

Dated

2015

SHEFFIELD CITY COUNCIL

and

NHS SHEFFIELD CLINICAL COMMISSIONING GROUP

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

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DRAFT

THIS AGREEMENT is made on

day of

2015

PARTIES

- (1) **SHEFFIELD CITY COUNCIL** of Town Hall, Pinstone Street, Sheffield, S12 2HH (the "**Council**")
- (2) **NHS SHEFFIELD CLINICAL COMMISSIONING GROUP** of 722 Prince of Wales Road, Darnall, Sheffield, S9 4EU (the "**CCG**")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of those ordinarily resident in the city and metropolitan borough of Sheffield.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act to those people registered with its member practices (as defined in its Constitution) and those people who are resident in the city of Sheffield and not registered with any GP practice.
- (C) The National 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. It is a requirement of the National Better Care Fund that the CCG and the Council establish a pooled fund for this purpose. The Partners wish to extend the use of pooled funds to include funding streams from outside of the National Better Care Fund from both the CCG and the Council to establish the Sheffield Better Care Fund.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
 - a) improve the quality and efficiency of the Services;
 - b) meet the National Conditions and the local objectives (as set out in the Sheffield Better Care Fund Plan);
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services; and
 - d) to pursue the aims, and achieve the outcomes, detailed in clause 4 of this Agreement.
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION¹

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.

2006 Act means the National Health Service Act 2006.

2004 Regulations means the Environmental Information Regulations 2004.

Affected Partner means, in the context of Clause 25, 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.

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

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

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

BCF Contribution means that part of any Financial Contribution into any Pooled Fund that is provided as part of the National Better Care Fund.

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

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

Commencement Date means 00:01 hrs on 1 April 2015

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

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

Contract Price means any sum payable to a Provider under a Service Contract as consideration for the provision of Services and which, for the avoidance of doubt:

- a) for Jointly Managed Schemes does not include any Default Liability; and
- b) for Solely Managed Schemes does not include any Default Liability

¹ Definitions should be finalised once main body of Agreement is finalised.

Data Protection Legislation includes

- (a) the Data Protection Act 1998 (1998 Act);
- (b) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (c) the Regulation of Investigatory Powers Act 2000;
- (d) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699);
- (e) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;
- (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426); and
- (g) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable.

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

Executive Management Group means the group responsible for implementation of agreed commissioning strategies, oversight of the Service Contracts and other matters detailed in Schedule 2.

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

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

Force Majeure Event means one or more of the following:

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

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

Functions means the NHS Functions and the Health Related Functions

Governance Arrangements means the mechanisms and bodies put in place by the Partners for the management and control of the joint arrangements that are the subject of this Agreement, as are more particularly described in Clause 20 and Schedule 2;

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

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

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

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

Initial Schemes means those Individual Schemes that are included as part of this Agreement at the Commencement Date

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 Specification².

Interagency Information Governance Protocol means the information governance protocol set out in Schedule 8 as may be amended from time to time by its signatories.

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 Health Related Functions through integrated structures.

Jointly Managed Schemes means those Individual Schemes that are commissioned pursuant to Integrated Commissioning and/or Lead Commissioning Arrangements.

Law means:

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

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

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

²

Further to discussions on 16.03.15 Parties to confirm whether these will be agreed by the Commencement Date or whether there will be a positive obligation to review within 3 months of the Commencement Date.

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.

Management Costs means all such reasonable and proper costs (excluding the Third Party Costs) as are (a) incurred by the Lead Commissioner / joint Commissioner in commissioning and managing the Service on behalf of the Partners; and/or, (b) incurred by the Host Partner in hosting the Pooled Fund as determined by the Executive Management Group pursuant to Clause 12 and, where relevant, set out in the relevant Scheme Specification.

Member means an executive member of the Council.

Month means a calendar month.

National Guidance means any and all guidance in place from time to time published by the NHS Commissioning Board in relation to the National Better Care Fund.

National 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.

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

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

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

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.

Payment for Performance Framework means the framework set out by the Department of Health which determines the Payment for Performance Fund

Payment for Performance Fund means the value of the Payment for Performance element of the National Better Care Fund as calculated in accordance with National Guidance

Payment for Performance Shortfall means the value of the Payment for Performance Fund relating to the shortfall in the Performance Target in the relevant Quarter

Performance Target means the performance target in respect of non-elective admission as set out in the National 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

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

Partnership Flexibilities are defined in Clause 5.1 of this Agreement.

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

Permitted Expenditure has the meaning given in Clause 8.3.

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.

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).

Representatives a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.

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 (and **Service** shall mean any one of these).

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

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

Sheffield Better Care Fund means the joint working arrangements that are established pursuant to this Agreement which is an extension of the national arrangements for the National Better Care Fund and includes the use of funding streams from outside of the National Better Care Fund from both the CCG and the Council, which at the Commencement Date shall be through the commissioning of Individual Schemes under a single Pooled Fund for the value of around £270m.

Sheffield Better Care Fund Plan means the plan attached at Schedule 6 setting out the Partners plan for the use of the Sheffield Better Care Fund.

Sole Commissioning Arrangement means a mechanism by which each Partner commissions a Service on its own behalf on the basis of aligned commissioning arrangements as may be agreed by the Partners from time to time. For the avoidance of doubt, a sole commissioning arrangement does not involve the delegation of any functions pursuant to Section 75 of the 2006 Act.

Solely Managed Scheme means an Individual Scheme that is commissioned pursuant to a Sole Commissioning Arrangement.

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 Executive Management Group.

Underspend means the circumstance where the expenditure from any Pooled Fund or Aligned Fund in any Financial Year is less than the aggregate value of the Financial Contributions made 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 A reference to "writing" or "written" includes fax and e-mail.

- 1.12 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.
- 1.13 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 23.
- 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.
- 3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme Specification.

4 AIMS AND OUTCOMES

- 4.1 [The Partners aim to achieve the following outcomes through the exercise of Partnership Flexibilities:
- For local people and communities:
- 4.1.1 That the effects of the Partnership Flexibilities will have reached the whole of the local population who will, consequently, find it simpler to navigate the care system and will experience fewer delays.
 - 4.1.2 Health and social care services are focussed on a person's needs - organisational boundaries do not get in the way.
 - 4.1.3 To provide more equitable, accessible universal services that people can access earlier.
 - 4.1.4 To achieve improved quality of life for those in active care.
 - 4.1.5 To work more closely with other organisations and to commission for outcomes, based on a customer journey and life-course for children, young people and adults.
 - 4.1.6 To encourage, support and develop more locally-based services.

- 4.1.7 To support and develop people's self-care and health condition management skills, knowledge and abilities.
- 4.1.8 To increase the number of people who are able to stay in their own homes, reducing admissions to long term care.
- 4.1.9 Have increased independence and resilience in our communities.
- 4.1.10 Have reduced the number of health crises through care planning and effective and targeted preventative interventions.
- 4.1.11 Have more equitable service provision in the city, contributing to reducing health inequalities
- 4.1.12 Children, young people and adults in Sheffield get the right care at the right time and in the right place.
- 4.1.13 People and their communities in Sheffield support each other to improve and maintain their wellbeing and independence.
- 4.1.14 Organisations in Sheffield work together to help people and their communities to build and strengthen the support they provide to each other.
- 4.1.15 Expert help is available to help people to take control of their own care so that it is genuinely person-centred, and complements and builds on the assets they have.

For each of our organisations:

- 4.1.16 To reduce our spend on high cost services by increasing our spending on preventative health and wellbeing measures.
- 4.1.17 To accrue benefits to our respective organisations from sharing staff, budgets, risk and information in areas where we can work together.
- 4.1.18 Develop our approach to co-production and building assets with Sheffield people and communities, a priority identified in our Joint Strategic Needs Assessment (JSNA).
- 4.1.19 Have configured our organisations appropriately to implement the requirements of the Children and Families Act 2014 and the Care Act 2014.
- 4.1.20 We get the best services and support we can for Sheffield from our combined resources, with both organisations complying with their financial duties.

5 PARTNERSHIP FLEXIBILITIES

5.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:

- 5.1.1 Lead Commissioning Arrangements;
- 5.1.2 Integrated Commissioning;
- 5.1.3 Sole Commissioning Arrangements;
- 5.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Partnership Flexibilities")

- 5.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 5.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
- 5.4 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.

6 FUNCTIONS

- 6.1 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.
- 6.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners.
- 6.3 Where the Partners propose to 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, Part 1 shall be completed. The initial Scheme Specification is set out in Schedule 1 Part 2
- 6.4 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.
- 6.5 The introduction of any Individual Scheme to the Agreement is subject to the Governance Arrangements.

7 COMMISSIONING ARRANGEMENTS

General

- 7.1 The Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 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.
- 7.3 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification
- 7.4 Where there are Integrated Commissioning or Lead Commissioner arrangements in respect of an Individual Scheme then prior to any new Service Contracts being entered into the Partners shall agree in writing:
- 7.4.1 how the liability under each Service Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
- 7.4.2 whether the Service Contract should give rights to third parties (and in particular if a Partner is not a party to the Service Contract to that Partner).
- 7.5 Through the Governance Arrangements, the Partner shall ensure that Executive Management Group is regularly informed of the effectiveness of the arrangements including the Sheffield Better Care Fund and any Overspend or Underspend in a Pooled Fund or Aligned Fund.

- 7.6 The Executive Management Group will report back to the Health and Wellbeing Board where required by its Terms of Reference.

Appointment of a Lead Commissioner

- 7.7 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
- 7.7.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 7.7.2 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.
 - 7.7.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 7.7.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 7.7.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 7.7.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 7.7.7 undertake performance management and contract monitoring of all Service Contracts;
 - 7.7.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
 - 7.7.9 report to the Executive Management Group and/or the Partners in accordance with the relevant Scheme Specification including (without limitation) regular information about the effectiveness of the arrangements including the Sheffield Better Care Fund and any Overspend or Underspend in a Pooled Fund or Aligned Fund.

8 ESTABLISHMENT OF A POOLED FUND

- 8.1 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 set out in:
- 8.1.1 the Scheme Specifications;
 - 8.1.2 for the Initial Schemes, Part 1 to Schedule 3.
- 8.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and the Scheme Specifications.
- 8.3 Subject to Clause 8.4, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 8.3.1 the Contract Price;
 - 8.3.2 where the Council is to be the Provider, the Permitted Budget;
 - 8.3.3 Third Party Costs as set out in the relevant Scheme Specification;

8.3.4 Approved Expenditure as set out in the relevant Scheme Specification,
("Permitted Expenditure")

- 8.4 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] [the Executive Management Group] in accordance with the procedure set out in Clause 31.2 (Variation).
- 8.5 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 7.4.
- 8.6 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:
- 8.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 8.6.2 providing the financial administrative systems for the Pooled Fund; and
 - 8.6.3 appointing the Pooled Fund Manager;
 - 8.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

9 POOLED FUND MANAGEMENT

- 9.1 When introducing a new Pooled Fund, the Partners shall agree:
- 9.1.1 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;
 - 9.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 9.2 The Pooled Fund Manager in respect of each Individual Service where there is a Pooled Fund shall have the following duties and responsibilities:
- 9.2.1 the day to day operation and management of the Pooled Fund;
 - 9.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 9.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 9.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 9.2.5 reporting to the Executive Management Group as required by the Executive Management Group and the relevant Scheme Specification;
 - 9.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 9.2.7 preparing and submitting to the Executive Management Group Quarterly reports (or more frequent reports if required by the Executive Management 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 Executive Management Group 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;

9.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it to undertake its functions; and

9.2.9 any other duties and responsibilities agreed by the Executive Management Group.

9.3 In carrying out their responsibilities as provided under Clause 9.2, the Pooled Fund Manager shall have regard to the recommendations of the Executive Management Group and shall be accountable to the Partners.

9.4 The Executive Management Group may agree to the wiring of funds between Pooled Funds.

10 ALIGNED FUNDS

10.1 Any Financial Contributions agreed to be held within an Aligned Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Scheme Specification. For the avoidance of doubt, an Aligned Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.

10.2 When introducing an Aligned Fund in respect of an Individual Scheme, the Partners shall agree:

10.2.1 which Partner if any shall host the Aligned Fund.

10.2.2 how and when Financial Contributions shall be made to the Aligned Fund.

10.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Aligned Fund, meeting all required accounting and auditing obligations.

10.4 Both Partners shall ensure that Services commissioned using an Aligned Fund are commissioned solely in accordance with the relevant Scheme Specification.

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

10.5.1 the NHS Functions funded from a Aligned Fund are carried out within the CCG Financial Contribution to the Aligned Fund for the relevant Service in each Financial Year; and

10.5.2 the Health Related Functions funded from a Aligned Fund are carried out within the Council's Financial Contribution to the Aligned Fund for the relevant Service in each Financial Year.

11 FINANCIAL CONTRIBUTIONS

11.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Aligned Fund for the first Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification.³

11.2 The Financial Contribution of the CCG and the Council to any Pooled Fund or Aligned Fund in the second and each successive Financial Year of the Individual Scheme shall be determined by the Partners in the final Quarter of the preceding Financial Year and in the event that both Partners cannot reach agreement on or before the start of the relevant Financial Year, either Partner may serve notice on the other Partner to terminate the relevant Individual Scheme at the end of the

³ Parties need to deal with the fact that some services will not have pooled funds. In respect of this, parties should decide how the invoicing/payment arrangements will work and whether this will vary from service to service.

current Financial Year provided that the Partners ensure that the National 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.

- 11.3 Financial Contributions will be paid as set out in Schedule 3 and where relevant, each Scheme Specification.
- 11.4 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 Executive Management Group minutes and recorded in the budget statement as a separate item.

12 NON FINANCIAL CONTRIBUTIONS

- 12.1 The Executive Management Group shall determine the non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support, the Management Costs 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).

13 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 13.1 The Partners have agreed risk share arrangements as set out in Schedule 3, which provide for financial risks arising within the commissioning of services from the pooled funds and the financial risk to the pool arising from the payment for performance element of the Sheffield Better Care Fund.

Overspends in Pooled Fund

- 13.2 Subject to Clause 13.3, 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.
- 13.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Executive Management Group in accordance with Clause 13.4.
- 13.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Executive Management Group is informed as soon as reasonably possible and the provisions of Schedule 3 and where appropriate, the relevant Scheme Specification shall apply.

Overspends in Aligned Funds

- 13.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an overspend in relation to a Partner's Financial Contribution to an Aligned Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Executive Management Group.
- 13.6 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Aligned Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the Executive Management Group.
- 13.7 The Partners shall act in accordance with the principles set out in Schedule 3 to manage any Overspends in an Aligned Fund.

Underspend

- 13.8 In the event that expenditure from any Pooled Fund or Aligned Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree 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 accordance with the principles set out in Schedule 3.

14 CAPITAL EXPENDITURE

- 14.1 Except as provided in Clause 14.2, 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.
- 14.2 The Partners agree that capital expenditure may be included in Pooled Funds where this is in accordance with National Better Care Fund Requirements and set out in the relevant Scheme Specification.

15 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.

16 AUDIT AND RIGHT OF ACCESS

- 16.1 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.
- 16.2 The Partners intend to agree detailed arrangements for a scheme of internal audit, in accordance with their undertaking to promote a culture of probity and sound financial discipline and control, and shall record such arrangements in a memorandum of understanding or protocol which shall be incorporated into this Agreement in accordance with Clause 31.
- 16.3 Both Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance
- 16.4 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.

17 LIABILITIES AND INSURANCE AND INDEMNITY⁴

- 17.1 Subject to Clause 17.2, and 17.3, 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.

⁴ We note that this is subject to the following comment in previous versions of the Agreement: "Legal Services to review with Insurance and Risk for SCC. CCG to review as well." Position to be confirmed

- 17.2 Clause 17.1 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 Executive Management Group.
- 17.3 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:
- 17.3.1 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;
 - 17.3.2 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);
 - 17.3.3 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.
- 17.4 For those Solely Managed Schemes, 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 those arrangements.
- 17.5 For those Jointly Managed Schemes, the Partners shall ensure that appropriate insurances are in place in respect of potential liabilities arising from those arrangements in accordance with the detail set out in relevant Scheme Specification.
- 17.6 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.

18 STANDARDS OF CONDUCT AND SERVICE

- 18.1 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).
- 18.2 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.
- 18.3 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.
- 18.4 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.

19 CONFLICTS OF INTEREST⁵

⁵ The Partners could include a procedure in this Agreement for the resolution of conflicts of interest.

- 19.1 Subject to Clause 19.2, the Partners shall each comply with their own policy for identifying and managing conflicts of interest, which shall at all times comply with the Law, National Guidance and the National Better Care Fund Requirements.
- 19.2 During the term of the Agreement, the Partners may develop and operate a joint policy for managing conflicts of interest relating to matters specific to, or arising from, their joint arrangements under this Agreement, which shall be incorporated as a Schedule to this Agreement pursuant to Clause 31 (Variation).

20 GOVERNANCE (GENERAL)⁶

- 20.1 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. However, for the avoidance of any doubt, the Health and Well Being Board does not have authority beyond any that might be prescribed in Law to make any decisions or approve any matters, on behalf of either or both Partners, in relation to the joint arrangements set out in this Agreement.
- 20.2 The Partners have established an Executive Management Group to undertake the governance responsibilities set out in the Terms of Reference and Schedule 2.
- 20.1 The Executive Management Group is based on a joint working group structure. Each member of the Executive Management Group 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 20 and Schedule 2.
- 20.2 The terms of reference of the Executive Management Group shall be agreed between the Partners in accordance with the provisions set out in Part 2 to Schedule 2.
- 20.3 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.
- 20.4 The Executive Management Group shall be responsible for the overall approval of the Individual Services, ensuring compliance with the Sheffield Better Care Fund Plan and the strategic direction of the Sheffield Better Care Fund.
- 20.5 Each Scheme Specification shall confirm any specific governance arrangements in respect of that Individual Scheme and how that Individual Scheme is reported to the Executive Management Group and the Health and Wellbeing Board as appropriate.

21 REVIEW⁷

- 21.1 The [Scheme Commissioning Lead] in respect of each Scheme Specification shall provide a monitoring report to the Executive Management Group on a Quarterly basis and the report shall set out:
- 21.1.1 performance against the indicators set out in the Scheme Specification;
- 21.1.2 *[INSERT REFERENCE TO OTHER CONTENT]*
- 21.2 Save where the Executive Management Group agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of

⁶ We note that some amendments have been made to the template agreement in both Clause 20 and Schedule 2. Please can we confirm the rationale for the approach that has been taken.

⁷ We have provided a suggested approach for the Partners to consider. We suggest that the Partners consider the practical arrangements for the review and any overarching performance management of the operation of these arrangements.

this Agreement, any Pooled Fund and Aligned Fund and the provision of the Services within 3 Months of the end of each Financial Year.

- 21.3 Subject to any variations to this process required by the Executive Management Group, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the Governance Arrangements.
- 21.4 The Partners shall within [20] Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Executive Management Group.
- 21.5 In the event that the Partners fail to meet the requirements of the Sheffield Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.⁸

22 COMPLAINTS

- 22.1 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.
- 22.2 The Executive Management Group may from to time to time review the arrangements for managing complaints and consider whether the Partners shall develop and operate a joint complaints system. The application of any joint complaints system will be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.

23 TERMINATION & DEFAULT

- 23.1 This Agreement may be terminated by any Partner giving not less than 12 Months' notice in writing to terminate this Agreement provided that such termination is possible in accordance with the National Guidance and Law and shall not take effect prior to the termination or expiry of all Individual Schemes unless agreed by the Partners and post termination arrangements have been agreed by the Executive Management Group.
- 23.2 Subject to Clause 11.2 and 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:
- 23.2.1 such termination is possible in accordance with the National Guidance and Law; and
- 23.2.2 that the Partners ensure that the National 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.
- 23.3 If a 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 24.
- 23.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clauses [INSERT]⁹

⁸ What level will any discussions be here?

⁹ This provision will be populated in the final draft of the Agreement.

- 23.5 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.
- 23.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 23.6.1 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;
- 23.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement,
- (a) [he provisions of this clause 23.7 shall apply in determining how the Service Contract shall be dealt with unless otherwise set out in the relevant Scheme Specification; and
- (b) 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;
- 23.6.3 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.
- 23.6.4 where a Service Contract is held by a [one Partner] [Lead Commissioner] relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows and it 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.
- 23.6.5 the Executive Management Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any Service Contracts and commitments relating to this Agreement; and
- 23.6.6 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.
- 23.7 Each Individual Scheme will continue for the duration of the Agreement unless separately terminated by agreement of the Executive Management Group or it is otherwise provided in the Individual Scheme. Where this is the case, both Partners must sign confirmation agreeing to the termination in writing and the terms of termination including notice period, how any Service Contracts will be dealt with and how any Underspend or Overspend in the Pooled Fund(s) shall be managed.
- 23.8 Any termination or variation of a Service Contract(s) associated with an Individual Scheme must be agreed in advance by the Executive Management Group and the impacts of such termination agreed.
- 23.9 In the event of termination in relation to an Individual Scheme, unless otherwise agreed, the provisions of Clause 23.4 and 23.6 shall apply mutatis mutandis in relation to the Individual Scheme and Service Contracts entered under the relevant Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

24 DISPUTE RESOLUTION¹⁰

- 24.1 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.
- 24.2 If a dispute has not been otherwise resolved, within fourteen (14) days of the dispute being served pursuant to Clause 24.1 the Chief Executive of the Council and the Accountable Officer of the CCG shall meet in good faith as soon as possible and in any event within twenty eight (28) days of notice of the dispute being served pursuant to Clause 24.1, at a meeting convened for the purpose of resolving the dispute.
- 24.3 If the dispute remains after the meeting detailed in Clause 24.2 has taken place, the Council's Leader 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 with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 24.4 If the dispute remains after the meeting detailed in Clause 24.3 has taken place, then the Partners may 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, subject to confirmation of agreement to mediation by the other Partner, 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.
- 24.5 Nothing in the procedure set out in this Clause 24 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.

25 FORCE MAJEURE¹¹

- 25.1 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.
- 25.2 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.
- 25.3 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.
- 25.4 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

¹⁰ A sample dispute resolution procedure has been included. Consider for example whether a referral of the dispute will be made to the Board and it should. Would arbitration proceedings be a preferred method of resolution?

¹¹ Consider whether the suggested procedure (including the definition of Force Majeure Event and timescales) is acceptable.

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.

26 CONFIDENTIALITY¹²

26.1 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:

26.1.1 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

26.1.2 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.

26.2 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.

26.3 Each Partner:

26.3.1 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

26.3.2 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;

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

27 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

27.1 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.

27.2 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.

28 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.

29 INFORMATION SHARING

¹² Confidential information and the sharing of information will need to be considered since the partners have different rules that apply.

DATA PROTECTION AND INFORMATION SHARING

- 29.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 29.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working. The Partners shall adhere to the Interagency Information Sharing Protocol at Schedule 8, and any specific information-sharing provisions set out in the relevant Scheme Specification, when sharing information under this Agreement.

HEALTH AND SOCIAL CARE RECORDS

- 29.3 The existing record holding organisation shall continue to hold, and be responsible for maintaining and the safekeeping of the Service User care records/files in accordance with Data Protection Legislation¹³.
- 29.4 The existing record holding organisation shall be responsible for facilitating Service Users in accessing their Personal Data under the 1998 Act.
- 29.5 Further detailed rules governing the sharing of virtual electronic records may be included in each Scheme Specification.

30 NOTICES

- 30.1 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:
- 30.1.1 personally delivered, at the time of delivery;
 - 30.1.2 sent by facsimile, at the time of transmission;
 - 30.1.3 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
 - 30.1.4 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.
- 30.2 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).
- 30.3 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:
- 30.3.1 if to the Council, addressed to the [];

Tel: []

¹³ Would it be helpful for the other Partner and any Service Provider to be granted reasonable access to the existing records?

Fax: []
E.Mail: []

and

30.3.2 if to the CCG, addressed to [];

Tel: []
Fax: []
E.Mail: []

31 VARIATION¹⁴

31.1 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.

31.2 Where the Partners agree that there will be:

31.2.1 a new Scheme Specification; or

31.2.2 an amendment to a current Scheme Specification (including a change in the level of Financial Contributions for a Financial Year over those in the previous Financial Year) ,

the Executive Management Group shall agree the new or amended Scheme Specification and this must be signed by both Partners.

31.3 A request to vary an Individual Scheme (which may include a change in the level of Financial Contribution/s) or add a new Individual Scheme may be made by either Partner but will require agreement from both Partners through the Council's Cabinet and the CCG's Governing Body. The notice period for any variation will be unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated contract/s, whichever is the shortest.¹⁵

31.4 In recognition that any variation to an Individual Scheme Specification could potentially have a negative impact on those Services being commissioned through the Agreement and/or disadvantage the Partner who is holding the relevant Service Contract(s), the following approach shall unless otherwise agreed be followed by the Executive Management Group:

31.4.1 on receipt of a request from one Partner to vary the Agreement or an Individual Scheme, the Executive Management Group will first undertake an impact assessment and identify those Service Contracts likely to be affected;

31.4.2 the Executive Management Group 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 Partner holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;

31.4.3 wherever possible agreement will be reached to reduce the level of funding in the Service Contract/s in line with any reduction in budget.

32 CHANGE IN LAW

¹⁴ The Partners may find it helpful to set out a procedure for agreeing to add a new scheme to the framework arrangement.

¹⁵ Please can we discuss whether you would like to include arrangements for introducing a new Individual Scheme.

- 32.1 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.
- 32.2 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.
- 32.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 24 (Dispute Resolution) shall apply.

33 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.

34 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.

35 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.

36 EXCLUSION OF PARTNERSHIP AND AGENCY

- 36.1 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.
- 36.2 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:
- 36.2.1 act as an agent of the other;
 - 36.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 36.2.3 bind the other in any way.

37 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.

38 ENTIRE AGREEMENT

- 38.1 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.

- 38.2 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.

39 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.

40 GOVERNING LAW AND JURISDICTION

- 40.1 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.
- 40.2 Subject to Clause 24 (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 as a deed by the Partners and is delivered on the date of this Agreement¹⁶

Executed as a deed by The Sheffield City Council
whose common seal was hereunto affixed
in the presence of:

Signature

Name of authorised signatory (print)

Executed as a deed by NHS Sheffield Clinical
Commissioning Group whose common seal was
hereunto affixed in the presence of:

Signature

Name of authorised signatory (print)

Signature

Name of authorised signatory (print)

¹⁶ _____
Partners to confirm execution blocks

SCHEDULE 1 – SCHEME SPECIFICATION

Part 1 – Template Services Schedule

TEMPLATE SERVICE SCHEDULE

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

1 OVERVIEW OF INDIVIDUAL SERVICE

Insert details including:

- (a) *Name of the Individual Scheme*
- (b) *Relevant context and background information*
- (c) *Whether there are Pooled Funds:*

The Host Partner for Pooled Fund X is [] and the Pooled Fund Manager, being an officer of the Host Partner is []

2 AIMS AND OUTCOMES

Insert agreed aims of the Individual Scheme

3 THE ARRANGEMENTS

Set out which of the following applies in relation to the Individual Scheme:

- (1) *Lead Commissioning;*
- (2) *Integrated Commissioning;*
- (3) *Joint (Aligned) Commissioning;*
- (4) *the establishment of one or more Pooled Funds and/or Aligned Funds as may be required.*

4 FUNCTIONS

The [Council] OR [CCG] shall exercise its [Health Related Functions] OR [NHS Functions] and where relevant the [NHS Functions of the CCG] OR [Health Related Functions of Council] to the extent that they relate to the commissioning of each of the services set out below.

OR

Set out the Council's Functions and the CCG's Functions which are the subject of the Individual Scheme including where appropriate the delegation of such functions for the commissioning of the relevant service.

Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)

5 SERVICES

*What Services are going to be provided within this Scheme. Are there contracts already in place? Are there any plans or agreed actions to change the Services? Who are the beneficiaries of the Services?*¹⁷

¹⁷ This may be limited by service line –i.e. individuals with a diagnosis of dementia. There is also a significant issue around individuals who are the responsibility of the local authority but not the CCG and Vice versa See note [] above

6 COMMISSIONING, CONTRACTING, ACCESS

Commissioning Arrangements

Set out what arrangements will be in place in relation to Lead Commissioning/Joint (Aligned) commissioning. How will these arrangements work?

Contracting Arrangements

Insert the following information about the Individual Scheme:

(a) relevant contracts

(b) arrangements for contracting. Will terms be agreed by both partners or will the Lead Commissioner have authority to agree terms

what contract management arrangements have been agreed?

What happens if the Agreement terminates? Can the partner terminate the Contract in full/part?

Can the Contract be assigned in full/part to the other Partner?

Access

Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible.

7 FINANCIAL CONTRIBUTIONS

Financial Year 201.../201

	CCG contribution	Council Contribution
Aligned Fund A		
Aligned Fund B		
Aligned Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial Year 201.../201

	CCG contribution	Council Contribution
Aligned Fund A		
Aligned Fund B		
Aligned Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial resources in subsequent years to be determined in accordance with the Agreement

8 FINANCIAL GOVERNANCE ARRANGEMENTS

The financial governance arrangements shall be as set out in Clauses 11, 12, 13 and 14 and Schedule 3 to the Agreement, unless agreed otherwise between the Partners and set out below. .

Consider the following specific arrangements for this Individual Scheme:

(1) *Management of the Pooled Fund*

*Are any amendments required to the Agreement in relation to the management of Pooled Fund
Have the levels of contributions been agreed?
How will changes to the levels of contributions be implemented?
Have eligibility criteria been established?
What are the rules about access to the pooled budget?
Does the pooled fund manager require training?
Have the pooled fund managers delegated powers been determined?
Is there a protocol for disputes?*

(2) *Audit Arrangements*

*What Audit arrangements are needed?
Has an internal auditor been appointed?
Who will liaise with/manage the auditors?
Whose external audit regime will apply?*

(3) *Financial Management*

*Which financial systems will be used?
What monitoring arrangements are in place?
Who will produce monitoring reports?
Has the scale of contributions to the pool been agreed?
What is the frequency of monitoring reports?
What are the rules for managing overspends?
Do budget managers have delegated powers to overspend?
Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?
How will overspends and underspends be treated at year end?
Will there be a facility to carry forward funds?
How will pay and non pay inflation be financed?
Will a contingency reserve be maintained, and if so by whom?
How will efficiency savings be managed?
How will revenue and capital investment be managed?
Who is responsible for means testing?
Who will own capital assets?
How will capital investments be financed?
What management costs can legitimately be charged to pool?
What re the arrangement for overheads?
What will happen to the existing capital programme?
What will happen on transfer where if resources exceed current liability (i.e. commitments exceed budget) immediate overspend secure?
Has the calculation methodology for recharges been defined?
What closure of accounts arrangement need to be applied?]¹⁸*

9 VAT

The position relating to VAT shall be as set out in Clause 15 of the Agreement unless agreed otherwise between the Parties and as set out below:

Consider the following specific arrangements for this Individual Scheme:

Set out details of the treatment of VAT in respect of the Individual Service consider the following:

¹⁸ We note that some of the information overlaps with the information that is included in the main body of Agreement, however, we consider it is appropriate that this is considered for each Scheme in order to determine whether the overarching arrangements should apply.

- Which partner's VAT regime will apply?
- Is one partner acting as 'agent' for another?
- Have partners confirmed the format of documentation, reporting and accounting to be used?

10 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangement for this Individual Scheme shall be as set out in Clause 20 and Schedule 2 to this Agreement unless agreed otherwise between the Partners and as set out below:

Consider the following specific arrangements for this Individual Scheme: Will there be a relevant Committee/Board/Group that reviews this Individual Scheme?

Who does that group report to?

Who will report to that Group?

Pending arrangements agreed in the Partnership Agreement, including the role of the Health & Wellbeing Board, Partners to confirm any bespoke management arrangements for the Individual Scheme

11 NON FINANCIAL RESOURCES

The non financial resources that each Partner shall contribute to this Individual Scheme shall be determined in accordance with Clause 12 of the Agreement unless otherwise agreed by the Partners and set out below.

Council contribution

	Details	Charging arrangements ¹⁹	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

CCG Contribution

	Details	Charging arrangements ²⁰	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

12 STAFF

Consider:

- *Who will employ the staff in the partnership?*

¹⁹ Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

²⁰ Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

- Is a TUPE transfer secondment required?
- How will staff increments be managed?
- Have pension arrangements been considered?

Council staff to be made available to the arrangements

Please make it clear if these are staff that are transferring under TUPE to the CCG.

If the staff are being seconded to the CCG this should be made clear

CCG staff to be made available to the arrangements

Please make it clear if these are staff that are transferring under TUPE to the Council.

If the staff are being seconded to the Council this should be made clear.

13 ASSURANCE AND MONITORING

Set out the assurance framework in relation to the Individual Scheme. What are the arrangements for the management of performance? Will this be through the agreed performance measures in relation to the Individual Scheme.

In relation to the Sheffield Better Care Fund you will need to include the relevant performance outcomes. Consider the following:

- What is the overarching assurance framework in relation to the Individual Scheme?
- Has a risk management strategy been drawn up?
- Have performance measures been set up?
- Who will monitor performance?
- Have the form and frequency of monitoring information been agreed?
- Who will provide the monitoring information? Who will receive it?

14 LEAD OFFICERS

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

15 INTERNAL APPROVALS

- Consider the levels of authority from the Council's Constitution and the CCG's standing orders, scheme of delegation and standing financial instructions in relation to the Individual Scheme;
- Consider the scope of authority of the Pool Manager and the Lead Officers
- Has an agreement been approved by cabinet bodies and signed?

16 RISK AND BENEFIT SHARE ARRANGEMENTS

The risk and benefit sharing arrangements for this Individual Scheme shall be as set out in Clause 13 and Schedule 3 to this Agreement unless agreed otherwise between the Partners and set out below.

Consider the following specific arrangements for this Individual Scheme:

Has a risk management strategy been drawn up?

Set out arrangements, if any, for the sharing of risk and benefit in relation to the Individual Scheme.

17 REGULATORY REQUIREMENTS

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

18 INFORMATION SHARING AND COMMUNICATION

The information sharing and communication arrangements shall be as set out in Clause 29 of the Agreement, unless agreed otherwise between the Partners and set out below:

Consider the following specific arrangements for this Individual Scheme:

*What are the information/data sharing arrangements?
How will charges be managed (which should be referred to in Part 2 above)
What data systems will be used?*

*Consultation – staff, people supported by the Partners, unions, providers, public, other agency
Printed stationary*

19 DURATION AND EXIT STRATEGY

*What are the arrangements for the variation or termination of the Individual Scheme.
Can part/all of the Individual Scheme be terminated on notice by a party? Can part/all of the Individual Scheme be terminated as a result of breach by either Partner?
What is the duration of these arrangements?*

Set out what arrangements will apply upon termination of the Individual Service, including without limitation the following matters addressed in the main body of the Agreement

- (1) maintaining continuity of Services;*
- (2) allocation and/or disposal of any equipment relating to the Individual Scheme;*
- (3) responsibility for debts and on-going contracts;*
- (4) responsibility for the continuance of contract arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the contract arrangements);*
- (5) where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners.*

Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement.

20 OTHER PROVISIONS

Consider, for example:

- *Any variations to the provisions of the Agreement*
- *Bespoke arrangements for the treatment of records*
- *Safeguarding arrangements*

PART 2 – AGREED SCHEME SPECIFICATIONS

DRAFT

SCHEDULE 2 – GOVERNANCE

Part 1

Introduction

- 1 Each Partner retains responsibility for the statutory functions that it has delegated to the other Partner in order to facilitate the exercise of the Partnership Flexibilities. Each Partner is also responsible for ensuring that any decisions made in connection with the exercise of those delegated functions (and in connection with the Partnership Flexibilities generally) are made lawfully and in accordance with its own constitutional document, standing orders, standing financial instructions and schemes of delegation.
- 2 Accordingly, this Schedule 2 sets out the Partners' governance arrangements for the Partnership Flexibilities.
- 3 The Partners acknowledge that the governance arrangements in this Schedule are not intended to replace the decision making bodies of either Partner and arrangements will need to allow for appropriate decision making within each Partner organisation.
- 4 The governance arrangements set out in this schedule may be amended from time to time by the prior agreement in writing of each Partner in accordance with Clause 30 to this Agreement.

Part 2

Terms of Reference of the Executive Management Group

- 1 The draft terms of reference for the Executive Management Group are attached below ("Draft Terms of Reference"):



BCF Draft Terms of
Reference - c.DOC

- 2 Within 3 (three) Months of the Commencement Date, the Executive Management Group shall review the Draft Terms of Reference and subject to Paragraph 4 below, agree any amendments to this document, and the amended version shall be the Terms of References for the Executive Management Group.
- 3 Subject to Paragraph 4 below, the Executive Management Group may on behalf of the Partners agree amendments to the Terms of Reference in writing from to time.
- 4 The Terms of Reference must as a minimum address the following issues:
 - a. Purpose of the Executive Management Group;
 - b. Responsibilities of the Executive Management Group;
 - c. Membership;
 - d. Meeting arrangements;
 - e. Quorum;
 - f. Accountability; and
 - g. Review arrangements.

Part 3

The Executive Management Group

- 1 Structure, Delegation and Membership
 - 1.1 The Executive Management Group is based on a joint working group structure. Each member of the Executive Management Group shall be an officer or Member of one of the Partners and will have appointed by the relevant Partner to carry out its role and responsibilities as set out in this schedule.
 - 1.2 The members of the Executive Management Group detailed in paragraph 1.4 are authorised to make decisions in relation to the matters set out in paragraph 2 below, on behalf of their respective organisations, only to the extent that each decision proposed to be taken is within the limits of delegated authority received from the relevant member's organisation (in accordance with its own standing orders/constitutional document and scheme of delegation).
 - 1.3 Where a matter requiring a decision is determined not to be within scope of an Executive Management Group member's delegated authority, the member will ensure that the matter is considered -- and a decision is taken -- by the member's organisation in accordance with that organisation's standing orders/constitutional document and scheme of delegation. If there is any doubt about the correct forum, body, individual or procedure for consideration of a matter and/or making a decision, the Executive Management Group shall take appropriate professional advice in accordance with paragraph 4.2 below.
 - 1.4 The membership of the Executive Management Group shall be set out in the Terms of Reference:
- 2 Information and Reports
 - 2.1 Each Pooled Fund Manager shall supply to the Executive Management Group on a Quarterly basis the financial and activity information as required under the Agreement.
- 3 Post-termination
 - 3.1 The Executive Management Group 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 – RISK SHARE, OVERSPENDS AND UNDERSPENDS²¹

Part 1 Financial Arrangements for the Initial Schemes

- 1 The Partners have agreed to establish the Sheffield Better Care Fund, which at the Commencement Date shall be financed through a single Pooled Fund that includes the total Financial Contributions of the Council and the CCG for the Initial Schemes and will be governed by the terms of the Agreement.
- 2 The Financial Contribution of the CCG and the Council to the Pooled Fund for the first Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification and the management of Non-Financial Contributions shall be as set out in Clause 12 to the Agreement.
- 3 As part of the single Pooled Fund, subject to Clause 11.2 of the Agreement, at the start of each Financial Year²² the Partners will agree the Financial Contributions of each Partner to the Individual Schemes and except where otherwise set out in the Scheme Specifications, the Partners shall make their Financial Contributions into the Pooled Fund at the beginning of each Financial Year. The Council shall provide an invoice to the CCG at the start of each Financial Year confirming the Financial Contributions due from the CCG²³.

["Legally the CCG is not permitted to include in the formal S75 arrangements the spend on adult urgent hospital surgical admissions but it makes no sense given what we are trying to achieve especially via Active Support & Recovery scheme not to include within risk sharing arrangements. Need to check with legal team whether this spend can count as a "Non- Pooled Fund" or whether it's something else.]²⁴

- 4 Management of the Pooled Fund
 - 4.1 The Council shall be the Host Partner for the Pooled Fund for the Initial Schemes and the provisions of Clauses 8 and 9 of the Agreement and where relevant the Scheme Specification shall apply to the management of the Pooled Fund.

Please consider any bespoke provisions relating to the managing this Pooled Fund in addition to the application of the provision in Clauses 8 and 9 of the Agreement and where relevant the Scheme Specification. As noted above, the Scheme Specifications may cross refer to this part of Schedule 3.

²¹ The Partners will need to carefully consider how to deal with Overspends and whether this will be an Agreement wide arrangement or different for each Individual Scheme.

²² Further to discussions on 16 March, we have cross referred to Clause 11.2 in relation to Financial Contributions for future years.

We note that the CCG's paper refers to these being agreed by the start of the Financial Year, would it be helpful to agree these at the end of the previous Financial Year or will the previous year's contributions continue to apply until a decision is reached? Will the EMG be involved in the decision making about Financial Contributions or will it be referred back to the Partners as the paper suggests. We suggest that a process for agreeing the Financial Contributions is confirmed either in this Schedule 3 or if the arrangements will apply to schemes other than the Initial Schemes in the main body of the Agreement.

²³ Please confirm whether this suggested provision reflects the agreed practical arrangements.

²⁴ We note that the above is a comment taken from a previous iteration of the Agreement, further to paragraph (c) in the Financial Risk Share Arrangements document, has the CCG taken advice on this issue? We suggest that it might be helpful to clarify the arrangements set out below refer to the Pooled Fund arrangements and the Aligned Fund arrangement for the urgent care Scheme Specification.

Part 2 Payment for Performance Fund

- 1 The Partners have agreed that payment from the Payment for Performance Fund will be paid into Individual Schemes in accordance with the relevant Scheme Specifications.
- 2 The CCG shall pay into the Pooled Fund at the each Financial Year, an amount equivalent to the Payment for Performance Fund.
- 2.1 Where there is a Payment for Performance Shortfall, the Partners have agreed that the CCG shall be responsible for managing the shortfall from its own resources outside of this Agreement subject to the Executive Management Group applying the procedure set out in Paragraph 4 of Part 3 of this Schedule 3 to ascertain whether it is possible to manage the Payment for Performance Shortfall by treating it as an Overspend²⁵

²⁵

Please confirm that this reflects the agreed position further to the points discussed on 18 March.

Part 3 Risk Sharing Arrangements

1 Subject to any contrary provision in the relevant Scheme Specification, the Partners agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.

Overspends

- 2 In the event that the Pooled Fund Manager identifies an actual or projected Overspend:
- 2.1 the Pooled Fund Manager must inform the Executive Management Group as soon as reasonably possible; and
- 2.2 the Executive Management Group and the Partners shall act in accordance with the provisions of this Schedule 3 and where relevant, the Scheme Specification for that Individual Scheme in taking a decision about how to manage the Overspend.
- 3 For Jointly Managed Schemes, the Partners will be responsible for the Overspend in proportion to their agreed Financial Contributions, provided that the Overspend does not arise solely out of any act, omission, breach, default or negligence of one Partner in which case the responsible Partner shall be responsible for managing the relevant Overspend.²⁶
- 4 For Solely Managed Schemes, the Overspend shall be managed as set out below (in order of precedence):
- 4.1 First, the Executive Management Group will take action, wherever possible, to contain expenditure;
- 4.2 Secondly, subject to Paragraph 12 below, the Partner responsible for the Individual Scheme, will vire Underspends from any other Individual Scheme for which it is responsible within the Pooled Fund;
- 4.3 Thirdly, subject to Paragraph 12 below, the Executive Management Group will consider whether other Underspends within the Pooled Fund, including those Underspends in Individual Schemes that are Solely Managed Schemes or Jointly Managed Schemes for which the other Partner is responsible, can be vired to the Individual Scheme that has an Overspend;
- 4.4 Fourthly, subject to the approval of the Executive Director –Resources at the Council and the Chief Finance Officer of the CCG, the Partner responsible for the Individual Scheme (which for the avoidance of doubt, the responsible Partner pursuant to Paragraph 4.2.) will use uncommitted reserves from the agreed contingency risk reserve;
- 4.5 Finally, the Partner responsible for the Individual Scheme will cover the Overspend from other resources outside of the Pooled Fund.
- 5 For the avoidance of doubt, where more than one Partner is responsible for commissioning under a Solely Managed Scheme, the Partner that is responsible for the Sole Commissioning Arrangements that are the subject of the Overspend shall be deemed to be the responsible Partner for the purposes of Paragraph 4 above.²⁷
- 6 Unless otherwise agreed by the Executive Management Group any Overspend will be recovered from the relevant Partner at the end of the relevant Financial Year.

²⁶ Please confirm if this is the intention behind the reference to "unilateral actions" in Paragraph 2 of Tim's drafting in his email of 18 March. Please also confirm whether the approach for dealing with this circumstance is what is envisaged and whether if there is any disagreement the matter will go to the default DRP provision in the main body of the Agreement.

²⁷ We note that for some Solely Managed Scheme, the Individual Scheme Specification refers to both Partners commissioning an Individual Scheme on their own behalf. Is this correct? In which case, we have suggested this drafting in paragraph 5 to clarify the intention. If this is agreed, we can include a new definition of "Responsible Partner" or amend the drafting in Paragraph 4. Given that Paragraph 4 is based on the agreed drafting in Tim' Furness' his email of 18 March, we have sought not to make any substantive amendments to these provisions on the basis that they have been agreed.

- 7 The Partners agree to co-operate fully in order to establish an agreed position in relation to any Overspends. Any decision of the Partners regarding an Overspend shall be made in accordance with the Governance Arrangements and shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partner.
- 8 Where there is an Overspend in an Aligned Fund at the end of the Financial Year or at termination of the Agreement such Overspend shall be met by the Partner whose Financial Contributions to the relevant Aligned Fund were intended to meet the expenditure to which the Overspend relates save to the extent that such Overspend is not the act, omission, breach, default or negligence of the other Partner.²⁸
- 9 Subject to any continuing obligations under any Service Contract entered into by either Partner, the Partners may agree to terminate a Service where the Scheme Specification provides and where the Service does not form part of the Sheffield Better Care Fund Plan.

Underspend²⁹

- 10 The Partners agree to co-operate fully in order to establish an agreed position in relation to any Underspends. In the absence of any such agreed position, Paragraphs 11 and 12 of Part 3 to this Schedule shall apply.
- 11 In the event of an actual or potential Underspend, the Executive Management Group shall consider (taking all relevant factors into account) whether the surplus monies should be:
- 11.1 spent, vired between, and/or utilised to manage an Overspend as referred to Paragraph 4 above; or
- 11.2 carried forward into the Pooled Fund for the next Financial Year; and/or
- 11.3 [returned to either or both of the Partners.]³⁰
- 12 Any decision of the Partners regarding an Underspend shall be made in accordance with the Governance Arrangements and shall be subject to the Law and the Standing Orders and Standing Financial Instructions of the Partners.

13 Worked examples

The following worked examples illustrate the principles set out above for managing Overspends and Underspends

13.1 Worked Example 1

(x) = underspend:

Assumes £3m contingency risk reserve each held outside BCF Pooled Budget.

	SCC £'m	CCG £'m	TOTAL £'m
A) SINGLE BUDGET			
Contribution to budget	2	4	6
Overspend		no split	1
Responsibility for overspend	0.33	0.67	1

Notes:

In this example both the Council and the CCG would firstly look to find Underspends elsewhere within Pooled Fund arrangements to offset and then secondly to deploy part of agreed contingency reserves. If an Underspend then available to Partners on same calculation basis and first call be to

²⁸ Please confirm that this is agreed.

²⁹ Please confirm the position for Underspends in Aligned Funds.

³⁰ We note that this is not an option that is included in the CCG's paper. Please consider whether you would like to include this option here.

deploy against overspends which their responsibility elsewhere within overall Pooled Fund arrangements.

13.2 Worked Example 2

JOINT BUDGET but separate responsibilities

Contribution to budget		2		4		6
Overspend	(0.2)		1.2		1	
Responsibilities		(0.2)		1.2		1

Notes:

In this example the Council would be expected to firstly use £0.2m underspend to offset over spend which is their responsibility elsewhere within Pooled Fund overall arrangements or if not required for these purposes to carry forward to a future year. The CCG would need to fund the overspend either from underspends which accrue to CCG elsewhere in Pooled Fund arrangements or from contingency risk reserve.

13.3 Worked Example 3

OVERALL BCF Pooled Fund Position

13.3.1 Scenario One – Both Overspending:

	Council CCG		TOTAL
	£'m	£'m	£'m
Contribution to budget	90	130	240
NET Overspend	3	2	5
Responsibilities	3	2	5

Notes: In this scenario both Partners would fund non recurrently from their respective contingency reserves (as within expected amounts for reserves).

13.3.2 Scenario Two – One Partner Overspending and One Underspending:

	Council CCG		TOTAL
	£'m	£'m	£'m
Contribution to budget	90	130	240
NET Over/(under)spend	(3)	5	2
Responsibilities	c/f (3)	5	2

Notes: In this scenario the CCG only has £3m contingency reserves and would have to look to underspend elsewhere within CCG budgets to do a further transfer into the BCF arrangements because the Council would be entitled to retain £3m Underspend but at the same time would be obligated to carry forward into the following financial year. Alternatively the Council could chose at their discretion to provide the resources in year to cover the Overspend being incurred by the CCG.

13.3.3 Scenario Three – Both Partners Underspending :

	Council CCG		TOTAL
	£'m	£'m	£'m
Contribution to budget	90	130	240
NET Under spend	(2)	(2)	(4)
Responsibilities	(2)	(2)	(4)

Notes: In this scenario both Partners have already “covered off” overspends in areas which their responsibility within Sheffield Better Care Fund and have an overall net underspend. Partners would agree either/both – non recurrent in year additional

investment or carry forward. The CCG cannot automatically carry forward resources to a future financial year and hence may have to withdraw the funds from the Sheffield Better Care Fund in the year in question to spend on other areas but then be responsible for re providing the equivalent funding in future financial year(s) to a profile to be agreed by the Partners.

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SCHEDULE 4 – JOINT WORKING OBLIGATIONS

Part 1 – LEAD COMMISSIONER 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution*
- 7 *The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)*
- 8 *[INSERT]*

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 Commissioner (including the provision of data and other information) as is reasonably necessary to enable the Lead Commissioner 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 Commissioner.*
- 3 *Each Partner (other than the Lead Commissioner) shall:*
- 3.1 *comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;*
- 3.2 *notify the Lead Commissioner of any matters that might prevent the Lead Commissioner from giving any of the warranties set out in a Services Contract or which might cause the Lead Commissioner to be in breach of warranty.*

SCHEDULE 5 – PERFORMANCE ARRANGEMENTS³¹

1 This schedule will set out the agreed overarching arrangements for the service performance monitoring. Each scheme specification will have specific monitoring arrangements as agreed by both parties.

Each Scheme shall ensure:

- 1.1 An Obligation to ensure service performance monitoring and standards are agreed by both parties in accordance with each specific scheme.
- 1.2 Authorise a Lead Commissioner/Contract Manger to monitor performance of contracted services under an individual scheme.
- 1.3 All monitoring arrangements will be carried out by the authorised Commissioner/Contract manager in line with each specific individual scheme
- 1.4 Performance reports will be provided to the **(Management Group?????)** in line with agreed monitoring arrangements under each individual scheme. **??how often**
- 1.5 Any failure to perform on individual schemes will be escalated to the **??Management Board??** In line with any agreed contract management arrangements in accordance with each individual scheme.

³¹

This is the document which we understand is Mark Ellis' draft v1. Has this now been further developed?

SCHEDULE 6 – SHEFFIELD BETTER CARE FUND PLAN



544978 - Schedule 6
- Better Care Fund Pl

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³² Partners to provide policies for information in this Schedule

SCHEDULE 8 – INTRA AGENCY INFORMATION SHARING PROTOCOL³³



544981 - Schedule 8
- Interagency Inform

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³³ Please confirm whether this is now agreed.