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**Dated 2026]**

**KENT COUNTY COUNCIL**

**and**

**NHS KENT AND MEDWAY INTEGRATED CARE BOARD**

# FRAMEWORK PARTNERSHIP AGREEMENT PURSUANT TO SECTION 75 NHS ACT 2006 RELATING TO THE COMMISSIONING OF HEALTH AND SOCIAL CARE SERVICES

**Contents**

**THIS AGREEMENT** is made on day of 202[ ]

**PARTIES**[1]

*(1)* **KENT COUNTY COUNCIL** of **County Hall, Maidstone, Kent ME14 1XQ** (the **"Council"**); and

*(2)* **NHS KENT AND MEDWAY INTEGRATED CARE BOARD** of 2nd Floor, Gail House, Lower Stone Street, Maidstone ME15 6NB (the **"ICB"**),

each a "**Partner**" and together the "**Partners**".

**BACKGROUND**

(A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the county of Kent.

(B) The ICB has the responsibility for commissioning health services pursuant to the 2006 Act in the county of Kent and Medway

(C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions. It is a requirement of the Better Care Fund that the ICB and the Council establish a pooled fund for this purpose. The Partners wish to extend the use of pooled funds to include funding streams outside of the Better Care Fund.[2]

(D) Section 75 of the 2006 Act gives powers to local authorities and integrated care boards 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 which are the subject of this Agreement through lead or joint commissioning arrangements and through which the Partners will pool funds and/or align budgets as set out in this Agreement.

(F) The aims and benefits of the Partners in entering into this Agreement are to:

a) improve the quality and efficiency of the Services;

b) meet the National Conditions; and Local Objectives in respect of Services related to the Better Care Fund;

c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;

d) Set up integrated teams acting on behalf of the Council and the ICB with clear responsibilities and guidelines for each organisation; and

(e) support arrangements for future pooled budgets in adults health and social care

(G) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 65Z5 of the 2006 Act as applicable, to the extent that exercise of these powers is required for the Partners to comply with their obligations under this Agreement.

(H) This Agreement establishes the overarching framework for partnership working between the Partners. The detailed arrangements for each Individual Scheme, including the applicable commissioning model, governance arrangements, functions, financial contributions, risk-sharing arrangements, performance requirements and exit arrangements, shall be set out in the relevant Scheme Specification in Schedule 1. Existing Scheme Specifications are contained in Schedule 1 Part 2 and future Scheme Specifications may be added in accordance with Clause 30 (Variation).

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1 See previous note about parties

2 Consider whether this will be the case or whether the services that will initially be commissioned using Better Care Fund monies will not have supplemental funding from 'non Better Care Fund' resources.

## 1 DEFINED TERMS AND INTERPRETATION[3]

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

**2018 Act** means the Data Protection Act 2018

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

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

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

**Affected Partner** means, in the context of Clause 24, 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.

**Agreed Sharing Mechanisms** means the technical measures described in paragraph 5 of Appendix 1 (Data Sharing Protocol) of Schedule 8, being the means by which the Partners shall transmit Personal Data between each other.[4]

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

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

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

**BCF Guidance** means any guidance issued by NHS England in relation to the Better Care Fund.

**BCF Pay for Performance Fund** means the element of the Pooled Fund to be released by the ICB for achievement of the BCF Performance Target as specified in the BCF Plan.

**BCF Performance Target** means the performance targets set out in the BCF Plan.

**BCF Project** means a project identified in the BCF Scheme Specification, and BCF Projects shall be interpreted accordingly

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

**Better Care Fund** means the Better Care Fund as described at **NHS England » Better Care Fund** as relevant to the Partners.

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

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

**Better Care Fund Plan or BCF Plan means** the plan referred to in Schedule 6 setting out the Partners plan for the use of the Better Care Fund.

**Bi-Monthly** means occurring once every two (2) Months.

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3 Definitions should be finalised once main body of Agreement is finalised. Defined terms used in the schedules should also be listed and defined in this Definitions section.

4 Retain this if Schedule 8 is used.

**Capital Expenditure** means any non-recurring expenditure on goods, services, equipment, property or other assets which provides an ongoing benefit beyond the Financial Year in which it is incurred and which would ordinarily be funded from a Partner's capital budget

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

**Commencement Date** means 00:01 hrs on [INSERT DATE].[5]

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

(a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;

(b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or

(c) which is a trade secret.

**Contract Price** means any sum payable under a Service Contract as consideration for the provision of goods, equipment or services as required as part of the Services

**Controller** has the meaning given to it in the Data Protection Legislation.

**Data Protection Contact** means the person appointed by each Partner and identified in paragraph 9 of Appendix 1 (Data Sharing Protocol) of Schedule 8.

**Data Protection Legislation means** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance and codes of practice issues by any Regulatory or Supervisory Body from time to time.

**Data Sharing Protocol** means the data sharing protocol set out in Appendix 1 of Schedule 8 (Data Sharing Protocol).

**Data Subject** has the meaning given to it in the Data Protection Legislation.

**Default Liability** means any sum which is agreed or determined by Law or in accordance with the terms of a Service Contract to be payable by any Partner(s) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under a Service 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 Service Contract, liable to the Provider.[6]

**Expiry Date** means 23:59 on [INSERT DATE] or such other date that the Partners have mutually agreed in writing to extend this Agreement until, in accordance with the terms of this Agreement;

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

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

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

(a) war, civil war (whether declared or undeclared), riot or armed conflict;

(b) acts of terrorism;

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5 Partners to confirm.

6 Default Liabilities are costs incurred by a Lead Partner as a result of that Partner breaching a Service Contract. The Partners should consider and agree the scope of what would be considered “Default Liabilities”. Should this be expanded to cover other liabilities such as Judicial Review liabilities of either Partner, for example? Will the Lead Partner be able to use Pooled Fund monies to cover these costs? Further consideration will always be needed on this.

(c) acts of God;

(d) fire or flood;

(e) industrial action;

(f) prevention from or hindrance in obtaining raw materials, energy or other supplies; or

(g) any form of contamination or virus outbreak,

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

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

**Health-Related Functions** means those of the health-related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.[7]

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

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

**ICB Statutory Duties** means the duties of the ICB pursuant to Sections 14Z32 to 14Z44 of the 2006 Act.

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

**Individual Scheme** means one of the schemes which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 of the 2006 Act as documented in a Scheme Specification.

**Information Commissioner** has the meaning given to it in the Data Protection Legislation.

**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.

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

**Law** means:

(a) any statute or proclamation or any delegated or subordinate legislation;

(b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;

(c) any guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and

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

**Lead Commissioning Arrangements** means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of the other Partner in exercise of both the NHS Functions and the Health-Related Functions and "Lead Commissioning" shall be interpreted accordingly.

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

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7 Here and in the definition of NHS functions the widest definition is used. This should be cut down in the relevant scheme specification to identify the function(s) being undertaken in the commissioning of the particular service.

**Local Objectives:** means the local priorities, outcomes and objectives agreed by the Partners from time to time in relation to the commissioning and delivery of the Services, including (without limitation):

(a) improving outcomes for adults through the integration of health and social care services;

(b) supporting people to live independently and safely within their communities;

(c) promoting effective joint working between the Partners and integrated teams;

(d) reducing health inequalities and improving access to Services; and

(e) supporting the development and implementation of pooled budget arrangements and integrated commissioning across adult health and social care.

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

**Month** means a calendar month.

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

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

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

**NHS Standard Contract** means the contract published by NHS England which must be used by the ICB when commissioning clinical services.

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

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

**Overspend** means any expenditure from a Scheme or a Pooled Fund or Non-Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year

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

**Partnership Board**[8] means the partnership board responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 2 or such other governance arrangements as the Partners agree.

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

**Performance Payments** means any payments, incentive payments, gainshare payments, outcome-based payments or other sums payable in connection with an Individual Scheme or Service Contract where such payments are contingent upon the achievement of specified performance measures, outcomes, targets, milestones or other criteria agreed by the Partners and set out in the relevant Scheme Specification or Service Contract.

**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.

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8 We have called the lead governance group the Partnership Board throughout the Agreement. Where this is called something different then we recommend using the find and replace option to make the changes throughout the document.

**Permitted Expenditure** has the meaning given in Clause 7.4.

**Personal Data** has the meaning given to it in the Data Protection Legislation as defined by the 2018 Act..

**Personal Data Breach** has the meaning given to it in the Data Protection Legislation.

**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 as is as nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 8.

**Processing** has the meaning given to it in the Data Protection Legislation, and the terms “Process” and “Processed” shall be construed accordingly.

**Processor** has the meaning given to it in the Data Protection Legislation.

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

**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 from time to time).

**Regulatory or Supervisory Body** means any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Partner must comply or to which it must have regard, and includes the Information Commissioner.

**Scheme** means Individual Scheme

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

**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.

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

**Service Provider** means a provider of Services under a Service Contract with one or both of the Partners.

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

**Shared Personal Data** means any Personal Data (including Special Category Personal Data) of any Service User(s) or Staff that fall(s) within any of the categories of Personal Data specified in paragraph 3 (Categories of Personal Data) of Appendix 1 (Data Sharing Protocol) of Schedule 8 and means in particular such data as any Disclosing Partner makes available under this Agreement and that a Receiving Partner receives under this Agreement. **Sole Commissioning** means an arrangement whereby one Partner commissions specified

Services in relation to an Individual Scheme on behalf of both Partners, exercises the relevant delegated Functions to the extent permitted by Law, and is the sole contracting authority in respect of those Services, as further described in Clause 6.6

**Sole Commissioning Arrangements** means the arrangements by which one Partner (the Sole Commissioner) commissions Services in relation to an Individual Scheme on behalf of both Partners, including responsibility for procurement, contract award, contract management and performance oversight of the relevant Services, and "Sole Commissioning" shall be interpreted accordingly

**Sole Commissioner** means the Partner appointed under a Scheme Specifications to undertake Sole Commissioning Arrangements and who is the sole named commissioning Party to relevant Service Contract and as further described in clause 6.6 .

**Special Category Personal Data** means Personal Data that falls within the scope of special categories of Personal Data specified in Article 9 of the UK GDPR.

**Third Party Costs** means all such third party costs (including legal and other professional fees) in respect of each Individual Scheme as a Partner reasonably and properly incurs in the proper performance of its obligations under this Agreement and as agreed by the Partnership Board.[9]

**UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

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

**Working Day** means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

1.1 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.

1.2 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.

1.3 Any reference to the Partners shall include their respective statutory successors, employees and agents.

1.4 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.

1.5 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.

1.6 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.

1.7 In this Agreement, words importing the singular only shall include the plural and vice versa.

1.8 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.

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

1.9 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.

1.10 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.

1.11 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[10]

2.1 Subject to clause 2.2 this Agreement shall commence on the Commencement Date and shall continue until 23:59 on [INSERT DATE] unless terminated earlier in accordance with the terms of this Agreement.

2.2 The Partners may, by mutual agreement in writing, extend the term of this Agreement for one or more periods up to twelve (12) months each, on such terms as the Partners may agree.

2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners in accordance with Clause [22.3].[11]

## 3 GENERAL PRINCIPLES[12]

3.1 Nothing in this Agreement shall affect:

3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or

3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.

3.2 The Partners agree to:

3.2.1 treat each other with respect and an equality of esteem;

3.2.2 be open with information about the performance and financial status of each; and

3.2.3 provide early information and notice about relevant problems.

3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme Specification.

## 4 PARTNERSHIP FLEXIBILITIES[13]

4.1 This Agreement sets out the mechanism through which the Partners will work together to commission the Services. This may include one or more of the following commissioning mechanisms:

4.1.1 Lead Commissioning Arrangements;

4.1.2 Integrated Commissioning;

4.1.3 Sole Commissioning;

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10 Consider the term and arrangements for dealing with termination.

11 This is on the basis that the Agreement is a framework arrangement so the duration of each Service will be set out in the relevant Scheme Specification.

12 Consider any overarching principles for insertion here. We have provided a list for consideration, however, this should be tailored to reflect the principles agreed between the Partners.

13 This Agreement has been drafted to cover a range of flexibilities to incorporate the framework approach. This wording should be retained in all Agreements.

4.1.4 Joint (Aligned) Commissioning; and/or

4.1.5 the establishment of one or more Pooled Funds,

in relation to Individual Schemes (the "**Flexibilities**").

4.2 Where there are Lead or Sole Commissioning Arrangements and the ICB is Lead Partner the Council delegates to the ICB and the ICB agrees to exercise, on the Council's behalf, the Health-Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.

4.3 Where there are Lead or Sole Commissioning Arrangements and the Council is Lead Partner, the ICB delegates to the Council and the Council agrees to exercise on the ICB's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health-Related Functions.

4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.[14]

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

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

(a)

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

(a)

4.5.3 The following Individual Schemes with Aligned Commissioning with the Council as Lead Partner:

(a)

4.5.4 The following Individual Schemes with Aligned Commissioning with the ICB as Lead Partner:

(a)

4.5.5 The following Individual Schemes with Integrated Commissioning:

(a) ].[15]

## 5 FUNCTIONS[16]

5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.

5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.

5.3 The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1 Part 2.[17]

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14 The Partners should always check that the proposed functions can be delegated before incorporating – see Guidance Notes.

15 In a number of agreements it has been difficult to establish exactly what arrangements are in place. As such we have inserted a clause which enables the Partners to set out what schemes are in place and which flexibilities are being used. Please see the Guidance Notes for further information on completion of this section.

16 This provision highlights how the framework can incorporate other schemes and funding arrangements.

17 This will be taken from the Better Care Fund Plan; other schemes may be included later. Consideration should be given as to whether any existing schemes should be moved under this Agreement.

5.4 Where the Partners wish to add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by the Partnership Board in accordance with the variation procedure set out in Clause 30 (Variations). Each new Scheme Specification shall be substantially in the form set out in Schedule 1 Part 1.[18]

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

5.6 The introduction of any Individual Scheme will be subject to mutual approval between the parties, and approval by the Partnership Board.

5.7 All Individual Schemes besides Schemes within the Better Care Fund, once approved for introduction into this Agreement, must be added to this Agreement as part of the Variation procedure and tabled for noting at the next scheduled meeting of the Partnership Board.

## 6 COMMISSIONING ARRANGEMENTS

### General

6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification and their obligations in Schedule 4 (Joint Working Obligations).

6.2 The Partners shall comply with all relevant legal duties or, and guidance applicable to, both Partners in relation to the Services being commissioned.

6.3 Each Partner shall keep the other Partner and the Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.

6.4 Where there are Sole Commissioning, Integrated Commissioning, or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Service Contract being entered into the Partners shall agree in writing:

6.4.1 how the liability under each Service Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and

6.4.2 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, the Partners shall consider whether or not the Partner that is not to be a party to the Service Contract should be afforded any rights to enforce any terms of the Service Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Service Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Service Contract and shall establish how liability under the Service Contract shall be apportioned in the event of termination of the relevant Individual Scheme.

6.5 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Service Contracts.

### Sole Commissioning

6.6 A “Sole Commissioner” arrangement is where one Partner (either the Council or the ICB) commissions specific Services on behalf of both Partners, with the other Partner not directly involved in the commissioning process for those Services. This arrangement is distinct from Lead Commissioning and Joint (Aligned) Commissioning, and is intended to provide flexibility where it is more efficient or appropriate for one Partner to act alone in commissioning certain Services.

6.6.1 Under a Sole Commissioner arrangement for this scheme:

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[18] A template Scheme Specification is set out in Schedule 1 Part 1 as a starting point for discussion. The procedure for approval of new Scheme Specifications should be selected / tailored as required and square brackets removed. See comments below at Clause 30 relating to the inclusion of a procedure for the proposal and approval of Individual Schemes.

6.6.2 The Sole Commissioner will be responsible for all aspects of commissioning, contracting, and managing the relevant Services, including compliance with all applicable laws, guidance, and the terms of this Agreement.

6.6.3 The other Partner delegates authority for the commissioning of the specified Services to the Sole Commissioner, to the extent permitted by law and as set out in the relevant Scheme Specification.

6.6.4 The Sole Commissioner shall keep the other Partner and the Partnership Board informed of the effectiveness and performance of the commissioned Services, providing regular reports as agreed.

6.6.5 Financial contributions, risk sharing, and any liabilities relating to Sole Commissioner Services shall be set out in the relevant Scheme Specification or as otherwise agreed by the Partners.

6.6.6 Any changes to Sole Commissioner arrangements must be agreed in writing by both Partners in accordance with the variation procedure set out in this Agreement.

**Integrated Commissioning**

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

6.7.1 The Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health-Related Functions are commissioned with all due skill, care and attention; and

6.7.2 Each Partners shall be responsible for compliance with and making payments of all sums due to a provider pursuant to the terms of each Service Contract.

6.7.3 Each Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

**Appointment of a Lead Partner**[19]

6.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall comply with its obligations under Schedule 4 Part 1 and:

6.8.1 exercise the NHS Functions in conjunction with the Health-Related Functions as identified in the relevant Scheme Specification;

6.8.2 endeavour to ensure that the NHS Functions and the Health-Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year;

6.8.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;

6.8.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;

6.8.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;

6.8.6 where Services are commissioned using the NHS Standard 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;

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19 The Partners should consider overarching obligations on Lead Commissioners, including whether any further duties will be assigned to the Lead Commissioner.

6.8.7 [20]undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;[21]

6.8.8 make payment of all sums due to a Provider pursuant to the terms of any Service Contract; and

6.8.9 keep the other Partner and Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.

**Reporting**

6.9 Each Partner shall keep the other Partners and the Partnership Board regularly informed of the effectiveness of the arrangements and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund in accordance with Schedule 5. .

## 7 ESTABLISHMENT OF A POOLED FUND[22]

7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners.

7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement including but not limited to:

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

7.2.2 providing the financial administrative systems for the Pooled Fund;

7.2.3 appointing the Pooled Fund Manager; and

7.2.4 ensuring that the Pooled Fund Manager complies with their obligations under this Agreement.

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7.3 Subject to Clause **Error! Reference source not found.**, it is agreed that the monies held in a Pooled Fund may only be expended on the following:[23]

7.3.1 the Contract Price;

7.3.2 where the Council is to be the Provider, the Permitted Budget;

7.3.3 Performance Payments;

7.3.4 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board; and

7.3.5 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board,

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20 Note that Schedule 4 Part 1 sets out some suggested Lead Partner obligations to consider – any further obligations around contract management etc should be included in Schedule 4 Part 1.

21 How will the Partners deal with performance monitoring and accountability/assurance frameworks? Consider including detail in Schedule 5.

22 Pooled Funds can be used for Lead Commissioning or Integrated Commissioning arrangements. Furthermore, each Service can have different Lead Commissioners. The host arrangements for Pooled Funds ensure that there is streamlined management and accountability of the Pooled Funds with the Host Partner being the accounting body and having responsibility for appointing a Pooled Fund Manager.

23 This dictates what can be funded out of the Pooled Fund and, therefore, what would constitute an overspend if it exceeded the amount in the Pooled Fund. Money spent on other things would be in breach of this Agreement and therefore not recoverable by the Host Partner.

## 8 7.5.1 POOLED FUND MANAGEMENT

8.1 When introducing a Pooled Fund, the Partners shall agree which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.

8.2 The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:

8.2.1 the day-to-day operation and management of the Pooled Fund;

8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;

8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;

8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;

8.2.5 reporting to the Partnership Board as required by this Agreement and by the Partnership Board;

8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;

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

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

8.3 In carrying out their responsibilities as provided under Clause 8.3, the Pooled Fund Manager shall:

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

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

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

## 9 NON-POOLED FUNDS[24]

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

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

9.2.1 which Partner if any[25] shall host the Non-Pooled Fund; and

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[24] These are funds that are notionally held in a joint fund (i.e. a virtual fund) but are not actually pooled into one account (they are held separately).
If there are Lead Commissioner/Integrated Commissioner arrangements, the funds need to be held but they will be separately accounted for. The Lead Commissioner will still be responsible for managing the fund effectively.

[25] Transfers between Partners for Non-Pooled funds need to be made by S76/256 of the 2006 Act.

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

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

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

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

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

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

## 10 FINANCIAL CONTRIBUTIONS[26]

10.1 The Financial Contributions of the ICB and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in the relevant Scheme Specification.[27]

10.2 The Financial Contribution of the ICB and the Council to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Year of operation shall be subject to annual review by the Partners .

10.3 Financial Contributions will be paid as set out in each Scheme Specification

10.4 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Partnership Board /action log/minutes and recorded in the budget statement as a separate item.

10.5 Overspends and Underspends [28]

10.5.1 Subject to any contrary provision in the relevant Scheme Specification, any Overspends or Underspends shall be apportioned between the Partners in the same proportions as their respective Financial Contributions to the relevant Pooled Fund or Non=Pooled Fund.

10.5.2 Where an actual or projected Overspend or Underspend is identified, the relevant Partner or Pooled Fund Manager (as applicable) shall notify the Partnership Board as soon as reasonably practicable and provide details of any proposed actions required to address or manage the Overspend or Underspend.

10.5.3 The management and reporting of Overspends and Underspends shall be undertaken in accordance with Schedule 3 and Schedule 5, unless otherwise specified in the relevant Scheme Specification.

10.6 Financial Contributions

10.6.1 Financial Contributions shall be paid into the relevant Pooled Fund or otherwise applied to the relevant Individual Scheme, in accordance with the payment arrangements and timings set out in the relevant Scheme Specification.

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26 The Partners should consider how to deal with financial contributions. The starting point is the NHS Better Care Fund contribution. Is either Partner able to commit a minimum amount per year? When and how will the Partners agree the contributions each year? What happens if the Partners disagree? Are there any particular factors that must be taken into consideration when establishing the level of commitment for subsequent years?

27 The Partners need to deal with the fact that some services will not have Pooled Funds. In respect of this, the Partners should decide how the invoicing/payment arrangements will work and whether this will vary from service to service.

28 The Partners will need to carefully consider how to deal with Overspends and whether this will be applicable across all Funds under the Agreement or different for each Individual Scheme.

10.6.2 The Partnership Board shall monitor any Financial Contributions, Overspends and Underspends throughout each Financial Year in accordance with the performance arrangements set out in Schedule 5.

10.6.3 Where additional Financial Contributions are required to address Overspends, each Partner shall make such additional contributions as are shall make such additional contributions as are required in accordance with Clause 10.5.1 and the relevant Scheme Specification, unless otherwise agreed in writing by the Partners

10.6.4 Any additional Financial Contributions made pursuant to Clause 10.6.3 shall be recorded in the relevant Scheme details and reported to the

Partnership Board.

## 11 NON-FINANCIAL CONTRIBUTIONS[29]

11.1 Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service.

11.2 Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Service Contracts and the Pooled Fund(s)).

## 12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS[30]

**Risk share arrangements**

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

**Overspends in Pooled Fund[31]**

12.2 Subject to Clause 12.3, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.

12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 12.4.[32]

12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and provided with a proposed action plan to mitigate the actual or projected overspend for

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29 These arrangements may need to be considered on a scheme by scheme basis.
Consider whether there are any practical arrangements that could be set out as overarching principles.

30 We have provided a suggested approach to overspends and underspends, however, the details will need to be considered by the Partners in the context of the specific risk sharing arrangements agreed between the Partners.

31 Although the contributions are being calculated by reference to the agreed contract value, there are a number of variables that could still contribute to an overspend.

32 This clause is drafted in this way because such expenditure is permitted and, therefore, although an Overspend occurs, it is not as a result of a breach by the Host Partner of its obligations. It is legitimate expenditure for which there are insufficient Financial Contributions. However the Partners may want to consider whether there should be an obligation on the Host Partner to ensure that demand is appropriately managed. For example, a provision could be included such that the Host Partner would be in breach if they failed to take the requisite steps to notify the other Partner/the Partnership Board of the potential overspend and arrange an action plan.

agreement by the partners in accordance with Schedule 5. The provisions of the relevant Scheme Specification[33] shall apply.

**Overspends in Non-Pooled Funds[34]**

12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner identifies an actual or projected Overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund, that Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board.

12.6 Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board in the event that the Lead Partner identifies an actual or projected Overspend.

12.7 Where in Sole Commissioning Arrangements any Partner identifies an actual or projected Overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund, that Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board.

**Underspend**

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

**Recovery of Funds**

12.9 Where one Partner is responsible for recovering charges, contributions, deferred payments, debts, reimbursement or other sums relating to an Individual Scheme on behalf of both Partners, that Partner shall use reasonable endeavours to pursue recovery in accordance with its usual policies and procedures and shall account to the other Partner for any sums recovered which are attributable to that other Partner. The allocation of recovered sums shall be as set out in the relevant Scheme Specification or otherwise agreed between the Partners.

## 13 CAPITAL EXPENDITURE[35]

13.1 Except as provided in Clause 13.2, neither Pooled Funds nor Non Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If any Partner identifies a need for Capital Expenditure, this must be agreed by the Partnership Board.

13.2 The Partners agree that Capital Expenditure may be made from a Better Care Fund Pooled Fund where this is in accordance with National Guidance. If a need for Capital Expenditure to be funded from any Pooled Fund relating to a non-Better Care Fund Scheme or from any Non Pooled Fund is identified this must be in accordance with the Partners' respective statutory powers and agreed by the Partners in writing.

## 14 VAT

The Partners shall agree the treatment of each Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Revenue and Customs.[36]

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33 Consider whether the overspend provisions will be the same across all of the different Schemes. If they are different, the specific provisions for each Scheme should be set out in the relevant Scheme Specifications.

34 This is just a suggestion of how overspends in relation to Non-Pooled Funds may be dealt with. It may be that this needs to be set out in each individual Scheme Specification and there is not a generic approach.

35 Once the arrangements are confirmed, a reference to section 256 grants can be included if relevant.

36 Partners to consider their respective positions regarding VAT. The arrangements applicable to each Scheme should be documented in the relevant Scheme Specification.

Both the Council and the ICB will address VAT matters through their own payment systems/methods. As the Joint Commissioning Team is included in a Pooled Fund, recharges of staff salaries would be outside the scope of VAT for both parties.

## 15 AUDIT AND RIGHT OF ACCESS

15.1 The 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 in accordance with the Regulations and the Local Audit and Accountability Act 2014.

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

15.3 The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

## 16 LIABILITIES AND INSURANCE AND INDEMNITY[37]

16.1 Nothing in this Agreement shall affect:

16.1.1 the liability of the Council to the Service Users in respect of the Health-Related Functions; or

16.1.2 the liability of the ICB to the Service Users in respect of the NHS Functions.

16.2 Subject to Clause 16.3, and 16.4, if a Partner (the "Indemnified Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) as a consequence of any act or omission of another Partner (the "Indemnifying Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Service Contract then the Indemnifying Partner shall be liable to the Indemnified Partner for that Loss and shall indemnify the First Partner accordingly.

16.3 Clause 16.2 shall only apply to the extent that the acts or omissions of the Indemnifying Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Indemnifying Partner acting in accordance with the instructions or requests of the Indemnified Partner or the Partnership Board.

16.4 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 Indemnified Partner will:

16.4.1 as soon as reasonably practicable give written notice of that matter to the Indemnifying Partner specifying in reasonable detail the nature of the relevant claim;

16.4.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Partner (such consent not to be unreasonably conditioned, withheld or delayed); and

16.4.3 give the Indemnifying 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.

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[37] This is a sample clause which will need to be discussed. What about any liabilities to third parties that a Partner incurs as a result of a breach by the Provider but in respect of which the Lead Commissioner/relevant Partner is unable to recover from the Provider? Should such loss be shared amongst the Partners? Perhaps apportioned by reference to the value of their respective Financial Contributions? This could be dealt with by way of indemnity or by permitting the Lead Commissioner to take this out of the Pooled Fund, thereby triggering the Overspend provisions.

16.5 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).[38]

16.6 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one Partner is entitled to bring a claim against the other Partner pursuant to this Agreement.

**Conduct of Claims**

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

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

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

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

## 17 STANDARDS OF CONDUCT AND SERVICE

17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective standing orders and standing financial instructions).

17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council’s obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

17.3 The ICB is subject to the ICB 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 ICB Statutory Duties and clinical governance obligations.

17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the Services.

## 18 CONFLICTS OF INTEREST[39]

18.1 The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in Schedule 7.

## 19 GOVERNANCE[40]

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38 The Partners should consider their respective insurance position and take advice from insurance advisers as required. The Partners may wish to consider including obligations to maintain specific insurance such as appropriate levels of as employers' liability, liability to third parties and other relevant insurance arrangements to cover their liability under this Agreement.

39 The Partners could include a procedure in this Agreement (Schedule 7) for the resolution of conflicts of interest.

40 We have set out a proposed approach to governance with an officer working group structure. There are three separate functions here which need to be addressed: First, strategic overview of partnership working which is the responsibility of the Health and Wellbeing Board for BCF save to the extent that the HWB signs off the Better Care Fund Plan and variations

19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Wellbeing Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.

19.2 The Partners have established a Partnership Board to[41]:

19.3 The Partnership Board is based on a joint working group structure. Each member of the Partnership Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.[42]

19.4 The terms of reference of the Partnership Board shall be as set out in Schedule 2 as may be amended or varied by written agreed from time to time. Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.5 The Partnership Board [43] shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 3. The Partnership Board will report to the Health and Wellbeing Board in accordance with its terms of reference.

19.6 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.

19.7 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Partnership Board and Health and Wellbeing Board.

19.12 The Partners acknowledge that each Partner remains subject to its own internal governance arrangements. The Partners shall exercise their rights and perform their obligations under this Agreement in a manner consistent with those arrangements, provided that nothing in this Clause shall operate to limit, exclude or override any obligation expressly contained in this Agreement

## 20 REVIEW [44]

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to it. Secondly, oversight and holding to account the management structures for delivery of the Schemes; we have suggested a partnership board to avoid ICB accountability running through the HWB (which is not possible legally). Finally there is the management of the individual Schemes. Depending on complexity this could be the Pooled Fund Manager or a commissioning officer but could equally be a management group.

It is possible for the ICB and the Council to form a joint committee (under Regulation 10) to take responsibility for the management of the arrangements including monitoring the arrangements and receiving reports and information on the operation of the arrangements. This would be a different arrangement to the working group structure suggested here (which relies upon authority for decision-making being delegated to individual officers in the relevant group (e.g. the Partnership Board)).

The Partners will need to agree the detail of how the governance structure will work and terms of reference will need to be developed for the relevant groups. The remit of each group and the circumstances in which matters/decisions may need to be referred or are reserved to ICB/Council governance structures (e.g. the Council Cabinet and ICB Board) should be clearly set out.

The Partners may also wish to consider how these governance arrangements will align / link in with the governance arrangements for their local Place-Based Partnership. For example, many Places are looking to align their BCF governance arrangements with their Place-based Partnership so that wider Place partners are around the table and able to participate in discussions around the BCF arrangements (but not make decisions). Conflicts of interest need to be carefully managed in these situations, however it would for example be possible to include the BCF Partnership Board as part of a wider meeting which includes the Place-based Partnership and (potentially) an ICB sub-committee. Specific legal advice should be sought in designing such Place governance arrangements to ensure that the appropriate governance and statutory frameworks are complied with and conflicts of interest are managed appropriately.

41 The Partners will need to determine the specific functions and objectives of the Partnership Board.

42 As noted above, this drafting will need to be amended if the Partners are setting up a joint committee as set out Regulation 10 of the Regulations.

43 Who signs off on the addition of new services/ Schemes?

44 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.

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

20.2 Save where the Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, and any [Pooled Fund] [and Non-Pooled Fund] and the provision of the Services within 3 Months of the end of each Financial Year.

20.3 Subject to any variations to this process agreed by the Partnership Board, Annual Reviews shall be conducted in good faith[45]

20.4 The Partners shall within [20] Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Partnership Board.

20.5 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.[46]

## 21 COMPLAINTS[47]

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

## 22 TERMINATION & DEFAULT[48]

22.1 This Agreement shall automatically terminate on the Expiry Date unless terminated earlier by the mutual agreement of the Partners or extended in accordance with clause 2.2.

22.2 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 shall not take effect prior to the termination or expiry of all Individual Schemes.

22.3 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:

22.3.1 such termination is possible in accordance with the National Guidance and Law; and

22.3.2 that the Partners ensure that the statutory Better Care Fund Requirements continue to be met, and

for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Schemes.[49]

22.4 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 23.[50]

22.5 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights, remedies, obligations or liabilities in respect of any antecedent breach and the provisions of Clauses 15 (Audit and Right of Access), 16 (Liabilities, Insurance and Indemnity), 23 (Dispute Resolution), 25 (Confidentiality), 26 (Freedom of Information and Environmental

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45 Is there anything that can be included to set out how Annual Reviews will be undertaken? Consider including minimum requirements for an annual review here.
46 What level will any discussions be here?
47 Consider whether the Partners will develop a joint complaints procedure. If not, we have suggested an approach for each Partner to use its own complaints procedure with cooperation from the other Party.
48 We have set out a suggested approach to termination and default here as a basis for discussion.
49 This Clause can be adopted where the Scheme Specifications do not set out termination provisions for the relevant Individual Scheme.
50 In this template there is no right to terminate this Agreement as a result of breach by either Partner.

Information Regulations), 27 (Ombudsmen), 28 (Information Sharing), 36 (Third Party Rights), 39 (Governing Law and Jurisdiction) and this Clause 22.5, together with any other provision which expressly or by implication is intended to survive termination

22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:[51]

22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to Service Users, the Services, the employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;

22.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, the 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. For the avoidance of doubt, termination of this Agreement shall not of itself release either Partner from any financial commitment, liability or obligation arising under a Service Contract entered into prior to termination. Each Partner shall remain liable for its agreed proportion of the Contract Price and any associated liabilities unless otherwise agreed in writing between the Partner;

22.6.3 the Lead Partner or Sole 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 Partner or Sole Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner or Sole Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;

22.6.4 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original Service Contract;

22.6.5 the Partnership Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and

22.6.6 termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.

22.7 In the event of termination in relation to an Individual Scheme the provisions of Clause 23.6 shall apply in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

## 23 DISPUTE RESOLUTION[52]

23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.

23.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.

23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective [chief executives] or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

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[51] These provision sets out a suggested approach to what happens if the Agreement terminates particularly where there are contracts still in place. The Partners will need to address this in each Service Contract and also in the individual Scheme Specifications.

[52] A sample dispute resolution procedure has been included. Consider for example whether a referral of the dispute will be made to the Partnership Board?

23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a **"Mediation Notice"**) to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

23.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## 24 FORCE MAJEURE[53]

24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event, provided that the Affected Partner shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event and resume performance of its obligations as soon as reasonably practicable.

24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.

24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement. To the extent that any Services or obligations are not affected by the Force Majeure Event, the Partners shall continue to perform such Services and obligations in accordance with the terms of this Agreement.

24.4 If the Force Majeure Event continues for a period of more than [sixty (60) days], either Partner shall have the right to terminate the Agreement by giving [fourteen (14) days] written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause 24.

24.5 Any termination pursuant to this Clause 24 shall, where reasonably practicable, be limited to the affected Individual Scheme or affected obligations only, and the Agreement shall continue in full force and effect in respect of all unaffected Services, Individual Schemes and obligations.

## 25 CONFIDENTIALITY[54]

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

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

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

25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and

25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:

(a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or

(b) is obtained by a third party who is lawfully authorised to disclose such information.

25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.

25.3 Each Partner:

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

25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25; and

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

## 26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Regulations to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.

26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

## 27 OMBUDSMEN

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

## 28 INFORMATION SHARING

28.1 The Partners will follow the Information Governance Protocol set out in Schedule 6, and in so doing will ensure that the operation this Agreement complies with Law, in particular Data Protection Legislation

28.2 The Partners agree to exercise their rights and obligations under this Agreement at all times in compliance with their respective obligations under the Data Protection Legislation.

28.3 Without prejudice to the obligation under Clause 28.1, the Partners will comply with the Data Sharing Protocol set out in Schedule 8, as agreed and amended between the Partners from time to time.

## 29 NOTICES

29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause

29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:

29.1.1 personally delivered, at the time of delivery;

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

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

29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:

29.3.1 if to the Council, addressed to the [INSERT JOB TITLE];

Tel: [INSERT]
Email: [INSERT]

and

29.3.2 if to the ICB, addressed to the [INSERT JOB TITLE];

Tel: [INSERT]
Email: [INSERT]

## 30 VARIATION [55]

30.1 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.

30.2 Where the Partners agree that there will be:

30.2.1 a new Pooled Fund;

30.2.2 a new Individual Scheme; or

30.2.3 an amendment to a current Individual Scheme,

30.2.4 the Partnership Board shall agree the new or amended Individual Scheme and this must be signed by the Partners. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification may be made by any Partner but will require agreement from all of the Partners.

30.3 The notice period for any variation unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

[55] The Partners may find it helpful to set out a procedure for agreeing to add a new scheme to the framework arrangement and the alternative drafting in Clauses 30.1 to 30.3 sets out an example of a more detailed variation procedure.

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

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

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

30.4.3 wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and

30.4.4 should this not be possible and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be shared equally between the Partners[56].

30.5 The Partners hereby agree that a decision by the Partnership Board to amend or replace an Individual Scheme (where such decision is accompanied by an amended or replacement Scheme Specification) shall be binding on the Partners, and once such decision has been recorded and the minutes have been approved the relevant amendments to such an individual scheme shall be considered incorporated as part of this Agreement and, once such decision has been recorded in approved minutes, the relevant amendment to that Individual Scheme shall be deemed incorporated into and form part of this Agreement, without the need for any further variation of this Agreement.

## 31 CHANGE IN LAW

31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.

31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.

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

## 32 WAIVER

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

## 33 SEVERANCE

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

## 34 ASSIGNMENT AND SUBCONTRACTING

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 transfer to a statutory successor of all or part of a Partner's statutory functions.

## 35 EXCLUSION OF PARTNERSHIP AND AGENCY

35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and

[56] Risk sharing arrangements will be for local agreement between the Partners.

employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

**36 THIRD PARTY RIGHTS**

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

**37 ENTIRE AGREEMENT**

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

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

**38 COUNTERPARTS**

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

**39 GOVERNING LAW AND JURISDICTION**

39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

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

This Agreement has been entered into on the date stated at the beginning of it.[57]

Signed by [**NAME AND JOB TITLE OF SIGNATORY**] for and on behalf of
**[ INSERT ] COUNCIL**

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Authorised Signatory

Signed by **[NAME AND JOB TITLE OF SIGNATORY]** for on behalf of **NHS [INSERT] INTEGRATED CARE BOARD**

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Authorised Signatory

57 Partners to confirm execution blocks – each Partner should check their own governance arrangements as to the appropriate execution clause and signatories.