

Dated

2018

WILTSHIRE COUNCIL
and
NHS WILTSHIRE CLINICAL COMMISSIONING GROUP

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

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THIS DEED OF AGREEMENT is made on

day of

2018

PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN (the "**Council**" and "**Host Party**"); and
 - (2) **NHS WILTSHIRE CLINICAL COMMISSIONING GROUP** of Southgate House, Pans Lane, Devizes, Wiltshire SN10 5EQ (the "**WCCG**"),
- (each a "**Party**" and together the "**Parties**").

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the county of Wiltshire (excluding the administrative area of Swindon Borough Council).
- (B) The WCCG has the responsibility for commissioning health services pursuant to the 2006 Act in the county of Wiltshire.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the WCCG and the Council establish a pooled fund for this purpose.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Parties have agreed to collaborate and to establish a framework through which the Parties can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also a means through which the Parties will pool funds and align budgets as agreed between the Parties.
- (F) This Recital summarises the key objectives of the Better Care Fund Plan and joint commissioning in Wiltshire, the functioning of which this Agreement seeks to improve. The aims and benefits of the Parties in entering in to this Agreement are to:
 - (a) improve the quality and efficiency of the Services;
 - (b) meet the National Conditions and Local Objectives;
 - (c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;
 - (d) to enable more robust and flexible joint commissioning structures between the Council and WCCG that are better placed to respond to the personalisation agenda or other policy shifts;
 - (e) to improve financial decision making and essential operational efficiencies across the whole system of health and social care;
 - (f) to develop services closer to home responding to expert opinion, good practice and Service Users and carers needs, and delivering the strategic objectives of each party;
 - (g) to facilitate easier integration of preventative services with intermediate and high dependency care packages across the health and social care spectrum to provide a more seamless service to Service Users and their carers;

- (h) to provide a clearly integrated point of contact for other health and social care professionals, in order that they can influence strategic commissioning decisions;
 - (i) to promote greater local decision making across localities about adult health and social care services that secures more innovative ways of providing support and services;
 - (j) to promote ways of combating social exclusion, tackle inequalities and improve the health and social wellbeing of local communities; and
 - (k) to ensure service users and their carers receive coherent integrated packages of support so avoiding the anxiety of having to navigate a complicated bureaucracy and these services are of a high quality, safe, and supportive.
- (G) The intended outcomes of these arrangements are:
- (a) Promote rights, independence, choice and control for both people and their carers including reducing the impact of stigma;
 - (b) Better health and well-being achieved through preventative, practical and self-help services and support to prevent decline;
 - (c) Improved ability to cope with critical points and transitions through the availability of intermediate care and community support, avoidance of inappropriate admissions to hospital or residential care and timely discharge from hospital;
 - (d) Extended timely use of community based housing equipment and support, enabling more Service Users to be supported at home or in extra care housing and preventing the need for unnecessary admission to hospital or long term care;
 - (e) More effective commissioning for home based care through better information and knowledge across the whole system; and
 - (f) Reduce pressure on our Acute Hospitals by providing care in alternative localities and enhancing the independence of the Service User.
- (H) The aims, objectives and intended outcomes set out in Recitals (F) and (G) will be achieved by:
- (a) Using the statutory joint commissioning structures permitted by the Regulations and other relevant Law relating to integrated working between health and social care;
 - (b) Using the Agreement as a basis for service planning, strategic commissioning in the context of personal budgets;
 - (c) Using evidence on the outcome for Service Users as the basis for improving standards and targeting resources; and
 - (d) Working in an integrated way within the overall strategic direction of the Councils and WCCG's Joint Health and Wellbeing Strategy and the relevant joint commissioning strategies agreed by the parties.
- (I) The Parties have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (J) The Parties are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.
- (K) The Parties acknowledge that whilst this Agreement is based on a template kindly provided by Bevan Brittan LLP and published on the NHS England website, which referred to the law and guidance in

force in August 2014, the Parties have amended this template document in accordance with their requirements.

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

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

Agreement means this agreement including its Schedules and Appendices.

Annual Review shall have the meaning given to the term in Clause 19.2.

Approved Expenditure means any additional expenditure approved by the Parties (either in the execution of this Agreement or in accordance with Clause 9 or Clause 19, as appropriate) in relation to:

- (a) a Service above the relevant Contract Price; or
- (b) any additional corporate, administrative or other costs to be specified in a Scheme Specification or Schedule 8 which do not fall within a Service.

Authorised Officers means an officer of each Party appointed to be that Party's representative for the purpose of this Agreement as set out in Clause 18.8.

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

Better Care Fund Plan or BCP means the plan attached at Schedule 6 setting out the Parties' plan for the use of the Better Care Fund.

Better Care Plan Business Manager means the jointly appointed business manager for the Better Care Fund Plan.

Better Care Plan Finance and Governance Group means the group responsible for delivery of the objectives set out in the Better Care Fund Plan as set out in Schedule 2.

Block Contract means a contract between a Party and any third party for the provision of any part of the Services:

- (a) in a care home (as defined in the Care Standards Act 2000);
- (b) in accommodation not registered under the Care Standards Act 2000;
- (c) in the Service User's home; or
- (d) which are within a defined envelope e.g. Community Services,

where (in each case) the identity of some or all of the Service Users benefiting from that contract has not yet been determined or may change at the discretion of the Council during the period of such contract.

Care Contract means a contract between a Party and any third party for the delivery of the Services (or any part of them) to any Service User and/or for the funding of a direct payment to a Service User or their representative for the delivery of the Services (or any part of them) to the Service User.

Carers Pooled Budget means funding to support carers pursuant to the Care Act 2014.

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

Commencement Date means 00:01 hrs on 1 April 2017.

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

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

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

Data Protection Legislation means the 1998 Act and, from 25 May 2018, the EU General Data Protection Regulation (EU Regulation 2016/679), the Data Protection Bill 2017 (when enacted) and any other applicable data protection laws in each case, to the extent in force, and as such are updated, amended or replaced from time to time including where applicable the guidance and codes of practice issued by the Information Commissioner.

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

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

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

Financial Contributions means the minimum financial contributions to be made by each Party to the Pooled Fund for each Individual Scheme in any Financial Year as set out in Schedule 8 as varied from time to time in accordance with the terms of this Agreement.

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

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

Force Majeure Event means one or more of the following:

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

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

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

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

Host Party means the Council, being the Party who undertakes day to day management of the Pooled Fund and who takes primary, although not exclusive, responsibility for preparing financial, performance and other reports as required.

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

ICES Pooled Budget means the funding to provide integrated community equipment to service users to enable them to remain living at home.

Indemnified Party has the meaning given to the term in Clause 15.2.

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

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

Joint (Aligned) Commissioning means a mechanism by which the Parties 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 Business Arrangements means the overarching agreement for joint business arrangements under the NHS Act 2006 dated 21 March 2014 and made between (1) the Council and (2) WCCG.

Joint Commissioning Board means the partnership board 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 Party(ies) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Party(ies) or relevant third party (as applicable); and
- (d) any judgment of a relevant court of law which is a binding precedent in England.

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

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

Local Objectives means the objectives for the Better Care Fund for Wiltshire as set out in the Better Care Fund Plan.

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 (including any claims and proceedings (to include any settlements or ex gratia payments made with the consent of the Parties and reasonable legal and expert costs and expenses) made or brought (whether successfully or otherwise) by or on behalf of any Service User (or his dependants) against an Indemnified Party under this Agreement or any of its employees or agents for personal injury (including death)) but excluding Indirect Losses and "Loss" shall be interpreted accordingly.

Month means a calendar month.

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

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

Non-Recurrent Payments means funding (if any) provided by a Party to the Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 9.4.

Overspend means any expenditure from the Pooled Fund in a Financial Year in relation to an Individual Scheme which exceeds the total Financial Contributions for that Scheme for that Financial Year which shall be managed in accordance with Clause 11 and Schedule 2Part 11.

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

Permitted Expenditure has the meaning given in Clause 7.3.

Personal Data means Personal Data as defined by the Data Protection Legislation.

Pooled Fund means the fund of monies maintained by the Host Party for the purpose of securing the Services or part of them pursuant to this Agreement, made up of the Financial Contributions from the Parties in accordance with the Regulations.

Pooled Fund Manager means such officer of the Host Party which includes a Section 113 Officer for the Pooled Fund as is nominated by the Host Party from time to time to manage the Pooled Fund in accordance with Clause 7.6.3.

Provider means a provider of any Services commissioned under the arrangements set out in this Agreement.

Public Health England means the SOSH trading as Public Health England. Quarter means each of the following periods in a Financial Year:

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

Sensitive Personal Data means Sensitive Personal Data as defined in the Data Protection Legislation.

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

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

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

Specified Legislation shall have the meaning given to the term in Clause 40.2.

Social Care Related Functions means those of the social care 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.

SOSH means the Secretary of State for Health.

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

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

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

Working Day means except in the context of 7-day services, any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

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

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue until 31 March 2019 unless extended in accordance with Clause 30 or terminated early in accordance with Clause 21 and shall be subject to an annual review by the Joint Commissioning Board.
- 2.2 Unless otherwise stated in the relevant Scheme Specification as varied from time to time and subject to the provisions of clause 9.2, the duration of the arrangements for each Individual Scheme shall be

concurrent with the term of the Agreement as set out in Clause 2.1 unless terminated early in accordance with Clause 21.

2.3 This Agreement supersedes previous Agreements relating to the Better Care Fund in Wiltshire, which the Parties acknowledge are referred to as the "BCP Section 75 Agreements" without prejudice to the rights and liabilities of the Parties under those previous Agreements.

2.4 The Parties agree that, if during the term of this Agreement, the Parties become a party to arrangements for an accountable care system in Wiltshire, they shall work together in good faith to agree the status of this Agreement as part of those arrangements which may include (without limitation) a variation to this Agreement pursuant to Clause 30 and/or termination pursuant to Clause 21.

3 GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

3.1.1 the rights and powers, duties, obligations and liabilities of the Parties to each other or to any third parties in the exercise of their respective functions and obligations (including the Functions); or

3.1.2 any power or duty of the Council to set, administer and recover charges for the provision of any services (including the Services) in the exercise of any Health Related Function.

3.1.3 the Council's power to determine and apply eligibility criteria for the purposes of assessment under the National Health Service and Community Care Act 1990.

3.2 The Parties agree to:

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

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

3.2.3 provide early information and notice about relevant problems.

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.

3.4 The Parties agree that, in accordance with Clause 36, on and from the Commencement Date this Agreement supersedes all previous arrangements entered into between the Parties under section 75 of the 2006 Act in relation to the Better Care Fund in Wiltshire, and in particular it supersedes such arrangements set out in the Joint Business Arrangements between the Parties. All acts done on and from the Commencement Date in relation to the Better Care Fund shall be deemed to have been done pursuant to the provisions of this Agreement.

3.5 For the avoidance of doubt, subject to Clause 3.4, the Joint Business Arrangements between the Parties shall continue in full force and effect.

4 PARTNERSHIP FLEXIBILITIES

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

4.1.1 Lead Commissioning Arrangements;

4.1.2 Integrated Commissioning;

4.1.3 Joint (Aligned) Commissioning;

4.1.4 the establishment of the Pooled Fund,

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

- 4.2 The Council delegates to the WCCG and the WCCG agrees to exercise, on the Council's behalf, the Social Care Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions in particular in accordance with the requirements of the Scheme Specifications.
- 4.3 The WCCG delegates to the Council and the Council agrees to exercise on the WCCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Social Care Related Functions in particular in accordance with the requirements of the Scheme Specifications.
- 4.4 Where the powers of a Party to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Parties shall agree arrangements designed to achieve the greatest degree of delegation to the other Party necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Parties can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Parties.
- 5.3 The Parties 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.
- 5.4 Where the Parties add a new Individual Scheme to this Agreement, a Scheme Specification for each Individual Scheme shall be in the form set out in Part 1 to Schedule 1 (as amended subject to agreement between the Parties) and shall be completed and agreed between the Parties. The initial Individual Schemes are listed in Part 2 in Schedule 1 and the Parties agree that during the term of this Agreement, they shall work towards the completion of the template Specifications set out in Part 1 (as amended subject to agreement between the Parties) for each Individual Scheme which is set out in Part 2.
- 5.5 The introduction of any Individual Scheme will be:
- 5.5.1 subject to business case approval by the Joint Commissioning Board and authorisation in accordance with the constitutional requirements of each Party;
 - 5.5.2 for insertion as part of this Agreement in accordance with Clause 30 (Variation); and
 - 5.5.3 reported to the Health and Wellbeing Board, which has strategic oversight of this Agreement.
- 5.6 All Individual Schemes will be subject to robust and regular review to assess the efficiency of these arrangements in accordance with Clause 19 and Schedule 2.

6 COMMISSIONING ARRANGEMENTS

Integrated Commissioning

- 6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, both Parties shall work in cooperation and shall endeavour to ensure that the NHS Functions and Social Care Related Functions are commissioned with all due skill, care and attention.

- 6.2 Both Parties shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
- 6.3 Both Parties shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Party's Financial Contribution in respect of that particular Individual Scheme in each Financial Year.
- 6.4 The Parties shall comply with the arrangements in respect of any Joint (Aligned) Commissioning as set out in the relevant Scheme Specification.
- 6.5 Each Party shall keep the other Party and the Better Care Plan Finance and Governance Group and the Joint Commissioning Board regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in the Pooled Fund in accordance with the provisions of Clause 10 (Risk Share Arrangements, Overspends and Underspends), Schedule 2 (Governance) and Schedule 2 Part 11 (Risk Share, Overspends and Underspends).
- 6.6 The Joint Commissioning Board will report back to the Health and Wellbeing Board as required by its terms of reference and the Better Care Plan Finance and Governance Group will report to the Joint Commissioning Board in accordance with its terms of reference as set out in Schedule 2.
- 6.7 Each Party is committed to defining a joint delivery plan for each Individual Scheme as set out in the relevant Scheme Specification.

Appointment of a Lead Commissioner

- 6.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
 - 6.8.1 exercise the NHS Functions in conjunction with the Social Care Related Functions as identified in the relevant Scheme Specification;
 - 6.8.2 endeavour to ensure that the NHS Functions and the Social Care Related Functions are funded within the parameters of the Financial Contributions of each Party in relation to each particular Individual Scheme in each Financial Year.
 - 6.8.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.8.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Party;
 - 6.8.5 comply with the Law as it applies to both Parties in relation to the Services being commissioned and in particular, but without limitation, ensure that all Service Contracts with care providers require that such element of the Services in any care home (as defined in the Care Standards Act 2000) complies with any national minimum standards under that Act;
 - 6.8.6 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;
 - 6.8.7 undertake performance management and contract monitoring of all Service Contracts;
 - 6.8.8 make payment of all sums due to a Provider pursuant to the terms of any Service Contract.
 - 6.8.9 keep the other Party and the Joint Commissioning Board regularly informed of the effectiveness of the arrangements and any Overspend or Underspend in the Pooled Fund.

7 ESTABLISHMENT OF THE POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Parties have agreed to establish and maintain the Pooled Fund for revenue expenditure as set out in the Scheme Specifications.
- 7.2 The 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 may only be expended on the following:
- 7.3.1 the Contract Price;
 - 7.3.2 Third Party Costs;
 - 7.3.3 Approved Expenditure;
- ("Permitted Expenditure")**
- 7.4 The Parties may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Party subject to approval by the Joint Commissioning 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 both Parties.
- 7.6 Pursuant to this Agreement, the Parties have agreed to appoint the Council as the Host Party for the Pooled Fund. The Host Party shall be responsible for:
- 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Party;
 - 7.6.2 providing the financial administrative systems for the Pooled Fund;
 - 7.6.3 appointing the Pooled Fund Manager. As at the Commencement Date, this has been agreed as being the Director of Finance and Procurement (Michael Hudson);
 - 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 The Pooled Fund Manager shall have the following duties and responsibilities:
- 8.1.1 the day to day operation and management of the Pooled Fund;
 - 8.1.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specifications;
 - 8.1.3 maintaining an overview of all joint financial issues affecting the Parties in relation to the Services and the Pooled Fund;
 - 8.1.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.1.5 reporting to the Better Care Plan Finance and Governance Group and the Joint Commissioning Board in accordance with this Agreement including (without limitation) the requirements of the relevant Scheme Specification and Schedule 2 (Governance);
 - 8.1.6 ensuring action is taken to manage any projected Underspends or Overspends relating to the Pooled Fund in accordance with this Agreement;

- 8.1.7 preparing and submitting to the Better Care Plan Finance and Governance Group and the Joint Commissioning Board Quarterly reports (or more frequent reports if required by the Joint Commissioning Board) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may reasonably be required by the Parties and the Health and Wellbeing Board to monitor the effectiveness of the Pooled Fund and to enable the Parties to complete their own financial accounts and returns. The Parties agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
- 8.1.8 preparing and submitting reports to the Joint Commissioning Board and Health and Wellbeing Board as required by it and any other Council/WCCG meeting that is deemed appropriate by the Joint Commissioning Board.

8.2 In carrying out their responsibilities as provided under Clause 8.1 the Pooled Fund Manager shall have regard to the recommendations of the Joint Commissioning Board and be accountable to the Parties.

9 FINANCIAL CONTRIBUTIONS

- 9.1 Subject to clause 9.2, the minimum Financial Contribution of the WCCG and the Council to the Pooled Fund for the specified Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification and Schedule 8, as varied in accordance with Clauses 19.5 to 19.8 and Clause 30.2.
- 9.2 The Parties acknowledge that as soon as reasonably practicable, this Agreement shall be varied to include indicative Financial Contributions for the Financial Year 2018/2019 in Schedule 8 and these will be confirmed in accordance with the procedure for agreeing the Financial Contributions for future years set out in Clauses 9.4 to 19.8 and will be subject to any variation agreed in accordance with Clause 30.2.
- 9.3 Notwithstanding any other provisions of this Clause 9, no provision of this Agreement shall preclude the Parties by mutual agreement making Non-Recurrent Payments to the Pooled Fund from time to time but no such additional contributions shall be taken into account in the calculation of the Party's respective contributions for the purposes of Schedule 2Part 11. Any such Non-Recurrent Payments agreed by the Parties shall be explicitly recorded in the relevant Better Care Plan Finance and Governance Group minutes and Joint Commissioning Board minutes and recorded in the budget statement as a separate item.
- 9.4 The Parties may agree any Approved Expenditure (in addition to Approved Expenditure agreed in a Scheme Specification or Schedule 8) through the Joint Commissioning Board including where relevant through a recommendation approved by the Better Care Plan Finance and Governance Group. For the avoidance of doubt, a business case including any corporate spend for such Approved Expenditure shall be approved by the Parties at the Joint Commissioning Board.

10 NON FINANCIAL CONTRIBUTIONS

- 10.1 Each Scheme Specification shall set out non-financial contributions of each Party 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).The Scheme Specifications shall set out whether these contributions shall be provided at a charge to the other Party or to the Pooled Fund.

11 RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 11.1 The Parties have agreed risk share arrangements as set out in Schedule 2Part 11, which provide for financial risks arising within the commissioning of services from the Pooled Fund.
- 11.2 The Host Party shall manage expenditure from the Pooled Fund within the Financial Contributions and shall ensure that expenditure is limited to Permitted Expenditure.

- 11.3 The Pooled Fund Manager shall notify the Joint Commissioning Board as soon as reasonably possible of an actual or projected Overspend or Underspend of the Pooled Fund, and the provisions of the relevant Scheme Specification and Schedule 2Part 11 shall apply. Such arrangements shall be subject to the Law and the constitutional documents, Standing Orders and Standing Financial Instructions (or equivalent) of each Party.
- 11.4 The Host Party 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 Joint Commissioning Board in accordance with Clause 11.3.
- 11.5 The provisions of Clause 21 shall apply in respect of Overspends and Underspends upon termination of this Agreement or a Scheme Specification.
- 11.6 In the event that agreement cannot be reached in respect of any matters referred to in this Clause 11 and Schedule 2Part 11 or indeed in any other matters the Parties shall follow the dispute procedure as set out in Clause 23.

12 CAPITAL EXPENDITURE

- 12.1 Subject to Clause 12.2, the Pooled Fund 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 Parties. If a need for capital expenditure is identified this must be agreed by the Parties acting by the Joint Commissioning Board.
- 12.2 The Parties agree that capital expenditure may be included in the Pooled Fund where this is in accordance with Better Care Fund requirements and set out in the relevant Scheme Specification. For the avoidance of doubt, this will include capital expenditure using the DFG.

13 VAT AND INVOICING

- 13.1 The Parties shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise and wherever possible in line with the Council's policy on the management and dispersal of VAT.
- 13.2 The Scheme Leader (as identified in the relevant Scheme Specification) shall check and approve the validity of spend in line with the relevant Service Contract and the expectations of the Parties set out in the relevant Scheme Specification, and report to the Better Care Plan Finance and Governance Group and the Joint Commissioning Board as required.

14 AUDIT AND RIGHT OF ACCESS

- 14.1 Both Parties shall promote a culture of probity and sound financial discipline and control. The Host Party (the Council) shall arrange for the audit of the accounts of the Pooled Fund and shall require the appropriate person or body appointed to exercise the functions of the appropriate person or body appointed to exercise the functions of the Audit Commission under section 29(1)(d) of the Audit Commission Act 1998 by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998. Both parties shall comply with each party's relevant financial reporting timescales and ensure a common approach to financial reporting is in place.
- 14.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access to any document, information or explanation they require from any employee or member of the Party in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

15 LIABILITIES AND INSURANCE AND INDEMNITY

- 15.1 The Parties shall agree and maintain appropriate insurance arrangements in respect of all potential liabilities arising from this Agreement. In the case of the WCCG, it may arrange alternative cover in

accordance with current NHS arrangements administered by the NHS Litigation Authority in lieu of commercial insurance. Each Party shall provide to the other upon request such evidence as that Party may reasonably require to confirm that the insurance arrangements are satisfactory and are in force at all times.

- 15.2 Each Party ("**Indemnifying Party**") shall indemnify the other Party ("**Indemnified Party**") and its employees and agents against all Losses incurred as a result of or in connection with this Agreement or a Service Contract to the extent that such Losses arise as a result of:
- 15.2.1 the proper exercise by the Indemnified Party of the Indemnifying Party's Functions in accordance with this Agreement; or
 - 15.2.2 any negligent or wrongful act, or omission, breach of statutory duty, breach of this Agreement or breach of the relevant Service Contract of the Indemnified Party, its employees or agents, save to the extent that the Indemnifying Party was following the instructions or requests of the Indemnified Party, the Health and Wellbeing Board, the Better Care Fund Finance and Governance Group or the Joint Commissioning Board.
- 15.3 If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause 15, that Party will:
- 15.3.1 as soon as reasonably practicable give written notice of that matter to the Indemnifying Party specifying in reasonable detail the nature of the relevant claim;
 - 15.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed); and
 - 15.3.3 give the Indemnifying Party and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Party and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 15.4 For the purposes of the indemnity in Clause 15.2 the expression "agents" shall be deemed to include without limitation any nurse or health professional/social care worker or manager providing services to the Council or the WCCG under contract for services for the Better Care Fund and any person carrying out work for the Council or the WCCG under such a contract connected with such of the Council's or the WCCG's facilities.
- 15.5 The Parties acknowledge that the responsibility for specific indemnity cover lies with the Provider relevant to the Services they operate. However, commissioners need to assure themselves that such indemnity cover is in place.
- 15.6 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which it is entitled to bring a claim against the other Party pursuant to this Agreement.

Conduct of Claims

- 15.7 In respect of the indemnities given in this Clause 15:
- 15.7.1 the Indemnified Party shall give written notice to the Indemnifying Party as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
 - 15.7.2 the Indemnifying Party shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the Indemnified Party, the Indemnifying Party shall consult with the Indemnified Party about

the conduct and/or settlement of such claims and proceedings and shall at all times keep the Indemnified Party informed of all material matters; and

- 15.7.3 the Indemnifying and Indemnified Parties shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

16 STANDARDS OF CONDUCT AND SERVICE

- 16.1 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties' respective constitutional documents, Standing Orders and Standing Financial Instructions).
- 16.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the WCCG will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 16.3 The WCCG is subject to the WCCG 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 Fund are therefore subject to ensuring compliance with the WCCG Statutory Duties and clinical governance obligations.
- 16.4 The Parties are committed to an approach to equality and equal opportunities as represented in their respective policies. The Parties will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.
- 16.5 The Services shall be purchased for or provided to the Service Users in accordance with the objectives set out in the Recitals to this Agreement and each Scheme Specification.
- 16.6 Subject to the requirements of its constitution the Host Party (the Council) and the Lead Commissioner for each Service shall implement the decisions of the Joint Commissioning Board in respect of the Pooled Fund. For the avoidance of doubt this Agreement does not affect the statutory responsibilities of either Party.
- 16.7 The Joint Commissioning Board shall monitor the exercise by the Parties under this Agreement of the Functions in accordance with Schedule 2.
- 16.8 The annual report(s) provided by the Council under Schedule 2 will set out the spending of the Pooled Fund in relation to the NHS Functions and the Council shall provide such information to the WCCG if the WCCG requests this from time to time.
- 16.9 The annual report(s) provided by the WCCG under Schedule 2 will set out the spending of the Pooled Fund in relation to the Social Care Related Functions and the WCCG shall provide such information to the Council if the Council requests this from time to time.

17 CONFLICTS OF INTEREST

The Parties shall comply with their respective organisation's Conflicts of Interest Policy for identifying and managing conflicts of interest as referred to in Schedule 7 and as such policies are updated from time to time during the term of this Agreement.

18 GOVERNANCE

- 18.1 Overall strategic oversight of partnership working between the Parties is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Parties as to any action it considers necessary.

- 18.2 The Parties have established a multi-agency/stakeholder Better Care Plan Finance and Governance Group and a Joint Commissioning Board made up solely of officers of the WCCG and the Council. The two bodies shall:
- 18.2.1 implement, deliver and operationally manage the Better Care Fund Plan;
 - 18.2.2 manage the Better Care Fund budget; and
 - 18.2.3 lead, co-ordinate and monitor delivery of the Better Care Fund programme,
- as set out in the terms of this Agreement and the terms of reference included at Schedule 2.
- 18.3 The Better Care Plan Finance and Governance Group and the Joint Commissioning Board are both based within the joint working group structure and referenced within the individual organisation's decision making process. Each member of the two groups shall be a representative with individual delegated responsibility from the Party employing them to make decisions which enable the Better Care Plan Finance and Governance Group and the Joint Commissioning Board to carry out their objectives, roles, duties and functions. The terms of reference of each of the above 2 groups are set out in Schedule 2.
- 18.4 Each Party undertakes to the other that it has secured and will continue to secure internal reporting arrangements to ensure the standards of accountability and probity required by each Party's own statutory duties and organisation are complied with.
- 18.5 The Joint Commissioning Board and the WCCG Governing Body Board and the Council's Cabinet shall be responsible for the overall approval of the use of funds for individual Services, ensuring compliance with the Better Care Fund Plan.
- 18.6 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the, Better Care Plan Finance and Governance Group, Joint Commissioning Board and Health and Wellbeing Board.
- 18.7 The Joint Commissioning Board shall co-operate with the Pooled Fund Manager in relation to reporting requirements set out in relevant guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health and/or the Local Government Association.

Authorised Officers

- 18.8 At the Commencement Date, the Authorised Officers shall be:
- 18.8.1 for the Council: (Interim) Director of Adult Social Care and Public Health; and
 - 18.8.2 for WCCG: the (Interim) Accountable Officer, and Chief Finance Officer. For the avoidance of doubt, any notice, information or communication given or made by or to either the (Interim) Accountable Officer or the Chief Finance Officer shall be deemed to have been given or made by or to WCCG.

19 REVIEW

- 19.1 Save where the Joint Commissioning Board agree alternative arrangements (including alternative frequencies) and without prejudice to Clause 19.6, the Parties shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
- 19.2 Subject to any variations to this process required by the Joint Commissioning Board, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.

- 19.3 The Parties shall within 2 Months of each Annual Review prepare a joint annual report documenting the matters referred to in this Clause 19. A copy of this report shall be provided to the Joint Commissioning Board.
- 19.4 The Parties acknowledge that the Joint Commissioning Board and the Better Care Plan Finance and Governance Group shall undertake regular reviews of the operation of this Agreement in accordance with the terms of reference set out in Schedule 2.

Financial Contributions

- 19.5 The Parties shall use reasonable endeavours to agree no later than 31st March in any Financial Year their respective Financial Contributions to the Pooled Fund for the following Financial Year and the relevant Scheme Specifications and Schedule 8 will be updated to reflect such agreement. Where agreement cannot be reached the Parties may need to use and/or apply the processes as outlined in Clauses 11 and 23.
- 19.6 The Parties shall review the operation of the Agreement at each meeting of the Joint Commissioning Board including confirmation of their respective Financial Contributions to the Pooled Fund for that Financial Year. The Parties may at this time (acting by written agreement of the Joint Commissioning Board) agree to vary such contributions and the relevant Scheme Specifications and Schedule 8 shall be amended in accordance with clause 30.
- 19.7 The Parties shall also use reasonable endeavours in each Financial Year to agree by 1st February a draft budget for the following Financial Year which would usually be based on the budget for the previous Financial Year. Such budget will be finalised once the Parties have agreed their Financial Contributions for the relevant Financial Year in accordance with Clauses 19.5 and 19.6 above.
- 19.8 Reviews under this clause shall be conducted in good faith and in accordance with the governance arrangements set out in Schedule 2, shall be based upon information to be provided as set out in Schedule 2 and shall take account of:
- 19.8.1 reasonable increases for inflation;
 - 19.8.2 any agreed addition or decrease of funds for development of the Pooled Fund against any agreed targets; and
 - 19.8.3 any commitments under or in connection with any Service Contract,
- and the Parties acknowledge that any decision to reduce a Party's Financial Contribution which may impact on either Party's ability to fund a Service shall comply with the requirements of clause 30 including consideration of any associated reduction in the Services, taking account of notice periods within the relevant Service Contracts.

20 COMPLAINTS

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

21 TERMINATION & DEFAULT

- 21.1 Subject to the requirements of the Law (and in particular the statutory requirements of the Better Care Fund):
- 21.1.1 this Agreement may be terminated by either Party giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes; and

21.1.2 unless otherwise agreed in the relevant Scheme Specification, each Individual Scheme may be terminated by either Party giving not less than 12 Months' notice in writing or such shorter notice period agreed between the Parties, provided that the Parties ensure that the statutory Better Care Fund requirements continue to be met and for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Services.

21.2 If a Party ("**Relevant Party**") fails to meet any of its obligations under this Agreement, the other Party may by notice require the Relevant Party to take such reasonable action within a reasonable timescale as the other Party may specify to rectify such failure. Should the Relevant Party fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.

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

22 EFFECTS OF TERMINATION OR EXPIRY

22.1 In the event that this Agreement is terminated in whole or in part (howsoever terminated) the Parties agree to co-operate to ensure an orderly wind down of their joint activities as set out in this Agreement so as to minimise disruption to all Service Users, carers and staff.

22.2 The Council and the WCCG shall co-operate to ensure that:

22.2.1 where possible, existing Service Contracts are assigned to the Party with statutory responsibility for the relevant Service Users. Where this is not possible, subject to Clause 22.2.3, the Council and the WCCG shall continue to be liable to purchase the Services in accordance with this Agreement for all current Service Users at the date of service of the notice of termination and to fulfil all existing obligations to third parties under any Service Contract until the relevant contracts are terminated; and

22.2.2 the Parties shall continue to operate the Pooled Fund in accordance with this Agreement so far as is necessary to ensure fulfilment of the obligations in sub-Clause 22.2.1; and

22.2.3 the Parties shall remain liable to contribute that proportion of the cost of the Services which either is their proportionate contribution to the relevant Scheme in the current Financial Year or, if such contribution has not at the date of notice of termination yet been confirmed under Clause 19.5, the Party's contribution in the immediately preceding Financial Year represented as a proportion of the aggregate contributions of each Party to the relevant Service in that preceding Financial Year, such liabilities to continue for so long as the Service Users shall require the Services or the obligations to third parties under any Service Contract remain to be fulfilled.

22.3 Upon termination of the Agreement or a Scheme Specification the Parties shall use reasonable endeavours to agree an apportionment of any Underspend in relation to the Individual Scheme so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the Underspend and such payments as shall be required to reflect this shall be made from the Pooled Fund to the Parties. Where such agreement cannot be reached within 30 days of termination the Underspend shall be returned to the Parties in proportion to their respective Financial Contributions for that Scheme.

22.4 Upon termination of the Agreement or a Scheme Specification the Parties shall use reasonable endeavours to agree an apportionment of any Overspend in relation to the Scheme so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the Overspend and such payments as shall be required to reflect this shall be made by the Parties to the Pooled Fund. Where such agreement cannot be reached within 30 days of termination the Parties shall meet the Overspend proportionately to their respective Financial Contributions for that Scheme.

- 22.5 When determining whether there has been an Underspend or Overspend as at the date of termination of this Agreement, all known liabilities in relation to the Pooled Fund should be assessed and quantified and taken into account. In the case of termination of a Scheme Specification, all known liabilities in relation to that Scheme should be assessed and quantified and taken into account.
- 22.6 The Parties shall continue to be responsible for any liabilities that arise following any payments made pursuant to Clause 22.3 and/or Clause 22.4. Any liabilities that are subsequently quantified shall be apportioned between the Parties on the same basis as an Overspend in accordance with Clause 22.4 and the Parties shall make such payments to each other or to the Pooled Fund as shall be required to reflect this.
- 22.7 Unless agreed otherwise assets purchased from the Pooled Fund will be disposed of by the Host Party for the purposes of meeting any of the costs of winding up the Services or where this is not practicable such assets will be shared proportionately between the Council and the WCCG according to their respective Financial Contributions to the relevant Scheme.

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Parties arising out of this Agreement, either Party may serve written notice of the dispute on the other Party, setting out full details of the dispute.
- 23.2 The Parties shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1 at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Authorised Officer of each Party (or in each case their nominees) shall meet in good faith as soon as possible after the relevant meeting and in any event 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 Parties will attempt to settle such dispute by mediation as follows:
- 23.4.1 in the case of any financial dispute including in relation to Overspends and Underspends as referred to in Clause 11 and Schedule 2Part 11, by referral to NHS England South West and Local Government Association South West Region peers for determination; and
- 23.4.2 in the case of any other dispute, in accordance with the CEDR Model Mediation Procedure set out at Schedule 7 or any other model mediation procedure as agreed by the Parties.
- 23.5 To initiate mediation under 23.4.1 or 23.4.2, either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to NHS England South West and Local Government Association South West peers, CEDR or the equivalent mediation organisation as agreed by the Parties (as the case may be) asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served (or in the case of mediation of financial issues, such other timescale as NHS England and the Local Government Association shall determine). Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). The Parties will co-operate with any person appointed as mediator, providing them with such information and other assistance as they shall require and will pay their costs as they shall determine or in the absence of such determination such costs will be shared equally.
- 23.6 Nothing in the procedure set out in this Clause 23 shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

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

25 CONFIDENTIALITY

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

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

- 26.1 The Parties agree that they will each cooperate with each other to enable any the other Party receiving a request for information under the 2000 Act or the 2004 Regulations to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding,

retrieving and supplying information held, directing requests to the other Party as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.

- 26.2 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Party shall be in breach of Clause 24 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.
- 26.3 Each Party ("**First Party**") acknowledges that the other Party will, in responding to a request received under the 2000 Act or the 2004 Regulations, be entitled to provide information relating to this Agreement or which otherwise relates to the First Party.

27 OMBUDSMEN

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

28 INFORMATION SHARING AND DATA PROTECTION

- 28.1 The Parties shall at all times after the commencement of this Agreement:
- 28.1.1 use their best endeavours to comply with their obligations under the Data Protection Legislation;
 - 28.1.2 cooperate with each other to enable the other Party to meet its obligations under the Data Protection Legislation.
- 28.2 No later than 20 Working Days from the date of this Agreement, the Parties shall procure and agree a policy and procedures for information sharing in order to ensure that:
- 28.2.1 the Parties comply with any notification requirements under the Data Protection Legislation;
 - 28.2.2 the Parties process information obtained in relation to any Service User in accordance with their obligations under the Data Protection Legislation; and
 - 28.2.3 Providers commissioned pursuant to Individual Schemes have in place appropriate technical and contractual measures to ensure their compliance with the Data Protection Legislation.
- 28.3 Following the agreement of a policy and procedures in accordance with Clause 28.2, both Parties shall thereafter comply at all times with such policy and procedures for the duration of this Agreement and indefinitely after its expiry or termination.
- 28.4 The Parties acknowledge that supporting data sharing protocols and agreements are being developed which will underpin the Better Care Fund Plan and which they will adhere to when sharing information under this Agreement. Wherever the Parties intend to share data, they will consider the type of information to be shared and the purpose for sharing it, and they will enter into the appropriate information sharing agreements as developed between the Parties.
- 28.5 Each Party shall take such steps as may be practicable to afford the other Party access to information which is reasonably required by the first Party in connection with any of its statutory functions and for any purpose connected with its rights and obligations under this Agreement.
- 28.6 Each Party must exercise its reasonable endeavours to ensure the accuracy of any data entered into the computer system used in carrying out the Party's obligations under the Agreement.
- 28.7 So far as is permitted in Law (and each Party shall use all reasonable endeavours to ensure such permission exists) all data held on any computer system operated under this Agreement must

immediately on termination of the Agreement be made available on request to the Party with statutory responsibility for the relevant Service Users.

29 NOTICES

29.1 Any notice to be given under this Agreement shall either be sent by first class post or electronic mail. The address for service of each Party shall be as set out in Clause 29.3. A notice shall be deemed to have been served if:

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

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

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

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

29.3.1 if to the Council, addressed to the (Interim) Director of Adult Social Care and Public Health (Graham Wilkin at the Commencement Date) at Wiltshire Council, County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN;

Tel: 01225 713117

Email: graham.wilkin@wiltshire.gov.uk

29.3.2 if to the WCCG, addressed to the (Interim) Accountable Officer (Linda Prosser at the Commencement Date) and the Chief Finance Officer (Steve Perkins at the Commencement Date) both at NHS Wiltshire Clinical Commissioning Group, Southgate House, Pans Lane, Devizes, Wiltshire SN10 5EQ;

Tel: 01380 733830

Email: linda.prosser@nhs.net and steve.perkins@nhs.net

30 VARIATION

30.1 No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Parties subject to approval by the Joint Commissioning Board as set out in this Clause.

30.2 Where the Parties agree that there will be:

30.2.1 a new Scheme Specification; or

30.2.2 an amendment to a current Scheme Specification,

the Joint Commissioning Board shall agree the new or amended Scheme Specification and this must be signed by the Parties. A request to vary an Individual Scheme (which may include a change in the level of Financial Contribution/s) may be made by any Party but will require agreement from all of the Parties in accordance with the process set out in Clause 30.3. The notice period for any variation

unless otherwise agreed by the Parties shall be 3 Months or in line with the notice period for variations within the associated Service Contract/s, whichever is the shortest.

30.3 The following approach shall, unless otherwise agreed, be followed by the Joint Commissioning Board:

30.3.1 on receipt of a request from one Party to introduce a Scheme Specification for an existing Individual Scheme or vary the Agreement or an Individual Scheme, the Joint Commissioning Board will first undertake an impact assessment and identify those Service Contracts likely to be affected;

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

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

30.3.4 should this not be possible and one Party is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed [and subject to the exceptions set out in Paragraph 5 of Schedule 3], be shared equally between the Parties.

31 CHANGE IN LAW

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

31.2 If at any time during the term of this Agreement a change to the manner in which a Service or the Services are commissioned is required as a result of a Change in Law then the provisions outlined in this Clause 31 shall apply.

31.3 The Parties shall jointly investigate the likely impact of the Change in Law on the Services and any other aspect of the Agreement and shall prepare a report in writing, setting out:

31.3.1 the variation proposed;

31.3.2 the date upon which it should take effect;

31.3.3 a statement of whether the variation will result in an increase or decrease in Financial Contributions by reference to the relevant component elements of the Service or Services which are subject to the Change in Law;

31.3.4 a statement on the individual responsibilities of the WCCG and the Council for any implementation of the variation;

31.3.5 a timetable for implementation of the variation;

31.3.6 a statement of any impact on, and any changes required to the Services; and

31.3.7 the date for expiry of the report.

31.4 The Parties shall confirm in writing their decision to proceed with the proposed variation and shall agree a formal variation in accordance with Clause 30.

31.5 In the event of failure by the Parties to agree the relevant amendments to the Agreement (as appropriate), the Clause 24 (Dispute Resolution) shall apply.

32 WAIVER

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

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

35 EXCLUSION OF PARTNERSHIP AND AGENCY

35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Parties or render either Party directly liable to any third party for the debts, liabilities or obligations of the other.

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

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

37 ENTIRE AGREEMENT

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

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

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

38 COUNTERPARTS

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

39 GOVERNING LAW AND JURISDICTION

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

40 STATUTORY OBLIGATIONS

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

41 FAIR DEALINGS

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

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

**THE CORPORATE SEAL of
WILTSHIRE COUNCIL
was hereunto affixed In the presence of:**

Signed on behalf of NHS WILTSHIRE CLINICAL COMMISSIONING GROUP

SCHEDULE 1 - SCHEME SPECIFICATION

Part 1: Template Scheme Specification

BETTER CARE FUND SCHEME SPECIFICATION
FINANCIAL YEAR [INSERT]
SCHEME: [INSERT]

Background:

1. This Scheme Specification is supplemental to the Better Care Fund Section 75 Agreement made between (1) Wiltshire Council and (2) NHS Wiltshire Clinical Commissioning Group and dated [INSERT] (the “**BCF S75**”). Defined terms in the BCF S75 apply in this Scheme Specification.
2. The purpose of this Scheme Specification is to set out the specific terms on which the Parties have agreed to collaborate in relation to the Scheme named above.

PART A – GENERAL	
Scheme Specification Terms:	
Commencement Date: [INSERT]	
End Date: [INSERT]	
Total Value of this Scheme:	
[INSERT]	
WCCG Lead Representative: [INSERT] NHS Wiltshire CCG Direct Line: 01380 [INSERT] Mobile: [INSERT] Email: [INSERT]@nhs.net	Council Lead Representative: [INSERT] Wiltshire Council Direct Line: 01225 [INSERT] Mobile: [INSERT] Email: [INSERT]@wiltshire.gov.uk

PART B – SCHEME DETAILS
Overview of Services and Contract Arrangements within this Scheme
41.2 At commencement of this Scheme Specification, the Services are as follows:
<u>Service 1 : [insert description]</u>
Functions: <i>Insert details of all relevant WCCG Functions and Council Functions as specified in regulations 5 and 6 of the 2000 Regulations. If the Functions vary at Service level then they have to be listed here. If they are the same throughout the Scheme, then delete here and insert at Part A above instead.</i>
Contracts: <i>Insert details of any existing contracts i.e. date of contract, parties, identification number and expiry date. State whether new contracts or variations of existing contracts are required.</i>
Commissioning arrangements: <i>State the commissioning arrangements which will apply in relation to the existing and proposed contracts i.e</i>

- a) *Lead Commissioning by the Council - the delegation by the WCCG to the Council of the WCCG Functions, so that the Council may exercise the WCCG Functions alongside the Council Functions and act as commissioner of the Service; or*
- b) *Lead Commissioning by the WCCG - the delegation by the Council to the WCCG of the Council Functions, so that the WCCG may exercise the Council Functions alongside the WCCG Functions and act as commissioner of the Service; or*
- c) *Integrated Commissioning - the establishment of an integrated management and commissioning department in relation to the Service.*

If the commissioning arrangements vary by Service then they have to be listed here. If they are the same throughout the Scheme, then delete here and insert at Part A above instead.

Service Users and Eligibility Criteria:

Insert details of the service users and eligibility criteria e.g. individuals with a diagnosis of dementia. Note that some service users may be the responsibility of the Council but not the WCCG and vice versa, so the beneficiaries need to be clearly set out. If the service users vary by Service then they have to be listed here. If they are the same throughout the Scheme, then delete here and insert at Part A above instead.

VAT:

Set out details of the treatment of VAT in respect of the Service. If VAT arrangements vary by Service then they have to be listed here. If they are the same throughout the Scheme because the commissioning arrangements are the same, then delete here and insert at Part A above instead.

CQC:

Set out any CQC registration requirements in relation to the Service. Again, if these apply at Scheme level, move to Part A instead.

Service 2 : [insert description]

Etc

PART C – SCHEME SPECIFICATION TERMS

Additional Terms & Conditions Specific to this Scheme Specification:

General

- 1.1 Each Party shall use reasonable endeavours to ensure that any change to the Lead Representatives is promptly communicated to the other Party.
- 1.2 This Scheme Specification may be executed in any number of counterparts each of which shall be an original and all of such counterparts taken together shall be deemed to constitute one and the same instrument.
- 1.3 Additional Services may be brought within the scope of this Scheme Specification by varying this Scheme Specification in accordance with the terms of the BCF S75.
- 1.4 The Parties acknowledge that the Contract Arrangements for Services commissioned within this Scheme must comply with the requirements of clause 17 of the BCF S75.
- 1.5 The Parties acknowledge that the Contract Arrangements for Services commissioned within this Scheme must comply with all relevant Legislation including the Public Contracts Regulations 2015.

Non-financial contributions to be provided by each Party

DN: Consider whether the following should be at Scheme or Service level

1.6 WCCG non-financial contributions: [INSERT]

1.7 Council non-financial contributions: [INSERT]

Set out all non-financial contributions of each Party which may include:

- *the assets and premises (if any) to be provided by each Party;*
- *the contract management services, administration services and IT support (if any) to be provided by each Party;*
- *the Staff to be made available by the WCCG and/or the Council together with any special arrangements which will apply to the Staff in question and specific consideration of:*
 - *whether or not TUPE will apply at any time and which Staff will be affected; and*
 - *how pensions will be dealt with including the financial implications arising from any pension liabilities and membership of the respective NHS and Local Government Pension Schemes*

1.8 Any charges for non-financial contributions made by either Party in relation to this Scheme shall be negotiated and agreed annually for inclusion as budget headings within this Scheme's budget, or separately budgeted to ensure transparency. Any variations to amounts so budgeted must be approved by the Joint Commissioning Board.

1.9 [INSERT ANY OTHER SCHEME OR SERVICE SPECIFIC REQUIREMENTS E.G. TERMINATION RELATED].

PART D – EXECUTION

SIGNED by _____

Duly authorised for and on behalf of **NHS WILTSHIRE CLINICAL COMMISSIONING GROUP**
Date: _____

SIGNED by _____

Duly authorised for and on behalf of **WILTSHIRE COUNCIL** Date: _____

Part 2: Initial Individual Schemes

Commissioning Activity	Council / CCG	Description	Lead
Better Care Fund - Intermediate Care	Council	Step Up/Down Beds	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Intermediate Care Therapies	S Watson
Better Care Fund - Intermediate Care	Council	Intermediate Care Social Work	Graham Wilkin
Better Care Fund - Intermediate Care	Council	Intermediate Care Programme Manager	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Mental Health Liaison	G Ruddle
Better Care Fund - Intermediate Care	Council	HTLAH Support for Community LA	Graham Wilkin
Better Care Fund - Intermediate Care	Council	HTLAH Support for Community CCG	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Step Up Beds (Wiltshire Health & Care)	S Watson
Better Care Fund - Intermediate Care	WCCG	SHARP - Social Care Help & Rehabilitation Project	S Watson
Better Care Fund - Intermediate Care	WCCG	SPA Support for STARR	J Cullen
Better Care Fund - Intermediate Care	WCCG	One Number	J Cullen
Better Care Fund - Intermediate Care	WCCG	Community Geriatrics	S Watson
Better Care Fund - Intermediate Care	Council	End of life care - 72 hour pathway	Graham Wilkin
Better Care Fund - Intermediate Care	Council	Bed Management System	Graham Wilkin
Better Care Fund - Intermediate Care	Council	GP Cover	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Community Services	S Watson
Better Care Fund - Intermediate Care	Council	Wiltshire Care Partnership	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Rehab Support Workers	S Watson
Better Care Fund - Intermediate Care	Council	Palliative Care Contract	Graham Wilkin
Better Care Fund - Intermediate Care	WCCG	Barchester Healthcare Gold Call	J Williamson
Better Care Fund - Intermediate Care	Council	iBCF - Sustainable Transformation - Project Team	Graham Wilkin
Better Care Fund - Intermediate Care	Council	iBCF - Providing stability and extra capacity in the local care system - residential	Graham Wilkin
Better Care Fund - Intermediate Care	Council	iBCF - Providing stability and extra capacity in the local care system - IC	Graham Wilkin
Better Care Fund - Intermediate Care	Council	iBCF - Providing stability and extra capacity in the local care system - Dom Care	Graham Wilkin

Better Care Fund - Intermediate Care	Council	iBCF - Improving Reablement - Front door	Graham Wilkin
Better Care Fund - Intermediate Care	Council	iBCF - Immediate Intervention - Staffing	Graham Wilkin
Better Care Fund - Intermediate Care	Council	iBCF - Immediate Care / DTOC Beds	Graham Wilkin
Better Care Fund - Access & Rapid Response	Council	Medvivo - Telecare Response and Support	Graham Wilkin
Better Care Fund - Access & Rapid Response	Council	Hospital Social Care Capacity (Additional Hospital Social Care Capacity)	Graham Wilkin
Better Care Fund - Access & Rapid Response	Council	Self-funder Support - CHS	Graham Wilkin
Better Care Fund - Access & Rapid Response	WCCG	Medvivo - Acute Trust Liaison	J Cullen
Better Care Fund - Access & Rapid Response	WCCG	Medvivo - Simple Point of Access	J Cullen
Better Care Fund - Access & Rapid Response	WCCG	Medvivo - Additional RR Hub	J Cullen
Better Care Fund - Access & Rapid Response	WCCG	Medical Room	J Cullen
Better Care Fund - Access & Rapid Response	WCCG	Leg Club Accomodation	J Cullen
Better Care Fund - Access & Rapid Response	Council	Urgent Care at Home Domiciliary Care	Council
Better Care Fund - Care Act	Council	Care Act	Not confirmed at Council
Better Care Fund - Self Care & Support	WCCG	Carers - CCG contribution to Pool	Sue Shelbourn-Barrow
Better Care Fund - Self Care & Support	WCCG	Carers - Voyage Respite	T Burns
Better Care Fund - Self Care & Support	Council	Carers - WCC contribution to Pool	Sue Shelbourn-Barrow
Better Care Fund - Self Care & Support	Council	Carers - WCC contribution to Pool (Childrens)	Graham Wilkin
Better Care Fund - Self Care & Support	Council	Info & Advice Portal content management (Healthwatch)	Graham Wilkin
Better Care Fund - Self Care & Support	WCCG	Public Health Prevention - Fracture Liaison	T Wilson
Better Care Fund - Self Care & Support	Council	Public Health Prevention - Training, etc..	Graham Wilkin
Better Care Fund - Self Care & Support	Council	Sound Doctor	Graham Wilkin
Better Care Fund - Protecting Social Care	Council	Maintaining Services Social Care	Graham Wilkin
Better Care Fund - Protecting Social Care	Council	Complex Care Packages	Graham Wilkin

Better Care Fund - Protecting Social Care	Council	Strengthening QA	Graham Wilkin
Better Care Fund - Service User Engagement	Council	Invest in Engagement (Healthwatch)	Graham Wilkin
Better Care Fund - Other Council	Council	Disabled Facilities Grant	Janet O'Brien
Better Care Fund - Management & Admin	Council	Finance & Performance	Michael Hudson
Better Care Fund - Management & Admin	Council	Administration (JRo)	Sue Shelbourn-Barrow
Better Care Fund - Management & Admin	Council	Veritas Analysis Contract (JHo)	Graham Wilkin
Better Care Fund - Management & Admin	WCCG	Workforce - paid by CCG	Steve Perkins
Better Care Fund - ICES	Council	Integrated Equipment - Wiltshire Council (adults)	Graham Wilkin
Better Care Fund - ICES	Council	Integrated Equipment - Wiltshire Council (children)	Graham Wilkin
Better Care Fund - ICES	WCCG	Integrated Equipment - Wilts CCG (excludes continence)	Graham Wilkin (or Gail Warnes?)
Better Care Fund - Unallocated	both	Unallocated funding / Contingency	Not confirmed

SCHEDULE 2 – GOVERNANCE

The Parties acknowledge that the governance arrangements set out in this Schedule relate only to the Better Care Fund. Further work to integrate the Parties' wider commissioning activities may require variations to these governance arrangements.

Part 1

1 Delegated Authority

1.1 The Joint Commissioning Board is authorised within the limited delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

1.1.1 authorise commitments which exceed or are reasonably likely to lead to exceeding the contributions of the Party to the aggregate contributions of the Party to the Pooled Fund; and

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

2 Information and Reports

The Pooled Fund Manager shall supply to the Joint Commissioning Board on a Quarterly basis the financial and activity information as required under the Agreement.

3 Post-termination

The Joint Commissioning Board shall continue to operate in accordance with this Schedule following any termination of this Agreement but shall endeavour to ensure that the benefits of any contracts are received by the Parties in the same proportions as their respective contributions at that time.

Part 2

.

SCHEDULE 3- RISK SHARE AND OVERSPENDS

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

1 FINANCIAL CONTRIBUTIONS AND MANAGEMENT OF THE POOLED FUND

- 1.1 In relation to the first Financial Year following the Commencement Date, the Parties have agreed the Financial Contributions for the Individual Schemes that are included as part of the Agreement as at the Commencement Date and these will be set out in each Scheme Specification as set out in Schedule 1 to the Agreement and Schedule 8. Amendments to these Financial Contributions shall be agreed in accordance with Clause 9, Clause 19 (Review) and Clause 30 (Variation) of the Agreement.
- 1.2 The Host Party shall manage expenditure from the Pooled Fund in accordance with the terms of the Agreement including (without limitation): Clauses 8 (Pooled Fund Management) and 11 (Risk Sharing Arrangements, Overspends and Underspends); the relevant Scheme Specification and this Schedule 2Part 11.
- 1.3 The Pooled Fund Manager shall develop and maintain appropriate systems to monitor progress on each Individual Scheme and for alerting the Joint Commissioning Board, through the Better Care Plan Finance and Governance Group of any risks to delivery and the actions being taken to mitigate the likelihood of the risk to delivery occurring or impact on delivery of Better Care Fund outcomes, including the financial impact. The Better Care Plan Finance and Governance Group will consider such reports, escalating to the Joint Commissioning Board matters which cannot be resolved at its level.
- 1.4 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with Clause 11 (Risk Sharing Arrangements, Overspends and Underspends) and this Schedule 2Part 11.
- 1.5 The Parties agree to co-operate fully in order to establish an agreed position in relation to any Overspends or Underspends. Any decision of the Parties regarding an Overspend or Underspend shall be made in accordance with the terms of this Agreement and shall be subject to the Law and the internal governance requirements of each Party. All decisions made by the Joint Commissioning Board will be exercised in accordance with the delegated authority of the individual members of the Joint Commissioning Board.

2 REPORTING ARRANGEMENTS

- 2.1 Subject to Paragraph 5 below, whenever an Overspend or Underspend is projected within a Financial Year, the Parties shall use best endeavours to agree how to manage the variance in order to achieve financial balance, taking into account the circumstances and reasons for the variance. The Parties shall keep the position under review, in line with the Better Care Fund Plan budget monitoring arrangements, acting in good faith and in a reasonable manner in agreeing the management of the Overspend or Underspend.
- 2.2 Subject to Paragraph 5 below, in the event that the Pooled Fund Manager identifies an actual or projected Overspend or Underspend:
 - 2.2.1 the Pooled Fund Manager shall notify the Joint Commissioning Board as soon as reasonably possible at least within 10 Working Days of identification of an actual or projected Overspend or as part of the monthly reporting of the Better Care Fund Plan budget to the Better Care Plan Finance and Governance Group including providing evidence to validate the extent of the Overspend or Underspend; and
 - 2.2.2 the Joint Commissioning Board and the Parties shall act in accordance with the provisions of this Schedule 2Part 11 and the relevant Scheme Specification for that Individual Scheme in taking a decision about how to manage the Overspend or Underspend.

- 2.3 Following the notification in accordance with paragraph 2.1.1 above, the Parties shall act through the Joint Commissioning Board to prepare a joint action plan for the management of the Overspend or Underspend, which shall be prepared:
- 2.3.1 as soon as practicable following the first meeting of the Better Care Plan Finance and Governance Group to take place after the Overspend or Underspend is notified and in any event at the next Joint Commissioning Board meeting; and
- 2.3.2 save as otherwise agreed by the Parties or set out in the relevant Scheme Specification, in accordance with Paragraphs 3 or 4 below as appropriate.

3 MANAGEMENT OF OVERSPENDS

- 3.1 Pursuant to Paragraph 2.2 above and subject to Paragraph 5 below, actual or projected Overspends, shall be managed as set out below (in order of precedence):
- 3.1.1 first, the relevant Party that is responsible for commissioning the Individual Scheme will take action, wherever possible, to contain expenditure;
- 3.1.2 secondly, the Joint Commissioning Board will consider whether it is appropriate for the Party responsible for commissioning the Individual Scheme to vire Underspends from any other Individual Scheme for which it is responsible within the Pooled Fund;
- 3.1.3 thirdly, the Joint Commissioning Board whether it is appropriate to use any Underspend from within that element of this Agreement that comprises the Improved Better Care Fund grant;
- 3.1.4 fourthly, the Joint Commissioning Board will consider whether other Underspends within the Pooled Fund including the uncommitted / contingency funds, and any Underspends in Individual Schemes for which the other Party is responsible, can be vired to the Individual Scheme that has an Overspend;
- 3.1.5 fifthly, subject to any continuing obligations under any Service Contract entered into by either Party, the Parties may agree to vary or terminate a Service where the Scheme Specification provides and in accordance with the terms of Clause 22 (Termination) and 30 (Variations) of the Agreement.
- 3.2 Unless otherwise agreed by the Joint Commissioning Board (which will consider all remaining options), any Overspend will be recovered from the Parties at the end of the relevant Financial Year in proportion with their respective Financial Contributions to the relevant Individual Services.

4 MANAGEMENT OF UNDERSPENDS

- 4.1 Pursuant to Paragraph 2.2 above and subject to Paragraph 5 below, actual or potential Underspend shall be managed as set out below (in order of precedence):
- 4.1.1 first, spent, vired between, and/or utilised to manage an Overspend as referred to Paragraphs 3.1.2 and 3.1.3 above;
- 4.1.2 secondly, save as otherwise agreed by the Parties, the Underspend shall be divided equally between the Parties.

5 EXCEPTIONS

- 5.1 The following exceptions apply to the provisions above:
- 5.1.1 Prior to the Commencement Date, the ICES Pooled Budget was operated as an aligned budget within the Joint Business Arrangements. On and from the Commencement Date, the ICES Pooled Budget will be added to the Pooled Fund in order to achieve efficiencies

through joint management of spend under the BCP. The Joint Commissioning Board agreed at its meeting of 8 February 2017 that this transfer was on a non-risk basis so that the provisions of Schedule 3 relating to Overspends and Underspends do not apply to the ICES Pooled Budget. Each Party shall continue to have responsibility for its own contribution to the ICES Budget so that each Party shall be liable for any Overspend in relation to its contribution, and each Party shall have discretion to determine the use of any Underspend in relation to its contribution;

- 5.1.2 Any Underspend in relation to the Carers Pooled Budget shall be ringfenced and carried forward to the next Financial Year;
- 5.1.3 The IBCF shall be treated as a Non-Recurrent Payment for the purposes of Clause 9.3 so that the provisions of this Schedule shall not apply and the Council shall have the sole discretion to determine the use of any Underspend of the IBCF. The Council must comply with the grant conditions set out in the IBCF grant determination made under Section 31 of the Local Government Act 2003. The Parties acknowledge that the IBCF must not be used to replace, and must not be offset against, the WCCG minimum contribution to the BCF; and
- 5.1.4 Any Underspend of DFG shall be carried forward and any Overspend of DFG shall be the responsibility of the Council. The Council must comply with the grant conditions set out in the DFG grant determination made under Section 31 of the Local Government Act 2003.

SCHEDULE 4 - JOINT WORKING OBLIGATIONS

Part 1 - LEAD COMMISSIONER OBLIGATIONS

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

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

Part 2 - OBLIGATIONS OF THE OTHER PARTY

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

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

SCHEDULE 5- PERFORMANCE ARRANGEMENTS

A performance dashboard has previously been agreed as the Key Performance Indicator for the Better Care Plan, as set out below. The Parties agree to work together in good faith to produce an updated performance dashboard by 31 March 2018.

SCHEDULE 6 - BETTER CARE FUND PLAN



Wiltshire BCF Plan -
11 Oct 2017...pdf

[DN: this PDF document will be printed out before the final version is signed, however, is being inserted as an embedded document for this version]

SCHEDULE 7 - POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Council's conflict of interest policy

Set out in Part 15 of the Council's Constitution available here:

<http://cms.wiltshire.gov.uk/documents/s120489/Part%2015%20-%20Human%20Resources%20Code%20of%20Conduct.pdf>

WCCG's conflict of interest policy

Referred in Part 8 of WCCG's Constitution available here:

<http://www.wiltshireccg.nhs.uk/wp-content/uploads/2017/04/NHS-Constitution-2017.06.01.pdf>

SCHEDULE 8- BETTER CARE FUND PLAN BUDGET 2017/19

2017-2018 Financial Contributions

These are as referred in Appendix 2 to the JCB Report (for meeting held 25 May 2017).

2018-2019 Indicative Financial Contributions

Please note that these are indicative only and will be agreed, reviewed and varied in accordance with the terms of this Agreement.

Taken from Summary of HWB 2017-19 Planning
Template:

	2018/19 Indicative Gross Contribution
Indicative Council Financial Contribution excluding IBCF	7,282,953
Indicative IBCF Contribution	7,210,533
Indicative CCG Minimum Financial Contribution	29,011,258
Indicative total CCG Financial Contribution	2,219,742
Total BCF Pooled Budget	45,724,486