admission as set out in the Better Care Fund Plan or such other relevant performance target that may be introduced from time to time under National Conditions or by agreement of the Partners

- (47) **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.
- (48) **Permitted Expenditure** has the meaning given in Clause 7.3.
- (49) **Personal Data** has the meaning set out in the Data Protection Legislation.
- (50) **Pooled Fund** means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations
- (51) **Pooled Fund Manager** means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 8.1.2.
- (52) **Programme Transformation Board** means the Programme Transformation Board, established by the Joint Executive Group (now the Locality Transformation Group) in February 2015, to support the management of all aspects of the Better Care Fund's (BCF) work, taking day to day decisions on the running of the BCF and being responsible for ensuring the BCF delivers its objectives, manages risk and for ensuring that there is a comprehensive and effective approach for stakeholder participation and involvement.
- (53) **Provider** means a provider of any Services commissioned under the arrangements set out in this Agreement.
- (54) **Public Health England** means the SOSH trading as Public Health England.
- (55) **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.
- (56) **Regulations** mean the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).
- (57) **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.
- (58) **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.
- (59) **Scheme Specification** means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement.
- (60) **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.
- (61) **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.

- (62) **Service Users** means those individual for whom the Partners have a responsibility to commission the Services.
- (63) **Social Care 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.
- (64) **SOSH** means the Secretary of State for Health.
- (65) **Underspend** means any expenditure from a Pooled Fund, Non Pooled Fund or Pooled Fund Non BCF in a Financial Year which is less than the aggregate value of the Financial Contributions for that Financial Year.
- (66) **Working Day** means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.
- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

- 2.1 This Agreement shall be treated as governing the relationship between the Partners with effect from the the Commencement Date.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 22.
- 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 local authority function.
- 3.2 The Partners agree to:
 - 3.2.1 treat each other with respect and an equality of esteem;
 - 3.2.2 be open with information about the performance and financial status of each; and
 - 3.2.3 provide early information and notice about relevant problems.
 - 3.2.4 Manage the system of accountability and performance management in such a way as to support then overall objectives and to support the partnership.
- 3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme Specification.

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:
 - 4.1.1 Lead Commissioning Arrangements;
 - 4.1.2 Joint (Aligned) Commissioning
 - 4.1.3 the establishment of one or more Pooled Fundsin relation to Individual Schemes (the "Flexibilities")
- 4.2 The Council may in any specific scheme delegate to the CCG and the CCG agrees to exercise, on the Council's behalf, the Social Care Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 The CCG may in any specific scheme delegate 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 Social Care Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as set out in the Scheme Specifications.
- 5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 shall be completed and agreed between the Partners. The initial scheme specification is set out in Schedule 1.
- 5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Locality Transformation Group.

6 COMMISSIONING ARRANGEMENTS

- 6.1 The Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Social Care Functions are commissioned with all due skill, care and attention.
- 6.2 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
- 6.3 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification.
- 6.4 Each Partner shall keep the other Partner and the Locality Transformation Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund through the reporting mechanisms.

Appointment of a Lead Commissioner

- 6.5 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall, in accordance with any further agreement set out in the Scheme particulars:
 - 6.5.1 exercise the NHS Functions in conjunction with the Social Care Functions as identified in the relevant Scheme Specification;
 - 6.5.2 endeavour to ensure that the NHS Functions and the Social Care Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - 6.5.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.5.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 6.5.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 6.5.6 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;

- 6.5.7 undertake performance management and contract monitoring of all Service Contracts, including where appropriate enforcement action under the contract;
- 6.5.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract;
- 6.5.9 keep the other Partner and the Locality Transformation Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund;
- 6.5.10 the day to day operation and management of the Scheme Specification including payment arrangements with the Provider;
- 6.5.11 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification; and
- 6.5.12 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and the Scheme Specifications.
- 7.3 Subject to Clause 7.4 it is agreed that the monies held in a Pooled Fund may only be expended (by the partner to whom it is transferred or directly) on the following:
 - 7.3.1 the Contract Price;
 - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
 - 7.3.3 Performance Payments;
 - 7.3.4 Grants payable out of capital contributions to the Fund;
 - 7.3.5 Approved Expenditure pursuant to clause 7.4.
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of the Locality Transformation Group.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities or compensating either Partner for Losses or Indirect Losses unless this is agreed by all Partners in accordance with Clause 16.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
 - 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 7.6.2 providing the financial administrative systems for the Pooled Fund;
 - 7.6.3 appointing the Pooled Fund Manager; and

- 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund, the Partners shall agree:
 - 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager in respect of each Pooled Fund shall have the following duties and responsibilities:
 - 8.2.1 management of the Pooled Fund;
 - 8.2.2 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.2.3 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.2.4 reporting to the Locality Transformation Group as required by the Locality Transformation Group and the relevant Scheme Specification;
 - 8.2.5 preparing and submitting to the Locality Transformation Group Quarterly reports (or more frequent reports if required by the Locality Transformation Group) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Locality Transformation Group to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns; and
 - 8.2.6 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any BCF Guidance including (without limitation) supplying Quarterly reports referred to in clause 8.2.5 above 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 Locality Transformation Group and shall be accountable to the Partners.
- 8.4 The Locality Transformation Group may agree to the varying of Individual Schemes provided that any variation is for the purpose of furthering the aims and outcomes of that particular Individual Scheme.
- 8.5 The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
- 8.6 Nothing in this Agreement shall constrain the Partners from using their powers under section 76 or section 256 of the 2006 Act in their absolute discretion.

9 NON POOLED FUNDS

- 9.1 In the event that the partners introduce a scheme based on Non-Pooled Funds the following provisions of this clause shall apply.
- 9.2 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Scheme

Specification. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.

- 9.3 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
 - 9.3.1 which Partner if any shall host the Non-Pooled Fund
 - 9.3.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.4 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.
- 9.5 Both Partners shall ensure that Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.
- 9.6 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
 - 9.6.1 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
 - 9.6.2 the Social Care 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 in the relevant Scheme Specification.
- 10.2 The Partners shall agree any proposed contributions no later than 31 December in any year for the Financial Year following, subject always to final approval by the relevant body at the Council and CCG. Such final approval shall be provided no later than 31st March unless agreed otherwise between the Partners.
- 10.3 Financial Contributions will be paid as set out in the each Scheme Specification.
- 10.4 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Locality Transformation Group minutes and recorded in the budget statement as a separate item. The parties must agree whether the additional contribution so made is to be used for an existing scheme, an existing scheme with variations as specified, or for a new scheme adopted pursuant to clause 30.

10A INVESTMENT SCHEMES

- 10A.1 Where either of the Partners has agreed to support the other Partner in relation to an Investment Scheme the following principles shall apply to each Investment Scheme:
 - 10A.1.1. Any Investment Scheme shall be considered by the Partner investing in an Investment Scheme following the submission by the of a business case:
 - 10A.1.2 A written agreement shall document any Investment Scheme which the Partners have agreed to proceed with;

- 10A.1.2 Such written agreement will state the purpose of the Investment Scheme; the amount to be invested; the length of the investment; the expected return on the investment; and, when any reviews which are to be carried out.

11 NON FINANCIAL CONTRIBUTIONS AND STAFF

- 11.1 The Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).
- 11.2 Save as provided in the Scheme Specifications, no staff are expected to transfer between the council and the CCG. The Council and the CCG may implement integrated commissioning arrangements, including the making available of staff under S113 of the Local Government act 1972.
- 11.3 Where staff are made available under s113 the provisions of the Information Governance Protocol shall apply and the Partners shall decide who shall be responsible for any vicarious liability for the staff so made available.

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Pooled Funds

- 12.1 In relation to any Pooled Fund, any Overspends will be applied in accordance with the relevant Scheme Specification.
- 12.2 In relation to any Pooled Funds, in the event that an Underspend arises in relation to any Scheme, they shall be applied:
- 12.2.1 First, to be used to meet any overspend in any other scheme managed by the same Partner.
- 12.2.2 Secondly, by being released to the Partner responsible for managing the scheme which has Underspent, subject always to that Partner retaining the discretion to transfer any projected Underspend to another pooled fund operated by the other party or to make payments for the purpose of health and social care either within or outside the Better care schemes to the other party pursuant to section 76 or section 256 of the 2006 Act.
- 12.3 Any savings generated in services which are not commissioned as part of the Better care fund shall accrue to the partner responsible for that service.

Non Pooled Funds

- 12.4 In relation to any Non Pooled Funds, the contributing Partner shall meet any Overspend.
- 12.5 In relation to any Non Pooled Funds, in the event that there is an Underspend, the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and in default of agreement are returned to the contributing Partner.

Pooled Funds Non BCF

- 12.6 Subject to Clause 12.3, 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.

- 12.7 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 Locality Transformation Group in accordance with Clause 12.8.
- 12.8 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Locality Transformation Group is informed as soon as reasonably possible. In the event that any Pooled Fund is Overspent at the year end, subject to any agreement between the parties to the contrary set out in the relevant scheme specification, the parties shall meet any Overspend in shares proportionate to their Financial Contributions.
- 12.9 In the event of an Underspend for a Pooled Fund Non BCF, the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

Schemes outside the Better care fund

- 12.10 Subject always to the terms agreed in any scheme specification, the following shall apply to any new schemes introduced after 1 April 2017.
- 12.11 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund or Aligned Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Locality Transformation Group.
- 12.12 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund and Aligned Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the Locality Transformation Group.

13 CAPITAL EXPENDITURE

- 13.1 Except as provided in Clause 13.2 and 13.3 Pooled Funds shall not normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.
- 13.2 The Partners agree that capital expenditure is included in Pooled Funds as set out set out in the Scheme Specification 1 and 4 of the Better care fund.
- 13.3 Where the Partners have agreed to support a capital scheme to support the objectives of the Parties in this Agreement they may add a Capital scheme specification which shall set out:
- 13.3.1 the purpose of the capital Scheme; the amount to be invested, and how the investment will support the objectives of this agreement and any scheme under it;
 - 13.3.2 the total cost of the scheme and how any additional funding will be provided;
 - 13.3.3 the timescale for the investment; and
 - 13.3.4 such other information as the Locality Transformation Group may require.
- 13.4 Capital assets purchased from the capital in the Better Care pooled fund shall be owned by, and be the responsibility of the Council.

14 VAT

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

15 AUDIT AND RIGHT OF ACCESS

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.
- 15.2 Both Partners shall comply with relevant local government and NHS finance and accounting obligations as required by relevant Law and/or National Guidance.
- 15.3 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 in relation to the body whose accounts they are responsible for auditing. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Locality Transformation Group.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16, the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
 - 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

17 STANDARDS OF CONDUCT AND SERVICE

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

18 CONFLICTS OF INTEREST

The Partners shall comply with their own policy for identifying and managing conflicts of interest.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 The Partners have established a Locality Transformation Group to:
- 19.2.1 Approve commencement of new activity
 - 19.2.2 Approve roles and responsibilities
 - 19.2.3 Delegate assurance roles
 - 19.2.4 Review definition documents
 - 19.2.5 Agree scope extensions to existing activities
 - 19.2.6 Agree addition of projects
 - 19.2.7 Act as an escalation point for any issues that cannot be resolved at the project or work stream level
 - 19.2.8 Monitoring and programme finances
 - 19.2.9 Ensuring progress against significant milestones and strategic objectives
 - 19.2.10 Approving any required changes
 - 19.2.11 Monitoring any significant risks and issues
 - 19.2.12 Agree communications
 - 19.2.13 Agree project closures and benefit reports
 - 19.2.14 Issue instructions to the Programme Transformation Board

- 19.3 The Locality Transformation Group is based on a joint working group structure. Each member of the Locality Transformation Group shall be an officer of one of the Partners or other nominating organisations and will have individual delegated responsibility from that organisation employing them to make decisions which enable the Locality Transformation Group to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.
- 19.4 Subject to clause 19.5, the terms of reference of the Locality Transformation Group shall be as set out in Schedule 2.
- 19.5 The Partners shall review Schedule 2 and agree any amendments within 1 month of the Commencement Date.
- 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 Locality Transformation Group shall be responsible for the overall approval of the Individual Services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.8 Each Services Schedule shall confirm the governance arrangements in respect of the Individual Service and how that Individual Services is reported to the Locality Transformation Group and Health and Wellbeing Board.
- 19.9 The Locality Transformation Group shall co-operate with the Pooled Fund Manager in relation to reporting requirements set out in the BCF Guidance.

20 REVIEW

- 20.1 The Scheme Commissioning Lead in respect of each Scheme Specification shall provide a monitoring report to the Programme Transformation Board for onward transmission to Locality Transformation Group on a monthly basis and the report shall be in such form as may be specified by the Transformation project board.
- 20.2 Save where the Locality Transformation Group agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any Pooled Fund and Non Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.3 Subject to any variations to this process required by the Locality Transformation Group, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.4 The Partners shall within 30 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 Locality Transformation Group.
- 20.5 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

The Partners' own complaints procedures shall apply to this Agreement. The Partners agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services.

22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination of the obligations on the parties to maintain a Better Care Fund.
- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund Requirements continue to be met.
- 22.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other 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 referred for resolution in accordance with Clause 23.
- 22.4 Termination of this Agreement (whether by effluxion of time or otherwise) and/or any Individual Scheme shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clauses 12,15,16,21,22,25,26,27,28,32,33,37 and 39
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 22.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 22.6.3 the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
- 22.6.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows and is within the Law the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
- 22.6.5 the Locality Transformation Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 22.6.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.7 In the event of termination in relation to an Individual Scheme the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Council's Corporate Director for People and the CCG's Accountable Officer, or any person acting in these positions, shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Council's Chief Executive and the CCG's chair, 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.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a **"Mediation Notice"**) to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

- 24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

25 CONFIDENTIALITY

- 25.1 In respect of any Confidential Information a Partner receives from another Partner (the **"Discloser"**) and subject always to the remainder of this Clause 25, each Partner (the **"Recipient"**) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

- 25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:
 - (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
- 25.3 Each Partner:
 - 25.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and
 - 25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
 - 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

- 26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 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.
- 26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

27 OMBUDSMEN

The Partners will co-operate with any investigation undertaken by the Health Service Commissioner for England or the Local Government Commissioner for England (or both of them) in connection with this Agreement.

28 INFORMATION SHARING

- 28.1 In respect of the Partners' rights and obligations under this Agreement, the Partners acknowledge and agree that they are Data Controllers in respect of the Personal Data they hold for the purposes of this Agreement.
- 28.2 The Partners will follow the Information Governance Protocol, and in so doing will ensure that the operation of this Agreement complies with the Data Protection Legislation and the Better Care Fund Requirements.

29 NOTICES

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
- 29.1.1 personally delivered, at the time of delivery;
 - 29.1.2 sent by facsimile, at the time of transmission;
 - 29.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
 - 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).
- 29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:
- 29.3.1 if to the Council, addressed to the Deputy Chief Executive (People);

Tel: 01702 215000
Fax: 01702 534618
E.Mail: simonleftley@southend.gov.uk

and
 - 29.3.2 if to the CCG, addressed to the Accountable Officer:

Tel: 01702 314299
Fax: 01702 313703
E.Mail: margarethathaway@nhs.net

30 VARIATION

No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

31 CHANGE IN LAW

- 31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.
- 31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.

- 31.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 23 (Dispute Resolution) shall apply.

32 WAIVER

No failure or delay by any Partner to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

33 SEVERANCE

If any provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

34 ASSIGNMENT AND SUB CONTRACTING

The Partners shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partners, which shall not be unreasonably withheld or delayed. This shall not apply to any assignment to a statutory successor of all or part of a Partner's statutory functions.

35 EXCLUSION OF PARTNERSHIP AND AGENCY

- 35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

- 35.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:

35.2.1 act as an agent of the other;

35.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or

35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

37 ENTIRE AGREEMENT

- 37.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.

- 37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

38 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

39 GOVERNING LAW AND JURISDICTION

- 39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 39.2 Subject to Clause 23 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

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

THE CORPORATE SEAL of **THE**)
COUNCIL OF THE BOROUGH OF)
SOUTHEND-ON-SEA
was hereunto affixed in the presence of:)

THE CORPORATE SEAL of **NHS**))
SOUTHEND CLINICAL COMMISSIONING)
GROUP was hereunto affixed in the)
presence of:)
)