

## APPENDIX 2

**Dated**

**Dec 2019**

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**LONDON BOROUGH OF SOUTHWARK**

**and**

**NHS SOUTHWARK CLINICAL COMMISSIONING GROUP**

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

**2019 - 2020**

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**THIS AGREEMENT** is made on                    day of April 2017

## **PARTIES**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** (the "Council")
- (2) **NHS SOUTHWARK CLINICAL COMMISSIONING GROUP** (the "CCG")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Southwark.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Southwark.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose. The Partners may agree to extend the use of pooled funds to include funding streams from outside of the Better Care Fund.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also the means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners 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) deliver the overall aims and objectives of the Better Care Fund Plan in particular the development of stronger integrated community based health and care services, successfully reducing and preventing the need of service users for more intensive support; and
  - e) deliver the specific aims and objectives of individual service schemes set out in annex 1 to the Better Care Fund Plan.
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with those persons likely to be affected by the arrangements.
- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

## 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:

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

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

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

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

**Aligned Commissioning** means a mechanism by which the Partners jointly agree how Services shall be commissioned but does not involve delegation of any Functions to the other Partner. For the avoidance of doubt, an aligned commissioning arrangement does not involve the delegation of any Functions pursuant to Section 75.

**Agreement** means this agreement including its Schedules and Appendices.

**Annual Report** means the report produced by the Partners in accordance with Clause 20.6

**Approved Expenditure** means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price.

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

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

**Better Care Fund guidance:** the "Integration and Better Care Fund Planning Requirements for 2017/19" published by NHS England which sets out the requirements of the Better Care Fund.

**BCF Pooled Fund** means the pooled fund set up under this Agreement in relation to the Better Care Fund

**BCF Programme Manager** means the individual given the responsibilities of the BCF Programme Manager in accordance with Clause 7.4 and Schedule 1 Scheme 4.

**BCF Scheme** means an Individual Scheme established under the Better Care Fund Plan and BCF Schemes shall be construed accordingly

**Better Care Fund Plan** means the plan attached at Schedule 4 setting out the Partners plan for the use of the Better Care Fund.

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

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

**Commencement Date** means 00:01 hrs on 1<sup>st</sup> April 2019.

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

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

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

**Delivery Costs** means the indirect costs incurred by a Partner in commissioning Services under any Scheme Specification where this is not expressly set out in the Scheme Specification as Approved Expenditure. Such costs include, but are not limited to all legal costs (including all costs incurred as a result of any legal challenge), human resources, management and IT costs, contract monitoring and audit costs and employment costs (including all costs incurred as a result of any legal challenge)

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

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

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

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

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

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

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

**GDPR** means the (EU) General Data Protection Regulation 2016/679.

**Health Related Functions** means the health related functions of the Council, specified in Regulation 6 of the Regulations

**Host Partner** means for each Pooled Fund the Partner that will host the Pooled Fund

**Health and Social Care Partnership Board: see Partnership Board**

**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.

**Improved Better Care Fund (iBCF)** means the Improved Better Care Fund (iBCF) grant paid to the council by the Department for Communities and Local Government (DCLG) with grant conditions as specified in the grant determination letter issued on 24 April 2017 including the requirement to pool the grant into the BCF pooled budget.

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

**Individual Scheme** means one of the schemes which has been agreed by the Partners to be included within this Agreement as documented in a Scheme Specification.

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

**Law** means:

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

**Lead Commissioning Arrangements** means the arrangements by which one Partner commissions Services on behalf of the other Partner in exercise of both the NHS Functions and the Council Functions.

**Lead Commissioner** means the Partner responsible for commissioning an Individual Service under a Scheme Specification in exercise of the other Partner's Functions.

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

**Month** means a calendar month.

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

**National Guidance** means any and all guidance in place from time to time published by the NHS Commissioning Board or the Department of Health in relation to the Better Care Fund. See also Better Care Fund guidance.

**NHS Functions** the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the CCG.

**Non Pooled Fund** means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund but are held by one of the Partners in relation to this Agreement.

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 10.6.

**Overspend** means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year in respect of the budget for the particular Services as set out in the relevant Scheme Specification.

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

**Partnership Board** means the Health and Social Care Partnership Board being the group of senior Council and CCG officers that oversees the monitoring of section 75 agreements, supporting the Health and Wellbeing Board in its Better Care Fund leadership function. Terms of Reference are set out in Schedule 2

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

**Permitted Expenditure** has the meaning given in Clause 7.5.

**Personal Data** means Personal Data as defined by the GDPR.

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

**Pooled Fund Manager** means such officer of the Host Partner for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 8.

**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.

**Quarterly Report** means the report produced by the Partners in accordance with Clause 20.2

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

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

**Scheme Lead** means the individual appointed to act as the operational lead in respect of each Individual Scheme

**Sensitive Personal Data** means Sensitive Personal Data as defined in the GDPR.



**Services** means such health and social care services and such equipment or other goods required as part of a service as agreed from time to time by the Partners as commissioned under the arrangements set out in this Agreement and more specifically defined in each Scheme Specification.

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

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

**SOSH** means the Secretary of State for Health.

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

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

- 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 there under and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at

the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2 TERM**

- 2.1 This Agreement shall come into force on the Commencement Date.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 22.
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

## **3 GENERAL PRINCIPLES**

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

## **4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission services. This will include the establishment of one or more of the following:
- 4.1.1 Lead Commissioning Arrangements;
- 4.1.2 Integrated Commissioning;
- 4.1.3 Aligned Commissioning
- 4.1.4 the establishment of one or more Pooled Funds
- in relation to Individual Schemes (the "Flexibilities")
- 4.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.

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

## **5 FUNCTIONS**

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.
- 5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme substantially in the form set out in Schedule 1 shall be completed and agreed between the Partners. The Scheme Specifications agreed at the Commencement Date are set out in Schedule 1 part 2
- 5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement and have undertaken the relevant consultation.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Health and Social Care Partnership Board

## **6 COMMISSIONING ARRANGEMENTS**

- 6.1 The Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 6.2 The Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
- 6.3 The Partners shall agree in writing prior to any new Provider Contracts being entered into how the liability under each Provider Contract shall be apportioned in the event of termination of the relevant Individual Scheme.
- 6.4 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification.
- 6.5 Each Partner shall keep the other Partners and the Health and Social Care Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund.

## **7 ESTABLISHMENT OF A POOLED FUND**

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement, the Scheme Specifications and any National Guidance and Law
- 7.3 At the Commencement Date it is agreed that there shall be a single Pooled Fund established for the Better Care Fund which will cover all of the Scheme Specifications (the "BCF Pooled

Fund"). The BCF Pooled Fund will be hosted by the Council. The Partners agree that further Pooled Funds may be added to this Agreement after the Commencement Date in accordance with Clause 8 and Clause 30.

- 7.4 The Partners have agreed that a designated officer will have the duties of BCF Programme Manager which includes the responsibility for the operational oversight of this Agreement as set out in Schedule 1 Part 2 Scheme 4. The designated officer undertaking the role of the BCF Programme Manager shall be part funded from the BCF Pooled Fund in proportion to the time taken on the role as agreed by the Health and Social Care Partnership Board.
- 7.5 It is agreed that the monies held in a Pooled Fund may only be expended on the agreed Service plans of the Better Care Fund as set out in Schedule 1 including the following:
- 7.5.1 the Contract Price;
- 7.5.2 where the Council is to be the Provider, the Permitted Budget;
- 7.5.3 Approved Expenditure where set out in the relevant Scheme Specification;
- ("Permitted Expenditure")
- 7.6 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.7 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities, Third Party Costs or Delivery Costs except where this is expressly agreed in advance by the Health and Social Care Partnership Board.
- 7.8 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. At the Commencement Date it is agreed that the Council shall be the Host Partner for the BCF Pooled Fund. The Host Partner shall be responsible for:
- 7.8.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
- 7.8.2 providing the financial administrative systems for the Pooled Fund; and
- 7.8.3 appointing the Pooled Fund Manager;
- 7.8.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **8 POOLED FUND MANAGEMENT**

- 8.1 If the Partners wish to introduce a new Pooled Fund, the Partners shall agree:
- 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
- 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager shall have the following duties and responsibilities:
- 8.2.1 the day to day operation and management of the Pooled Fund;
- 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;

- 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
- 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- 8.2.5 reporting to the Health and Social Care Partnership Board in line with the relevant Scheme Specification;
- 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
- 8.2.7 preparing and submitting to the Health and Social Care Partnership Board quarterly reports (or more frequent reports if required) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
- 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 8.2.9 preparing and submitting reports to other Council and CCG committee meetings and relevant management meetings as required
- 8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Fund Manager shall have regard to the National Guidance and recommendations of the Health and Social Care Partnership Board and shall be accountable to the Partners.
- 8.4 The Health and Social Care Partnership Board may agree to the viring of funds between Individual Schemes and, where relevant, between Pooled Funds.

## **9 NON POOLED FUNDS**

- 9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established for the purpose agreed by the Partners in advance. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.
- 9.2 When introducing a Non Pooled Fund the Partners shall agree:
  - 9.2.1 which Partner if any shall host the Non-Pooled Fund
  - 9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
- 9.4 At the Commencement Date the Partners agree that the BCF Joint Risk Reserve will be held by the Council as a Non-Pooled Fund in accordance with the BCF Joint Risk Reserve Agreement.
- 9.5 Both Partners shall ensure that Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.

## **10 FINANCIAL CONTRIBUTIONS**

- 10.1.1 The amount each Partner will contribute in relation to the Better Care Fund is set out in the Better Care Fund Plan financial template (Annex X). In 2019/20 the contributions are as follows:

Source	Income
CCG:	
Minimum CCG Contribution	£22,654,606
Council:	
DFG	£1,486,043
iBCF	£15,751,933
Winter Pressures Grant	£1,570,648
Additional LA Contribution	£0
Additional CCG Contribution	£0
<b>Total</b>	<b>£41,463,230</b>

- 10.2 Schedule 1 sets out the schemes that will be funded from the total pooled budget and the lead agency who will receive the funding to deliver the scheme.
- 10.3 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the First Financial Year of operation for each Individual Scheme shall be as set out in the relevant Scheme Specification.
- 10.4 The Partners may agree to make additional contributions to the Pooled Fund in respect of additional Services as set out in revised Scheme Specifications and agreed by the Health and Social Care Partnership Board.
- 10.5 When determining the Partners contributions to the Pooled Fund in Financial Years subsequent to the First Financial Year, the Partners shall take into account any changes in the National Conditions and any local planning considerations. The Health and Social Care Partnership Board shall agree the Financial Contributions which shall then be submitted to the Health and Wellbeing Board for ratification.
- 10.6 Subject to National Guidance, Financial Contributions will be paid quarterly in arrears as set out in the relevant Scheme Specification otherwise agreed in advance by the Health and Social Care Partnership Board.
- 10.7 No provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the Health and Social Care Partnership Board minutes and recorded in the budget statement as a separate item.

## 11 NON FINANCIAL CONTRIBUTIONS

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

## 12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

### Risk share arrangements

- 12.1 There are no defined risk sharing arrangements as part of the agreement, but the Health and Social Care Partnership Board are able to agree a risk sharing arrangement as set out in Schedule 3.
- 12.2 Note: There will be no performance payment risk share arrangements in 2019/20 as the non-achievement of performance targets is not associated with a financial penalty.

### **Overspends**

- 12.3 Overspends shall be dealt with in accordance with Schedule 3.

### **Underspend**

- 12.4 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the BCF Risk Share Arrangements in schedule 3.
- 12.5 All partners are obliged to provide transparent information to the Pooled Fund Manager on potential Underspends at the earliest possible stage to enable the Health and Social Care Partnership Board to consider remedial action and/or potential alternative uses of the funding.

## **13 CAPITAL EXPENDITURE**

- 13.1 Except as provided in Clause 13.2 neither Pooled Funds or Non Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.
- 13.2 The Partners agree that capital expenditure may be included in Pooled Funds where this is in accordance with Better Care Fund Requirements and set out in the relevant Scheme Specification.

## **14 VAT**

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

## **15 AUDIT AND RIGHT OF ACCESS**

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(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.
- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

## **16 LIABILITIES AND INSURANCE AND INDEMNITY**

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner (“First Partner”) incurs a Loss arising out of or in connection with this Agreement (including a Loss under any Individual Scheme) as a consequence of any act or omission of another Partner (“Other Partner”) which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Provider Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Partnership Board.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
- 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
- 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

## **17 STANDARDS OF CONDUCT AND SERVICE**

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council’s obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.



## **18 CONFLICTS OF INTEREST**

The Partners agree a process for identifying and managing conflicts of interest arising in respect of this Agreement.

## **19 GOVERNANCE**

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

19.2 The Partners have established the Health and Social Care Partnership Board to:

19.2.1 Agree the Better Care Fund Plan for recommendation to the Health and Wellbeing Board;

19.2.2 Agree key decisions around implementation of the Better Care Fund Plan and subsequent strategic development of the Better Care Fund Plan including agreeing any variations to the Better Care Fund Plan and this Agreement;

19.2.3 Agree how to deal with Overspends and Underspends including any changes in levels of funding related to each Scheme Specification;

19.2.4 Agree expenditure from any jointly held Risk Reserve ;

19.2.5 Review quality of the Services

19.2.6 Receive high level progress reports from the BCF Programme Manager on a quarterly basis; AND

19.2.7 Consider the wider strategy on integration.

19.3 The Partners will consider and agree any revisions to the governance framework that may be required to meet the objectives of the Better Care Fund or related reporting requirements. The Health and Social Care Partnership Board is based on a joint working group structure. Each member of the Health and Social Care Partnership Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Health and Social Care Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.

19.4 The terms of reference of the Health and Social Care Partnership Board are set out in Schedule 2

19.5 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.6 The Health and Social Care Partnership Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund and agree regular reports to the Health and Wellbeing Board.

19.7 Each Scheme Specification shall confirm the assurance and governance arrangements in respect of each Individual Service and the mechanism of how that Individual Service is reported to the Health and Social Care Partnership Board, and Health and Wellbeing Board.

## **20 REVIEW**

20.1 Each Scheme Lead shall provide a monthly monitoring report to the BCF Programme Manager in line with the requirements set out in the relevant Scheme Specification.

- 20.2 The BCF Programme Manager shall produce a Quarterly Report and submit this to the Health and Social Care Partnership Board who shall undertake a quarterly review of this Agreement and the implementation of the BCF Plan.
- 20.3 The Quarterly Report shall conform to National Guidance and shall include:
- 20.3.1 an evaluation of performance against the Performance Targets and the agreed performance measures targets and priorities in respect of each Scheme Specification;
  - 20.3.2 review of expenditure against plan
  - 20.3.3 the quality of the Services provided and funded
  - 20.3.4 the effectiveness of integration and delegated Functions the exercise of which are the subject of the Arrangements.
- 20.4 The BCF Programme Manager shall produce an annual report which will be submitted to the Health and Social Care Partnership Board who shall undertake an annual review. An “**Annual Review**” will include the elements set out at Clause 20.2 above and in addition shall consider the Financial Contributions for the subsequent year in accordance with Clause 10.4, and any changes proposed in relation to the Services, the structure of these Arrangements or the Better Care Fund.
- 20.5 Quarterly Reviews and Annual Reviews shall be conducted in accordance with National Guidance and in good faith.
- 20.6 The Health and Social Care Partnership Board shall following approval of the Annual Review prepare a joint Annual Report in accordance with any National Guidance and documenting the matters referred to in this Clause 20. A copy of this Annual Report shall be provided to the Partnership Board and Health and Wellbeing Board.
- 20.7 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

## **21 COMPLAINTS**

- 21.1 During the term of the Agreement, the Partners may develop and operate a joint complaints system for some Services. The application of a joint complaints system will be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.
- 21.2 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply:
- 21.2.1 where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;
  - 21.2.2 where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG;
  - 21.2.3 where a complaint relates partly to one or more of the Council's Health Related Functions and partly to one or more of the CCG's NHS Functions then a joint response will be made to the complaint by the Council and the CCG, in line with local joint protocol;
  - 21.2.4 where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this

Agreement, then the Health and Social Care Partnership Board will set up a complaints subgroup to examine the complaint and recommend remedies and report to the Board.

## **22 TERMINATION & DEFAULT**

- 22.1 This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes unless agreed by the Partners and post termination arrangements have been approved by the.
- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that all Better Care Fund Requirements continue to be met.
- 22.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.4 Termination of this Agreement and/or any Individual Scheme (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of Clauses 12.3, 12.4, 12.5, 15, 16, 21, 22, 25, 26, 27, 28, 32, 33, 37 or 39.
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 22.6.2 where either Partner has entered into a Provider Contract which continues after the termination of this Agreement, unless otherwise agreed or the Partner holding the Provider Contract agrees to accept ongoing responsibility for funding the Provider Contract, that Partner shall take all reasonable steps to bring the Provider Contract to an end as soon as possible following termination. Following the termination of this Agreement, unless otherwise agreed, until the termination of the Provider Contract both Partners shall continue to contribute to the Contract Price in accordance with the relevant proportion in which the relevant Provider Contract relates to commissioning for CCG Functions and Council Functions and will enter into all appropriate legal documentation required in respect of this;
- 22.6.3 where there are Lead Commissioning arrangements in place, the Lead Commissioner shall make reasonable endeavours to amend or terminate a Provider Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Provider Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;
- 22.6.4 where a Provider Contract held by a Partner relates all or partially to Services which relate to the other Partner's Functions then provided that the Provider Contract allows the

other Partner may request that the Provider Contract is assigned in whole or part upon the same terms mutatis mutandis as the original Provider Contract.

- 22.6.5 the Partnership Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 22.7 On termination the member of staff designated as undertaking the duties of the BCF Programme Manager will remain employed by the Partner who is the employer immediately prior to the termination. The relevant employer shall bear any costs in relation to the employee as a result of termination.
- 22.8 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.9 In the event of termination in relation to an Individual Scheme the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

## 23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Authorised Officers 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 Health and Social Care Partnership Board shall convene an exceptional meeting as soon as possible after the relevant meeting and in any event within fourteen (14) days of the date of the meeting for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, the Partnership Board shall convene an exceptional meeting as soon as possible after the relevant meeting and in any event within fourteen (14) days of the date of the meeting for the purpose of resolving the dispute.
- 23.5 If the dispute remains after the meeting detailed in Clause 23.4 has taken place, dispute shall be referred to the Health and Wellbeing Board for the purpose of resolving the dispute.
- 23.6 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.7 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## 24 FORCE MAJEURE

- 24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall, subject to Clause 22.2, have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

## 25 CONFIDENTIALITY

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

## **26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS**

- 26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
- 26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

## **27 OMBUDSMEN**

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

## **28 INFORMATION SHARING**

The Partners will seek to agree an information governance protocol and in so doing will ensure that the operation of this Agreement complies with Law, in particular the GDPR.

## **29 NOTICES**

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
- 29.1.1 personally delivered, at the time of delivery;
  - 29.1.2 sent by facsimile, at the time of transmission;
  - 29.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
  - 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).
- 29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:
- 29.3.1 if to the Council, addressed to

The Strategic Director of Children's and Adults Services

29.3.2 if to the CCG, addressed to

The Chief Officer

NHS Southwark CCG

160 Tooley St. London, SE1 2QH

### **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 Partners.

30.2 Where the Partners agree that there will be a new Scheme Specification or an amendment to a current Scheme Specification the Health and Social Care Partnership Board shall agree the new or amended Scheme Specification and this must be signed by both Partners.

### **31 CHANGE IN LAW**

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

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

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

### **32 WAIVER**

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

### **33 SEVERANCE**

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

### **34 ASSIGNMENT AND SUB CONTRACTING**

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

### **35 EXCLUSION OF PARTNERSHIP AND AGENCY**

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

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

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

## **36 THIRD PARTY RIGHTS**

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

## **37 ENTIRE AGREEMENT**

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

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

## **38 COUNTERPARTS**

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

## **39 GOVERNING LAW AND JURISDICTION**

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

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



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

THE COMMON SEAL OF **THE MAYOR  
AND BURGESSES OF THE LONDON  
BOROUGH OF SOUTHWARK** was  
hereunto affixed in the presence of

---

Authorised Signatory

Date:

Signed and Sealed for on behalf of  
**SOUTHWARK CLINICAL  
COMMISSIONING GROUP**

---

Authorised Signatory

Date:

## SCHEDULE 1– SCHEME SPECIFICATIONS

### Part 1

#### Standard BCF template

<b>Scheme ref no.</b>
<b>Scheme name</b>
<b>Scheme lead</b>
<b>What is the strategic objective of this scheme?</b>
<b>Overview of the scheme</b>
<b>The delivery chain</b>
<b>The evidence base</b>
<b>Investment requirements</b>
<b>Budget holder – council or LA</b>
<b>Impact of scheme</b>
<b>Feedback loop</b> -outcomes and PIs
<b>What are the key success factors for implementation of this scheme?</b>

**Part 2 – Services Schedule –**

<b>ID</b>	<b>BCF plan</b>	<b>Scheme</b>	<b>Lead and budget holder</b>	<b>2019/20</b>	<b>Page ref</b>
<b>Theme 1 -</b>					
1		Hospital discharge	LA	£1,790,453	
2		Reablement	LA	£1,936,738	
3		Neuro rehab team	CCG	£197,886	
14		Shared budget for complex joint discharge	LA/CCG	£176,120	
41		Discharge to Assess – council costs	LA	£260,000	
40		Discharge to Assess – CCG costs	CCG	£100,313	
18		Night Owls - overnight intensive homecare	LA	£224,000	
31		Housing worker – discharge team	LA	£50,000	
35		Contingency – council staff	LA	£300,000	
4		Intermediate Care	LA	£1,137,563	
		<b>Sub-total – hospital discharge</b>		<b>£6,173,073</b>	
<b>Theme 2-</b>					
7		Community Health Enhanced Rapid Response /@home	CCG	£,4,216,105	
10		Care home pharmacist	CCG	£47,095	
8		Enhanced Primary Care Access - 7 day services	CCG	£743,000	
9		Self -management for long terms conditions	CCG	£307,000	
		<b>Sub-total</b>		<b>£5,313,200</b>	
<b>Theme 3-</b>					
11		Home care quality improvement	LA	£1,900,000	
33		Dementia - Enhanced neighbourhood support	LA	£184,177	
34		End of life care	LA	£152,905	
12		Disabled Facilities Grant	LA	£1,486,043	
27		Protect Adult Social Care - Residential Care	LA	£2,010,610	
		<b>Sub-total</b>		<b>£5,733,735</b>	
<b>Theme 4</b>					
13		Voluntary sector preventative services	LA	£1,248,251	
15		Voluntary sector carers work	LA	£400,000	
16		Carers strategy	LA	£450,000	
17		Telecare	LA	£566,000	
5		Community equipment: council cost	LA	£400,000	
6		Community equipment: joint contingency for 19/20	LA/CCG	£164,000	
		<b>Sub-total</b>		<b>£3,228,251</b>	
<b>Theme 5</b>					
19		Mental Health Reablement	LA	£151,632	
21		Community mental health services	LA	£655,000	
22		Mental Health discharge worker	LA	£50,000	
32		Mental Health Broker	LA	£50,000	
23		Mental Health Complex Cases worker	LA	£60,000	
20		Psychiatric Liaison (AMHPs and reablement)	LA	£300,000	
24		Mental Health – personal budgets	LA	£600,000	
25		Learning Disabilities – personal budgets	LA	£211,000	
26		Enhanced Psychological Support for those with LD (£29k Local Authority, £210k CCG)	CCG /LA	£239,000	
		<b>Sub-total</b>		<b>£2,316,632</b>	
<b>Misc</b>					

28	Care Act Funding	LA	£1,000,000	
29/30	Service development and change management	CCG/LA	£375,758	
	<b>Sub-total</b>			
			<b>£1,375,758</b>	
	<b>Total (Core BCF)</b>		<b>£24,140,649</b>	
<b>Improved Better Care Fund grant</b>				
36	Sustaining quality in home care	LA	£10,327,850	
39	Re-ablement and intermediate care including step down accommodation	LA	£999,749	
37	Improving and Investing in local nursing care	LA	£4,174,334	
38	Transformation fund	LA	£250,000	
	<b>Sub-Total iBCF</b>		<b>£15,751,933</b>	
<b>Winter Pressures Grant</b>				
42	Residential care for older people	LA	£400,000	
43	Nursing Care for older People	LA	£300,000	
44	Home care for older people	LA	£870,648	
	<b>Sub-total Winter Pressures Grant</b>		<b>£1,570,648</b>	
	<b>Grand Total BCF</b>		<b>£41,463,230</b>	

**Schedule 1 part 2 continued : DETAILED SERVICE SPECIFICATIONS SEE ANNEX 1**

**To follow**

## **Schedule 2: – Health and Social Care Partnership Board**

Insert Terms of reference

## SCHEDULE 3 – RISK SHARE OVERSPENDS AND UNDERSPENDS

- 1 **BCF Risk Share Arrangements** There are no defined risk sharing arrangements as part of this agreement, but the Health and Social Care Partnership Board are able to agree a risk sharing arrangement in the event of overspends as set out below.

There are no risk share agreements in the BCF for 2017/19.

### 2 **Overspends in Pooled Fund**

- 2.1 The contribution to the cost of the relevant Individual Service from the Pooled Fund will be capped at the level set in the Scheme Specification. Any spend above this must be funded by additional contributions from either or both Partners. The responsibility for the contribution from each Partner will in the first instance be calculated by reference to which Partner's Function is being exercised. The Health and Social Care Partnership Board may agree alternative arrangements for funding the Overspend.
- 2.2 Subject to Paragraph 3.2, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions allocated for each Service as set out in each Scheme Specification and shall ensure that the expenditure is limited to Permitted Expenditure.
- 2.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and agreement to any such Overspend has been obtained in writing from the Health and Social Care Partnership Board in accordance with Paragraph 3.3 of this Schedule.
- 2.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Health and Social Care Partnership Board is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and this Schedule 3 shall apply. The Health and Social Care Partnership Board will consider the case for permitting an overspend, and if so its funding source. The Overspend could be funded via redirecting funds from elsewhere in the Pooled Fund (such as virement from an underspending Service), or by agreeing alternative funding sources outside the Pooled Fund from either or both of the Partners. Where the amount is less than £50,000, a budget transfer from an underspending BCF scheme to an overspending BCF scheme can be agreed by the co-chairs of the Health and Social Care Partnership Board between meetings, and formally reported to the next meeting.

### **Overspends in Non Pooled Funds**

- 2.5 Where either Partner forecasts an overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Health and Social Care Partnership Board. Responsibility for the overspend shall, unless otherwise agreed by the Health and Social Care Partnership Board, rest with the Partner in respect of whose Function the overspend has occurred.
- 2.6 Where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the Health and Social Care Partnership Board.

### **Underspend**

- 2.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

- 2.8 All partners are obliged to provide transparent information to the Pooled Fund Manager on potential underspends at the earliest possible stage to enable the Partnership Board to consider remedial action and/or potential alternative uses of the funding.

#### **Schedule 4 – BETTER CARE FUND PLAN**

The Southwark Integration and Better Care Fund Plan template for 2019/20 approved by NHS England is attached in appendix 1