

Dated

2022

WORCESTERSHIRE COUNTY COUNCIL

and

**NHS HEREFORDSHIRE AND WORCESTERSHIRE
CLINICAL COMMISSIONING GROUP**

**SECTION 75 AGREEMENT RELATING TO THE
COMMISSIONING OF HEALTH AND SOCIAL CARE
SERVICES INCLUDING THE BETTER CARE FUND**

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THIS DEED OF AGREEMENT is made on

day of

2022

PARTIES

- (1) **WORCESTERSHIRE COUNTY COUNCIL of County Hall, Spetchley Road, Worcester WR5 2NP (the "Council"); and**
- (2) **NHS HEREFORDSHIRE AND WORCESTERSHIRE CLINICAL COMMISSIONING GROUP of The Coach House, John Comyn Drive, Perdiswell, Worcester WR3 7NS (the "CCG"),**

(each a "**Party**" and together the "**Parties**").

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care, preventative and public health services on behalf of the population of the county of Worcestershire.
- (B) The CCG has responsibility for commissioning health services pursuant to the 2006 Act in the counties of Herefordshire and Worcestershire.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose. The Partners wish to extend the use of pooled funds to include funding streams from outside of the Better Care Fund.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Parties have agreed to collaborate and to establish a framework through which the Parties can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also a means through which the Parties will pool funds and align budgets as agreed between the Parties.
- (F) The aims and benefits of the Parties in entering into this Agreement are to:
 - i) improve the quality and efficiency of the Services;
 - ii) meet the National Conditions and Local Objectives, and
 - iii) make more effective use of resources through the establishment and maintenance of a Pooled Budget for revenue expenditure on the Services.
- (G) The Parties are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.
- (H) The Parties acknowledge that whilst this Agreement is based on a template kindly provided by Bevan Brittan LLP and published on the NHS England website, which refers to the law and guidance in force in August 2014, the Parties have amended this template in accordance with their requirements.

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

Affected Party means, in the context of Clause 24, the Party whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event.

Agreement means this agreement including its Schedules and Appendices.

Annual Budget means the Financial Contributions for the relevant Financial Year agreed between the Parties pursuant to Clause 19.5.

Annual Review shall have the meaning given to it in accordance with Clause 19.1.

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

Better Care Fund or BCF means the Better Care Fund as described in NHS England Publications Gateway Ref. No.00314 and NHS England Publications Gateway Ref. No.00535 as relevant to the Parties. BCF is paid directly to the CCG by DfLUHC.

Better Care Fund Plan or BCP means the plan setting out the Parties' proposed use of the Better Care Fund and updated annually in accordance with Clause 19.

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

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

Change in Law means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, which relates to the powers, duties and responsibilities of the Parties and which must be complied with, implemented or otherwise observed by the Parties.

Commencement Date means 00:01 hrs on 1 April 2021.

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

- (a) which comprises 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 Party or the interests of a Service User respectively; or
- (c) which is a trade secret.

Contract Price means any sum payable to a Provider under a Services Contract as consideration for the provision of Services and which, for the avoidance of doubt, does not include any Default Liability.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**); the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Default Liability means any sum which is agreed or determined by Law or in accordance with the terms of a Services Contract to be payable by any Party or Parties to the Provider as a consequence of:

- (a) breach by either or both of the Parties of an obligation(s) (in whole or in part) under the relevant Services Contract; or
- (b) any act or omission of a third party for which either or both of the Parties are, under the terms of the relevant Services Contract, liable to the Provider.

DFG means the Disabled Facilities Grant being funding for capital grants to help meet the cost of adapting property for the needs of a disabled person. DFG is paid directly to the Council by DfLUHC under Section 31 of the Local Government Act 2003 and is subject to grant conditions set out in grant determinations made under that Section.

DfLUHC means the Department for Levelling Up, Housing and Communities.

Financial Contributions means the minimum financial commitments to be made by each Party to the Pooled Budget for each Individual Scheme in any Financial Year as set out in the Annual Budget.

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

First Party shall have the meaning given to the term in Clause 26.3.

Force Majeure Event means one or more of the following:

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

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

Functions means the NHS Functions and the Social Care Related Functions.

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

IBCF means the Improved Better Care Fund announced in the Spring Budget 2017 being additional funding for social care. IBCF is paid directly to the Council by DfLUHC under Section 31 of the Local Government Act 2003 and is subject to grant conditions set out in grant determinations made under that Section.

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 being developed and funded under the Better Care Fund Plan which is agreed by the Parties to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification and "**Scheme**" shall be interpreted accordingly.

Integrated Commissioning means arrangements by which both Parties commission Services in relation to an Individual Scheme on behalf of each other in exercise of both the NHS Functions and Social Care Related Functions through integrated structures.

Integrated Commissioning Executive Officers Group (ICEOG) means the partnership board responsible for review of performance and oversight of this Agreement as set out in Schedule 2

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

Law means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
- (c) any guidance, direction or determination with which the Party(ies) 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 Party(ies) 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 Party commissions Services in relation to an Individual Scheme on behalf of the other Party in exercise of both the NHS Functions and the Social Care Related Functions.

Lead Commissioner means the Party having the function of commissioning Services or part of a Service on behalf of the Parties.

Local Objectives means those objectives set by the parties in respect of Worcestershire.

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 NHS England Planning Guidance as amended or replaced from time to time.

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

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

Non-Recurrent Payments means funding (if any) provided by a Party in respect of the Pooled Budget or to an Individual Scheme in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 9.3.

Overspend means any expenditure in respect of the Pooled Budget in a Financial Year, in relation to an Individual Scheme, which exceeds the total Financial Contributions for that Scheme for that Financial Year which shall be managed in accordance with Clause 11 and Schedule 3

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

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

Permitted Expenditure has the meaning given in Clause 7.3.

Personal Data means Personal Data as defined under Data Protection Legislation.

Pooled Budget means the budget agreed between the Parties for the purpose of securing the Services or part of them pursuant to this Agreement, made up of the Financial Contributions from the Parties in accordance with the Regulations as set out in the Annual Budget.

Pooled Budget Manager means such proper officer of either Party (which includes a Section 113 / Section 151 Officer) as is nominated by the relevant Party from time to time to manage the Pooled Budget in accordance with this Agreement. As at the Commencement Date, Pooled Fund Manager is the Deputy Chief Finance Officer of the Council who has delegated decision making authority for this responsibility from the Chief Financial Officer.

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

Reviewed Pooled Budget means the Pooled Budget for the relevant Financial Year agreed between the Parties pursuant to the Annual Review.

Quarter means each of the following periods in a Financial Year:

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

and "**Quarterly**" shall be interpreted accordingly.

Regulations means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).

Relevant Party shall have the meaning given to the term in Clause 21.2.

Scheme Manager means the manager of an Individual Scheme as identified in the relevant Scheme Specification.

Scheme Specification means a specification setting out the arrangements and Services for an Individual Scheme agreed by the Parties to be commissioned under this Agreement, a template for which is in Schedule 1.

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

Services Contract means an agreement for the provision of Services entered into with a Provider by one or more of the Parties in accordance with the relevant Individual Scheme and for the avoidance of doubt the term Services Contract shall include a block contract or care contract.

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

Social Care Related Functions means those of the social care and public 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.

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

Underspend means any expenditure in respect of the Pooled Budget in a Financial Year for any Individual Scheme which is less than the aggregate value of the Financial Contributions for that Individual Scheme for that Financial Year.

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

Working Day means 8:00am to 6:00pm any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Parties shall include their respective statutory successors, permitted assignees or transferees, and employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.

- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.
- 1.13 1.13 All references to BCF shall include reference to IBCF and DFG unless otherwise stated.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue until it is terminated in accordance with this Agreement.
- 2.2 Unless otherwise stated in the relevant Scheme Specification, the duration of the arrangements for each Individual Scheme shall be concurrent with the term of the Agreement as set out in Clause 2.1 unless varied in line with Clause 30 or terminated early in accordance with Clause 21.
- 2.3 The Parties agree that on and from the Commencement Date this Agreement supersedes all previous arrangements entered into between the Parties under Section 75 of the 2006 Act in relation to the Better Care Fund in Worcestershire. All acts done on and from the Commencement Date in relation to the Better Care Fund shall be deemed to have been done pursuant to the provisions of this Agreement.

3 GENERAL PRINCIPLES

- 3.1 Nothing in this Agreement shall affect:
- 3.1.1 the rights and powers, duties, obligations and liabilities of the Parties to each other or to any third parties in the exercise of their respective Functions and obligations (including the Functions); or
 - 3.1.2 any power or duty of the Council to set, administer and recover charges for the provision of any services (including the Services) in the exercise of any Social Care Related Functions.
 - 3.1.3 the Council's power to determine and apply eligibility criteria for the purposes of assessment under the National Health Service and Community Care Act 1990.
- 3.2 The Parties 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.

4 FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Parties will work together to establish one or more of the following:
- 4.1.1 Lead Commissioning Arrangements;
 - 4.1.2 Integrated Commissioning;
 - 4.1.3 Joint (Aligned) Commissioning;

4.1.4 the establishment of the Pooled Budget,

- 4.2 In relation to Individual Schemes, the Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Social Care Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions in accordance with the requirements of the Scheme Specifications.
- 4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Social Care Related Functions in accordance with the requirements of the Scheme Specifications.
- 4.4 Where the powers of a Party 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 Parties shall agree arrangements designed to achieve the greatest degree of delegation to the other Party necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Parties 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 Parties.
- 5.3 The initial Individual Schemes are listed in Part 2 of Schedule 1.
- 5.4 The Parties shall not enter into a new Individual Scheme unless they are satisfied that the Individual Scheme in question will improve the health and well-being of the Service Users in accordance with this Agreement.
- 5.5 Where the Parties add a new Individual Scheme to this Agreement, a Scheme Specification for each Individual Scheme in the form set out in Part 1 to Schedule 1 (as amended subject to agreement between the Parties) shall be completed and agreed between the Parties.
- 5.6 The introduction of any Individual Scheme will be:
- 5.6.1 subject to business case approval by the ICEOG;
 - 5.6.2 subject to any additional constitutional requirements of each Party;
 - 5.6.3 inserted as part of this Agreement in accordance with Clause 30 (Variation); and
 - 5.6.4 reported to the Health and Wellbeing Board, which has strategic oversight of this Agreement.

6 COMMISSIONING ARRANGEMENTS

Integrated Commissioning

- 6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, both Parties shall work in cooperation and shall endeavour to ensure that the NHS Functions and Social Care Related Functions are commissioned with all due skill, care and attention.
- 6.2 Both Parties shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Services Contract.
- 6.3 Both Parties shall work in cooperation and endeavour to ensure that the relevant Services, as set out in each Scheme Specification, are commissioned within each Party's Financial Contributions in respect of that particular Individual Scheme in each Financial Year.

- 6.4 The Parties shall comply with the arrangements in respect of any Joint (Aligned) Commissioning as set out in the relevant Scheme Specification.
- 6.5 Each Party shall keep the other Party and the ICEOG regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in the Pooled Fund, in accordance with the provisions of Clause 11 (Risk Share Arrangements, Overspends and Underspends), Schedule 2 (Governance) and Schedule 3 (Financial Schedule - Risk Share, Overspends and Underspends).
- 6.6 The relevant joint commissioning groups will each report back as required by their respective terms of reference, and as set out in Schedule 2.
- 6.7 Each Party is committed to developing a joint delivery plan for each Individual Scheme as set out in the relevant Scheme Specification.

Appointment of a Lead Commissioner

- 6.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
- 6.8.1 exercise the NHS Functions in conjunction with the Social Care Related Functions (or vice versa) as identified in the relevant Scheme Specification;
 - 6.8.2 commission Services for Service Users who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.8.3 contract with Provider(s) for the provision of the Services on terms agreed with the other Party (such approval not to be unreasonably withheld or delayed);
 - 6.8.4 comply with the Law as it applies to both Parties in relation to the Services being commissioned and in particular, but without limitation, ensure that all Services Contracts with care providers require that such element of the Services in any care home (as defined in the Care Standards Act 2000) complies with any national minimum standards under that Act;
 - 6.8.5 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" (as defined in the NHS Standard Form Contract) with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 6.8.6 undertake performance management and contract monitoring of all Services Contracts;
 - 6.8.7 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 6.9 The provisions in Schedule 4 (Joint Working Obligations) shall apply where there are Lead Commissioner Arrangements in respect of an Individual Scheme.

Scheme Managers

- 6.10 In respect of each Individual Scheme, the Lead Commissioner shall appoint or, each Party shall appoint or agree the appointment of the Scheme Manager prior to the commencement of an Individual Scheme.
- 6.11 The relevant Party shall procure that the Scheme Manager shall in respect of the respective Individual Scheme:
- 6.11.1 Keep account(s) of all income and expenditure (whether or not Permitted Expenditure) and, where applicable, separately in respect of each Services Contract;

- 6.11.2 Provide on a monthly basis a summary of all such expenditure in such form as the Pooled Budget Manager shall require for the purposes of complying with its obligations;
- 6.11.3 Monitor and record compliance by Providers with each Services Contract (including but not limited to measuring performance against KPIs);
- 6.11.4 Monitor and record any Overspend or Underspend against the Agreed Expenditure; and
- 6.11.5 Provide any other information or comply with such other reporting requirements as reasonably required by ICEOG from time to time.

7 ESTABLISHMENT OF THE POOLED BUDGET

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Parties have agreed to establish and maintain the Pooled Budget in respect of revenue expenditure on the Individual Schemes.
- 7.2 The Pooled Budget shall be managed in accordance with the terms of this Agreement.
- 7.3 It is agreed that monies in respect of the Pooled Budget may only be expended on the following:
 - 7.3.1 the Contract Price;
 - 7.3.2 Third Party Costs;
 - 7.3.3 Approved Expenditure;
 ("Permitted Expenditure")
- 7.4 The Parties may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Party, subject to approval by the ICEOG.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on any Default Liability unless this is agreed by both Parties.

8 POOLED BUDGET MANAGEMENT

- 8.1 The Pooled Budget Manager shall have the following duties and responsibilities:
 - 8.1.1 maintaining an overview of all joint financial issues affecting the Parties in relation to the Individual Schemes and the Pooled Budget subject to receiving the relevant information from each Scheme Manager, preparing and submitting to the ICEOG Quarterly reports (or more frequent reports if properly required by the ICEOG) and the Annual Report about the income and expenditure in respect of the Pooled Budget together with such other information as may reasonably be required by the Parties and the Health and Wellbeing Board to monitor the effectiveness of the Pooled Fund. The Parties agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
 - 8.1.2 preparing and submitting reports to the ICEOG and Health and Wellbeing Board as required by it and any other Council/CCG meeting that is deemed necessary and appropriate by the ICEOG for the discharge of its monitoring obligations.
- 8.2 In carrying out their responsibilities as provided under Clause 8.1 the Pooled Budget Manager shall have regard to the recommendations of the ICEOG and be accountable to the Parties.

9 FINANCIAL CONTRIBUTIONS AND BALANCING PAYMENTS

- 9.1 Subject to Clause 9.2, the minimum Financial Contribution of the CCG and the Council in respect of the Pooled Budget for the specified Financial Year of operation of each Individual Scheme shall be as set out in the relevant Annual Budget.
- 9.2 No provision of this Agreement shall preclude the Parties by mutual agreement making Non-Recurrent Payments. Any such Non-Recurrent Payments agreed by the Parties shall be explicitly recorded in the ICEOG minutes and recorded in any budget statement or financial reports as a separate item.
- 9.3 The Parties may agree any Approved Expenditure (in addition to Approved Expenditure agreed in a Scheme Specification) through the ICEOG. For the avoidance of doubt, a business case including any corporate spend for such Approved Expenditure shall be approved by the Parties at a quorate ICEOG meeting.
- 9.4 The CCG shall make equal monthly payments to the Council in respect of the BCF received by the CCG and allocated to the Council under the Annual Budget. Such equal monthly payment shall be adjusted commensurately with any in-year variations agreed between the Parties.
- 9.5 In respect of IBCF the Council will pay amounts properly due against an invoice raised by the CCG in accordance with the Annual Budget.
- 9.6 The Parties acknowledge that the DFG grant funding is paid by the Council to third parties in accordance with any agreed budget allocation.

10 NON-FINANCIAL CONTRIBUTIONS

- 10.1 Each Scheme Specification shall set out non-financial contributions of each Party including staff, premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Services Contracts and the Pooled Budget). The Scheme Specifications shall set out whether these contributions shall be accounted for in respect of the Pooled Budget.

11 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 11.1 The Parties have agreed risk share arrangements as set out in Schedule 3, which provide for the allocation of the financial risks relating to Overspend arising within the commissioning of Services in respect of the Pooled Budget.
- 11.2 ICEOG shall, in conjunction with the Pooled Budget Manager and any reports produced in that regard manage expenditure in respect of the Pooled Budget within the Financial Contributions and shall ensure that expenditure is limited to Permitted Expenditure.
- 11.3 The Pooled Budget Manager shall notify the ICEOG as soon as reasonably possible of an actual or projected Overspend or Underspend in respect of the Pooled Budget, and where there is an actual Overspend or Underspend the provisions of Schedule 3 shall apply. Such arrangements shall be subject always to the Law and the constitutional documents, Standing Orders and Standing Financial Instructions (or equivalent) of each Party.
- 11.4 The provisions of Clause 22 shall apply in respect of Overspends and Underspends upon termination of this Agreement or a Scheme Specification.
- 11.5 In the event that agreement cannot be reached in respect of any matters referred to in this Clause 11 and Schedule 3 the Parties shall follow the dispute procedure as set out in Clause 23.

12 CAPITAL EXPENDITURE

- 12.1 Subject to Clause 12.2, the Pooled Budget shall not normally be allocated to 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 Parties. If a need for capital expenditure is identified this must be agreed by the Parties acting by the ICEOG.
- 12.2 The Parties agree that capital expenditure may be included in the Pooled Budget where this is in accordance with Better Care Fund requirements and set out in the relevant Scheme Specification. For the avoidance of doubt, this will include capital expenditure using the DFG.

13 VAT AND INVOICING

- 13.1 The Parties shall agree the treatment of VAT under this Agreement in accordance with any relevant guidance from HM Revenue & Customs and wherever possible in line with the Party responsible for such VAT's policy on the management and dispersal of VAT.
- 13.2 The Scheme Manager shall check and approve the validity of spend in line with the relevant Services Contract or Permitted Budget set out in the relevant Scheme Specification, and report to the ICEOG as required.

14 AUDIT AND RIGHT OF ACCESS

- 14.1 Both Parties shall promote a culture of probity and sound financial discipline and control. Each Party shall arrange for the audit of their respective [Individual Schemes] as part of their normal auditing practice and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 29(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998. Both Parties shall comply with each Party's relevant financial reporting timescales and ensure a common approach to financial reporting is in place.
- 14.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access to any document, information or explanation they require from any employee or member of either Party 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 LIABILITIES AND INSURANCE AND INDEMNITY

- 15.1 The Parties shall agree and maintain appropriate insurance arrangements in respect of all potential liabilities arising from this Agreement. In the case of the CCG, it may arrange alternative cover in accordance with current NHS arrangements administered by the NHS Litigation Authority in lieu of commercial insurance. Each Party shall provide to the other upon request such evidence as that Party may reasonably require to confirm that the insurance arrangements are satisfactory and are in force at all times.
- 15.2 Each Party ("**Indemnifying Party**") shall indemnify the other Party ("**Indemnified Party**") and its employees and agents against all Losses incurred as a result of or in connection with this Agreement or a Services Contract to the extent that such Losses arise as a result of any negligent or wrongful act, or omission, breach of statutory duty, breach of this Agreement or breach of the relevant Services Contract of the Indemnified Party, its employees or agents, save to the extent that the Indemnifying Party was following the instructions or requests of the Indemnified Party, the Health and Wellbeing Board or the ICEOG.
- 15.3 If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause 15, that Party will:

- 15.3.1 as soon as reasonably practicable give written notice of that matter to the Indemnifying Party specifying in reasonable detail the nature of the relevant claim;
 - 15.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 15.3.3 give the Indemnifying Party 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 Party and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 15.4 For the purposes of the indemnity in Clause 15.2 the expression "agents" shall be deemed to include without limitation any nurse or health professional/social care worker or manager providing services to the Council or the CCG under a contract for services for the Better Care Fund and any person carrying out work for the Council or the CCG under such a contract connected with such of the Council's or the CCG's facilities.
- 15.5 The Parties acknowledge that the responsibility for specific indemnity cover lies with the Provider relevant to the Services they operate. However, commissioners need to assure themselves that such indemnity cover is in place.
- 15.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party pursuant to this Agreement.

Conduct of Claims

- 15.7 In respect of the indemnities given in this Clause 15:
- 15.7.1 the Indemnified Party shall give written notice to the Indemnifying Party as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
 - 15.7.2 the Indemnifying Party 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 Party, the Indemnifying Party shall consult with the Indemnified Party about the conduct and/or settlement of such claims and proceedings and shall at all times keep the Indemnified Party informed of all material matters; and
 - 15.7.3 the Indemnifying and Indemnified Parties shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

16 STANDARDS OF CONDUCT AND SERVICE

- 16.1 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties' respective constitutional documents, Standing Orders and Standing Financial Instructions).
- 16.2 The Council is subject to the duty of best value under the Local Government Act 1999 ("**Best Value**"). This Agreement and the operation of the Pooled Budget is therefore subject to the Council's obligations for Best Value and the CCG will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 16.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of 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 Budget are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.

- 16.4 The Parties are committed to an approach to equality and equal opportunities as represented in their respective policies. The Parties will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.
- 16.5 The Services shall be purchased for or provided to the Service Users in accordance with the objectives set out in the Recitals to this Agreement and each Scheme Specification.
- 16.6 Each Scheme Manager shall implement the bona fide decisions of the ICEOG pursuant to Schedule 2 in respect of an Individual Scheme. For the avoidance of doubt this Agreement does not seek to affect the statutory responsibilities of either Party.
- 16.7 The ICEOG shall monitor the exercise by the Parties under this Agreement of the Functions in accordance with Schedule 2.
- 16.8 The report(s) provided by the Council under Schedule 2 will set out the expenditure under this Agreement in relation to the NHS Functions and the Council shall provide such information to the CCG if the CCG requests this from time to time.
- 16.9 The quarterly report(s) provided by the CCG under Schedule 2 will set out the expenditure under this Agreement in relation to the Social Care Related Functions and the CCG shall provide such information to the Council if the Council requests this from time to time.

17 CONFLICTS OF INTEREST

The Parties shall comply with their respective organisation's Conflicts of Interest Policy for identifying and managing conflicts of interest as referred to in Schedule 6 and as such policies are updated from time to time during the term of this Agreement.

18 GOVERNANCE

- 18.1 Overall strategic oversight of partnership working between the Parties is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Parties as to any action it considers necessary.
- 18.2 The Parties have established a multi-agency/stakeholder Integrated Commissioning Executive Officer Group (ICEOG) with membership as set out in Schedule 2. That body will:
 - 18.2.1 implement, deliver and operationally manage the Better Care Fund Plan;
 - 18.2.2 manage the Better Care Fund budget; and
 - 18.2.3 lead, co-ordinate and monitor delivery of the Better Care Fund programme,as set out in the terms of this Agreement and the terms of reference included at Appendix 1 of Schedule 2.
- 18.3 Each member of the ICEOG shall be a representative with individual delegated responsibility from the Party employing or appointing them to make decisions which enable that body to carry out its objectives, roles, duties and functions set out in Schedule 2.
- 18.4 Each Party undertakes to the other that it has secured and will continue to secure internal reporting arrangements to ensure the standards of accountability and probity required by each Party's own statutory duties and organisation are complied with.

- 18.5 The ICEOG and the CCG Governing Body Board and the Council's Cabinet shall be responsible for the overall approval of the use of funds for Individual Schemes, ensuring compliance with the Better Care Fund Plan.
- 18.6 A Scheme Specification may set out any additional governance arrangements in respect of the Individual Scheme and (if applicable) how that Individual Scheme is reported to the ICEOG differently to any other Scheme.
- 18.7 The Parties shall procure that ICEOG shall co-operate with the Pooled Budget Manager in relation to reporting requirements set out in relevant guidance in relation to the Better Care Fund as issued from time to time by NHS England, DfLUHC, the Department of Health and Social Care and/or the Local Government Association.

19 REVIEW

Annual Review

- 19.1 The Parties shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the BCP, the Pooled Budget, the Individual Schemes and the provision of the Services within 3 Months of the end of each Financial Year.
- 19.2 Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 19.3 The Parties shall within 2 Months of each Annual Review jointly prepare an annual report ("**Annual Report**") documenting the matters referred to in this Clause 19. A copy of the Annual Report shall be provided to the ICEOG and also to the Health and Wellbeing Board.
- 19.4 The Parties acknowledge that the ICEOG shall also undertake regular reviews of the operation of this Agreement in accordance with the terms of reference set out in Schedule 2

Review of Financial Contributions

- 19.5 The Parties shall use all reasonable endeavours to agree no later than 31st March in any Financial Year their respective Financial Contributions for the following Financial Year and the BCP and Annual Budget shall be agreed and signed by a relevant chief finance officer of each Party.
- 19.6 The relevant Scheme Specifications will be updated (or deemed to be updated) to reflect the Annual Budget. Where agreement cannot be reached prior to 1 April:
- 19.6.1 the Annual Budget and the Financial Contributions shall for an interim period commencing on 1 April until the earlier of the date of agreement of the Annual Budget and termination of the Agreement ("Interim Period") be deemed to remain the same as the previous Financial Year;
- 19.6.2 a Party may give notice to the other Party at any time during the Interim Period that its Financial Contributions are to be reduced provided that (a) it does not result in a financial shortfall to the other Party in respect of any directly related Services Contract and (b) the Party giving the notice provides all reasonable assistance to mitigate the impact of such reduction; and
- 19.6.3 where any financial shortfall arises during the Interim Period as a result of cost increases outside of the direct control of the Parties (including inflation, staff costs and contractual increases under Service Contracts) the Parties shall either contribute to such shortfall in the proportions stated in the Scheme Specification or agree changes to the relevant Services or Scheme to counter the shortfall. .
- 19.7 Where the Annual Budget is agreed after 1 April, the effect shall be backdated such that either Party may be required to make a balancing payment (resulting in a positive or negative result) to give retrospective effect to the Annual Budget from 1 April.

- 19.8 The Parties shall review the operation of the Agreement at each meeting of the ICEOG including confirmation of their respective Financial Contributions for that Financial Year. The Parties may at this time (acting by written agreement of the ICEOG) agree to vary such contributions and the relevant Scheme Specifications and Schedule 3 shall be amended in accordance with Clause 30.
- 19.9 The Parties shall also use reasonable endeavours in each Financial Year to agree by 1st February a draft budget for the following Financial Year which would usually be based on the budget for the previous Financial Year. Such budget will be finalised once the Parties have agreed their Financial Contributions for the relevant Financial Year in accordance with Clauses 19.5 and 19.8 above.
- 19.10 Reviews under this clause 19 shall be conducted in good faith and in accordance with the governance arrangements set out in Schedule 2, shall be based upon information to be provided as set out in Schedule 2 and shall take account of:
- 19.10.1 National Guidance;
 - 19.10.2 reasonable increases for inflation;
 - 19.10.3 any agreed addition or decrease of BCF or the Parties' own funds against any agreed Services and/or outputs;
 - 19.10.4 any commitments under or in connection with any Services Contract; and
 - 19.10.5 any consequential effect to a Party as a result of any changes to any Individual Scheme
- and the Parties acknowledge that any decision to reduce a Party's Financial Contribution which may impact on either Party's ability to fund a Service shall comply with the requirements of Clause 30 including consideration of any associated reduction in the Services, taking account of notice periods within the relevant Services Contracts.

20 COMPLAINTS

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

21 TERMINATION & DEFAULT

- 21.1 Subject to the requirements of the Law (and in particular the statutory requirements of the Better Care Fund):
- 21.1.1 this Agreement may be terminated by either Party giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes; and
 - 21.1.2 unless otherwise agreed in the relevant Scheme Specification, each Individual Scheme may be terminated by either Party giving not less than 12 Months' notice in writing or such shorter notice period agreed between the Parties, provided that the Parties 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.
- 21.2 If a Party ("**Relevant Party**") fails to meet any of its obligations under this Agreement, the other Party may by notice require the Relevant Party to take such reasonable action within a reasonable timescale as the other Party may specify to rectify such failure. Should the Relevant Party fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.

- 21.3 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and any terms of this Agreement that expressly or by implication survive termination of this Agreement.

22 EFFECTS OF TERMINATION OR EXPIRY

- 22.1 In the event that this Agreement is terminated in whole or in part (howsoever terminated) the Parties agree to co-operate to ensure an orderly wind down of their joint activities as set out in this Agreement so as to minimise disruption to all Service Users, carers and staff and subject to the statutory requirements of the Better Care Fund.
- 22.2 The Council and the CCG shall co-operate to ensure that:
- 22.2.1 where possible, existing Services Contracts are assigned to the Party with statutory responsibility for the relevant Service Users. Where this is not possible, subject to Clause 22.2.3, the Council and the CCG shall continue to be liable to purchase the Services in accordance with this Agreement for all current Service Users at the date of service of the notice of termination and to fulfil all existing obligations to third parties under any Services Contract until the relevant contracts are terminated; and
 - 22.2.2 the Parties shall continue to operate the Pooled Budget in accordance with this Agreement so far as is necessary to ensure fulfilment of the obligations in sub-Clause 22.2.1; and
 - 22.2.3 the Parties shall remain liable to contribute the proportion of the cost of the Services which either is their proportionate contribution to the relevant Individual Scheme in the current Financial Year or, if such contribution has not at the date of notice of termination yet been confirmed under Clause 19.5, the Party's contribution in the immediately preceding Financial Year represented as a proportion of the aggregate contributions of each Party to the relevant Services in that preceding Financial Year, such liabilities to continue for so long as the Service Users shall require the Services or the obligations to third parties under any Services Contract remain to be fulfilled.
- 22.3 Upon termination of the Agreement or an Individual Scheme the Parties shall use all reasonable endeavours to agree an apportionment of any Underspend in relation to the Individual Scheme so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the Underspend, the consequential effect to any other Individual Scheme and such payments as shall be required to reflect this shall be made from the Pooled Fund to the Parties. Where such agreement cannot be reached within 30 days of termination the Underspend shall be returned to the Parties in proportion to their respective Financial Contributions for that Scheme.
- 22.4 Upon termination of the Agreement or an Individual Scheme the Parties shall use all reasonable endeavours to agree an apportionment of any Overspend in relation to the Scheme so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the Overspend and such payments as shall be required to reflect this shall be made by the Parties to the Pooled Fund. Where such agreement cannot be reached within 30 days of termination the Parties shall meet the Overspend proportionately to their respective Financial Contributions for that Scheme.
- 22.5 When determining whether there has been an Underspend or Overspend as at the date of termination of this Agreement, all known liabilities in relation to each Individual Scheme should be assessed and quantified and taken into account. In the case of termination of an Individual Scheme, all known liabilities in relation to that Scheme should be assessed and quantified and taken into account.
- 22.6 The Parties shall continue to be responsible for any liabilities that arise following any payments made pursuant to Clause 22.3 and/or Clause 22.4. Any liabilities that are subsequently quantified shall be apportioned between the Parties on the same basis as an Overspend in accordance with Clause 22.4 and the Parties shall make such payments to each other as shall be required to reflect this.
- 22.7 Unless agreed otherwise assets purchased from the Pooled Budget will be disposed of by the Party with the responsibility for the Individual Scheme to which those assets relate for the purposes of meeting any of the costs of winding up the Services or where this is not practicable such assets will

be shared proportionately between the Council and the CCG according to their respective Financial Contributions to the relevant Scheme.

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Parties arising out of this Agreement, either Party may serve written notice of the dispute on the other Party, setting out full details of the dispute.
- 23.2 The Parties 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 Authorised Officer of each Party (or in each case their nominees) shall meet in good faith as soon as possible after the relevant meeting and in any event within fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Parties will attempt to settle such dispute by referring the dispute to the Parties' respective Chief Executive or equivalent, who will endeavour to meet within 28 days of a Party serving notice requiring the same.
- 23.5 If the dispute remains after the meeting detailed in Clause 23.3 or 23.4 has taken place, then the Parties may attempt to settle such dispute by mediation as follows:
- 23.5.1 in the case of any financial dispute including those in relation to any Overspends and/or Underspends as referred to in Clause 11 and Schedule 3; by referral to NHS England Midlands and Local Government Association Midlands Region peers for determination; and
 - 23.5.2 in the case of any other dispute, in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Parties.
- 23.6 To initiate mediation under 23.4.1 or 23.4.2, either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to NHS England Midlands and Local Government Association Midlands peers, CEDR or the equivalent mediation organisation as agreed by the Parties (as the case may be) asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served (or in the case of mediation of financial issues, such other timescale as NHS England and the Local Government Association shall determine). Neither Party 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 Parties). The Parties will co-operate with any person appointed as mediator, providing them with such information and other assistance as they shall require and will pay their costs as they shall determine or in the absence of such determination such costs will be shared equally.
- 23.7 If the dispute remains after the meeting detailed in Clause 23.3 or 23.4 has taken place may be referred to expert determination by an expert (the **Expert**). The Expert shall be appointed by agreement in writing between the parties, but in the event of a failure to agree within ten Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed by an appropriate professional body relevant to the issue (or any other association that the parties reasonably understand to have replaced it) in relation to a Dispute.
- 23.8 The Expert shall act on the following basis:
- 23.8.1 the Expert shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 23.8.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures, or unless one Party objects prior to the date of the determination) be final and binding on the parties;

- 23.8.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make their determination within 30 business days of their appointment or as soon as reasonably practicable thereafter. The parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 23.8.4 the determination process shall be conducted in private and shall be confidential; and
- 23.8.5 where the determination is to be final and binding, the Expert shall determine how and by whom the costs of the determination, including their fees and expenses, are to be paid. The fees and expenses of the Expert shall otherwise be borne 50:50 between the Parties.
- 23.9 Nothing in the procedure set out in this Clause 23 shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

- 24.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any Losses or damages incurred by that Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party 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 Party and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Parties shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Party shall have the right to seek to terminate the Agreement under Clause 21.1. For the avoidance of doubt, no compensation shall be payable by either Party as a direct consequence of this Agreement being terminated in these circumstances.

25 CONFIDENTIALITY

- 25.1 In respect of any Confidential Information a Party receives from another Party (the "**Discloser**") and subject always to the remainder of this Clause 25, each Party (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which'
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
- 25.3 Each Party:

- 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 Parties agree that they will each cooperate with each other to enable the Party receiving a request for information under the 2000 Act or the 2004 Regulations to respond promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving, and supplying information held, directing requests to the other Party as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.
- 26.2 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Party shall be in breach of Clause 25 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.
- 26.3 Each Party ("**First Party**") acknowledges that the other Party will, in responding to a request received under the 2000 Act or the 2004 Regulations, be entitled to provide information relating to this Agreement or which otherwise relates to the First Party.

27 OMBUDSMEN

The Parties 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 AND DATA PROTECTION

- 28.1 The Parties shall at all times after the commencement of this Agreement:
 - 28.1.1 use their best endeavours to comply with their obligations under the Data Protection Legislation;
 - 28.1.2 cooperate with each other to enable the other Party to meet its obligations under the Data Protection Legislation.
- 28.2 The Parties shall ensure that at all times throughout the duration of this Agreement there remains in place a policy and procedures for information sharing in order to ensure that:
 - 28.2.1 the Parties comply with any notification requirements under the Data Protection Legislation;
 - 28.2.2 the Parties process information obtained in relation to any Service User in accordance with their obligations under the Data Protection Legislation; and
 - 28.2.3 Providers commissioned pursuant to Individual Schemes have in place appropriate technical and contractual measures to ensure their compliance with the Data Protection Legislation.
- 28.3 Both Parties shall thereafter comply at all times with such policy and procedures for the duration of this Agreement and indefinitely after its expiry or termination.

- 28.4 The Parties acknowledge that supporting data sharing protocols and agreements are being developed which will underpin the Better Care Fund Plan and which they will adhere to when sharing information under this Agreement. Wherever the Parties intend to share data, they will consider the type of information to be shared and the purpose for sharing it, and they will enter into the appropriate information sharing agreements as developed between the Parties.
- 28.5 Each Party shall take such steps as may be practicable to afford the other Party access to information which is reasonably required by the first Party in connection with any of its statutory functions and for any purpose connected with its rights and obligations under this Agreement.
- 28.6 Each Party must exercise its reasonable endeavours to ensure the accuracy of any data entered into the computer system used in carrying out the Party's obligations under the Agreement.
- 28.7 So far as is permitted in Law (and each Party shall use all reasonable endeavours to ensure such permission exists) all data held on any computer system operated under this Agreement must immediately on termination of the Agreement be made available on request to the Party with statutory responsibility for the relevant Service Users.

29 NOTICES

- 29.1 Any notice to be given under this Agreement shall either be sent by first class post or electronic mail. The address for service of each Party shall be as set out in Clause 29.3. A notice shall be deemed to have been served if:
- 29.1.1 posted, at the expiration of forty-eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
 - 29.1.2 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 Party 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 the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, 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 Party in writing:
- 29.3.1 if to the Council, addressed to: the Strategic Director for People, Worcestershire County Council of County Hall, Spetchley Road, Worcester WR5 2NP
 - if to the CCG, addressed to the Accountable Officer, NHS Herefordshire And Worcestershire Clinical Commissioning Group of The Coach House, John Comyn Drive, Perdiswell, Worcester WR3 7NS

30 VARIATION

- 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 Parties subject to approval by the ICEOG in accordance with Schedule 2 as set out in this Clause.
- 30.2 Where the Parties agree that there will be:
- 30.2.1 a new Scheme Specification; or
 - 30.2.2 an amendment to a current Scheme Specification,

the ICEOG shall agree the new or amended Scheme Specification and this must be signed by the Parties. A request to vary an Individual Scheme (which may include a change in the level of Financial Contribution/s) may be made by any Party but will require agreement from both Parties in accordance with the process set out in Clause 30.3. The notice period for any variation unless otherwise agreed by the Parties shall be 3 Months or in line with the notice period for variations within the associated Services Contract/s, whichever is the shortest.

30.3 The following approach shall, unless otherwise agreed, be followed by the ICEOG:

- 30.3.1 on receipt of a request from one Party to introduce a Scheme Specification for an existing Individual Scheme or vary the Agreement or an Individual Scheme, the ICEOG will first undertake an impact assessment and identify those Services Contracts likely to be affected;
- 30.3.2 the ICEOG will agree whether those Services Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Services Contract terms and conditions and ensuring that the Party holding the Services Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;
- 30.3.3 wherever possible, agreement will be reached to reduce the level of funding in the Services Contract/s in line with any reduction in budget; and
- 30.3.4 should this not be possible and one Party is left financially disadvantaged as a result of holding a Services Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed and subject to the exceptions set out in Paragraph 5 of Schedule 3, be shared equally between the Parties.

31 CHANGE IN LAW

- 31.1 The Parties 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 If at any time during the term of this Agreement a change to the manner in which an Individual Scheme or the Services are commissioned is required as a result of a Change in Law then the provisions outlined in this Clause 31 shall apply.
- 31.3 The Parties shall jointly investigate the likely impact of the Change in Law on the Services and any other aspect of the Agreement and shall prepare a report in writing, setting out:
 - 31.3.1 the variation proposed;
 - 31.3.2 the date upon which it should take effect;
 - 31.3.3 a statement of whether the variation will result in an increase or decrease in Financial Contributions by reference to the relevant component elements of the Individual Scheme or Services which are subject to the Change in Law;
 - 31.3.4 a statement on the individual responsibilities of the CCG and the Council for any implementation of the variation;
 - 31.3.5 a timetable for implementation of the variation;
 - 31.3.6 a statement of any impact on, and any changes required to the Services; and
 - 31.3.7 the date for expiry of the report.
- 31.4 The Parties shall confirm in writing their decision to proceed with the proposed variation and shall agree a formal variation in accordance with Clause 30.

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

32 WAIVER

Any relaxation, delay or failure of either Party in exercising any right under this Agreement shall not be taken as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right.

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

35 EXCLUSION OF PARTNERSHIP AND AGENCY

- 35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Parties or render either Party 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 Party will have authority to, or hold itself out as having authority to:

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

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

37 ENTIRE AGREEMENT

- 37.1 The terms herein contained together with the contents of the Schedules constitute the complete Agreement between the Parties 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 Party.

- 37.2 Each of the Parties acknowledge and agree that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

- 37.3 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Party 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 both Parties 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 Parties 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).

40 STATUTORY OBLIGATIONS

- 40.1 The Parties shall in the performance of their obligations under this Agreement comply with all relevant Law and all provisions relating to such matters elsewhere in this Agreement.
- 40.2 Each Party will note the other Party's current and future obligations under the Data Protection Legislation, the 2000 Act, the Human Rights Act 1998, the Equality Act 2010, S.75 of the 2006 Act and Part 1 of the Local Government Act 1999 (as amended from time to time) and any codes of practice and best practice guidance issued by the European Commission Government and the appropriate enforcement agencies (the "**Specified Legislation**") and shall:
- 40.2.1 comply with the Specified Legislation in so far as it places obligations upon that Party in the performance of its obligations under this Agreement;
 - 40.2.2 facilitate the other Party's' compliance with its obligations under these provisions and comply with any reasonable requests for that purpose;
 - 40.2.3 act in respect of any person who receives or requests services under this Agreement as if that Party were a public authority for the purpose of the Human Rights Act 1998.
- 40.3 The Parties shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and of any other Acts pertaining to the health and safety of employees and shall ensure that any contractors carrying out work for any purpose relating to the Agreement likewise comply.
- 40.4 The Parties shall not in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person unlawfully discriminate against any person contrary to UK legislation relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise.

41 FAIR DEALINGS

- 41.1 The Parties recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

IN WITNESS WHEREOF this Agreement has been executed by the Parties as a DEED on the date which first appears in this Agreement

**THE CORPORATE SEAL of
WORCESTERSHIRE COUNCIL
was hereunto affixed in the presence of:**

Authorised signatory

**Signed as a deed on behalf of
NHS HEREFORDSHIRE AND WORCESTERSHIRE
CLINICAL COMMISSIONING GROUP**

Authorised signatory

Authorised signatory

SCHEDULE 1 – SCHEME SPECIFICATION

Part 1 – Scheme Specification Template

SECTION 75 - Schedule 3 - TEMPLATE					
Scheme name		[Scheme name]			
Lead Commissioning Organisation	Host partner for pooled fund	Scheme Manager		Annual budget	
[insert org name]	[insert org name]	[enter officer of host partner]		[enter £]	
SCHEME SUMMARY					
Description of the scheme					
Is the scheme within the Better Care Fund? <i>Yes / No</i>					
Planned duration of the scheme <i>Enter start and end date</i>					
What performance measures / national BCF conditions does this scheme support?		<i>e.g DTaC, NEA, Res and Nursing Admissions, 91 day at home following reablement</i>			
Which of the HICM areas does this scheme support?		<i>Early Discharge planning, Systems to monitor patient flow, MDT discharge teams, Homefirst / D2A, 7-day service, Trusted Assessors, Focus on choice, Enhanced health in care homes</i>			
FINANCIAL ARRANGEMENTS					
Financial contributions					
Partner		BCF £		Partner spend not in BCF £	
Worcestershire Council					
Herefordshire & Worcestershire CCG					
TOTAL					
Funding Source for Scheme					
*enter YES under relevant funding source	PASC	DFG	CCG Min Fund	Council Additional Fund	CCG Additional Fund
Funding source*					
Funding flow arrangements					
*enter YES under relevant funding source	Funds retained and spent by lead / host partner		Invoice by WCC to HWCCG and cash transfer		
Funding transfer*					
Financial reporting arrangements for scheme					
*enter YES under relevant control arrangement	Sole control		Lead Commissioner		Joint Commissioner
[Enter scheme host here]					
Statutory reporting by Scheme host					
Statutory reporting by Partner					
CONTRACTUAL ARRANGEMENTS FOR SCHEME					
Contract type:					
The end date of the contract (include details of extension options):					
Are the contract terms agreed by both partners (jointly commissioned contract) or by the lead commissioner:					
What contract management arrangements have been agreed?					
Which partner has responsibility for contract monitoring and performance management?					
What happens if the s75 agreement terminates:					
Can the partner terminate the contract:					
Can the contract be assigned in full / part to the other partner?					
RISK SHARING ARRANGEMENTS FOR SCHEME					
HOW PERFORMANCE OF THE SCHEME IS TO BE MEASURED <i>Please detail agreed KPIs below</i>					
Unit of measure	Target / ambition	Report frequency		Report submitted to:	
<i>e.g. number of clients supported, reduction in DTaC</i>	<i>full year target</i>	<i>e.g. monthly / quarterly</i>		<i>e.g. CYP JCG</i>	

Part 2: Schedule of Individual Schemes

A/C	Provider	Budget Category	Service
Adults	WCC	ICES	Worcestershire Community Equipment Service
Adults		BCF	Beds for Admission Prevention & Patient flow
Adults		BCF	Onward Care Team
Adults		BCF	Older People Care Act Eligible Services
Adults		BCF	DFCG
Adults		BCF	Growth
Adults		BCF	Community Health Services
Adults	WH&CT	Other Adults	Wheelchairs
Adults	WH&CT	Other Adults	WINN project - mobile OT service
Adults		Other Adults	FNC
Adults		Other Adults	Adult Recovery Services
Adults		Other Adults	Hospital & Rapid Response Assessment
Adults		Other Adults	Carers
Adults		Other Adults	iBCF
Adults		Other Adults	Loneliness Services
Adults		Other Adults	Social Impact Bond
Adults		Other Adults	Suicide Prevention

Adults		Other Adults	Support at home
Adults		Other Adults	Adult weight management services
Adults		Other Adults	NHS Health Checks
Adults		Other Adults	Sexual Health Services (including Out of Area GUM)
Adults		Other Adults	Lifestyle Services
Adults	WH&CT	LD	LD Integrated Teams
Adults		LD	LD Complex cases - TCP
Adults		LD	LD Complex cases - Dowry
Adults		LD	LD Other
Adults		Mental Health	Dementia Post Diagnostic Support
Adults		Mental Health	Dementia services
Adults		Mental Health	General Advocacy
Adults		Mental Health	Mental Capacity Act Training
Adults		Mental Health	Qwell
Adults			S117
			Total Adults Section 75
Children's	WH&CT	Provider Arm (WH&CT)	CAMHS Service
Children's	WH&CT	Provider Arm (WH&CT)	Speech Language & Communication needs (SCLN)

Children's	WH&CT	Provider Arm (WH&CT)	Children's Respite Care (Osbourne court)
Children's	WH&CT	Provider Arm (WH&CT)	Short Breaks - Osbourne Court
Children's	WH&CT	Provider Arm (WH&CT)	Thorne Lodge
Children's	WH&CT	Provider Arm (WH&CT)	Children's special needs CDC
Children's		Voluntary Sector	Worcester Young Carers Project
Children's		Children's Other	Physio Equipment spend
Children's		Children's Other	Children's contribution to the ICES equipment
Children's		Children's Other	Commissioning Team
Children's		Children's Other	0-19s Prevention and Early Intervention Service (Starting Well) incl LAC health Assessments
Children's		Children's Other	Speech and Language therapy Service
Children's		Children's Other	EHWB for schools
Children's		Children's Other	CAMHS Training

SCHEDULE 2– GOVERNANCE

The Parties acknowledge that the governance arrangements set out in this Schedule relate only to the Section 75 Agreement, including the Better Care Fund.

1 Delegated Authority

1.1 The Integrated Commissioning Executive Officers Group (ICEOG) is authorised to make financial commitments and to take other decisions where necessary within the limited delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

1.1.1 authorise commitments which exceed, or are reasonably likely to lead to exceeding, the contributions of the Party to the aggregate contributions of the Party to the Pooled Budget, as laid out in Schedule 3; and

1.1.2 authorise a Lead Commissioner to enter into any Services Contract necessary for the provision of Services under an Individual Scheme.

2 Information and Reports

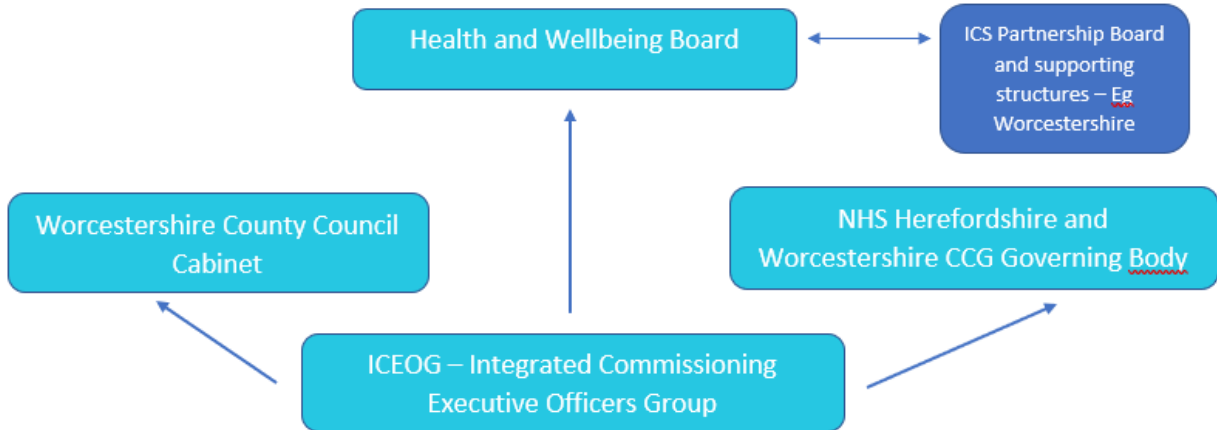
The ICEOG shall receive on a Quarterly basis the financial and activity information as required under the Agreement. In addition it will receive regular reports from each of the Individual Schemes included in the Agreement, as outlined in the Scheme Specifications for each Individual Scheme listed at Schedule 1 (together with any further Schemes, if any, agreed pursuant to this Agreement).

3 Post-termination

The ICEOG shall continue to operate in accordance with this Schedule 2 following any termination of this Agreement for so long as is reasonably necessary to comply with the post termination provisions.

Part 2

Worcestershire's Governance arrangements for the oversight and delivery of the Section 75 Agreement



Integrated Commissioning Executive Officers Group (ICEOG)

The Terms of Reference for the ICEOG describe the role of this group and its relationship to the other key groups that are responsible for the oversight and delivery of the Section 75 Agreement. These Terms of Reference are included below at **Appendix 1**.

Appendix 1

ICEOG TERMS OF REFERENCE

1 Aims

- 1.1 To progress the integration of NHS, social care, public health and related services for the benefit of Worcestershire residents through:
- 1.2 The development of strategies that support the integration of care across adults and children's services – in the context of the Integrated Care System, Joint Strategic Needs Assessment, Joint Health and Well-being Strategy, the Children and Young People's Plan and other relevant strategic plans across the Council and CCG
- 1.3 Ensuring effectiveness, safety and improved experience of services commissioned under the Section 75 (S75) agreement.
- 1.4 Working within the budgets delegated from partners' governing bodies. The scheme of delegation of the governing bodies through the powers delegated to lead officers (the Director for People, the Director of Public Health, the Director of Children's Services, and the CCG Accountable Officer)
- 1.5 To support the development of new models of care, focussing specifically upon integration and improvement of health and social care across Worcestershire.

2 Membership and representation

2.1 The Executive Officers Group comprises:

- 2.1.1 Strategic Director for People Worcestershire County Council
- 2.1.2 Director of Public Health Worcestershire County Council
- 2.1.3 Director of Children's Services/Chief Executive Worcestershire County Council/Worcestershire Children First
- 2.1.4 Deputy Chief Finance Officer – Service Finance Worcestershire County Council
- 2.1.5 Accountable Officer (Chair) Herefordshire and Worcestershire CCG
- 2.1.6 Managing Director – Worcestershire Herefordshire and Worcestershire CCG
- 2.1.7 Chief Finance Officer Herefordshire and Worcestershire CCG
- 2.1.8 Director of Partnership and Change Herefordshire and Worcestershire CCG

2.2 In addition the following will attend meetings as required according to the agenda:

- 2.2.1 Assistant Director for Adult Social Care Worcestershire County Council
- 2.2.2 Assistant Director for Commissioning Worcestershire County Council
- 2.2.3 Director of Education and Early Help Worcestershire Children First
- 2.2.4 Deputy Director of Public Health Worcestershire County Council

- 2.2.5 Chief Nursing Officer and Director of Quality Herefordshire and Worcestershire CCG
- 2.2.6 Relevant finance officers from the County Council and CCG
- 2.2.7 Other senior managers will be invited to attend as required.
- 2.3 All members are appointed by virtue of the post or role that they hold. They will therefore remain a member for as long as they fulfil that post or role.
- 2.4 Members may have named substitutes but someone acting as a substitute for one member cannot also be the substitute for another member. Substitutes will have the same powers and responsibilities as the member they are substituting for.

3 Objectives

Operational Business

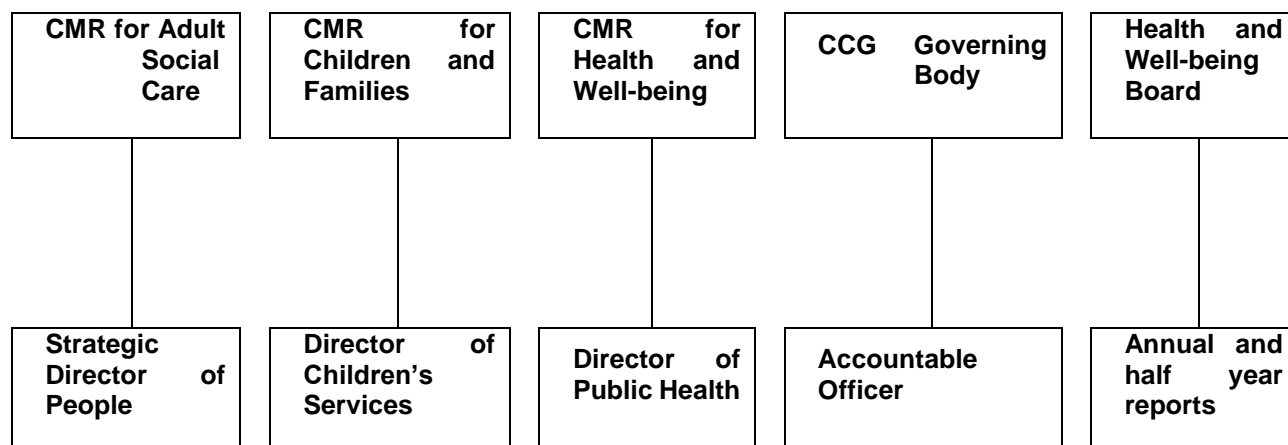
- 3.1 Establish and maintain appropriate integrated commissioning arrangements and review their effectiveness annually.
- 3.2 Develop and implement appropriate and effective integrated commissioning plans in accordance with the priorities, outcomes and budgets set by the respective governing bodies and the Health and Well-being Board.
- 3.3 Establish appropriate and rigorous financial accountability mechanisms to ensure that the S75 agreement is fully implemented, and all contributed funds are used effectively for the intended purpose within agreed limits.
- 3.4 Agree and report against a joint performance management framework, including: monitoring achievement against the BCF standards; contract performance, and quality assurance.
- 3.5 Identify individual and collective quality, financial and other relevant risks and agree remedial action to address these risks within the scheme of delegation of the governing bodies.
- 3.6 To oversee financial recovery actions in relation to efficiency programmes
- 3.7 Support the development and review of the Health and Well-being Strategy and associated plans.
- 3.8 Support development and implementation of the Worcestershire Better Care Fund plan.
- 3.9 Ensure that public, patients, service users and carers are given the opportunity to shape how services are organised and provided.
- 3.10 Ensure that the statutory duties and responsibilities of relevant partners are discharged by integrated commissioned services, including Safeguarding responsibilities in respect of children and vulnerable adults.
- 3.11 Ensure that all integrated commissioning meets the requirements of the Equality Act and undertake an Equality Impact Assessment for service developments or significant changes.

4 Reporting arrangements

- 4.1 The Strategic Director of People, the Director of Public Health and the Director of Children's Services will keep relevant Cabinet Members and the wider Council informed of any issues requiring their attention that arise from discussions at the Integrated Commissioning Executive Officers Group.
- 4.2 The Clinical Commissioning Group Accountable Officer will keep the CCG Governing Body informed of any issues requiring their attention that arise from discussions at the Integrated Commissioning Executive Officers Group.

- 4.3 The Strategic Director of People, the Director of Public Health, the Director of Children's Services and the Accountable Officer will produce a full report for the Health and Well-being Board annually on the Integrated Commissioning Executive Officer's Group, with an interim report half-way through the year.

5 Reporting arrangements



6 Conducting the business of the meetings

- 6.1 The Integrated Commissioning Executive Officers Group will be serviced from the Adult Services Commissioning Unit (WCC) with support from the CCG.
- 6.2 Meetings will be held monthly on dates to be agreed in advance or at such other intervals as may be agreed by the members.
- 6.3 The agenda will be developed by the Assistant Director for Commissioning in discussion with the Chair. (A standard Agenda and forward plan will be developed to ensure that business can be considered in line with the commissioning cycle and governance processes of partner organisations.) A standard format for papers will be used and papers will be clearly identified (for example, as performance report, for information, for decision).
- 6.4 To be quorate; the Chair, Strategic Director of People, Director of Children's Services or their nominated deputies must be in attendance.

7 Review

- 7.1 For review by 31st March 2022, or before if required, and at least each anniversary of the Commencement.

SCHEDULE 3– FINANCIAL CONTRIBUTIONS, RISK SHARE AND OVERSPENDS

Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of the Agreement.

Pooled Budget and Financial Management

Whilst every effort will be made by the Parties to ensure that the expenditure remains in line with the agreed budget through robust budget management, it is acknowledged that there may be circumstances that lead to either an over or under spend for which both Parties will be sighted on and in agreement with in the month of occurrence.

Pooled Budget Underspends

Underspends are forecast within the financial year, the Integrated Executive Officer Group (ICEOG)* will be fully briefed on the Underspend including the impact on service delivery/anticipated outcomes for both the Individual Scheme and any other Services where applicable.

Following which, ICEOG* will make an informed decision on the management of this variance and document it in the minutes.

Underspends at the end of a financial year can either be carried forward into the next financial year or allocated to Parties. The historic split has been on a 50:50 basis, however, it will be the responsibility of ICEOG* to formally approve and minute this agreement.

Pooled Budget Overspends

Over-spends are forecast within the financial year, the Integrated Executive Officer Group (ICEOG)* will be fully briefed on the Over-spend including the impact on service delivery/anticipated outcomes for both the Individual Scheme and any other Services where applicable.

Following which, ICEOG* will make an informed decision on the management of this variance and document it in the minutes.

These options could include

- agreeing an action plan to facilitate the reduction in expenditure within an agreed timeframe.
- utilisation of Underspends within the Section 75 Agreement to mitigate any Overspend.
- agreement to a proportionate Non-recurrent Payment from each Party based on both/either the overall budget % contribution and/or an informed discussion on the driver of the Overspend.
- the decommissioning of all or any part of the Individual Schemes to which the Overspend relates.

Aligned Budgets

In the case of aligned budgets, financial liability rests with the relevant commissioning Party in full and that Party has the option to recover any Underspend in full, unless otherwise agreed by ICEOG* and respective governing bodies. Overspends on aligned budget also rest with the relevant commissioning Party in full.

*ICEOG – assumed to be quorate.

SCHEDULE 4– JOINT WORKING OBLIGATIONS

Part 1 – LEAD COMMISSIONER OBLIGATIONS

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

- 1 The Lead Commissioner shall notify the other Party if it receives or serves:
 - 1.1 a Change in Control Notice;
 - 1.2 a Notice of an Event of Force Majeure;
 - 1.3 a Contract Query;
 - 1.4 Exception Reports - and provide copies of the same.
- 2 The Lead Commissioner shall provide the other Party with copies of any and all:
 - 2.1 Monthly Activity Reports;
 - 2.2 Scheme Updates;
 - 2.3 Joint Performance Dashboards;
 - 2.4 Remedial Action Plans; and
 - 2.5 Service Quality Performance Report;
- 3 The Lead Commissioner shall not without the approval of both Parties:
 - 3.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
 - 3.2 vary any Provider Plans (excluding Remedial Action Plans);
 - 3.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
 - 3.4 give any approvals under the Services Contract;
 - 3.5 agree to or propose any variation to the Services Contract (including any Schedule or Appendices);
 - 3.6 suspend all or part of the Services;
 - 3.7 serve any notice to terminate the Services Contract (in whole or in part);
 - 3.8 serve any notice;
 - 3.9 agree (or vary) the terms of a Succession Plan; without the prior approval of the other Party (acting through the Joint Commissioning Board) such approval not to be unreasonably withheld or delayed.
- 4 The Lead Commissioner shall advise the other Party of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Party as part of that process.

Part 2 – OBLIGATIONS OF THE OTHER PARTY

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

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

SCHEDULE 5 – PERFORMANCE ARRANGEMENTS

The ICEOG will receive relevant performance reports at its monthly meetings including:

- Monitoring against delivery of national and local BCF standards
- Monitoring against the performance measures in the relevant Services Contract specification for each Individual Scheme included in this Agreement, as outlined in the Scheme Specifications included at Schedule 1, Part 2.

SCHEDULE 6 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

The Parties shall comply with their respective organisation's Conflicts of Interest Policy for identifying and managing conflicts of interest and as such policies are updated from time to time during the term of this Agreement.

The CCG's policy can be viewed here:

[HWCCG Conflicts of Interest Policy](#)

Worcestershire County Council's Code of Conduct can be viewed here:

[WCC Code of Conduct](#)

SCHEDULE 7 – INFORMATION GOVERNANCE

1. In relation to the UK Data Protection Regulations, tailored by the Data Protection Act 2018, all Parties confirm that:
 - 1.1. That their operational policies and procedures are fully compliant
 - 1.2. That staff are fully and appropriately trained in the requirements of the Regulations and the Act and in their responsibilities to protect personal data and are familiar with the ICO (Information Commissioners Office) guidance on Data Protection, including guidance on Children's Data, Data Sharing and the Age Appropriate Design Code (issued September 2020)
 - 1.3. That contracts issued and designated service providers are fully compliant as appropriate
 - 1.4. That in relation to paragraphs 1.1 to 1.3 compliance is regularly reviewed and monitored.

SCHEDULE 8 – BETTER CARE FUND PLAN



BCF 21.22 Narrative
Plan Final.docx



Worcestershire HWB
V4.xlsx