

**1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2025**

**SOUTHEND ON SEA CITY COUNCIL**  
**and**  
**MID and SOUTH ESSEX INTEGRATED CARE SYSTEM**

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**FRAMEWORK PARTNERSHIP AGREEMENT RELATING  
TO THE COMMISSIONING OF HEALTH AND SOCIAL  
CARE SERVICES USING THE BETTER CARE FUND  
1 APRIL 2023 - 31 MARCH 2025**

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2023 to 2025 Section 75 Agreement

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**THIS AGREEMENT** is made on                      day of

2023

## **PARTIES**

- (1) **SOUTHEND-ON-SEA CITY COUNCIL** of Civic Centre, Victoria Avenue, Southend on Sea, Essex, SS2 6ER (the "Council")
- (2) **MID AND SOUTH ESSEX INTEGRATED CARE SYSTEM** of Civic Centre, Victoria Avenue, Southend on Sea, Essex, SS2 6ER (the "ICS")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Southend on Sea.
- (B) The ICS has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Southend on Sea.
- (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 ICS and the Council establish a pooled fund for this purpose.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering into 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,for the benefit of the population of Southend on Sea.
- (G) 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<sup>1</sup>

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

**1998 Act** means the Data Protection Act 1998.

**2000 Act** means the Freedom of Information Act 2000.

**2004 Regulations** means the Environmental Information Regulations 2004.

**2006 Act** means the National Health Service Act 2006.

**Affected Partner** means, in the context of Clause 23, 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.

**Annual Report** means the annual report produced by the Partners in accordance with Clause 20 (Review)

**Approved Expenditure** means any expenditure approved by the Partners in writing or as set out in the Scheme Specification in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

**BCF Quarterly Report** means the quarterly report produced by the Partners and provided to the Health and Wellbeing Board

**BCF 2023 Agreement** means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2023

**Better Care Fund** means the Better Care Fund as described in NHS England Publications Gateway Ref. No.00314 and NHS England Publications Gateway Ref. No.00535 as relevant to the Partners.

**Better Care Fund Plan** means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund [as attached as Schedule 6].

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

**ICS Statutory Duties** means the Duties of the ICS 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

**Commencement Date** means 00:01 hrs on 1 April 2023.

**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;

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<sup>1</sup> Definitions should be finalised once main body of Agreement is finalised.

- (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 Services Contract as consideration for the provision of goods, equipment, or services as required as part of the Services and which, for the avoidance of doubt, does not include any Default Liability.

**Default Liability** means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract to be payable by any Partner(s) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under a Services Contract or (ii) any act or omission of a third party for which any or all of the Partners are, under the terms of the relevant Services Contract.<sup>2</sup>

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

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

**Force Majeure Event** means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
  - (b) acts of terrorism;
  - (c) acts of God;
  - (d) fire or flood;
  - (e) industrial action;
  - (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
  - (g) any form of contamination or virus outbreak; and
  - (h) any other event,
- in each case where such event is beyond the reasonable control of the Partner claiming relief

**Functions** means the NHS Functions and the Health-Related Functions

**Health Related Functions** means those of the health-related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.<sup>3</sup>

**Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund and for any Non-Pooled Fund the Partner that will host the Non-Pooled Fund

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

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

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

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<sup>2</sup> Default Liability are costs incurred by a lead partner as a result of that Partner breaching a contract. Will the Lead Partner be able to use Pooled Fund monies to cover these costs? Should this be expanded to cover other liabilities such as Judicial Review liabilities of either Partner? Further consideration will always be needed on this.

<sup>3</sup> Here and in the definition of NHS functions the widest definition is used. This should be cut down in the relevant specification to identify the function being undertaken in the commissioning of the service.

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

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

**Law** means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (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 Partner** means the Partner responsible for commissioning an Individual Service under a Scheme Specification.

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

**Month** means a calendar month.

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

**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 ICS as are relevant to the commissioning of the Services and which may be further described in each Service Schedule.

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

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause [8.4].

**Overspend** means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.

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

**Partnership Board<sup>4</sup>** means the partnership board responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 2 or such other arrangements for governance as the Partners agree.

**Partnership Board Quarterly Reports** means the reports that the Pooled Fund Manager shall produce and provide to the Partnership Board on a Quarterly basis

**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 Service.

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

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

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

**Pooled Fund Manager** means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause [10].

**Provider** means a provider of any Services commissioned under the arrangements set out in this Agreement [including the Council where the Council is a provider of any 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 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.

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

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

**Services Contract** means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme.

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

**SOSH** means the Secretary of State for Health.

**Third Party Costs** means all such third-party costs (including legal and other professional fees) in respect of each Individual Scheme as a Partner reasonably and properly incurs in the proper performance of its obligations under this Agreement and as agreed by the Partnership Board.<sup>5</sup>

**Underspend** means any expenditure from the Pooled Fund in a Financial Year which is less than the aggregate value of the Financial Contributions for that Financial Year.

**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 pound's 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

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<sup>5</sup> For discussion between the Parties. These are costs incurred by a Lead Partner such as legal fees and any other professional fees that have to be paid to a third party. The Parties should consider whether any third party costs can be paid for using Pooled Funds. For discussion between the Parties. The current drafting provides that these can be charged where it is agreed specifically in a Service Specification or with prior agreement of both parties.

- 2.2 This Agreement shall continue until it is terminated in accordance with Clause [21]
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners.
- 2.4 This Agreement supersedes the BCF 2015 Agreement without prejudice to the rights and liabilities of the Partners under the BCF 2015 Agreement.

### **3 GENERAL PRINCIPLES<sup>6</sup>**

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

### **4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:
- 4.1.1 Lead Commissioning Arrangements;
  - 4.1.2 Integrated Commissioning;
  - 4.1.3 Joint (Aligned) Commissioning
  - 4.1.4 the establishment of one or more Pooled Funds
- in relation to Individual Schemes (the "Flexibilities")
- 4.2 Where there is Lead Commissioning Arrangements and the ICS is Lead Partner the Council delegates to the ICS and the ICS agrees to exercise, on the Council's behalf, the Health-Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 Where there is Lead Commissioning Arrangements and the Council is Lead Partner, the ICS delegates to the Council and the Council agrees to exercise on the ICS's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health-Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners

shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.<sup>7</sup>

4.5 [At the Commencement Date the Partners agree that the following shall be in place:

4.5.1 The following Individual Schemes with Lead Commissioning with Council as Lead Partner:

- (a) Intermediate Care Beds (Brook Meadows)
- (b) Carers Contract
- (c) Dementia Support
- (d) Single Point of Access
- (e) Hospital Team
- (f) Active Recovery
- (g) Home Care
- (h) Reablement
- (i) Residential Care

4.5.2 The following Individual Schemes with Lead Commissioning with ICB as Lead Partner:

**Community Service Lines**

- a) Integrated Community Teams
- b) Southend Enhanced Discharge Service (SEDs)
- c) Collaborative Care Team
- d) SPOR (Health Element)
- e) Stroke (Community Service)
- f) Pressure Relieving Equipment
- g) Continence
- h) Rosedale Therapy Input
- i) Occupational Therapy
- j) SWIFT/UCRT Original
- k) Older People Community Mental Health Teams (inc. Assessment Service)
- l) Dementia Intensive Support Team
- m) Older People Day Care (Mental Health)
- n) Reablement Beds
- o) Havens Hospice Grant
- p) Carers

**FUNCTIONS**

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- 4.6 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.
- 4.7 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.
- 4.8 The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1 Part 2.
- 4.9 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by each Partner [in accordance with the variation procedure set out in Clause 30 (Variations)]. Each new Scheme Specification shall be substantially in the form set out in Schedule 1 Part 1.
- 4.10 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.
- 4.11 The introduction of any Individual Scheme will be subject to business case approval by the [Partnership Board]<sup>8</sup> [in accordance with the variation procedure set out in Clause 29 (Variations)].

## **5 COMMISSIONING ARRANGEMENTS**

### **General**

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

## Integrated Commissioning

5.7 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:

- 5.7.1 the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 5.7.2 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

## Appointment of a Lead Partner

5.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:

- 5.8.1 exercise the NHS Functions in conjunction with the Health-Related Functions as identified in the relevant Scheme Specification;
- 5.8.2 endeavour to ensure that the NHS Functions and the Health-Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
- 5.8.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 5.8.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
- 5.8.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 5.8.6 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;  
  
<sup>9</sup>undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;<sup>10</sup>
- 5.8.7 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 5.8.8 keep the other Partner and Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.

## 6 ESTABLISHMENT OF A POOLED FUND

- 6.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners as set out in the Service Specifications. At the Commencement Date there shall be a single Pooled Fund in respect of this Agreement
- 6.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.

- 6.3 Subject to Clause 6.4, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 6.3.1 the Contract Price;
  - 6.3.2 where the Council is to be the Provider, the Permitted Budget;
  - 6.3.3 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board
  - 6.3.4 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board
- ("Permitted Expenditure")
- 6.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 6.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with Clause 6.4.
- 6.6 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:
- 6.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
  - 6.6.2 providing the financial administrative systems for the Pooled Fund; and
  - 6.6.3 appointing the Pooled Fund Manager;
  - 6.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **7 POOLED FUND MANAGEMENT – NB NOT CURRENTLY IN USE**

- 7.1 When introducing a Pooled Fund, the Partners shall agree:
- 7.1.1 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;
  - 7.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 7.2 The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:
- 7.2.1 the day-to-day operation and management of the Pooled Fund;
  - 7.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
  - 7.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
  - 7.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
  - 7.2.5 reporting to the Partnership Board as required by this Agreement and by the Partnership Board;
  - 7.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;

7.2.7 preparing and submitting to the Partnership Board Quarterly Reports (or more frequent reports if required by the Partnership Board) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Partnership Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance;

7.2.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.

7.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:

7.3.1 have regard to National Guidance and the recommendations of the Partnership Board; and

7.3.2 be accountable to the Partners for delivery of those responsibilities.

7.4 The Partnership Board may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

## **8 NON-POOLED FUNDS**

8.1 Any Financial Contributions agreed to be held within a Non-Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. For the avoidance of doubt, a Non-Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.

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

8.2.1 which Partner if any<sup>11</sup> shall host the Non-Pooled Fund

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

8.3 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.

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

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

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

8.5.2 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.

## **9 FINANCIAL CONTRIBUTIONS**

9.1 The Financial Contribution of the ICS and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 3.

- 9.2 The Financial Contribution of the ICS and the Council to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners and in line with national guidance.
- 9.3 Financial contributions in each financial year shall be paid to the fund in twelve [insert alternative proposal based on previous arrangements] equal instalments receivable on the 5<sup>th</sup> working day of the month commencing April 2023.
- 9.4 With the exception of Clause [13], no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Partnership Board minutes and recorded in the budget statement as a separate item.

## **10 NON-FINANCIAL CONTRIBUTIONS**

- 10.1 Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.
- 10.2 Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Services Contracts and the Pooled Fund).

## **11 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS**

### **Risk share arrangements**

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

### **Overspends in Pooled Fund**

- 11.2 Subject to Clause 12.1, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
- 11.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 12.4.
- 11.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule [3] shall apply.

### **Overspends in Non-Pooled Funds**

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

### **Underspend**

- 11.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Schedule 3 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

## **12 CAPITAL EXPENDITURE**

- 12.1 Except as provided in Clause 12.2, neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.
- 12.2 The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

## **13 VAT**

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

## **14 AUDIT AND RIGHT OF ACCESS**

- 14.1 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.
- 14.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.
- 14.3 The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

## **15 LIABILITIES AND INSURANCE AND INDEMNITY**

- 15.1 [Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 15.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Partnership Board.
- 15.3 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:

- 15.3.1 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;
  - 15.3.2 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);
  - 15.3.3 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.
- 15.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).
- 15.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

#### **Conduct of Claims**

- 15.6 In respect of the indemnities given in this Clause 15:
- 15.6.1 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;
  - 15.6.2 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.
  - 15.6.3 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 a relevant indemnity.

## **16 STANDARDS OF CONDUCT AND SERVICE**

- 16.1 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).
- 16.2 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.
- 16.3 The ICS is subject to the ICS 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 ICS Statutory Duties and clinical governance obligations.

- 16.4 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 CONFLICTS OF INTEREST**

- 17.1 The Partners shall comply with the policy for identifying and managing conflicts of interest as agreed by the Partners from time to time.

## **18 GOVERNANCE**

- 18.1 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.

- 18.2 The Partners have established a Partnership Board- to be known as the “Southend Better Care Fund Management 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

The Partnership Board is based on a joint working group structure. Each member of the Partnership Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.

- 18.3 The terms of reference of the Partnership Board shall be as set out in Schedule [2] as may be amended or varied by written agreed from time to time.

- 18.4 Each Partner shall nominate an overall BCF Lead. For Southend on Sea Borough Council this is Taslima Qureshi, Head of Strategic Commissioning and for Southend ICS this is Hugh Johnston, Interim Head of Transformation.

- 18.5 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.

- 18.6 The Partnership Board shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 3.

- 18.7 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 18.8 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Partnership Board and Health and Wellbeing Board.

## **19 REVIEW**

- 19.1 The Partners shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board
- 19.2 Save where the Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any [Pooled Fund and Non-Pooled Fund] and the provision of the Services within 3 Months of the end of each Financial Year.
- 19.3 Subject to any variations to this process required by the Partnership Board, Annual Reviews shall be conducted in good faith.
- 19.4 The Partners shall within 20 Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Partnership Board.
- 19.5 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.

## **20 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.

## **21 TERMINATION & DEFAULT**

- 21.1 Unless otherwise agreed in the relevant Scheme Specification, each Individual Scheme may be terminated by either Partner giving not less than 12-Months' notice in writing or such shorter notice period agreed between the Partners provided that:
- 21.1.1 such termination is possible in accordance with the National Guidance and Law; and
- 21.1.2 that the Partners ensure that the statutory Better Care Fund Requirements continue to be met, and
- for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Services.
- 21.2 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.

- 21.3 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 12, 15, 16, 21, 22, 25, 26, 27, 28, 32, 33, 37 and 39<sup>12</sup>
- 21.4 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.
- 21.5 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 21.5.1 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;
  - 21.5.2 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;
  - 21.5.3 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
  - 21.5.4 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
  - 21.5.5 the Partnership Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
  - 21.5.6 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.
- 21.6 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).

## **22 DISPUTE RESOLUTION**

- 22.1 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.
- 22.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 22.1, at a meeting convened for the purpose of resolving the dispute.
- 22.3 If the dispute remains after the meeting detailed in Clause 22.2 has taken place, the Partners' respective Chief Executive and the ICS Chair or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

- 22.4 If the dispute remains after the meeting detailed in Clause 22.3 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.
- 22.5 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.

### **23 FORCE MAJEURE**

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 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.

### **24 CONFIDENTIALITY**

- 24.1 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:
- 24.1.1 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
- 24.1.2 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.

24.2 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.

24.3 Each Partner:

24.3.1 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

24.3.2 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;

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

## **25 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

25.1 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.

25.2 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.

## **26 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.

## **27 INFORMATION SHARING**

The Partners will comply with the information governance protocol as agreed between the Partners from time to time.

## **28 NOTICES**

28.1 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:

28.1.1 personally delivered, at the time of delivery;

28.1.2 sent by facsimile, at the time of transmission;

28.1.3 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

28.1.4 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.

28.2 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).

28.3 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:

28.3.1 if to the Council, addressed to the Executive Director Adults and Communities:

Tel:  
Email:

and

28.3.2 if to the ICS, addressed to the ICS Director, South East Essex:

Tel:  
Email:

## 29 VARIATION

29.1 No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners subject to approval by the Partnership Board as set out in this Clause.

29.2 Where the Partners agree that there will be:

29.2.1 a new Pooled Fund;

29.2.2 a new Individual Scheme; or

29.2.3 an amendment to a current Individual Scheme,

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

29.3 The following approach shall, unless otherwise agreed, be followed by the Partnership Board:

29.3.1 on receipt of a request from one Partners to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Partnership Board will first undertake an impact assessment and identify those Service Contracts likely to be affected;

29.3.2 the Partnership Board will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Partners holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;

- 29.3.3 wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and
- 29.3.4 should this not be possible and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be shared equally between the Partners<sup>13</sup>.

## **30 CHANGE IN LAW**

- 30.1 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.
- 30.2 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.
- 30.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 22 (Dispute Resolution) shall apply.

## **31 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.

## **32 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.

## **33 ASSIGNMENT AND SUB CONTRACTING**

The Partners shall not subcontract, 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.

## **34 EXCLUSION OF PARTNERSHIP AND AGENCY**

- 34.1 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.
- 34.2 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:
- 34.2.1 act as an agent of the other;
- 34.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
- 34.2.3 bind the other in any way.

### **35 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.

### **36 ENTIRE AGREEMENT**

36.1 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.

36.2 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.

### **37 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.

### **38 GOVERNING LAW AND JURISDICTION**

38.1 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.

38.2 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

Signed for and on behalf of

**SOUTHEND ON SEA CITY COUNCIL**

**Mark Harvey, Executive Director,  
Adults & Communities**

Signed for on behalf of **MID AND SOUTH  
ESSEX INTEGRATED CARE SYSTEM**

**, ICS Director  
Authorised Signatory**

## SCHEDULE 1 – SCHEME SPECIFICATIONS

For Southend on Sea City Council, the following schemes have been approved for the period 2023-24:

Scheme Name	Description
Intermediate Care Beds (Brook Meadows)	30 short term intermediate care beds, therapy/ recovery led model of support
SED (Southend enhanced discharge) service	therapy led personal care/rehabilitation to people discharged from hospital on Pathway 1, for up to 14 days post hospital discharge
Carers contract	Unpaid carers support service providing practical and emotional support
Dementia Support	A community-based dementia support offer to support those living with dementia and their carers to live well and as independently as possible in the community.
Single Point of Access	Provision of a Single Point of Access to adult social care teams.
Hospital Team	Provision of a dedicated team to support the Discharge to Assess Policy and guidance
Active Recovery	Aligned operational teams across adult social care and health co-located in Localities of Southend and geographically aligned with the Primary Care Networks (PCNs) in Southend.
Home Care	Personal care at home to maximise independence at home
Reablement	Reablement complements the work of intermediate care services and aims to provide a short term, time limited service to support people to retain or regain their independence at times of change and transition.
Residential Care	Provision of residential care for those 65 and over

For Southend ICS, the following schemes have been agreed for 2023-24:

Scheme Name	Description
Integrated Community Teams	The provision of community-based health services
Collaborative Care Team	The provision of community-based health services
SPOR (Health Element)	The provision of community-based health services
Tissue Viability	The provision of community-based health services
Leg Ulcer	The provision of community-based health services
Stroke (Community Service)	The provision of community-based health services
Pressure Relieving Equipment	The provision of community-based health services
Continence	The provision of community-based health services
Wheelchair Services	The provision of community-based health services
Rosedale Therapy Input	The provision of community-based health services
Occupational Therapy	The provision of community-based health services
SWIFT/UCRT Original	The provision of community-based health services
Enhanced Heart Failure	The provision of community-based health services
Older People Community Mental Health Teams (inc. Assessment Service)	The provision of community-based health services
Dementia Intensive Support Team	The provision of community-based health services
Older People Day Care (Mental Health)	The provision of community-based health services
Reablement Beds	The provision of community-based health services
Havens Hospice Grant	End of Life Services
Carers	Carers services

## **SCHEDULE 2 – GOVERNANCE**

### **1 Partnership Board [TO BE KNOWN AS THE SOUTHEND BCF MANAGEMENT GROUP]**

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

1.1.1 ICS: Tricia D’Orsi, NHS Alliance Director, Ashley King NHS Alliance Finance Director, Caroline McCarron, Deputy NHS Alliance Director

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

1.1.2 the Council: Mark Harvey (Executive Director, Adults and Communities), Jeremy Budd (Director Commissioning), Joe Chesterton (Executive Director Finance and Resources)

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

1.1.3 other organisations by invitation.

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

3 The Partnership Board shall provide:

3.1.1 Direction:

- Make recommendations to support delivery of the programme (eg: changes to the plans, schemes or budget)
- Provide a solution planning forum for barriers to delivery
- Approval of project and work-stream proposals and initiatives
- Oversee and direct the work of the programme on behalf of SBC and SICS.

3.1.2 Assurance:

- Report on programme activity, including a quarterly report including direct reporting to the Health and Wellbeing Board
- Manage risks, issues and dependencies
- Evaluation of outcomes and associated decisions.

3.1.3 Communication:

- Stakeholder engagement and management including assisting the programme to achieve a high profile within the local area and wider community.

3.1.4 Sustainability:

- Ensure that there is a sustainable approach beyond the life of the programme, including decommissioning of projects and/or transitioning activity to “business as usual” when funding decreases.

### **4 Partnership Board Support**

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

### **5 Meetings**

5.1 The Partnership Board will meet monthly at a time to be agreed.

- 5.1.1 The meeting will be quorate when there are:
- 5.1.2 Two (2) voting members from the ICS: or a deputy of either to be notified to the Council in advance of any meeting; and
- 5.1.3 Two (2) voting members from the Council or a deputy of either to be notified in writing to the ICS in advance of any meeting.
- 5.1.4 Each party to the BCF section 75 (SICS and SBC) shall have 3 voting members. Deputies for voting members may be notified in advance of the meeting. The appointed BCF officer for each party shall not be a voting member.
- 5.2 Decisions of the Partnership Board shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Partnership Board. If no unanimity is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.
- 5.3 Where a Partner is not present and has not given prior written notification of its intended position on a matter to be discussed, then those present may not make or record commitments on behalf of that Partner in any way.
- 5.4 Minutes of all decisions shall be kept and copied to the Authorised Officers within [seven (7)] days of every meeting. Minutes of the BCF Management Group will be a matter of public record and will be shared with the Southend Health and Wellbeing Board.

## **6 Delegated Authority**

- 6.1 The BCF Management Group is authorised within the limit of delegated Authority for its members (which is received through their respective organisation's own standing orders and financial scheme of delegation).

## **7 Information and Reports**

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

## **8 Post-termination**

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

### SCHEDULE 3 – FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS

- 1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.
- 2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.

#### Financial Contributions

- 3 Financial contributions in each financial year shall be paid to the fund in twelve equal instalments receivable on the 5th working day of the month commencing April 2023.

<b>Funding Sources</b>	<b>Income Yr 1</b>	<b>Income Yr 2</b>	<b>Expenditure Yr 1</b>	<b>Expenditure Yr 2</b>
DFG	£1,721,065	£1,721,065	£1,721,065	£1,721,065
Minimum NHS Contribution	£15,977,498	£16,881,824	£15,977,498	£16,881,824
iBCF	£7,797,498	£7,797,498	£7,797,498	£7,797,498
Additional LA Contribution	£368,848	£0	£368,848	£0
Additional ICB Contribution	£0	£0	£0	£0
Local Authority Discharge Funding	£1,093,197	£1,821,922	£1,093,197	£1,821,922
ICB Discharge Funding	£1,198,780	£1,666,320	£1,198,780	£1,666,320
<b>Total</b>	<b>£28,156,886</b>	<b>£29,888,629</b>	<b>£28,156,886</b>	<b>£29,888,629</b>

#### Risk Share

Partners contributions will be limited to the value as identified within the included plans. There will be no risk share arrangements in place.,

#### Overspend

- 4 The Partnership Board shall consider what action to take in respect of any actual or potential Overspends
- 5 The Partnership Board shall act reasonably having taken into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints agree appropriate action in relation to Overspends which may include the following:
  - 5.1 whether there is any action that can be taken in order to contain expenditure;

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

### **Part 1 – LEAD PARTNER OBLIGATIONS**

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

- 1        *The Lead Partner shall notify the other Partners if it receives or serves:*
  - 1.1      *a Change in Control Notice;*
  - 1.2      *a Notice of an Event of Force Majeure;*
  - 1.3      *a Contract Query;*
  - 1.4      *Exception Reports*  
*and provide copies of the same.*
- 2        *The Lead Partner shall provide the other Partners with copies of any and all:*
  - 2.1      *CQUIN Performance Reports;*
  - 2.2      *Monthly Activity Reports;*
  - 2.3      *Review Records; and*
  - 2.4      *Remedial Action Plans;*
  - 2.5      *JI Reports;*
  - 2.6      *Service Quality Performance Report;*
- 3        *The Lead Partner shall consult with the other Partners before attending:*
  - 3.1      *an Activity Management Meeting;*
  - 3.2      *Contract Management Meeting;*
  - 3.3      *Review Meeting;*  
*and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.*
- 4        *The Lead Partner shall not:*
  - 4.1      *permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;*
  - 4.2      *vary any Provider Plans (excluding Remedial Action Plans);*
  - 4.3      *agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;*
  - 4.4      *give any approvals under the Service Contract;*
  - 4.5      *agree to or propose any variation to the Service Contract (including any Schedule or Appendices);*
  - 4.6      *suspend all or part of the Services;*
  - 4.7      *serve any notice to terminate the Service Contract (in whole or in part);*

- 4.8 *serve any notice;*
- 4.9 *agree (or vary) the terms of a Succession Plan;*
- without the prior approval of the other Partners (acting through the [JCB]) such approval not to be unreasonably withheld or delayed.*
- 5 *The Lead Partner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.*
- 6 *The Lead Partner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution*
- 7 *The Lead Partner shall share copies of any reports submitted by the Service Provider to the Lead Partner pursuant to the Service Contract (including audit reports)*

## **Part 2 – OBLIGATIONS OF THE OTHER PARTNER**

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

- 1 *Each Partner shall (at its own cost) provide such cooperation, assistance and support to the Lead Partner (including the provision of data and other information) as is reasonably necessary to enable the Lead Partner to:*
- 1.1 *resolve disputes pursuant to a Service Contract;*
- 1.2 *comply with its obligations pursuant to a Service Contract and this Agreement;*
- 1.3 *ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;*
- 2 *No Partner shall unreasonably withhold or delay consent requested by the Lead Partner.*
- 3 *Each Partner (other than the Lead Partner) shall:*
- 3.1 *comply with the requirements imposed on the Lead Partner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;*
- 3.2 *notify the Lead Partner of any matters that might prevent the Lead Partner from giving any of the warranties set out in a Services Contract or which might cause the Lead Partner to be in breach of warranty.*

**SCHEDULE 5 – PERFORMANCE ARRANGEMENTS**

*NOT USED*

## SCHEDULE 6 – BETTER CARE FUND PLAN

The schedules below detail the planned use of the overall BCF funds for both 2023/24 and 2024/25.

NHS Commissioned Out of Hospital spend from the minimum ICB allocation	2023-24	2024-25
Minimum required spend	£15,977,498	£
Discharge Fund	£1,198,780	£1,166,320

Adult Social Care services spend from the minimum ICB allocations	2023-24	2024-25
Disabled Facilities Grant (DFG)	£1,721,065	£1,721,065
Local Authority Discharge Fund	£1,093,197	£1,821,922
iBCF	£7,797,498	£7,797,498
Local Authority Contribution	£368,848	£0

Scheme Type	Source of Funding	Expenditure 23/24 (£)	Expenditure 24/25 (£)
High Impact Change Model for Managing Transfer of Care	LA BCF	£1,064,740	£1,075,387
Bed based intermediate Care Services (Reablement, rehabilitation, wider short-term services supporting recovery)	LA BCF	£2,009,461	£2,029,556
Home Care Additional Packages	LA BCF	£2,551,111	£2,940,455
Home-based intermediate care services	LA BCF	£785,489	£793,344
Southend Enhanced Discharge Service (SEDs) High Impact Change Model for Managing Transfer of Care	LA BCF	£500,000	£500,000
Active Recovery (Reablement) - High Impact Change Model for Managing Transfer of Care	LA BCF	£250,000	£250,000
Carers Services	LA BCF	£150,000	£150,000
Community Based Schemes	iBCF	£150,000	£150,000
Residential Placements	iBCF	£2,087,000	£2,087,000
Additional Home Care Packages	iBCF	£2,087,000	£2,087,000
Southend Reablement Service	iBCF	£770,012	£770,012
Learning Disability Services	iBCF	£1,750,000	£1,750,000

Range of projects which support the transformation and improvement of adult social care.	IBCF	£853,486	£853,486
Disabled Facilities Grant Assistive Technologies and Equipment	DFG	£1,721,065	£1,721,065
Transformation Projects	Additional LA Contribution	£368,848	£0
Able to Recover Monitoring and responding to system demand and capacity	LA Discharge Funding	£200,000	£200,000
Reablement Early Intervention	LA Discharge Funding	£12,500	£12,500
Provider Incentive Scheme	LA Discharge Funding	£50,000	£50,000
Seasonal Intelligence Provide tools and training to ensure the data monitoring highlights winter pressures	LA Discharge Funding	£2,075	£2,075
Southend Enhanced Discharge Service (SEDs) To support Winter Pressures	LA Discharge Funding	£300,000	£300,000
Southend Care Ltd Enhanced Reablement Capacity	LA Discharge Funding	£100,000	£100,000
Discharge Community Hub	LA Discharge Funding	£40,000	£40,000
Workforce Development	LA Discharge Funding	£366,490	£366,490
Resource to be allocated dependent on requirements in winter e.g., designated setting	LA Discharge Funding	£22,132	£750,857
MSE ICB - Community Services - Other Community provision, to assist flow and prompt discharge	ICB BCF	£2,966,993	£3,134,925
MSE ICB - Community Services - Bed based intermediate Care Services	ICB BCF	£1,502,737	£1,587,792
MSE ICB - Community Services - Urgent Community Response Service	ICB BCF	£821,318	£867,805
MSE ICB - Community Services - Virtual Wards	ICB BCF	£769,186	£812,722
MSE ICB - Southend Community Services - Dementia Support Service	ICB BCF	£1,024,018	£1,081,978
MSE ICB - Southend Community Services - Equipment Service Provision - EPUT	ICB BCF	£568,411	£600,583
MSE ICB - Southend Havens Hospice	ICB BCF	£605,260	£639,517
MSE ICB - Southend Carers - Carers Breaks	ICB BCF	£158,774	£167,760
MSE ICB Discharge spend - Ward based enablement	ICB Discharge Funding	£99,118	£137,776
MSE ICB Discharge spend - Acute Discharge Schemes	ICB Discharge Funding	£1,061,271	£1,475,062
MSE ICB Discharge spend - Transport	ICB Discharge Funding	£12,728	£17,692
MSE ICB Discharge spend - Welfare Support Discharge to Assess pathway 0	ICB Discharge Funding	£25,232	£35,073

**NB: An agreed BCF plan for 2023-25 will be inserted here once the NHS England BCF templates are approved.**

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

*NOT USED*

**SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL**

*NOT USED*