

Dated _____ **2015**

PETERBOROUGH CITY COUNCIL

and

**NHS CAMBRIDGESHIRE AND PETERBOROUGH
CLINICAL COMMISSIONING GROUP**

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

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2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

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

Agreement means this agreement including its Schedules and Appendices.

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

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

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

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

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

Commencement Date means 1 April 2015.

Commissioning Board as set out in Schedule 2.

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

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

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

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

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

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

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;

- (c) acts of God;
- (d) fire or flood;
- (e) industrial action;
- (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
- (g) any form of contamination or virus outbreak; and
- (h) any other event,

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

Functions means the NHS Functions and the Health Related Functions.

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

Host Partner means for each Pooled Fund the Partner that will host the Pooled Fund as specified in clause 7.6

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

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

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

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

Joint Commissioning Forum: means the partnership body that is responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

Law means:

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

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

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

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

Month means a calendar month.

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

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

NHS Standard Form Contract means NHS England's contract template document for use by commissioners for all contracts for healthcare services other than primary care.

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

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

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

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

Permitted Expenditure has the meaning given in Clause 7.3.

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

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

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

Provider means a provider of any Services commissioned under the Services Contract.

Public Health England means the SOSH trading as Public Health England.

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

Performance Payment Arrangement means any arrangement agreed with a Provider and one or more Partners in relation to the cost of providing Services on such terms as agreed in writing by all Partners.

Performance Payments means any sum over and above the relevant Contract Price which is payable to the Provider in accordance with a Performance Payment Arrangement as set out in Schedule 6.

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

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

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

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

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

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

SOSH means the Secretary of State for Health.

Underspend: has the meaning given in clause 12.6.

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

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

- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that 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.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue until terminated as set out in this Agreement.
- 2.2 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

3 GENERAL PRINCIPLES

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

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more Pooled Funds in relation to Individual Schemes
- 4.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 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 Health Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.
- 5.3 Where the Partners add a new Individual Scheme to this Agreement the Scheme Specification for each Individual Scheme shall be substantially in the form as set out in Part 1 of Schedule 1 and shall be completed and agreed between the Partners. The initial Scheme Specification is set out in part 1 of Schedule 1.
- 5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Joint Commissioning Forum.

6 COMMISSIONING ARRANGEMENTS

Joint Commissioning

- 6.1 Both Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Services Contract, where applicable.
- 6.2 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
- 6.3 The Partners shall comply with the arrangements in respect of the Joint (Aligned) Commissioning as set out in the relevant Scheme Specification.
- 6.4 Each Partner shall keep the other Partners and the Health and Wellbeing Programme Board and Joint Commissioning Forum regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.
- 6.5 The Joint Commissioning Forum will report back to the Health and Wellbeing Board as required by its terms of reference as set out in Schedule 2.

Appointment of a Lead Commissioner

- 6.6 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
 - 6.6.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.6.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - 6.6.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.6.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 6.6.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;

- 6.6.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 6.6.7 undertake performance management and contract monitoring of all Service Contracts;
- 6.6.8 ensure all 5 work streams as set out in Schedule 2 and in this Agreement are outcomes focussed;
- 6.6.9 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 6.6.10 keep the other Partner and the Joint Commissioning Forum regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 It is agreed that the monies held in the Pooled Fund recorded in the Scheme Specification may only be expended under the headings set out in the table in Part 2 of Schedule 1 (“Permitted Expenditure”)
 - 7.3.1 For the items listed in column (d) as a “Contribution”, the amount in column (b) is the approved expenditure from the Better Care Fund available to the Lead Commissioner for arranging services or towards Service Contracts entered into by the Lead Commissioner.
 - 7.3.2 For the item listed in column (d) as “Performance”, the amount in column (b) is the Performance Payments available to the Lead Commissioner, subject to meeting the performance requirements agreed with NHS England. In accordance with technical guidance relating to the Better Care Fund, the funding for such Performance Payments will not be physically transferred into the Pooled Fund by the CCG. The CCG shall only release the full value of the performance fund into the Pooled Fund if the non elective admissions target – which is a reduction of non elective admissions of 1% as per the refreshed Better Care Fund admission reduction trajectory is met. If the target is not met, the CCG shall only release into the Pooled Fund a part of that funding proportionate to the partial achievement of the target. The Partners agree that the Joint Commissioning Forum shall determine how any performance funding which is released into the Pooled Fund in accordance with this clause 7.3.2 is spent. Any part of the performance funding that is not released into the Pooled Fund due to the target not being met must be dealt with in accordance with NHS England requirements.
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the joint express written agreement of each Partner. Such agreement will be subject to the Joint Commissioning Forum approval on behalf of the Health and Wellbeing Board.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.
- 7.6 Pursuant to this Agreement, the Partners appoint the Council as the Host Partner for the Pooled Fund set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
 - 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;

- 7.6.2 providing the financial administrative systems for the Pooled Fund; and
- 7.6.3 appointing the Pooled Fund Manager;
- 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 The Partners shall agree which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager in respect of each Individual Scheme where there is a Pooled Fund shall have the following duties and responsibilities:
 - 8.2.1 the day to day operation and management of the Pooled Fund;
 - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.2.5 reporting to the Joint Commissioning Forum as required by the Joint Commissioning Forum and the relevant Scheme Specification;
 - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 8.2.7 preparing and submitting to the Joint Commissioning Forum Quarterly reports (or more frequent reports if required by the Joint Commissioning Forum) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Joint Commissioning Forum to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
 - 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Fund Manager shall have regard to the recommendations of the Joint Commissioning Forum and shall be accountable to the Partners.
- 8.4 The Joint Commissioning Forum may agree to the viring of funds between the Pooled Fund and any amendments to the Scheme Specification.

9 NOT USED

10 FINANCIAL CONTRIBUTIONS

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

- 10.2 Financial Contributions in future years for the CCG and Council will be determined by future national guidance on BCF contributions.
- 10.3 Financial Contributions will be paid as set out in the each Scheme Specification.
- 10.4 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the Joint Commissioning Forum minutes and recorded in the budget statement as a separate item.

11 NON FINANCIAL CONTRIBUTIONS

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

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The Partners have agreed risk share arrangements as set out in schedule 3, which provide for financial risks arising within the commissioning of Services from the Pooled Fund and the financial risk to the Pooled Fund arising from the payment for performance element of the Better Care Fund.

Overspends in Pooled Fund

- 12.2 Subject to Clause 12.3, the Host Partner for the Pooled Fund shall manage expenditure from the Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.
- 12.3 The Lead Commissioner for each Individual Scheme shall have responsibility for ensuring that demand on the Pooled Fund is appropriately managed in order to avoid any Overspend. In the event of an Overspend, the Lead Commissioner shall not be in breach of his obligations under this Agreement PROVIDED THAT it has notified the Joint Commissioning Forum of the Overspend and within 5 working days and taken all reasonable steps to mitigate the impact of the Overspend.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Joint Commissioning Forum is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule 3 shall apply.

Overspends in Non Pooled Funds

- 12.5 Not Used

Underspend

- 12.6 In the event that expenditure from any Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year ("**Underspend**") the Joint Commissioning Forum shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners.

13 Capital Expenditure

Pooled Funds shall not normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.

14 VAT

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

15 AUDIT AND RIGHT OF ACCESS

15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled Fund and shall require the Audit Commission to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.

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

16 LIABILITIES AND INSURANCE AND INDEMNITY

16.1 Subject to Clause 16.2, and 16.3, if a Partner ("**First Partner**") incurs any reasonable Losses arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner ("**Other Partner**") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that reasonable Loss and shall indemnify the First Partner accordingly.

16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant reasonable Losses. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Joint Commissioning Forum.

16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:

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

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

16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.

16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.

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

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner. For the avoidance of doubt, good corporate governance shall mean the Partners complying with each of its Contract Regulations and/or Standing Orders and financial instructions.
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.3 The 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.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

18 CONFLICTS OF INTEREST

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

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the partners is vested in the Health and Wellbeing Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 The Health and Wellbeing Board has agreed to use the Joint Commissioning Forum to:
- 19.2.1 Oversee the development of this Agreement and the development of agreements in future years;
 - 19.2.2 Receive updates from the Pooled Fund Manager and make appropriate recommendations on use of the Pooled Funds;
 - 19.2.3 Update the Health and Wellbeing Board as appropriate to ensure democratic oversight of the use of the Better Care Fund.
- 19.3 Updates for the Health and Wellbeing Board and Commissioning Board will be prepared by the Pooled Fund Manager in consultation with colleagues working for each Partner.
- 19.4 The role of the Joint Commissioning Forum is set out in Schedule 2
- 19.5 Each Partner has internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 19.6 The Health and Wellbeing Board has agreed that the Joint Commissioning Forum shall be responsible for the overall approval of the Services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.7 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Schemes and how that Individual Scheme is reported to the Joint Commissioning Forum and Health and Wellbeing Board.

20 REVIEW & FORWARD FUNDING

- 20.1 Save where the Joint Commissioning Forum agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement, any Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year. Specifically, the amounts with reference to the Pooled Fund, Partner contributions and details of expenditure shall be subject to review by the Partners by no later than 3 months prior to the end of the Financial Year.
- 20.2 Subject to any variations to this process required by the Joint Commissioning Forum, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.3 The Partners shall within 20 Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Joint Commissioning Forum.
- 20.4 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

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

22 TERMINATION & DEFAULT

- 22.1 Notwithstanding any other right of the Partners to terminate this Agreement, where funding received by the Partners under the Better Care Fund is reduced or withdrawn, either Partner may terminate this Agreement and shall give the other Partner ninety (90) days prior written notice of its intention to do so. The Agreement shall end at the expiry of the notice period as set out in any such notice.
- 22.2 This Agreement may be terminated by a Partner 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.
- 22.3 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund requirements continue to be met.
- 22.4 If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.5 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners’ rights in respect of any antecedent breach and the provisions of this Agreement.
- 22.6 In the event of termination or expiry of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use all reasonable endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.7 Upon expiry or termination of this Agreement for any reason whatsoever the following shall apply:

- 22.7.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to Service Users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
 - 22.7.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
 - 22.7.3 the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
 - 22.7.4 where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows, the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
 - 22.7.5 the Joint Commissioning Forum shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
 - 22.7.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.8 In the event of expiry or termination in relation to an Individual Scheme the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Director of Communities for the Council and the Chief Strategy Office for the CCG or their nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such

information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

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

24 FORCE MAJEURE

- 24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

25 CONFIDENTIALITY

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

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 PROTECTION REGULATIONS

26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 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 Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.

26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 25 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

27 OMBUDSMEN

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

28 INFORMATION SHARING

28.1 The Partners shall enter into the Data Processing Agreement as set out in schedule 8 as soon as reasonably practical after the Commencement Date to ensure the protection and security of the data passed from the Council to the CCG and from the CCG to the Council in pursuance of the obligations and objectives under this Agreement.

28.2 Without prejudice to clause 28.1, the Partners shall ensure that the operation this Agreement complies comply with Law, in particular the 1998 Act.

29 NOTICES

29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:

29.1.1 personally delivered, at the time of delivery;

29.1.2 sent by facsimile, at the time of transmission;

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

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

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

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

if to the Council, addressed to the Assistant Director, Adult Social Care Commissioning, Peterborough City Council, Third Floor, Bayard Place, Broadway, Peterborough PE1 1HZ

and

if to the CCG, addressed to Andy Vowles, Lockton House, Clarendon Road, Cambridge, CB2 8FH Telephone: 01223 725400, E mail: a.vowles@nhs.net

30 VARIATION

No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

31 CHANGE IN LAW

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

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

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

32 WAIVER

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

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

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

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

- 35.2.1 act as an agent of the other;
- 35.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
- 35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this 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 Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.
- 37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

38 COUNTERPARTS

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

39 GOVERNING LAW AND JURISDICTION

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

IN WITNESS WHEREOF this Agreement has been executed by the Partners on the date of this Agreement

THE COMMON SEAL of
PETERBOROUGH CITY COUNCIL

was hereunto affixed in the presence of:

Authorised Signatory

THE COMMON SEAL of
**CAMBRIDGESHIRE AND
PETERBOROUGH CLINICAL
COMMISSIONING GROUP**

was hereunto affixed in the presence of:

Authorised Signatory

SCHEDULE 1 – SCHEME SPECIFICATION

Part 1 – Agreed Scheme Specification

As set out in of Schedule 6

Part 2 – Permitted Expenditure

Scheme Name (Item (a))	2015/16 (£000) Price (b)	Lead Commissioner (C)	Type (d)	Description of spend (e)	Transfer of Funds into the Pooled Fund
Care act implementation	407	Council	Contribution	To support the local authority in meeting its revised statutory duties under the Care Act 2014.	yes
2014/15 section 256 agreement	3,522	Council	Contribution	Continuing current 'section 256' investment in social care to support other social care services	yes
Protecting adult social care services Inc Transformation	1589	Council	Contribution	Support to ensure that existing social care service levels can be protected and that local social care services are able to meet new national minimum eligibility criteria.	yes
1. Data Sharing		Council		To deliver an effective and secure joint approach to data sharing across the whole system, enabling improved co-ordination and integration of services for adults and older people.	yes
2. 7 Day Working	250	Council		To expand 7 day working to ensure discharge planning is undertaken according to patient need, not organisational availability.	yes
3. Person Centred System (Joint Assessments)	100	Council		To enhance and improve person centred care across the entire system, ensuring that care and support is planned and co-ordinated by	yes

				Integrated Neighbourhood Teams (MDT) working alongside individuals at risk of becoming frail or requiring high cost services in the future.	
4. Information and Communication		Council		To develop and deliver high quality sources of information and advice based on individuals' needs as opposed to organisational boundaries	yes
5. Ageing Healthily and Prevention	550	Council		To develop community based preventative services to support and enable older people in particular to enjoy long and healthy lives and feel safe within their communities.	yes
Older People Community Health Services	3,749	CCG	Contribution	A contribution towards the CCG Older People and Adult Community Services contract, which will drive integration across the local health and wellbeing system	No
Performance fund	429	CCG	Performance	This is the performance-related pay element of the Better Care Fund. If local services meet their targets for the reduction of non-elective admissions, this sum will be released for spending on integration and transformation projects; if not, it will be used to compensate acute providers. The Partners agree that the Joint Commissioning Forum shall determine how the performance fund shall be spend.	Not until reduction of non elective admissions by 1% is met

Carers prescription	150	CCG	Contribution	The GP Family Carers Services Prescription service aims to build capacity to improve the support available to carers from primary care services, It was designed to support primary care professionals, by integrating with familiar work processes - developing a prescription with a read code designed to populate the GPs carers' database.	No
DFG capital - Adults	661	Council	Contribution	Ring-fenced sum for the Disabled Facilities Grant for Adults	No
DFG capital - Children	150	Council	Contribution	Ring-fenced sum for the Disabled Facilities Grant for Childrens	No
Social Care capital grant - various	442	Council	Contribution	Maintaining current levels of capital investment in social care to maintain performance in services and provide adequate capital investment for implementation of the Care Act in Peterborough	No
Total	11,999				

Financial Contributions for subsequent years are to be determined in accordance with the Agreement.

12 equal monthly payments will be made by the CCG during the first week of each month subject to receiving an invoice from the Council 10 working days in advance.

SCHEDULE 2 – GOVERNANCE

GOVERNANCE STRUCTURE

General

- (a) This Schedule sets out how the Partners will retain proper influence and control over the joint commissioning function notwithstanding each Partner assuming the lead commissioning role for different elements of the Pooled Fund.
- (b) Governance will be in accordance with the relevant boards made up of representatives of each of the Partners (as set out below) which together formulate proposals which eventually are put to each of the Council's and the CCG's decision making authorities..
- (c) The decision making powers of the Council are vested in the Strategic Management Team, Member Committees and full Council, taking into account the Council's formal "scrutiny" process.
- (e) The decision making powers of the CCG are set out in the CCG's Constitution, with ultimate decisions being taken by the CCG Governing Body.

2. Framework for decision making

(a) The Joint Commissioning Forum ("JCF")

On the JCF, The Council is represented by the Director of Communities and other key staff. The CCG is represented by its Local Chief Officer for Borderline and Peterborough LCG and other key staff.

It will provide the overall framework and direction for partnership working in Peterborough. The JCF will agree the outcome requirements to be satisfied by joint commissioning. The terms of reference of the JCF are set out in this Schedule.

Through monthly meetings the JCF will evaluate programme delivery and financial benefits realisation for the priority schemes. This will be assessed alongside a performance dashboard of integrated care metrics to ensure high levels of satisfaction from patients, carers and employees to ensure that the delivery of the programme remains on track.

The accountability for performance, risk management, and remedial action will be managed through the JCF. This will be overseen by the Health and Well Being Board governance structure. The JCF is not a body with legal decision making powers. The relevant decision making powers are vested in the Council, the CCG and other statutory partners.

(b) Commissioning Board

The monthly Commissioning Board engages stakeholders and drives forward the delivery of the core schemes, reporting to the JCF as the commissioning executive group of the Health and Well Being Board. The projects are reviewed by the Commissioning Board on a monthly basis and detailed action plans will be put in place where delivery is not on track.

(c) Day to Day Management

Adult Social Care Delivery Board:

The remit of this weekly Delivery Board is to ensure alignment of 'day to day' delivery activities with the key outcomes and a strategic programme level approach to risk and issue management.

Assistant Director of Adult Social Care:

The management of delivering Peterborough's Better Care Fund will be the responsibility of the Assistant Director of Adult Social Care. This role Chairs the Adult Social Care Delivery Board and is

responsible for establishing the robust governance arrangements required to provide the oversight of the plan for the Health and Wellbeing Board.

The Assistant Director will have direct links with the commissioning leads in the CCG and the City Council and will escalate where any operational issues will affect the delivery of the plan.

(d) CCG Governance in relation to Clinical Safety and Performance

The CCG has responsibility for providing assurance on the quality and safety of the health services it commissions to the Patient Safety and Quality Committee.

SCHEDULE 3 – RISK SHARE AND OVERSPENDS

For the purposes of this section 'Risk Sharing' shall mean the mechanism by which any deficit in the budget is to be controlled by the Joint Commissioning Forum for the purposes of providing the Schemes under the Agreement, including how any surplus at the end of each Agreement Year is to be dealt with and how the level of demand upon the Service is to be addressed.

1. The Parties agree that each Partner will accept overall responsibility for the 'contribution' budget lines under which they are the Lead Commissioner. The other party will not accept any responsibility for any deficit arising in those budget lines. For areas that are jointly commissioned, the Council as the Pooled Fund Host will manage the budget within the agreed limit; any variation in that amount must be agreed in writing by both Parties.
2. The provisions set out in this Schedule are intended to deal with a situation where a surplus, deficit or potential deficit is identified in the budget and as a result of the operation of the financial model at the end of each Agreement Year. For the avoidance of doubt, each Agreement Year runs from 1 April in one year to 31 March of the next year in line with the Commencement Date of the Agreement.
3. The aim of this Risk Sharing section is to assist the Parties in deciding who is responsible for identifying and controlling risks and how any surplus should be accounted for and any change in demand for the Service is to be addressed.
4. The control of deficit risk in each budget line shall be the responsibility of the Lead Commissioner. Each Partner shall use its best endeavours to ensure that there is no financial disadvantage or loss to the other as a result of managing the budget and operating the financial model.
5. An essential part of this risk management duty of each Lead Commissioner shall be to ensure that internal financial controls are robust and carefully monitored and scrutinised.
6. At the end of each Agreement Year it is agreed that in the event of there being a surplus in the budget, that surplus shall be retained in the Pooled Fund in the following year for the purposes of delivering the Scheme Specification under the Agreement.
7. Each Partner shall be entitled to receive such information as it requires from the other to verify the amount of any surplus prior to agreeing to its re-investment as set out in paragraph 6 above.
8. Any requests for information by either Partner contained herein are without prejudice to any information that either Partner is entitled to request of the other Partner under any other provision of the Agreement.

SCHEDULE 4– JOINT WORKING OBLIGATIONS

As set out in Schedule 6.

SCHEDULE 5 – PERFORMANCE ARRANGMENTS

As set out in Schedule 6.

SCHEDULE 6 – BETTER CARE FUND PLAN

SCHEDULE 7 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

SCHEDULE 8 – DATA PROCESSING AGREEMENT

DATED

2015

AN AGREEMENT

BETWEEN:

- (1) **PETERBOROUGH CITY Council** (“PCC”); and
- (2) **Cambridgeshire and Peterborough Clinical Commissioning Group** (“CCG”),

BACKGROUND

- (A) There will be instances pursuant to the Partnership Agreement where either PCC or CCG may be required to Process Personal Data on behalf of the other. All references to Data Controller and Data Processor in this agreement shall be a reference to PCC or to CCG depending on the context.
- (B) This agreement is to ensure the protection and security of data passed from the Data Controller to the Data Processor for processing or accessed by the Data Processor on the authority of the Data Controller for processing or otherwise received by the Data Processor for processing on the Data Controller's behalf.
- (C) Paragraphs 11 and 12 of Part II of Schedule 1 of the Data Protection Act 1998 place certain obligations upon a Data Controller to ensure that any data processor it engages provides sufficient guarantees to ensure that the processing of the data carried out on its behalf is secure;
- (D) This agreement exists to ensure that there are sufficient security guarantees in place and that the processing complies with obligations equivalent to those of the 7th Data Protection Principle contained in the Data Protection Act 1998;
- (E) This agreement further defines certain service levels to be applied to all data related services provided by the Data Processor.
- (F) This agreement provides an operating framework to enable lawful disclosure of Data to and for the purposes of data processing by the Data Processor working on behalf of the Data Controller taking account of the Data Protection Act 1998, any relevant guidance and laws on confidentiality of personal information and data protection that may be in force from time to time and any duties that may be applicable under common law.
- (G) The terms and conditions of this agreement shall apply to all information provided by the Data Controller, or obtained by the Data Processor from other sources as part of the delivery of the contracted services, or derived from any combination thereof.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement:

"Act" means the Data Protection Act 1998;

"Data" means any information of whatever nature that, by whatever means, is provided to the Data Processor by the Data Controller, is accessed by the Data Processor on the authority of the Data Controller or is otherwise received by the Data Processor on the Data Controller's behalf, for the purposes of the Processing specified in clause 3.1(a), and shall include, without limitation, any Personal Data and Sensitive Personal Data;

"Data Controller" has the meaning set out in the DPA;

"Data Processor" has the meaning set out in the DPA;

"Data Subject", "Personal Data" and "Processing" shall have the same meanings as are assigned to those terms in the Act;

'DPA' means the Data Protection Act 1998.

"Sensitive Personal Data" as defined in the Act.

"Schedule" means the schedules annexed to and forming part of this agreement;

"Scheme" means the Scheme Specification as set out in Schedule 1 of the Partnership Agreement.

"Partnership Agreement" means the partnership agreement made under section 75 National Health Service Act 2006 relating to the commissioning of Health and Social Care Services under the Better Care Fund;

1.2 In this agreement any reference, express or implied, to an enactment (which includes any legislation in any jurisdiction) includes references to:

- (a) that enactment as re-enacted, amended, extended or applied by or under any other enactment (before, on or after the date of this agreement);
- (b) any enactment which that enactment re-enacts (with or without modification); and
- (c) any subordinate legislation made (before, on or after the date of this agreement) under that enactment, as re-enacted, amended, extended or applied as described in clause 1.2(a), or under any enactment referred to in clause 1.2(b).

1.3 In this agreement:

- (a) references to a person include an individual, a body corporate and an unincorporated association of persons;
- (b) references to a party to this agreement include references to the successors or assignees (immediate or otherwise) of that party.

1.4 Clauses 1.1 to 1.3 apply unless the contrary intention appears.

2. APPLICATION OF THIS AGREEMENT

2.1 This agreement shall apply to:

- (a) all Data sent from the date of this agreement by the Data Controller to the Data Processor for Processing;
- (b) all Data accessed by the Data Processor on the authority of the Data Controller for Processing from the date of this agreement; and

- (c) all Data otherwise received by the Data Processor for Processing on the Data Controller's behalf;

in relation to the Scheme.

3. DATA PROCESSING

3.1 The Data Processor agrees to Process the Data to which this agreement applies in accordance with the terms and conditions set out in this agreement, and in particular the Data Processor agrees that it shall:

- (a) Process the Data at all times in accordance with the Act and solely for the purposes (connected with provision by the Data Processor of the Scheme) and in the manner specified from time to time by the Data Controller in writing and for no other purpose or in any manner except with the express prior written consent of the Data Controller;
- (b) in a manner consistent with the Act and with any guidance issued by the Information Commissioner, implement appropriate technical and organisational measures to safeguard the Data from unauthorised or unlawful Processing or accidental loss, destruction or damage, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and to the nature of the Data to be protected;
- (c) ensure that each of its employees, agents and subcontractors are made aware of its obligations under this agreement with regard to the security and protection of the Data and shall require that they enter into binding obligations with the Data Processor in order to maintain the levels of security and protection provided for in this agreement;
- (d) not divulge the Data whether directly or indirectly to any person, firm or company or otherwise without the express prior written consent of the Data Controller except to those of its employees, agents and subcontractors who are engaged in the Processing of the Data and are subject to the binding obligations referred to in clause 3.1(c) or except as may be required by any law or regulation;
- (e) in the event of the exercise by Data Subjects of any of their rights under the Act in relation to the Data, inform the Data Controller as soon as possible, and the Data Processor further agrees to assist the Data Controller with all data subject information requests which may be received from any Data Subject in relation to any Data;
- (f) not Process the Data outside of the United Kingdom except with the express prior written authority of the Data Controller; and
- (g) allow its data processing facilities, procedures and documentation to be submitted for scrutiny by the Data Controller or its representatives in order to ascertain compliance with the terms of this agreement.

4. OBLIGATIONS OF THE DATA CONTROLLER

4.1 The Data Controller agrees that it shall ensure that it complies at all times with the Act, and, in particular, the Data Controller shall ensure that any disclosure of Personal Data made by it to the Data Processor is made with the data subject's consent or is otherwise lawful.

5. GENERAL PROVISIONS

The Data Processor shall not subcontract any of its processing operations performed on behalf of the Data Controller under this agreement without the prior written consent of the Data Controller. Where the Data Processor subcontracts its obligations to a sub-processor, with the prior consent of the Data Controller, it shall do so only by way of a written agreement with the sub-processor and such written agreement shall impose the same obligations on the sub-processor as are imposed on the Data Processor under this agreement. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the Data Processor shall remain fully liable to the Data Controller for the performance of the sub-processor's obligations under such agreement.

6. FURTHER OBLIGATIONS OF THE DATA PROCESSOR

- 6.1 The Data Processor shall comply with all applicable aspects of the DPA in relation to the processing of the Data.
- 6.5 The Data Processor shall have information security and data protection policies in place. These will describe individual responsibilities for handling Data.
- 6.6 The Data Processor shall provide the Data Controller with copies of the policies referred to in 6.5 above on request.
- 6.7 The Data Processor shall undertake all reasonable background checks to ensure the reliability of all its employees, contractors who are likely to use or have access to the Data.
- 6.9 The Data Processor shall ensure that all employees are aware of and act in accordance with the policies referred to in 6.5 above.
- 6.10 The Data Processor shall ensure that all its employees and contractors are adequately trained to understand and comply with their responsibilities under DPA and this agreement and shall provide the Data Controller with evidence of that training on request.
- 6.11 The Data Processor shall ensure that only those employees involved in delivery of the Scheme use or have access to the Data on a strict 'need to know' basis and shall implement appropriate access controls to ensure this requirement is satisfied.
- 6.12 The Data Processor shall ensure that any employees involved in delivery of the Scheme who do not specifically need to use personal information as part of their role have restricted access to anonymised Data and/or redacted extracts only.

7. SECURITY - GENERAL

- 7.3 The Data Processor shall notify the Data Controller immediately of any incidents or activities that would indicate non-compliance with any of the terms of this agreement.
- 7.4 The Data Processor shall indemnify the Data Controller against and compensate for any loss (financial or otherwise) that the Data Controller sustains due to any failure by the Data Processor or employees, contractors or sub-contractors to act in accordance with the terms of this agreement and relevant legislation.

8. SECURITY - PHYSICAL

8.1 The Data Processor shall ensure that all Data is physically protected from accidental or deliberate loss or destruction arising from environmental hazards such as fire or flood.

8.2 The Data Processor shall ensure that all Data is held on premises that are adequately protected from unauthorised entry and/or theft of the Data and any IT equipment on which Data is held is physically secure. This protection can be achieved, for example, by the use of burglar alarms or security systems, security doors, ram-proof pillars and controlled access systems.

9 **SECURITY – IT SYSTEMS**

9.1 The Data Processor shall hold electronically-based Data on secure servers unless otherwise agreed in writing.

9.1.1 Data will, under no circumstances, be stored on portable media or devices such as laptops or USB memory sticks or CD-ROM unless agreed in writing and subject, at a minimum, to those constraints detailed in section 9.2 below.

9.2 The Data Processor shall ensure that:

9.2.1 All portable media used for storage or transit of the Data are fully encrypted in accordance with standards agreed between the Data Controller and Data Processor.

9.2.2 Portable media are not left unattended at any time and in particular in parked cars and vehicles and in unlocked & unoccupied rooms

9.2.3 When not in use, all portable media are stored in a locked area and issued only when required to authorised employees, with a record kept of the identity of the employee, the date of issue, the equipment or devices issued and the return date.

9.3 The Data Processor shall not allow employees to hold the Data on their own personal computers, mobile phones and other devices of a personal nature.

9.4 The Data Processor shall ensure adequate back-up facilities to minimise the risk of loss of or damage to Data and that a robust business continuity plan is in place in the event of restriction of service for any reason.

9.5 The Data Processor shall not transmit the Data by email except as an attachment encrypted to 256 bit AES\Blowfish standards or from a GSCX compliant e-mail system to a GSCX compliant e-mail system.

9.6 The Data Processor shall only make printed paper copies of Data only if this is essential for delivery of the Individual Scheme.

9.7 The Data Processor shall store printed paper copies of Data in locked cabinets when not in use and shall not remove from premises unless this is essential for delivery of the Individual Scheme.

9.8 For the purposes of this agreement the Data Processor will not have access to any of the Data Controller's networked IT systems.

10. **SECURITY – DESTRUCTION AND RETENTION**

10.1 The Data Processor shall ensure that the Data held in paper form (regardless of whether as originally provided by the Data Controller or printed from the Data Processor's IT systems) is

destroyed using a cross cut shredder or subcontracted to a confidential waste company that complies with European Standard EN15713.

10.2 The Data Processor shall ensure that electronic storage media used to hold or process Data is destroyed or overwritten to current CESG standards as defined at www.cesg.gov.uk

10.3 In the event of any bad or unusable sectors that cannot be overwritten, the Data Processor shall ensure complete and irretrievable destruction of the media itself.

10.4 The Data Processor shall provide the Data Controller with copies of all relevant overwriting verification reports and/or certificates of secure destruction of Data at the conclusion of the contract.

10.5 The Data Processor and Data Controller shall ensure that the retention of Data is in accordance with the Act.

11. **MONITORING & AUDIT**

11.1 The Data Processor shall permit the Data Controller to monitor compliance with the terms of this agreement, by completing and returning a Data Processing Monitoring Form as set out in Schedule 1, at the request of the Data Controller.

12. **TERMINATION**

12.1 This agreement shall terminate automatically upon termination or expiry of the Data Processor's obligations in relation to the Partnership Agreement, and on termination of this agreement the Data Processor shall forthwith deliver to the Data Controller or destroy, at the Data Controller's sole option, all the Data Controller's Data in its possession or under its control.

12.2 The Data Controller shall be entitled to terminate this agreement forthwith by notice in writing to the Data Processor if:-

12.2.1 the Data Processor is in a material or persistent breach of this agreement which, in the case of a breach capable of remedy, shall not have been remedied within twenty one (21) days from the date of receipt by the Data Processor of a notice from the Data Controller identifying the breach and requiring its remedy; or

12.2.2 the Data Processor become insolvent, has a receiver, administrator, or administrative receiver appointed over the whole or any part of its assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for solvent amalgamation or reconstruction).

13. **GOVERNING LAW**

13.1 This agreement is governed by and shall be interpreted in accordance with the law of England and Wales.

13.2 In the event of a dispute, the parties to this agreement agree to attempt to resolve such issues according to dispute resolution procedures set out in the Partnership Agreement between the parties. In the event that resolution cannot be reached, the parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear the case.

14. **WAIVER**

14.1 Failure by either party to exercise or enforce any rights available to that party or the giving of any forbearance, delay or indulgence shall not be construed as a waiver of that party's rights under this agreement.

15. **INVALIDITY**

15.1 If any term or provision of this agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision or part shall to that extent be deemed not to form part of this agreement but the enforceability of the remainder of this agreement shall not be affected provided however that if any term or provision or part of this agreement is severed as illegal or unenforceable, the parties shall seek to agree to modify this agreement to the extent necessary to render it lawful and enforceable and as nearly as possible to reflect the intentions of the parties embodied in this agreement including without limitation the illegal or unenforceable term or provision or part.

16. **ENTIRE AGREEMENT**

16.1 This agreement and the documents attached to or referred to in this agreement shall constitute the entire understanding between the parties and shall supersede all prior agreements, negotiations and discussions between the parties. In particular the parties warrant and represent to each other that in entering into this agreement they have not relied upon any statement of fact or opinion made by the other, its officers, servants or agents which has not been included expressly in this agreement. Further, each party hereby irrevocably and unconditionally waives any right it may have:

- (a) to rescind this agreement by virtue of any misrepresentation;
- (b) to claim damages for any misrepresentation whether or not contained in this agreement;

save in each case where such misrepresentation or warranty was made fraudulently.

17. **NOTICES**

17.1 Except as otherwise expressly provided within this agreement, no notice or other communication from one party to the other shall have any validity under the agreement unless made in writing by or on behalf of the party concerned.

17.2 Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other party in the manner referred to in clause 17.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) working days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

17.3 For the purposes of clause 17.2, the address of each party shall be:

For PETERBOROUGH CITY

COUNCIL:

Address:

For the attention of:

Tel:

Fax:

E-mail:

For **CCG : Andy Vowles**

Address: Lockton House,
Clarendon Road, Cambridge,
CB2 8FH

Telephone: 01223 725400

For the attention of:

Tel:

Fax:

E-mail:

17.4 Either Party may change its address for service by serving a notice in accordance with this clause.

Executed as a Deed by the parties on the date written above

Executed as a DEED on behalf of
PETERBOROUGH CITY COUNCIL by:

.....
SIGNATURE OF FIRST OFFICER

.....
SIGNATURE OF SECOND OFFICER

.....
PRINT FULL NAME

.....
PRINT FULL NAME

.....
POSITION

.....
POSITION

Signed as a Deed by
on behalf of CAMBRIDGESHIRE AND PETERBOROUGH
CLINICAL COMMISSIONING GROUP

SIGNATURE OF FIRST OFFICER

Maureen Donnelly

.....
PRINT FULL NAME

CCG Chair

.....
POSITION

.....
SIGNATURE OF SECOND OFFICER

Neil Modha.....

.....
PRINT FULL NAME

Chief Clinical Officer

.....
POSITION

.....
Signature of witness:

Name:

Address:

Occupation:

SCHEDULE 1

DATA PROCESSING MONITORING FORM

Monitoring Compliance of *[insert name of Data Processor here]* with the Data Controller's Information Governance Requirements in relation to *[insert name of contract here]*

Please complete this form and return to *[insert name of Data Controller's representative here]*

Your Compliance Assurance to the Data Controller

1. If you already process personal data on your own behalf, as defined within the Data Protection Act 1998, have you reviewed your Notification to the Information Commissioner for Data Processing within the past 12 months?

Please confirm your Notification number:

Do your staff have confidentiality/data protection training at induction and subsequently on an annual basis and are aware of the organisational policies and procedures and are notified when any changes are made?

2. Have you had a security breach resulting in loss of or damage to personal or confidential information within the past 2 years?

If YES, please provide details:

3. Have you had a security breach resulting in unauthorised disclosure of personal information within the past 2 years?

If YES, please provide details:

4. Have you been the subject of any complaints to the Information Commissioner within the past 2 years?

If YES, please provide details:

5. If you answered 'YES' to any of questions 2 – 4 above, did this affect Information belonging to the Data Controller?

If YES, please provide details:

6. If you answered 'YES' to question 5 above, did the incident result in disciplinary action against any of your employees and /or sub-contractors?

If YES, please provide details:

7. Have you updated or amended your confidentiality, information security, data protection or records management policies since the commencement of the contract?

If YES please provide details:

(Please provide copies if the amendments substantially alter the policy)

8. Please use this space to inform us of any other matters that you consider relevant in relation to your compliance with the Data Controller's requirements.

I confirm that [*insert name of Data Processor here*] is complying with all aspects of the Data Controller's confidentiality and information security requirements.

Signed..... Date.....

Name..... Position.....

For and on behalf of [*insert name of Data Processor here*]
(Print name & position of authorised signatory)