



DATED

**Stockport Clinical Commissioning
Group (1)**

and

**Stockport Metropolitan Borough
Council (2)**

**SECTION 75 PARTNERSHIP
AGREEMENT**

**For the creation of a pooled fund and
shared commissioning arrangements
Integrated Health and Social Care
Service in Stockport**

**These arrangements include use of
Section 75 powers to establish Pooled
Fund and Lead Commissioning
arrangements**

Responsible Officers:

On behalf of NHS Stockport Clinical Commissioning Group

(Accountable Officer)

On behalf of Stockport Council

(Insert name and role of responsible officers for the purpose of this Agreement)

(The Council's Responsible Officers)

INDEX OF CONTENTS

1. **Parties**
2. **Introduction**
3. **The Stockport Together Vision**
4. **Section 75 Document Purpose**
5. **Background to the Agreement**
6. **Definitions**
7. **Appointment of Commissioning Function and Pooled Budget Function**
Hosts
8. **Integrated Commissioning**
 - 8.1 Schedule 5
 - 8.2 Delegations
 - 8.3 Partial or Incomplete Delegations
 - 8.4 Integrated Commissioning Objectives
 - 8.5 Parties Mutual Responsibilities
 - 8.6 Legacy contracts, transitional commissioning arrangements
 - 8.7 Monitoring and Review of the HCICB
 - 8.8 Integrated Commissioning Arrangements through the Health and Care
Integrated Commissioning Board
 - 8.9 Role of Joint Commissioning Board
 - 8.10 Specific functions of the Joint Commissioning Board
9. **Pooled Fund**
 - 9.1 Pooled Fund Agreement
 - 9.3 Operation of Pooled Budgets
 - 9.4 Contributions to Pooled fund
 - 9.4 Financial Accountability and Risk Sharing
 - 9.5 Pooled fund: Overspend and underspend procedures
 - 9.6 Non-financial contributions to the Pooled Fund; transfer of assets in lieu of
money contributions
 - 9.7 Division of Pooled Fund into Individual Pooled Service Budgets (PSB's)
 - 9.8 VAT
 - 9.9 Capital expenditure

- 10 Over-arching arrangements for Health and Care Integrated Commissioning Board (HCICB) and Joint Commissioning Board**
- 10.1 Status of HCICB
- 10.2 Relationship between HCICB and Joint Commissioning Board (JCB)
- 10.3 Relationship between parties, HCICB, over-arching principle of financial probity
- 10.4 Commercial confidentiality arrangements
- 10.5 Shared Data Protection Arrangements
- 10.6 Conflicts of interest
- 10.7 Resolution of commissioning disputes between parties by mediation
- 10.8 Director of Integrated Commissioning
- 11 Liabilities, insurance and indemnity**
- 12 Term of agreement**
- 13 Continued Co-operation between parties after end of agreement**
- 14 Continuing contracts and liabilities arising from termination of agreement**
- 15 Third Party rights and contracts**
- 16 Governing and applicable law**
- 17 Complaints procedures**
- 18 Review and variation**
- 19 Appointment of legal advisors**
- 20 Appointment of financial and audit advisors**
- 21 Relationship between the Parties and Greater Manchester Strategic Partnership Board and Joint Commissioning Board in the event that it exercises parallel legal powers**
- 22 Responsibility for public statements and press releases**
- 22 Entire Agreement**
- 24 No partnership or agency**
- 25 Invalidity and severability**
- 26 Counterparts**
- 27 Notice**
- 28 Addresses**
- 29 Force Majeure**
- 30 Termination**
- 31 Transferability of Agreement**
- 32 Liability and Indemnity (add into main document text)**

Schedule 1 *(to follow)*

Schedules describing the services to be provided under integrated commissioning arrangements.

Schedule 2 *(to follow)*

Pooled Budgets

Schedule 3 *(to follow)*

HCICB Governance specifications

Schedule 4 *(to follow)*

Conflicts of Interest Principles

Schedule 5 *(to follow)*

Governance Diagram

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Summary of Agreement

Since 2009, both Stockport Council and the NHS commissioning organisations in Stockport have had a commitment to integrated commissioning arrangements for the commissioning of health and social care services using pooled budget arrangements.

From 2015/16, these arrangements also included a Better Care Fund (BCF).

Pooled budgets between Social Care and Health are designed to cut across organisational boundaries, to improve the health and well-being of people in Stockport and to provide better value for money.

Both Stockport Council and Stockport Clinical Commissioning Group have now agreed to extend these integrated commissioning arrangements through the commissioning of a larger scale integrated health and social care service using a single pooled budget.

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1. Parties:

- (1) **NHS STOCKPORT CLINICAL COMMISSIONING GROUP** of
7th Floor, Regent House, Heaton Lane, Stockport SK4 1BS (“**the CCG**”);
- (2) **STOCKPORT METROPOLITAN BOROUGH COUNCIL** of
Town Hall, Stockport, SK1 3XE (“**the Council**”)

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2. Introduction

- 2.1 The purpose of this agreement is to put in place the arrangements required to govern and manage integrated commissioning arrangements aligned with a new pooled budget. It will establish the Health and Care Integrated Commissioning Board (**HCICB**) as the vehicle through which both parties will discharge their commissioning responsibilities in respect of the pooled funds. The agreement applies to the defined health and social care services supplied to the residents of the Metropolitan Borough of Stockport and to patients registered with the GP Practices within the Stockport area and whose medical services contracts are managed by the CCG. This agreement builds on and supersedes arrangements entered into by previous Section 75 agreements but is to be regarded as an entirely new arrangement.
- 2.2 Stockport's 2015/16 Better Care Fund plan was submitted in September 2014. In October 2014, NHS England reviewed the plan and it was 'approved with support.' Following the submission of further evidence, this was formally updated Stockport was notified of its 'full approval' status in December 2014. The parties have noted that the BCF monies included within the pooled funds are subject to a pre-condition that they are deployed through a S75 pooled fund agreement.

3. The Stockport Together Vision

- 3.1 The Parties have a shared vision of a timely transformation towards an integrated approach to the provision of health and social care services in Stockport, and believe that significantly extending the pooling of financial resources and both co-ordinating and integrating their commissioning activities through the medium of the HCICB will help facilitate the best use of resources to support the local resident and patient population.

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4. Section 75 Document Purpose

The purpose of this Section 75 agreement is to:

1. Set out the Pooled Fund arrangements, including provision for the new services set out in Schedule 1
2. Record the commissioning philosophy that will underpin the commissioning of health and social care services through the HCICB and the transitional arrangements.
3. Describe the new expanded role of the HCICB in the administration of the Pooled Fund and to make formal arrangements for its procedures and actions.
4. Make any necessary arrangements to ensure that the commissioning and planning of the defined functions takes place on the basis of and by reference to evidence-based information and standards, and uses up-to-date service specifications and recognised and authoritative clinical protocols implemented with suitable and expert medical and social care advice.
5. Describe the joint actions to be taken by the parties both through and outside the HCICB in order to commission health and social care services in an integrated way.
6. Regulate the relationships between the parties as exercised through the HCICB.
7. Provide for the development of formal commissioning arrangements by the parties through the HCICB.
8. Make arrangements for the provision of a secretariat and other supporting services for the HCICB.
9. Make the necessary delegation, governance, audit and regulatory arrangements to facilitate the purposes listed above.

5. Background to the Agreement

- 5.1 The Parties are organisations working to improve the health and care of people resident in the Stockport area and patients registered to GP practices within the same area. They believe that outcomes for their served populations can be greatly enhanced by closer working Partnership arrangements. Although the parties responsibilities nominally cover the same geographical area, they have different commissioning responsibilities to the registered population for health care services and to the resident population for public health and social care services.
- 5.2 The objective of the Partnership Arrangements are to improve the outcomes for health and social care users from commissioned services through closer working between the National Health Service and Local Government to the extent (from time to time and subject to the terms of this agreement) that it is lawful to do so and consistent with the obligations of the Parties to co-operate with each other in commissioning the care.
- 5.4 These Partnership Arrangements have been established pursuant to Section 75 of the Act and pursuant to the Regulations.
- 5.5 The Parties believe that the Partnership Arrangements proposed by this Agreement fulfil the objectives set out by the Stockport Health and Wellbeing Board within the Joint Health and Wellbeing Strategy, Stockport CCG's Strategic Plan, the NHS Constitution and Guidance in so far as it relates to local, regional and national requirements, the Council Plan and the Council's relevant Strategic Directorate Business Plans.

6. Definitions and Interpretation

In this Agreement, unless the context otherwise requires:

“**The Authorised Officers**” means the Responsible Officers of the Parties as specified in the introductory page of this Agreement

“**The Act**” means the National Health Service Act 2006

“**The Chief Officers**” means the Chief Clinical Officer of the Clinical Commissioning Group and the Chief Executive Officer of the Council

“**The Commencement Date**” means 1 April 2016

“**The Council**” means the Stockport Metropolitan Borough Council

“**The Council's Functions**” means such functions of the Council as may be necessary to provide the Services specified in Schedule 1(1)

“**The Director of Integrated Commissioning**” means the jointly appointed individual who will be the integrated commissioning lead on behalf of both parties and who shall have overall responsibility for the Joint Commissioning Board

“**The Financial Year**” means a twelve month period commencing on 1 April and terminating on the following 31 March

“**The Functions**” means together Stockport Clinical Commissioning Group Functions and the Council's Functions in so far as they relate to the agreement

“**The HSCA 2012**” means the Health and Social Care Act 2012

“**The HCICB**” means the Health and Care Integrated Commissioning Board

“**The Health-Related Functions**” shall mean the public health functions of the Council under the HSCA 2012 and any other functions that may be exercised by the Council in its commissioning or delivery of the Services specified in Schedule 1

“**The Initial Term**” means a period of one year terminating on 31 March 2017 and capable of extending thereafter on a year to year basis at the parties discretion and agreement for a maximum period of seven years from the date of this agreement and thereafter as agreed between the Parties by further negotiation

“The Joint Commissioning Board” shall mean the joint administrative arrangements made by the Parties to commission the integrated services agreed through the HCICB

“Commissioning Function Host” shall mean the CCG as the party responsible for hosting the integrated commissioning arrangements

“Ancillary Service Commissioner” (ASC) shall mean the party that has been nominated in writing within an Ancillary Service Commissioning Agreement to be the lead commissioner of a service that falls within Schedule 1 of this agreement but which the parties have agreed shall fall outside the HCICB integrated commissioning arrangements

“Ancillary Service Commissioning Agreement” shall mean an agreement made between the parties under Clause 7.10.8

“The MCP” means the Multispecialty Community Provider to be established by and with the agreement of the current principal providers of health and social care services within the area in which their services may be delivered and which may be commissioned by their agreement through the HCICB and which will undertake such integration activities as may be required.

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

“The Pooled Fund Host” shall mean the Council as the Party responsible for the accounting for and audit of the pooled fund established under this agreement

“The Pooled Fund” means such fund or funds of monies received from separate contributions by the Parties for the purposes of providing the specified services to be commissioned through the HCICB and which are set out in Schedule 1 of this agreement

“The Pooled Fund Arrangements” means the arrangements agreed by the Parties for establishing and maintaining the Pooled Fund

“The Pool Fund Manager” will be the nominated officer(s) who will be accountable to the HCICB for the management of the Pooled Fund in accordance with the Pooled Fund Arrangements.

“The Individual Pool Budgets” shall mean the budgets agreed between the Parties within the HCICB to provide the services specified in Schedule 1 of this agreement from the Pooled Fund and which shall be administered by the Joint Commissioning Board

“The Individual Pool Budget Managers” being officers with delegated responsibility (detailed in the annual budget report) for budgets and the commissioning of services within an Individual Pool Budget

“The Parties” means together Stockport Clinical Commissioning Group and the Council

“The Partnership Arrangements” means the arrangements jointly agreed by the Parties for the purposes of providing the Services pursuant to the Regulations and Section 75 of the Act

“Pennine Care” means Pennine Care NHS Foundation Trust

“Finance Lead” shall mean the Section 151 Officer of the Council

“Stockport CCG” means the Stockport Clinical Commissioning Group

Stockport CCG functions” means such of those functions as described in Schedule 3 as may be necessary to provide the Services

“Stockport FT” means Stockport NHS Foundation Trust

“The Regulations” means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 SI No. 617 and any amendments and subsequent re-enactments

“The Services” means the services commissioned under this Agreement

“The Service User” means an individual in receipt of services commissioned under the agreement.

“The Term” means a period of means a period of seven years from the Commencement Date, plus any extended period as agreed by the Parties under clause 14.3;

“The Stockport Area” means the area within the Stockport Metropolitan Borough boundary in Greater Manchester. It includes areas in which GPs listed by the CCG are practicing and for which commissioning responsibilities exist for the registered population and also any area within the boundaries of the Metropolitan Borough of Stockport for which the Council has responsibilities and duties for those ordinarily resident

“Losses” means any and all direct losses, costs, claims, proceedings, damages, liabilities and any reasonably incurred expenses, including legal fees and disbursements

The headings in this Agreement are inserted for convenience only and shall not affect its construction and a reference to any Schedule or clause is to a Schedule or clause of this Agreement.

Words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

“SOSH” means the Secretary of State for Health.

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

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

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.

Reference to the Parties shall include their respective statutory successors, employees and agents subject to the provision of Paragraph 20.

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

Non-exhaustive lists: 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.

Gender and persons :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.

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

"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.

Mode of formal communication: 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.

Money: 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.

References to this Agreement within its text include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

7. Appointment of the Commissioning Function and Pooled Fund Hosts and their duties

7.1 Earlier Section 75 Agreements between the Parties established the Health and Wellbeing Integrated Commissioning Group (HWICB), consisting of representatives of the Parties in order to provide overall governance for the agreement, deployment, administration and management of resources between Stockport Council and Stockport CCG, and oversight of aligned resources, aligned to meet specified services by reference to agreed health and care priorities and outcomes identified from Joint Strategic Needs Assessment, the Joint Health and Wellbeing Strategy and the CCG Integrated Commissioning Plan and within the delegated scope of identified resource availability. Under the HWICB arrangements the Parties retained independence in their commissioning arrangements relating to the specified services.

7.2 The Parties propose to continue to build upon the previous model under this agreement, under which the parties will commission the services described in Schedule 1 of this agreement and the Health and Wellbeing Integrated Commissioning Board will be reconfigured and renamed the Health and Care Integrated Commissioning Board (HCICB). The HCICB will be subject to the rules for meetings, voting arrangements and procedural rules set out in **Schedule 3** to this agreement. The HCICB will provide strategic direction in the areas of agreed joint financing and commissioning set out in this agreement, with delegated authority for the development and operation of integrated commissioning and service innovation in these areas, taking into account the wider strategic framework set by the Health and Wellbeing Board and the Joint Health and Wellbeing Strategy and within the strategic plans of the Parties, and informed by appropriate intelligence such as the JSNA. Integrated commissioning will initially take place by sharing the planning and commissioning arrangements and then commissioning services using separate contracts with providers through the HCICB. In time the Parties will move towards full integrated commissioning arrangements from the Pooled Fund under which the CCG will act as Commissioning Lead.

7.3 The parties will appoint NHS Stockport Clinical Commissioning Group acting through the HCICB as the host for the integrated commissioning arrangements (which such expression shall have a different meaning to the role of Lead Service



Commissioner referred to in this agreement) and Stockport Council as the host for the pooled fund. In order to facilitate these arrangements the following functions will be undertaken in the manner set out elsewhere in this agreement 1

- 7.3.1 To agree to, and oversee, the use of HSCA 2012 flexibilities for establishing and then operating pooled budgets and integrated commissioning between the Parties under the terms of this agreement.
- 7.3.2 To oversee the establishment of the Pooled Fund and then the establishment of lead commissioner arrangements through the HCICB, to administer the individual Pool Budgets (if appropriate) and to receive information from the Director of Integrated Commissioning (DIC), the Finance Lead and Individual Pool Budget Managers (where appropriate) with delegated responsibility for the access to an agreed level of funding from the Pooled Fund.
- 7.3.3 To approve the overall pooled budget, the component individual pool budgets and the required Party contributions to the Pool Fund.
- 7.3.4 To monitor the BCF in accordance with NHS England guidance, making use of recommended best practice templates and to report to the HCICB on a quarterly basis for sign off and in relation to any specific required annual returns.
- 7.3.5 To prepare proposals for managing the financial aspects of the Pooled Funds for consideration by both parties, including the initial separate management of the Parties contributions and then following the eventual pooling of the aligned resources the risk management arrangements associated with this.
- 7.3.6 To receive (as a minimum) quarterly information from the Pooled Fund Manager(s), to include both service and financial information, in a form to be agreed, to fulfil the Parties' performance management requirements.
- 7.3.7 To receive quarterly information from the officers to include both service and financial information, in a form to be agreed, to fulfil the Parties' performance management requirements.
- 7.3.8 To agree appropriate action resulting from the above reports where necessary.

- 7.3.9 To resolve disputes or where necessary to refer such to dispute resolution procedures.
- 7.3.10 To review the role and effectiveness of the integrated commissioning arrangements through achievement of planned objectives and targets, ultimately demonstrating improved outcomes for service users and making recommendations to the Council and CCG as to any amendment to its functions.
- 7.3.11 To report, on an appropriate basis, on the integrated commissioning arrangements to ensure appropriate reporting and accountability to the parent organisations.
- 7.3.12 To report to statutory bodies and other stakeholders by the inclusion of minutes on Parties' bodies agendas as appropriate and as agreed by each Party.
- 7.3.13 Any other purposes as may be deemed appropriate by the Parties and agreed as set out in this agreement
- 7.4 The Council through the HCICB will be the Pooled Fund Host with responsibility for accounting, audit and the financial reporting of the Pooled Fund and its collection, administration and for making payments out of it in relation to the performance of contracts agreed through the HCICB in relation to the relevant Pooled Service Budget and such part of the Pooled Fund that is represented by it.
- 7.5 Both parties will jointly appoint a Director of Integrated Commissioning (DIC), employed by the CCG who will be responsible for implementing the instructions and policies of the HCICB through integrated commissioning arrangements. The DIC will jointly report to the Chief Clinical Officer of the CCG and the Chief Executive of the Council through arrangements set out in this agreement. The DIC will by instruction from the HCICB determine delegation of financial responsibility for Pooled Service Budgets which will be managed by Individual Pooled Service Budget Managers who will commission all appropriate services on behalf of the Parties and provide appropriate information to the DIC, the Finance Lead, the HCICB and the Parties.
- 7.6 The commissioning contracts will initially be between the party with responsibility for commissioning of that service and the provider selected by the HCICB and subject to the integrated service delivery arrangements agreed within the HCICB. Following the establishment of full integrated commissioning arrangements through the



Pooled Fund, the contracting role may be undertaken by either Party or as otherwise provided for under this agreement.

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8. Integrated Commissioning:

8.1 Schedule 5:

The commissioning arrangements set out in this agreement shall be the means by which the Parties co-operate in order to provide the services described in Schedule 1 to this agreement through integrated commissioning. This Agreement sets out the mechanism through which the Parties will work together in partnership through the HCICB. During the period of this agreement the Parties will co-operate with a view to introduce integrated commissioning through capitation and outcome based payments for services provided under the service contracts and the establishment of standard contracts and outcome assessment arrangements to support this.

8.2 Delegations:

With a view to working together in partnership (but not so as to create the legal relationship of parties between them), in order to implement the integrated commissioning arrangements set out in this agreement and to make arrangements for the services to be provided under Schedule 1 the parties agree that:

- 8.2.1 The Council shall delegate to the CCG and the CCG agrees to exercise, on the Council's behalf, the Council's Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions, and
- 8.2.2 To the extent to which it may legally do so, the CCG shall delegate to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Council's Functions.
- 8.2.3 In the event that any delegation of powers by any of the Parties provide for under this agreement shall require obtaining the consent or approval of any Minister of the Crown, Government Department or any other body formally constituted for that (and other) purposes then the party required to seek such consent or approval shall use its best endeavours to do so and in a timely fashion, efficiently and without unreasonable delay.

8.2.4 The Parties shall only delegate such powers to each other as are required to implement the terms of this agreement and specifically reserve all other commissioning powers and functions to themselves.

8.3 Partial or incomplete delegations:

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 service specification in Schedule 1 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 those statutory constraints.

8.4 Integrated commissioning objectives:

The Parties shall seek to achieve the following objectives in the course of making the integrated commissioning arrangements under this agreement:

- 8.4.1 To continue to deliver the S75 services as covered by previous agreements and the defined services as have been specified in Schedule 1.
- 8.4.2 To deliver improved and improving service delivery efficiencies through the integrated commissioning arrangements.
- 8.4.3 To work with the main NHS and other service providers within the locality to facilitate the commissioning of services
- 8.4.4 To Take any necessary steps to develop a future procurement strategy for the better integration of services by their provision through an MCP, which is to be established through other arrangements by a Provider Board composed of representatives of the 'fixed point' service providers already involved in the delivery of the services.
- 8.4.5 To introduce new service commissioning arrangements involving the use of capitation payments and outcomes assessment frameworks to be developed by the Parties during the period of this agreement.

- 8.4.6 To liaise and co-operate in the formulation of the Greater Manchester Strategic Sustainability Plan relating to its future proposals for the sub-regional provision of combined health and social care.
- 8.4.7 Where the Parties propose to add a new service to this Agreement a Scheme Specification for the new service shall be completed and agreed between the Parties.
- 8.4.8 The Parties shall not enter into a new Scheme Specification in respect of an additional service unless they are satisfied that the Individual Scheme in question will improve the health and wellbeing of the population of Stockport in accordance with this Agreement and by reference to the Outcomes Framework.
- 8.4.9 Each Party shall keep the other Party and the HCICB regularly informed of the effectiveness of the arrangements including the Better Care Fund and any overspend or underspend in the Pooled Fund.

8.5 Parties mutual responsibilities:

The Parties agree that their boards, their officers and employees, their controlled subsidiaries and any independent contractors retained by either of the Parties or their controlled subsidiaries shall work together for the purposes of undertaking integrated commissioning arrangements and achieving the objectives described in Clause 7.5 and in particular shall:

- 8.5.1 Co-operate with each other in the conduct of all activities relating to the objectives.
- 8.5.2 Make the necessary delegations as set out in Clauses 7.2 and 7.3, including any formal arrangements to give all necessary third party consents or notifications.
- 8.5.3 Make all and any agreed contributions into the Pooled Fund as set out in Schedule 1 promptly and without deductions for the purposes of providing the services.
- 8.5.4 Make any necessary arrangements to make payments from the pooled fund as may be required by the HCICB in order to provide the services that have been commissioned under this agreement.

- 8.5.5 Operate all their related activities and services in a manner that is compatible with the objectives set out in Clause 7.4 so far as they are not inconsistent with their other legal obligations or formal service delivery arrangements.
- 8.5.6 Operate the integrated commissioning arrangements and fulfilling all responsibilities relating to them as agreed in this agreement. Exercise candour in their dealings with each other and to conduct themselves transparently in any negotiations, including disclosing any reasonable prospect that there shall be a conflict of interest between them.
- 8.5.7 Exercise candour in their dealings with each other and to conduct themselves transparently in any negotiations, including disclosing any reasonable prospect that there shall be a conflict of interest between them.

8.6 Legacy contracts, transition commissioning arrangements:

- 8.6.1 Both Parties agree that any contracts for the full or partial delivery of the services specified in Schedule 1(1) that are continuing at the date of this agreement and which are between the parties and other providers (legacy contracts) will be unaffected by this agreement.
- 8.6.2 After the date of this agreement any legacy contract will be deemed to fall within the integrated commissioning arrangements set out in Clause 7 and will be dealt with as part of the Pooled Fund arrangements set out in Clause 8. Subject to the continuation of the pre-existing commissioning arrangements and any contractual arrangements made under them.

8.7 Monitoring and review of the HCICB:

The Responsible Officers of the Parties shall from time to time agree joint arrangements to monitor and review the manner in which the HCICB exercises the delegated commissioning and regulatory powers set out in Schedules 3 and 5 to ensure that they are exercised in compliance with the law and with the terms of this agreement and that the manner in which they are exercised is both effective and appropriate.

8.8 Joint integrated commissioning arrangements through the HCICB



- 8.8.1 Both Parties shall work in cooperation and shall endeavour to ensure that the services specified in Schedule 1 are commissioned with all due skill, care and attention through the HCICB arrangements.
- 8.8.2 Each Party shall be responsible for making payments to Providers from the Pooled Fund of all sums pursuant to the terms of the contract negotiated on behalf of that Party through the HCICB and the Joint Commissioning Board and for complying with the terms of that contract.
- 8.8.3 Both Parties shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification in Schedule 1 are commissioned through the HCICB within each Parties Financial Contribution in respect of that particular Service in each Financial Year.
- 8.8.5 Each Party shall keep the other Parties and the HCICB regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in the Pooled Fund.
- 8.8.6 The HCICB will report back to both the Parties in the event of any failure by either of them to make payments required by this agreement.
- 8.8.7 The parties will make any necessary reports to the Health and Wellbeing Board outside the terms of this agreement as may be required under Chapter 7 of the HSCA 2012.

8.9 Role of Joint Commissioning Board

The parties will commission the services specified in Schedule 1 through the strategic direction of the HCICB. The administrative work involved in implementing the decisions taken by the HCICB and in undertaking the commissioning arrangements for these services shall be under the overall direction of the Lead Commissioner through the Director of Integrated Commissioning. The parties may at their discretion after approval by the HCICB either make their own commissioning arrangements or instruct the Joint Commissioning Board to make such arrangements as may be required in relation to the services. The Joint Commissioning Board shall oversee the integrated commissioning arrangements operated between the parties for the purposes of implementing this agreement and



shall be an ad hoc administrative arrangement for which the Director of Integrated Commissioning shall have day-to-day operational responsibility. The parties may direct the Joint commissioning Board to issue contracts for the services in accordance with the strategic direction of the HCICB and, subject to any agreements between the parties as to the use of capitation and outcomes-related payments or in relation to costs under the Pooled Fund, such contracts shall be on such terms as are consistent with the directions of the HCICB as interpreted by the parties in relation to each contract.

8.10 Specific Functions of the Joint Commissioning Board:

Without prejudice to the generality of the Paragraph 8(9) above the Joint Commissioning Board shall undertake the following specific functions:

- 8.10.1 Undertake population health and social care needs assessments
- 8.10.2 Carry out strategic planning of health and social care services
- 8.10.3 Undertake assurance activity of planned commissioning changes
- 8.10.4 Exercise the consultation responsibilities of commissioners in planning for the redesign
- 8.10.5 Undertake assurance (including clinical assurance) of system capacity, outcomes and delivery
- 8.10.6 Undertake assurance (including clinical assurance) of system quality and safety
- 8.10.7 Establish the weighted capitation payment linked to an age cohort
- 8.10.8 Establish and oversee the operation of the outcomes framework
- 8.10.9 Establish the procurement strategy for the schedule of services as outlined in the agreement
- 8.10.10 Establish the acceptable provider forms and the scope of service delivery
- 8.10.11 Assess the provider response to the above in terms of:-
 - a. Level of payment and mix of cost / outcomes reward
 - b. Development plan / milestones for the provider form development in accordance with the procurement strategy



- c. Sign off the value chain which links the outcomes framework with the providers own operating/development model

8.10.12 Oversee the development of an integrated commissioning resource to align expertise and capacity within both Parties

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9. Pooled Fund:

9.1 The Parties agree as follows:

9.1.1 The Council will be the Pooled Fund Host with the responsibility for accounting and audit and the financial reporting of the overall pool being exercised by the finance lead.

9.1.2 The Director of Integrated Commissioning (DIC) will be the joint responsibility of the Chief Clinical Officer of the CCG and Chief Executive of the Council and will manage the operation of the Pooled Fund and the Pooled Services Budgets through the Joint Commissioning Board (the JCB) which will be jointly operated by the Parties under paragraphs xxx and xxx of this agreement.

9.1.3 The DIC will determine delegation of financial responsibility to Individual Pooled Service Budget Managers who will work through the JCB to commission all appropriate services on behalf of the Parties and provide appropriate information to the Parties and the HCICB.

9.1.4 The Standing Orders and Standing Financial Instructions of the Party by which an Individual Pooled Service Budget Manager is employed shall apply to the management of each Individual Pooled Service Budget through the JCB under this Agreement. The CCG Governing Body and Council Executive should formally record this arrangement in their Standing Orders and Standing Financial Regulations.

9.1.5 The Parties will provide the HCICB, the DIC and the Individual Pooled Service Budget Managers with all the necessary financial and administrative support to enable the effective and efficient management of the Pooled Fund and any Individual Pooled Service Budget.

9.1.6 The Parties will create a clear identifiable accounting structure within their financial systems (e.g. a separate cost centre) to enable effective monitoring and reporting of the Pool Fund and the budgets of the Individual Pooled Services and the DIC under instruction from the Finance Lead will be responsible for maintaining an overall accounting structure for the Pooled Fund.

9.1.7 The Individual Pooled Service Budget Managers will provide such information as is deemed necessary by the Parties to this Agreement, to the HCICB, to enable

effective performance management of the Services provided under this Agreement and any Pooled budget.

9.1.8 The DIC and the Individual Pooled service Budget Managers will be accountable for managing their Pooled Service budget and forecasting expenditure and will notify the nominated finance officers of each party who must report to the HCICB on the outputs and outcomes and the achievements of targets as set out in the service plans and objectives.

9.1.9 The DIC and the Individual Pooled Service Budget Managers will be responsible for the management of each specific Individual Pooled Service Budget within financial balance and will in conjunction with the JCB report any potential or actual variations to any Individual Pooled Service Budget and its potential effect upon the Pooled fund, as soon as practicably possible to the HCICB, and in any event at the next meeting of the HCICB following identification of any such variation;

9.1.10 Individual Pool Budget Managers will follow their own statutory accounting and audit arrangements. A year-end Memorandum Account showing income received, expenditure and any balance remaining shall be prepared by the Pool Host and sent to the Parties for inclusion in their statutory accounts.

9.1.11 The Parties shall comply, at all times, with HMRC guidance as updated from time to time on VAT in respect of the respective Pooled Budgets and their Statutory Finance Officers shall consult with HMRC to agree an appropriate scheme for recovery of VAT.

9.2 Operation of Pooled Budgets

9.2.1 The Parties will agree their contribution to the Pooled Fund as set out in Schedule 2 each year in accordance with this clause 8. The contributions for the Financial Year 2016/17 are as set out in Schedule 2 here to and will be used as a basis for agreeing future Financial Year contributions from the Parties. Such annual contributions will be evidenced in writing by insertion into the said Schedule 2 as an agreed amendment.

9.2.2 The Parties agree that annual Pooled Fund will be confirmed by 31 March for the following Financial Year. The Board will receive notice of planned contributions within one week of each Party agreeing their respective budgets.

- 9.2.3 The Lead Commissioner shall ensure that VFM is actively secured at all times in making payments from Individual Pool Budgets to deliver the services set out in Schedule 1.
- 9.2.4 Any monies specifically allocated by the government for particular client groups, services or specific projects shall be put into the relevant Pooled Budget subject to such discretions that funding allocations allow to the HCICB. The HCICB shall approve the expenditure plans for such grants. The appropriate Individual Pool Budget manager will ensure that the conditions of the grant are met. Where grants are put into relevant pooled budget any underspends in the grant will be carried over to the next financial year unless this is not allowed by the conditions of the grant.
- 9.2.5 For the avoidance of doubt, all funding between the organisations supplied under this Agreement are included in the Party's annual contributions to the Pooled Fund.
- 9.3 Contributions to the Pooled fund:**
- 9.3.1 Annual contributions to the Pooled fund will be calculated taking into account but not limited to
- (i) recurrently rolled forward Funds from previous year
 - (ii) plus or minus agreed in-year changes where recurrent (overspends or underspends)
 - (iii) plus or minus agreed inflationary uplift
 - (iv) plus or minus planned and agreed changes, and
 - (v) minus planned and agreed efficiency requirements
- 9.3.2 The parties agree that these changes must not have a detrimental financial impact on either party unless specifically agreed with the party adversely affected and approved by HCICB.
- 9.3.3 Contributions agreed by Parties will be formally budgeted for prior to the start of the new financial year.
- 9.3.4 Where required, the organisation which is not hosting the Pool will pay its contribution to the Pooled Fund by 4 equal instalments on a fixed date agreed with the Pool Host in each year of this Agreement. As a minimum this will be an amount equal to the amount allocated in respect of its revenue expenditure budget for the



Services in question for the said Financial Year in which the payment is made. The amounts will be set out in Schedule 2.

- 9.3.5 The annual Pooled Fund will normally be calculated as the initial Pooled Fund for the previous year, plus any agreed in-year changes where it is decided these should be recurrent, plus any agreed inflationary uplift for the forthcoming year, plus any agreed planned changes for the coming year, plus any agreed efficiency requirements. The way in which such annual Pooled Fund will be determined shall be in accordance with the above provisions.
- 9.3.6 The contribution by the Council to the Pooled Fund shall be made upon the net figure after deductions for charges levied on Service Users, or any associated costs or expenses.
- 9.3.7 The parties recognise that there may be scope to develop the Partnership and to bring other budgets and services in addition to those specified in Schedule 1 into pooled or aligned arrangements from time to time and any such changes will be treated as variations to this agreement and will be evidenced in writing and Scheduled to this agreement.
- 9.3.8 The Pooled Fund shall only be used for the provision of Services agreed to fulfil the Aims and Outcomes of this Agreement as set out at Schedule 1 to this Agreement.
- 9.3.9 Changes forecast to the total level of agreed Pooled Fund expenditure for the year shall be reported to the next meeting of the HCICB and the HCICB shall agree appropriate action to contain expenditure within an individually agreed Individual Pool Budget or to utilise a surplus, or exceptionally, where additional funding is thought to be required, shall submit a case of need to the Parties. Where additional funding is approved, the Parties will consider the appropriateness of continuing such level of funding as part of the Pooled Fund setting process for the following year.
- 9.3.10 Where an unforeseen overspend arises at the end of the Financial Year, the Parties will need to consider how best to fund this and its implications for future years. Parties have agreed that as a general principle overspends will not be tolerated and if this situation arises then actions will be approved in-year by the HCICB to avert this situation. In the event that overspends do arise then the nature of this will be explicitly set out by the Individual Pool Budget Manager and the source understood



by the HCICB so that fair and appropriate action can be agreed to fund the pressure.

9.3.11 The HCICB will be responsible for negotiating any proposed arrangements for joint support in the instance of under or overspends in year within the overall spirit of Partnership arrangements and financial positions recognising that Parties retain statutory responsibility for this element of the service. Such negotiated proposals must be agreed between the parties before they shall be implemented. Where recurrent pressures are identified then the HCICB will consider whether it is necessary to instruct the Individual Pool Budget Managers to develop robust recovery plans.

9.3.12 Where there is a surplus in an Individual Pool Budget then the Pool Host shall identify this for in-year financial management purposes, taken in wider context with all other Pooled Budgets, and any recurrent impact of this on future year's contributions. Any in-year surpluses identified should be made explicit in the reports so that the HCICB can understand this in the wider context of all Individual Pool Budgets and give consideration to other options it feels are appropriate (such as applying this to other Pooled overspending areas or known pressures and/or carrying forward any surplus for the benefit of the service in future years or making an in-year repayment to the Parties based on percentage contributions). Where the surplus has a recurrent impact then Parties may propose options around retaining this for service investments or agreeing a recurrent deduction to party contributions which will be subject to review by the HCICB. Such agreement is to be indicated in writing in the minutes of the relevant meeting of the HCICB.

9.3.13 The Parties may not normally vary their annual contributions to the Pooled Fund during the course of the financial year to which the annual contribution applies. Any variations to the Parties' annual contributions must be recommended by the HCICB, having considered the wider context as outlined in xxx above, with such agreement indicated in writing in the minutes of the relevant meeting of the HCICB.

9.3.14 In the event of dispute or disagreement in relation to the liability or benefit for any overspend or underspend the matter may be referred by either Party in accordance with Clause 9.3.2.

9.3.15 The DIC shall present a quarterly and an annual report to the HCICB, which shall be provided to the relevant Parties and include income and expenditure received by or incurred from the Pooled Fund. Such reports shall include an item on potential overspend or underspend.

9.4 Financial accountability and risk sharing:

9.4.1 Each party will maintain its existing financial accountability and internal and external audit arrangements and shall bear its own risks in relation to the integrated commissioning arrangements. By way of clarification this means that the Council will follow its Financial Procedure rules and the CCG will follow its own Standing Financial Instructions and Standing orders as last approved by the CCG Governing Body.

9.4.2 The approach to bearing risks will remain under continuous review by both parties in line with the objectives of the agreement relating to integrated commissioning and the management of the pooled funds.

9.5 Pooled fund: Overspend and underspend procedures

9.5.1 Subject to Clauses xxx and xxx, the HCICB shall manage expenditure from the Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.

9.5.2 The Council as the host organisation of the Pooled Fund shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that the only expenditure from the Pooled Fund has been in accordance with Permitted Expenditure and it has informed the HCICB in accordance with Clause 8.5.4.

9.5.3 In the event that the DIC or any Pooled Service Budget Manager identifies an actual or projected variation then they must ensure that the HCICB is informed as soon as reasonably possible and the provisions of the relevant Service Specification are applied and that the shared financial governance arrangements set out in Schedule 4 shall apply.

9.6 Non-financial contributions to the Pooled Fund; transfer of assets in lieu of money contributions

The Services Specifications in Schedule 1 and the relevant budgets in Schedule 2 shall set out any non-financial contributions (and the service or services to which they relate) of each Party including staff (including the Pooled Service Budget Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).

9.7 Division of Pooled Fund into Individual Pooled Service Budgets (PSB's):

The Director of Integrated Commissioning following consultation with the HCICB shall establish suitable arrangements for the purposes of creating pooled service budgets for the individual services to be provide under this agreement to be operated in accordance with the financial governance arrangements set out in this agreement and the budgets set out in Schedule 2

9.8 VAT

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

9.9 Capital Expenditure

No part of the Pooled Fund shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of the Council. The CCG does not have a capital budget. If a need for capital expenditure is identified this must be agreed by the Parties.

10. Over-arching arrangements for the HCICB

10.1 Status of HCICB:

The HCICB shall be operated in accordance with the rules and procedure set out in Schedule 3. In the event that any legislative or regulatory change mandates amendment to this arrangement then this agreement will not be ended and the Parties will consult with each other and co-operate in order to identify any appropriate changes to the status of the HCICB and make any necessary changes to the arrangements set out in this agreement. Provided that if no new status or arrangements can be agreed then this Clause shall have no further effect in relation to any possible termination arrangements.

10.2 Relationship between HCICB and Joint Commissioning Board (JCB) arrangements

The HCICB shall be the principal source of strategic direction for the JCB through the Director of Integrated Commissioning (DIC)

10.3 Relationship between parties and HCICB, over-arching principle of financial probity

10.3.1 All Parties shall promote a culture of financial probity and sound financial discipline and control in relation to the arrangements set out in this Agreement. The Council as the host of the pooled fund shall arrange for the audit of the accounts of the Pooled Fund and shall require the relevant internal auditors to make arrangements to certify an annual return of those accounts as may from time to time be required under Section 28(1) of the Audit Commission Act 1998 or other applicable legislation of similar effect

10.3.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access by them to any document, information or explanation they require from any employee, member of the Parties 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.

- 10.3.3 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties respective Standing Orders and Standing Financial Instructions).
- 10.3.4 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 10.3.5 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.

10.4 Commercial confidentiality arrangements

Information shall be shared between the parties in accordance with the data sharing arrangements set out in Paragraph 9.17 below save that no commercially sensitive information shall be communicated between the parties in the course of the operation of the Joint Commissioning Board without the express agreement of the Director of Integrated Commissioning or some other officer of each of the parties appointed for that purpose

10.5 Shared data protection arrangements under the Data Protection Act (the 1998 Act), the Freedom of Information Act (the 2000 Act) and the Environmental Protection Regulations 2004 (the 2004 Act)

- 10.5.1 The Parties agree that they will each cooperate with each other to enable any Party receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Parties as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.
- 10.5.2 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Party shall be in breach of Clause



26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

10.5.3 Any processing of data that is undertaken by the Parties, their servants, employees, agents or subcontractors in the course of this agreement shall comply with the Fair Data Processing principals set out in the 1998 Act and shall be in accordance with the over-arching data processing policy

10.6 Conflicts of interest

The Parties shall comply with the agreed principles for identifying and managing conflicts of interest.

10.7 Resolution of commissioning disputes between parties by mediation

10.7.1 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

10.7.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Paragraph 10.7.1 at a meeting convened for the purpose of resolving the dispute

10.7.3 If the dispute remains after the meeting detailed in Clause 10.7.2 has taken place, the Parties' respective Authorised Officer or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

10.7.4 If the dispute remains after the meeting detailed in Clause 0 has taken place, then the Parties will attempt to settle such dispute by mediation in accordance with an independent mediation procedure as agreed by the Parties in compliance with this agreement. To initiate mediation, 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 the Centre for Effective Dispute Resolution (CEDR) or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. 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 him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

10.7.5 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.

10.8. Director of Integrated Commissioning.

10.8.1 Appointment of the Director of Integrated Commissioning (DIC)

The DIC shall be recruited, appointed and employed by the CCG in accordance with its own recruitment policies and it shall be responsible for the DIC's day to day management.

10.8.2 Arrangements relating to employment of the DIC:

The Council will confer on the DIC such powers and responsibilities and make resources available sufficient to enable them to carry out their duties.

10.8.3 DIC responsibility for Individual PSB's

The DIC shall have day to day management of the pooled service budgets and shall report to the HCICB in relation to this responsibility.

11 Liabilities and Insurance and Indemnity

11.1 Subject to Paragraph 8, if a Party ("First Party") incurs a Loss arising out of or in connection with this Agreement or in relation to the Services to be jointly commissioned under the terms of this agreement as a consequence of any act or omission of another Party ("Other Party") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the contract under which the Services are to be provided then the Other Party shall be liable to the First Party for that Loss and shall indemnify the First Party accordingly.



- 11.2 Clause 11.1 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party, the HCICB or the DIC.
- 11.3 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 paragraph then the Party that may claim against the other indemnifying Party will:
- 11.3.1 As soon as reasonably practicable give written notice of that matter to the Other Party specifying in reasonable detail the nature of the relevant claim
- 11.3.2 Not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Party (such consent not to be unreasonably conditioned, withheld or delayed)
- 11.3.3 Give the other 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 purposes of assessing the merits of and if necessary, defending the relevant claim.
- 11.4 Each Party shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.
- 11.5 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

12 Term of agreement:

This Agreement shall come into force on the Commencement Date and shall continue until it is terminated in accordance with its terms. The duration of the



arrangements for each Individual Service shall be as set out in the relevant Scheme Specification in Schedule 1.

13 Continued co-operation between parties after end of agreement:

The Parties shall continue to co-operate with each other or their statutory successors following the termination of this agreement (for any reason) with a view to ensuring the continuity of delivery of the services, the continuation, renewal or re-procurement of the services, any commissioning arrangements relating to them and the continued provision of health and social care to the served populations.

14 Continuing contracts and liabilities arising from termination of agreement:

In the event that this agreement is ended then any contracts made under it will be deemed to continue as between the parties to that agreement and the parties will seek to co-operate under paragraph 13 in relation to the arrangements made under such contracts.

15 Third party rights and contracts

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.

16. Governing and Applicable law

16.1 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.

16.2 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).

17 Complaints procedures

17.1 During the term of the Agreement, the Parties will develop and operate a joint complaints system. The application of a joint complaints system will be without



prejudice to a complainant's right to use either of the Parties' statutory complaints procedures where applicable

- 17.2 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply
- 17.3 Where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council
- 17.4 Where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG
- 17.5 Where a complaint relates partly to one or more of the Council's Health Related Functions and partly to one or more of the CCG's NHS Functions then a joint response will be made to the complaint by the Council and the CCG, in line with local joint protocol
- 17.6 Where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, then the HCICB will set up a complaints subgroup to examine the complaint and recommend remedies. All complaints shall be reported to the HCICB

18 Review and variation

- 18.1 The Parties shall review the integrated commissioning arrangements six months prior to expiry of the Term.
- 18.2. Review will comprise the delivery of the NHS Functions and the health-related Functions, the extent to which the objectives of the integrated commissioning arrangements are met, compliance with and fulfilment of national and local policies, financial arrangements and continuous improvement in quality of care through clinical governance.
- 18.3 The Parties may determine to renew the Partnership Agreement at the end of the Term.

- 18.4 The review and variation provisions in this paragraph shall apply as a means of developing and refining the parties' respective functions in relation to the services and fulfilling the objectives of this Agreement.
- 18.5 If at any time during the term of this Agreement either party gives Notice to vary this Agreement, it shall be considered first by the HCICB for approval and then if approved will be recommended for approval by the other party. In the event of such mutual approval then a memorandum of agreement shall be prepared and executed by the parties and thereafter the variation shall be binding.
- 18.6 If the CCG or SMBC do not agree to the request to vary the agreement, then the variation shall not take place

19 Appointment of Legal Advisors

The parties shall in all circumstances where it is practicable to do so take a single advisor approach to seeking legal advice in relation to the implementation of this agreement, any dispute arising from it or any proposed change to or modification of its terms, such advice being commissioned through the DIC.

20 Appointment of Financial and Audit Advisors

At all times the Parties shall retain their own financial and audit advisors for their financial and governance arrangements but may make arrangements for a single advisor in relation to specific matters where it is practicable and desirable to do so, such advice being commissioned through the DIC.

21 Relationship between the Parties and Greater Manchester Strategic Partnership Board and Joint Commissioning Board in the event that it exercises parallel legal powers

The parties shall consult with each other in the event that either of the bodies exercises parallel legal powers in relation to the arrangements made under this agreement and shall seek to ensure that the exercise of powers or discretions in this agreement are so far as possible compatible with the current policy of the relevant bodies for the purposes of the defined functions.

22 Responsibility for Public Statements and Press Releases

The parties shall co-operate when issuing any public statement or press release relating to the terms of this agreement or any activity undertaken under it or



discretion exercised by reference to it to the intent that both parties agree such statement or release which should represent the agreed position of both parties in relation to such matters.

23 Entire Agreement

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

24 No Partnership or Agency

Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee or agent and principal between the Parties.

25 Invalidity and Severability

If any Clause or part of this Agreement is found by any court tribunal administrative body or authority of competent jurisdiction to be illegal invalid or unenforceable then that provision will to the extent required be severed from this Agreement and will be ineffective without as far as is possible modifying any other Clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

26 Counterparts

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

27 Notice

All formal Notices relating to this Agreement shall be given by hand, pre-paid first class post (or in accordance with the Postal Services Act 2000 if applicable) or facsimile transmission confirmed by pre-paid letter to the addressee at the address given below or such other address as the addressee shall have for the time being notified to the other Party giving the notice and such notice shall be deemed to have



been delivered either upon delivery if by hand or if by letter at the expiration of forty eight (48) hours after posting or if by facsimile, upon receipt.

28 For the purposes of clause 24.1, the address of each Party shall be:

Council:

Chief Executive
Stockport Metropolitan Borough Council
Town Hall
Stockport
SK1 3XE

Clinical Commissioning Group:

Chief Clinical Officer
Stockport Clinical Commissioning Group
Regent House
Stockport
SK4 1BS

29 Force Majeure

Neither Party will be liable to the other for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including fire, natural disaster, flood shortage or delay of power, fuel or transport.

30 Termination

30.1 This agreement will commence on 1 April 2016 and run for one year. Thereafter it can be extended on a year to year basis at the parties' discretion and agreement for a maximum period of 7 years.

30.2 This Agreement shall terminate upon the effluxion of time except where paragraph 30.1 applies or the agreement is otherwise renewed on review by the parties.

30.3 In the event of dispute or disagreement relating to the terms and conditions of this Agreement, which cannot be resolved under this Agreement, then either Party may by service of 6 months' notice in writing upon the other Party to terminate this Agreement.



30.4 In the event that the Agreement terminates, responsibility for the CCG's Functions exercised under the Agreement will be returned to the CCG and responsibility for the Council's Functions exercised under the Agreement will be returned to the Council.

30.5 Either Party may terminate the Agreement at any time with immediate effect in the event that:

- (i) There is a change in law that materially affects the Partnership Arrangements made pursuant to this Agreement under the Regulations or renders performance of any Party's obligations (or the obligations of any other party towards that Party) ultra vires.
- (ii) One of the parties is in material breach of its obligations under this Agreement, provided that where the breach is remediable, the non-defaulting Party shall require the defaulting Party to remedy the breach and if the defaulting Party so remedies the breach within one month, such **breach shall not give rise to a right to terminate the agreement.**

30.6 In the event of immediate termination of the agreement the Pooled funds, including underspends and overspends shall be returned to the Parties based on proportions of contributions to the Pool. In the event of assets being purchased from the pool, the Parties will provide proposals to the HCICB for how these will be dealt with prior to the termination of the agreement. If these proposals cannot be agreed that **Parties will refer to the dispute procedure at paragraph 10.7.**

30.7 Termination of the Agreement shall be without prejudice to the rights, duties and liabilities of the Parties or any of them that have accrued prior to termination.

31. Transferability of agreement

In the event that any individual role or statutory function of any party that is a fundamental requirement for the effectiveness of this agreement shall be transferred to another organisation then:

31.1 The remaining Parties shall first seek to negotiate a continuation of this agreement with that organisation and if that shall not prove possible within a reasonable period (to be agreed between the Parties) then this agreement will be deemed to have ended due to supervening impossibility of performance.

31.2 Should either Party cease to exist or cease to be responsible for the defined functions then subject to any applicable ministerial direction or delegated legislation this agreement shall be deemed to continue with any other organisation that takes over substantially all its role or statutory function with the Stockport MBC borough boundaries.

Schedule 1

Schedules describing the services to be provided under integrated commissioning arrangements.

Schedule 2

Details of Pooled Budgets to be reviewed and amended each year

Schedule 3

HCICB Governance specifications

Schedule 4

Conflicts of Interest Principles

Schedule 5

Governance Diagram