
Dated 1 April 2018

Nottinghamshire County Council

and

**NHS Bassetlaw Clinical Commissioning Group
NHS Mansfield and Ashfield Clinical Commissioning
Group
NHS Newark and Sherwood Clinical Commissioning
Group
NHS Nottingham North and East Clinical Commissioning
Group
NHS Nottingham West Clinical Commissioning Group
NHS Rushcliffe Clinical Commissioning Group**

**FRAMEWORK PARTNERSHIP AGREEMENT RELATING
TO THE COMMISSIONING OF HEALTH AND SOCIAL
CARE SERVICES AS SPECIFIED IN THE
NOTTINGHAMSHIRE COUNTY BETTER CARE FUND**

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THIS AGREEMENT is made on 1st April 2018

PARTIES

- (1) **Nottinghamshire County Council** whose principal place of business is at County Hall, West Bridgford, Nottingham NG2 7QP (the **Council**)
- (2) **NHS Bassetlaw Clinical Commissioning Group** whose principal place of business is at Retford Hospital, North Road, Retford Nottinghamshire, DN22 7XF (**Bassetlaw CCG**)
- (3) **NHS Mansfield and Ashfield Clinical Commissioning Group** whose principal place of business is at Hawthorn House, Ransom Wood Business Park, Southwell Road West, Rainworth, Mansfield, Nottinghamshire, NG21 0HJ (**Mansfield and Ashfield CCG**)
- (4) **NHS Newark and Sherwood Clinical Commissioning Group** whose principal place of business is at Balderton Primary Care Centre, Lowfield Lane, Balderton, Nottinghamshire, NG24 3HJ (**Newark and Sherwood CCG**)
- (5) **NHS Nottingham North and East Clinical Commissioning Group** whose principal place of business is at Civic Centre, Arnot Hill Park, Arnold, Nottingham NG5 6LU (**Nottingham NE CCG**)
- (6) **NHS Nottingham West Clinical Commissioning Group** whose principal place of business is at Stapleford Care Centre, Church Street, Nottingham, NG9 8DB (**Nottingham W CCG**)
- (7) **NHS Rushcliffe Clinical Commissioning Group** whose principal place of business is at Easthorpe House, 165 Loughborough Road, Ruddington, Nottingham, NG11 6LQ (**Rushcliffe CCG**)

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the County of Nottinghamshire (excluding the City of Nottingham).
- (B) Each CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the population of NHS Bassetlaw CCG, NHS Mansfield and Ashfield CCG, NHS Newark and Sherwood CCG, NHS Nottingham North and East CCG, NHS Nottingham West CCG and NHS Rushcliffe CCG.
- (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 CCGs 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 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 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; and
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with all 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:

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

Agreement means this agreement including its Schedules and Appendices.

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.

BCF Finance, Planning and Performance Subgroup means the sub group identified in Schedule 2.

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

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

CCG means each clinical commissioning group who is a party to this Agreement.

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 1st April 2018.

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 Service Contract as consideration for the provision of Services and which, for the avoidance of doubt, does not include any Default Liability.

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

District Councils means the seven district councils within Nottinghamshire County being Bassetlaw; Broxtowe; Mansfield; Ashfield; Gedling; Newark & Sherwood and Rushcliffe.

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

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

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
 - (b) acts of terrorism;
 - (c) acts of God;
 - (d) fire or flood;
 - (e) industrial action;
 - (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
 - (g) any form of contamination or virus outbreak; and
 - (h) any other event,
- in each case where such event is beyond the reasonable control of the Partner claiming relief

Functions means the NHS Functions and the Health Related Functions

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

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

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

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

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

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

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

Law means:

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

Lead Commissioning Arrangements means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of the other Partners 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.

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

Month means a calendar month.

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

Non elective Admissions means the number of non-elective (emergency) First Finished Consultant Episodes (FFCEs) for the general and acute specialities derived from the NHS monthly activity return in accordance with the "Everyone Counts: Planning for Patients 2014/15-2018/19: Technical definitions for Clinical Commissioning Groups and Area Teams" first published on 23 December 2013.

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

Non Pooled Fund means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification

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 10.4.

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

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

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

Permitted Expenditure has the meaning given in Clause 7.3.

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

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

Pooled Fund Manager means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 8.

Steering Group means the Steering Group responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

Programme Manager shall be Sarah Fleming or such other person agreed by the Steering Group from time to time.

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).

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

Section 113 Officer means an officer of the Council who, pursuant to s113 of the Local Government Act 1972, may perform functions on behalf of other public bodies.

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

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

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

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

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

SOSH means the Secretary of State for Health.

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 Steering Group.

Unit of planning means the non-statutory collaboration between the CCGs in a geographical area based on the provision of service to a population. The units of planning are:

1. North: Bassetlaw CCG

2. Mid Nottinghamshire: Mansfield and Ashfield CCG and Newark and Sherwood CCG

3. South Nottinghamshire: Nottingham NE CCG, Nottingham W CCG, Rushcliffe CCG.

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

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

- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date.
- 2.2 This Agreement shall continue until 31st March 2018 unless it is:
- a) terminated earlier in accordance with Clause 22 (or otherwise lawfully terminated); or
 - b) extended in accordance with clause 2.3.
- 2.3 The Partners may (through the Steering Group) agree to extend the term of this Agreement provided that:
- a) the matter is discussed at least 3 months prior to the expiry of this Agreement (in accordance with clause 2.2);
 - b) the Partners are in unanimous agreement; and
 - c) the maximum period in respect of the extension shall be twelve (12) months.
- 2.4 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:
- a) 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
 - b) 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:
- a) treat each other with respect and an equality of esteem;
 - b) be open with information about the performance and financial status of each; and
 - c) provide early information and notice about relevant problems.
- 3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme Specification.

4 PARTNERSHIP FLEXIBILITIES

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

- a) Lead Commissioning Arrangements;
- b) Integrated Commissioning;
- c) Joint (Aligned) Commissioning
- d) the establishment of one or more Pooled Funds

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

From the Commencement Date, the Partners agree to establish a Pooled Fund for the Services.

- 4.2 Where the Partners agree pursuant to a variation (in accordance with clause 30), each CCG delegates to the Council and the Council agrees to exercise on each 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.
- 4.3 Where the Partners agree pursuant to a variation (in accordance with clause 30), the Council shall delegate to one or more CCG and each such 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.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.
- 5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 shall be completed and agreed between the Partners. The initial scheme specification is 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.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by and the Steering Group and Health and Wellbeing Board.

6 COMMISSIONING ARRANGEMENTS

Integrated Commissioning

The following provisions 6.1 to 6.6 shall apply where the Partners agree unanimously that there is Integrated Commissioning in respect of an Individual Scheme:

- 6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, the relevant Partners (identified within the Scheme Specification) 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 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 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.
- 6.4 The Partners shall comply with the arrangements in respect of the Joint (Aligned) Commissioning as set out in the relevant Scheme Specification.
- 6.5 Each Partner shall keep the other Partners and the Better Care Fund Steering Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.
- 6.6 The Steering Group will report back to the Health and Wellbeing Board as required by its Terms of Reference.

Appointment of a Lead Commissioner

The following provision 6.7 shall apply where the Partners agree unanimously a Lead Commissioner arrangement in respect of an Individual Scheme

- 6.7 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
 - a) exercise the relevant delegated functions (either NHS Functions or Health Related Functions) as identified in the relevant Scheme Specification;
 - b) endeavour to ensure that such functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - c) commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - d) contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - e) comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - f) 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;
 - g) undertake performance management and contract monitoring of all Service Contracts;
 - h) make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
 - i) keep the other Partners and the Steering Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 It is agreed that the monies held in a Pooled Fund may only be expended on the following:
- a) the Contract Price for the plan schemes as in Schedule 1; and
- where agreed by the Partners pursuant to a variation (under clause 30):
- b) where any Partner is to be the Provider, the Permitted Budget;
 - c) Third Party Costs;
 - d) Default Liability (where agreed pursuant to clause 7.5);
 - e) Approved Expenditure
- (together "Permitted Expenditure").
- 7.4 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.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
- a) holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - b) providing the financial administrative systems for the Pooled Fund;
 - c) appointing the Pooled Fund Manager;
 - d) ensuring that the Pooled Fund Manager complies with its obligations under this Agreement; and
 - e) making payments from the Pooled Fund in accordance with this Agreement to the Partners and District Councils.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
- a) 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;
 - b) which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager in respect of each Individual Service where there is a Pooled Fund shall have the following duties and responsibilities:
- a) the day to day operation and management of the Pooled Fund;

- b) ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
- c) maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
- d) ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- e) reporting to the Steering Group as required by the Steering Group and the relevant Scheme Specification;
- f) ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
- g) preparing and submitting to the Steering Group Quarterly reports (or more frequent reports if required by the Steering Group) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Steering Group 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.
- h) preparing and submitting reports to the Health and Wellbeing Board as required by it.

8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Fund Manager shall have regard to the recommendations of the Steering Group and shall be accountable to the Partners.

8.4 The Steering Group may agree to the viring of funds between Pooled Funds.

8.5 Save where expressly stated in a Scheme Specification, nothing in this Agreement shall make the Host Partner or Pooled Fund Manager responsible for:

- a) the management of any Service Contracts (save those to which it is a direct contracting party);
- b) the payment of (or receipt of) any additional monies under Service Contracts.

8.6 Each Partner shall be responsible for the management of the Service Contracts to which it is a party and its actions or inactions in respect of such Service Contracts (unless agreed otherwise in a Scheme Specification).

8.7 No Partner shall incur additional costs in respect of its Service Contracts unless:

- a) it proposes to fund such costs directly from its own budget; or
- b) it has the prior unanimous agreement of all Partners that such costs may be drawn from the Pooled Fund as Approved Expenditure.

9 NON POOLED FUNDS

The following provisions of clause 9 shall apply where the Partners agree Non Pooled Funds in respect of an Individual Scheme:

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 of commissioning that Service as set out in the relevant Scheme Specification. 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 in respect of an Individual Scheme, the Partners shall agree:
- a) which Partner if any shall host the Non-Pooled Fund
 - b) 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 The Partners shall ensure that Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.
- 9.5 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
- a) the NHS Functions funded from a Non-Pooled Fund are carried out within the CCG Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
 - b) the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

10 FINANCIAL CONTRIBUTIONS

- 10.1 The Financial Contribution of each CCG and the Council to any Pooled Fund or (where relevant) Non-Pooled Fund for the first Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification. Where this Agreement is extended (as agreed by the Steering Group in accordance with clause 2) the Partners shall agree at Steering Group any revisions to the Financial Contributions.
- 10.2 Each CCGs Financial Contribution shall be determined by the Unit of Planning to which it belongs.
- 10.3 The Partners shall each pay their Financial Contributions as set out in each Scheme Specification.
- 10.4 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Steering Group minutes and recorded in the budget statement as a separate item.

11 NON FINANCIAL CONTRIBUTIONS

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

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The Partners have agreed risk share arrangements as set out in schedule 3, which provide for financial risks arising within the commissioning of services from the Pooled Funds.

Overspends in Pooled Fund

- 12.2 The Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.

- 12.3 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 it has informed the Steering Group in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Steering Group is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule 3 shall apply.

Overspends in Non Pooled Funds

The following provisions 12.5 and 12.6 shall apply where the Partners agree that there is a Non Pooled Fund in respect of an Individual Scheme:

- 12.5 Where in Joint (Aligned) Commissioning Arrangements any 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 Partners and the Steering Group.
- 12.6 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 Partners and the Steering Group.

Underspend

- 12.7 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 process set out in Schedule 3 shall apply.

13 CAPITAL EXPENDITURE

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.

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 Audit Commission to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.
- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in

relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that 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 Steering Group.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against a 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:
- a) 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;
 - b) 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);
 - c) 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 shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 7.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Wellbeing Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 The Partners have established a Steering Group to provide system leadership to ensure delivery of the Better Care Fund Plan to improve outcomes for the people of Nottinghamshire.
- 19.3 The Steering Group is based on a joint working group structure. Each member of the Steering Group shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them and their unit of planning to make decisions which enable the Steering Group 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 Steering Group 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 Steering Group shall be responsible for the overall approval of the Individual Services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.7 Each Services Schedule shall confirm the governance arrangements in respect of the Individual Service and how that Individual Services is reported to the Steering Group and Health and Wellbeing Board.

20 REVIEW

- 20.1 Save where the Steering Group agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any Pooled Fund (and where relevant Non Pooled Fund), and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.2 Subject to any variations to this process required by the Steering Group, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.3 The Partners shall within 20 Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Steering Group.
- 20.4 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

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

22 TERMINATION & DEFAULT

- 22.1 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.

- 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 the 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 (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 1, 15, 16, 22.6, 23, 25, 26, 28, 29 and 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. Such transition activity may include the agreement of further contracts pursuant to s75 of the 2006 Act.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- a) 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;
 - b) where a Partner has entered into a Service Contract which continues after the termination of this Agreement, the relevant Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
 - c) the Lead Commissioner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
 - d) where a Service Contract held by a Lead Commissioner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
 - e) the Steering Group 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
 - f) Termination of this Agreement shall have no effect on the liability of any rights or remedies of any Partner already accrued, prior to the date upon which such termination takes effect.
- 22.7 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, a Partner may serve written notice of the dispute on the other relevant Partner, setting out full details of the dispute.
- 23.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective chief executives and chief officers or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, a Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.5 Nothing in the procedure set out in this Clause 23 shall in any way affect a Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

- 24.1 The Partners shall not be entitled to bring a claim for a breach of obligations under this Agreement by another Partner or incur any liability to another 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 Partners as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.
- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

25 CONFIDENTIALITY

- 25.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- a) 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

- b) 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:

- a) 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
- b) 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;
- c) 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 follow the Information Governance Protocol set out in schedule 8, and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

29 NOTICES

29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by 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 Partners in writing. A notice shall be deemed to have been served if:

- a) personally delivered, at the time of delivery;

- b) 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
- c) 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 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:

- a) if to the Council, addressed to the Chief Executive,

Address: Chief Executive's Office
County Hall
West Bridgford
Nottingham
NG2 7QP

Tel: 0115 9773582

Email: chief.exec@nottsc.gov.uk

and

- b) if to a CCG, addressed to:

CCG	Accountable Officer	Telephone	Email
NHS Bassetlaw CCG Retford Hospital North Road Retford Nottinghamshire DN22 7XF	Idris Griffiths	01777 274400	idris.griffiths@nhs.net
NHS Mansfield and Ashfield CCG Hawthorn House Ransom Wood Business Park Southwell Road West Rainworth Mansfield Nottinghamshire NG21 0HJ	Amanda Sullivan	0300 300 1234	amanda.sullivan7@nhs.net
NHS Newark and Sherwood CCG Balderton Primary Care Centre Lowfield Lane Balderton Nottinghamshire NG24 3HJ	Amanda Sullivan	0300 300 1234	amanda.sullivan7@nhs.net

NHS Nottingham North and East CCG Civic Centre Arnot Hill Park Arnold Nottingham NG5 6LU	Sam Walters	0115 8831838	sam.walters1@nhs.net
NHS Nottingham West CCG Stapleford Care Centre Church Street Nottingham NG9 8DB	Sam Walters	0115 8831838	sam.walters1@nhs.net
NHS Rushcliffe CCG Easthorpe House 165 Loughborough Road Ruddington Nottingham NG11 6LQ	Sam Walters	0115 8831838	sam.walters1@nhs.net

30 VARIATION

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

31 CHANGE IN LAW

- 31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.
- 31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.
- 31.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), 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 a 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, no Partner will have authority to, or hold itself out as having authority to:
- a) act as an agent of the other;
 - b) make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - c) 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 CORPORATE SEAL of THE
COUNCIL OF NOTTINGHAMSHIRE
was hereunto affixed in the presence of:



Signed for on behalf of:
NHS Bassetlaw Clinical Commissioning
Group

Idris Griffiths
Authorised Signatory

Signed for on behalf of:-
NHS Mansfield and Ashfield Clinical
Commissioning Group

Signed for on behalf of:
NHS Newark and Sherwood Clinical
Commissioning Group

Signed for on behalf of:
NHS Nottingham North and East Clinical
Commissioning Group

Sam Walters
Authorised Signatory

Signed for on behalf of:
NHS Nottingham West Clinical
Commissioning Group

Sam Walters
Authorised Signatory

Signed for on behalf of:
NHS Rushcliffe Clinical Commissioning
Group

Sam Walters
Authorised Signatory

SCHEDULE 1 – SCHEME SPECIFICATION

SERVICE SCHEDULE

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement.

1 OVERVIEW OF SERVICES AND FINANCIAL CONTRIBUTIONS

Scheme	Bassetlaw £	Mansfield and Ashfield £	Newark and Sherwood £	Nottingham North and East £	Nottingham West £	Rushcliffe £	Nottinghamshire County Council £	Total £
A. Seven Day Working				£297,808	£201,735	£221,492		£721,035
B. Delayed Transfers of Care				£2,496,828	£1,099,953	£1,895,882		£5,492,663
C. Reducing non-elective admissions				£2,740,376	£2,197,207	£2,085,697		£7,023,280
D. Support to social care				£114,066	£71,789	£77,232		£263,087
E. Enabling				£170,539	£113,346	£133,103		£416,988
F. Proactive care (community based)		£7,664,898	£4,996,353					£12,661,251
G. Patient and carer support		£165,415	£106,782					£272,197
H. Better Together Implementation Support		£254,865	£170,047					£424,912
I. 7 day access to services	£753,567							£753,567
J. Mental Health Liaison	£440,777							£440,777
K. Discharge / Assessment incl. Intermediate Care	£3,107,780							£3,107,780
L. Respite services	£21,000							£21,000
M. Improving Care Home quality	£75,000							£75,000
N. Telehealth	£455,610							£455,610
O. Support for carers	£240,640	£305,717	£197,344	£223,007	£140,027	£161,809		£1,268,544
P. Protecting social care	£2,429,216	£4,152,072	£2,510,121	£3,166,694	£2,419,881	£2,379,429		£17,057,413
Q. Disabled Facilities							£6,441,437	£6,441,437

Scheme	Bassetlaw £	Mansfield and Ashfield £	Newark and Sherwood £	Nottingham North and East £	Nottingham West £	Rushcliffe £	Nottinghamshire County Council £	Total £
Grant								
R. Care Act Implementation	£312,209	£515,645	£320,370	£378,593	£255,161	£279,018		£2,060,996
S. Improved Better Care Fund							£21,590,371	£21,590,371
Total	£7,835,799	£13,058,612	£8,301,017	£9,587,911	£6,499,099	£7,233,662	£28,031,808	£80,547,908

The Host Partner for the Pooled Funds detailed in the table above is Nottinghamshire County Council and the Pooled Fund Manager, being an officer of the Host Partner is the Service Director of Finance and Procurement.

2 COMMISSIONING, VARIATION AND TERMINATION

- 2.1 The Partners may terminate their respective Service Contracts in accordance with the term and termination clauses included in that Service Contract.
- 2.2 The relevant Partner shall inform the Pooled Fund Manager (in writing) of the termination or variation of a Service Contract at the same time as the Provider.
- 2.3 In the event of a Service Contract termination, the relevant Partner shall be responsible for identifying further schemes to ensure the Better Care Fund Plan is delivered and the minimum contribution to the Pooled Fund is delivered subject to Clause 5.5.

3 FINANCIAL GOVERNANCE ARRANGEMENTS

- 3.1 The Partners shall establish their Financial Contribution at the commencement of the Financial Year. The overall level of contributions into the Pooled Fund may be increased to reflect service developments or decreased to reflect budgetary pressures. Any material requests to vary the Pooled Fund will need to be recommended and formally recorded by the Steering Group for recommendation and approval by the Health and Wellbeing Board, in accordance with the terms of this Agreement and the constitutional and financial regulations of each of the Partners.
- 3.2 The Partners shall endeavour to maintain expenditure against the Pooled Fund in line with their agreed contribution levels for the Financial Year. Where expenditure against contribution is exceeded by any Partner then the conditions specified in Schedule 3 will apply.

- 3.3 Each CCG agrees that Financial Contributions must remain at or above the minimum contribution level for each Unit of Planning.
- 3.6 Any underspends at year end may (subject to each organisation's standing orders and standing financial instructions) be carried over into the next years Pooled Fund subject to the formal request from the responsible commissioning organisation and as agreed and recorded by Partners at the Steering Group.
- 3.7 The Pooled Fund Manager shall have delegated authority to transfer budget between schemes provided that:
3.7.1 in respect of the CCGs, a formal request has been received from the relevant Chief Finance Officers; or
3.7.2 in respect of the Council, a formal request has been received from the Director of Adult Social Care, Health and Public Protection
For schemes jointly funded by a CCG(s) and the Council, approval from both responsible commissioning organisations is required.
- 3.8 The Pooled Fund Manager is not authorised to overspend within a month. Where the commissioning organisation as identified in each Scheme Specification seeks to spend more money than is contained in the Pooled Fund for that Scheme then it shall, unless all the Partners agree otherwise, be responsible for the additional contributions to the Pooled Fund which must be made by the responsible commissioning organisation prior to the payment being made from the Pooled Fund.
- 3.9 The process for managing overspends and underspends at Financial Year end or on termination or expiry of the agreement is in Schedule 3.

4 Management reporting to partner organisations

All Partners shall provide monthly management information as required by the BCF Finance, Planning and Performance Subgroup and the Steering Group. The Partners shall present quarterly information to the Health and Wellbeing Board. The format of reporting is set out in Schedule 5.

5 VAT

The VAT regime of the organisation making the payment to the Provider(s) will apply for each scheme.

6. GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

- 6.1 Each Partner shall be responsible for reviewing the delivery of the schemes to which it is a party.
- 6.2 The Partners shall report scheme delivery and impact upon performance metrics on a monthly basis to the BCF Finance, Planning and Performance Subgroup and escalated monthly on an exception basis to the Steering Group if there is significant risk to the ongoing delivery of the scheme. The Steering Group will escalate on an exception basis quarterly to the Health and Wellbeing Board where there is a significant risk to delivery of the Better Care Fund Plan in accordance with the BCF Terms of Reference in Schedule 2.

7. LEAD OFFICERS

Partner	Lead Officer	Lead Finance Officer	Address	Telephone Number	Email Address
Nottinghamshire County Council	David Pearson Corporate Director Adult Social Care, Health and Public Protection	Nigel Stevenson Service Director of Finance and Procurement	County Hall West Bridgford Nottingham NG2 7QP	0300 500 8080	David.pearson@nottscc.gov.uk Nigel.stevenson@nottscc.gov.uk
Bassetlaw CCG	Idris Griffiths Chief Operating Officer	Therese Paskell Chief Finance Officer	Retford Hospital North Road Retford Nottinghamshire DN22 7XF	01777 274400	idris.griffiths@nhs.net therese.paskell@nhs.net
Mansfield and Ashfield CCG	Amanda Sullivan Chief Officer	Mick Cawley Chief Finance Officer	Hawthorn House Ransom Wood Business Park Southwell Road West Mansfield Nottinghamshire NG21 0HJ	0300 300 1234	amanda.sullivan7@nhs.net
Newark and Sherwood CCG	Amanda Sullivan Chief Officer	Mick Cawley Chief Finance Officer	Hawthorn House Ransom Wood Business Park	0300 300 1234	amanda.sullivan7@nhs.net

Partner	Lead Officer	Lead Finance Officer	Address	Telephone Number	Email Address
			Southwell Road West Mansfield Nottinghamshire NG21 0HJ		
Nottingham North and East CCG	Sam Walters Chief Officer	Jonathan Bemrose Director of Finance	Civic Centre Arnot Hill Park Arnold Nottingham NG5 6LU	0115 8831838	sam.walters1@nhs.net Jonathan.bemrose@nottinghamnortheastccg.nhs.uk
Nottingham West CCG	Sam Walters Chief Officer	Jonathan Bemrose Director of Finance	Stapleford Care Centre Church Street Stapleford Nottingham NG9 8DB	0115 8835100	sam.walters1@nhs.net Jonathan.bemrose@nottinghamnortheastccg.nhs.uk
Rushcliffe CCG	Sam Walters Chief Officer	Jonathan Bemrose Director of Finance	Easthorpe House 165 Loughborough Road Ruddington Nottingham NG11 6LQ	0115 8837880	sam.walters1@nhs.net Jonathan.bemrose@nottinghamnortheastccg.nhs.uk

8. INTERNAL APPROVALS

Each Partner's own scheme of delegation will apply.

9. NOT USED

10. Non-financial contributions

Council contribution

	Details	Charging arrangements	Comments
Premises	Desk space	None	Hot desk provision for Programme Manager (3 days per week)
Premises	Meeting rooms	None	Use of meeting rooms for BCF meetings.
Assets and equipment	Computer and phone	None	Access to computer and landline phone for Programme Manager when hot-desking on Council premises.
Human resources	Finance staff	None	Council will incur resource utilisation of finance staff through hosting/administering the pooled budget.

CCG Contribution

Each CCG shall contribute:

	Details	Charging arrangements	Comments
Premises	Desk space	None	Hot desk provision for Programme Manager (1 day per week) at any CCG location
Premises	Meeting rooms	None	Use of meeting rooms for BCF meetings.
Human resources	Director of Transformation	None	One day per week for BCF programme activities including supervision of Programme Manager

PART 2 – AGREED SCHEME SPECIFICATIONS

The scheme specifications are contained within the Nottinghamshire Better Care Fund plan which can be found on the Nottinghamshire County Council website <http://www.nottinghamshire.gov.uk/caring/yourhealth/developing-health-services/health-and-wellbeing-board/bettercarefund/>

SCHEDULE 2 – GOVERNANCE

The governance arrangements for monitoring delivery of the Better Care Fund, including the Pooled Fund, are set out within the terms of reference.



Terms of Reference
BCF Programme Steer

SCHEDULE 3 – RISK SHARE, OVERSPENDS AND UNDERSPENDS

Pooled Fund Management

- 1 The Partners shall report to the Steering Group on planned and actual expenditure and savings per scheme on a monthly basis. Mitigating actions will be agreed by the Council or relevant Unit of Planning and documented in the finance and performance report approved by the Steering Group. Over and under spends against the Better Care Fund Plan shall be reconciled by the Host Partner on a quarterly basis.

Overspend

- 2 The Partners agree that Overspends shall be apportioned in accordance with this Schedule 3.
- 3 The Partners shall manage Overspends at an organisation or Unit of Planning level, and escalate these to the Steering Group if the value exceeds that which can be managed within the organisation or relevant Unit of Planning. If the Steering Group is unable to reach agreement on managing the Overspend this will be escalated to the Health and Wellbeing Board for agreement. Each Unit of Planning has an established contingency to manage Overspends. For the purpose of the Pooled Fund, expenditure on Protecting Social Care Services, Disabled Facilities Grants, Social Care Capital and Care Act Implementation shall remain within the financial allocation as detailed in Schedule 1. All material changes to scheme funding shall be reported by the relevant Partner / Unit of Planning to the Health and Wellbeing Board.
- 4 The Steering Group shall acting reasonably having taken into consideration all relevant factors including, where appropriate, the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints agree appropriate action in relation to Overspends which may include the following:
 - 4.1 any action that can be taken in order to contain expenditure;
 - 4.2 whether there are any Underspends that can be vired from any another fund in the Unit of Planning or Council maintained under this Agreement;
 - 4.3 how any Overspend shall be apportioned between the CCGs within a Unit of Planning, such apportionment to be just and equitable taking into consideration all relevant factors.
- 5 The Partners agree to co-operate fully in order to establish an agreed position in relation to any Overspends.
- 6 Subject to any continuing obligations under any Service Contract entered into by each Partner, the relevant Partner may give notice to terminate a Service Contract or Individual Scheme where the Service Contract provides. Notwithstanding such termination, the relevant Partner shall be required to maintain its minimum contribution to the Pooled Fund subject to clause 5.5.

Underspend

- 7 The Partners shall manage Underspends at an organisation or Unit of Planning level, and may be transferred to alternative schemes within the Pooled Fund subject to approval from the contributing partner's local decision making bodies as stated in Schedule 1.
- 8 Where there is an Underspend at the end of the Financial Year or at termination of the Agreement such underspend shall be managed by the Partner whose Financial Contributions to the Pooled Fund were intended to meet the expenditure to which the Underspend relates. In cases other than termination, Underspends may be carried forward to the subsequent Financial Year subject to approval from the relevant Partner's local decision making body.

SCHEDULE 4- NOT USED

SCHEDULE 5 – PERFORMANCE ARRANGEMENTS

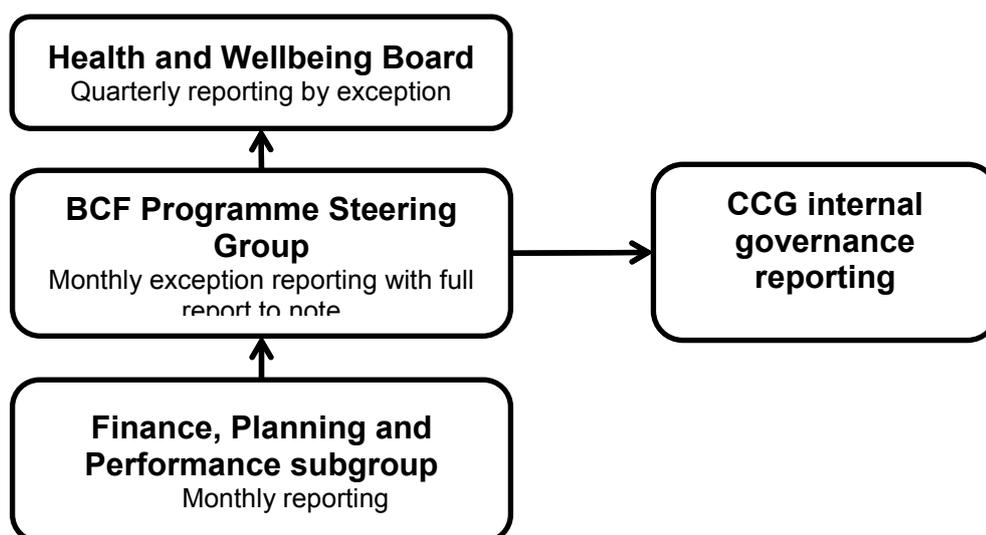
Performance metrics

There are six metrics for monitoring the delivery of the Better Care Fund Plan:

Ref.	Metric
BCF1	Total non-elective admissions in to hospital (general & acute), all-age, per 100,000 population
BCF2	Permanent admissions of older people (aged 65 and over) to residential and nursing care homes, per 100,000 population
BCF3	Proportion of older people (65 and over) who were still at home 91 days after discharge from hospital into reablement / rehabilitation services
BCF4	Delayed transfers of care (delayed days) from hospital per 100,000 population
BCF5	Patient / Service User experience: <ul style="list-style-type: none"> • Disabled Facilities Grants • GP Patient Survey • Friends and Family Test • Proportion of people reporting poor patient experience of inpatient care • Proportion of people reporting poor patient experience of general practice and out of hours service • Overall satisfaction of people who use services with their care and support • The proportion of people who use services and carers who find it easy to find information about services
BCF6	Permanent admissions of older people (aged 65 and over) to residential and nursing care homes directly from a hospital setting per 100 admissions of older people (aged 65 and over) to residential and nursing care homes

Performance reporting

A governance structure is in place for monthly reporting of delivery of the BCF Plan against performance metrics, scheme delivery, risk register and financial expenditure and savings as shown in the diagram below:



Monthly and quarterly performance monitoring will take place in accordance with the BCF memorandum of understanding below.



20150223 BCF
Memorandum of unde

A quarterly report will be submitted to the Health and Wellbeing Board in accordance with national guidance.

SCHEDULE 6 – BETTER CARE FUND PLAN

The Nottinghamshire Better Care Fund plan can be found on the Nottinghamshire County Council website <http://www.nottinghamshire.gov.uk/caring/yourhealth/developing-health-services/health-and-wellbeing-board/bettercarefund/>

SCHEDULE 7 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Nottinghamshire County Council's Code of Conduct shall apply to all County Councillors and co-opted members. CCG policies will apply to their employees and members.



SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL

Information governance will be conducted in accordance with the Notts Information Sharing protocol attached below.



Information
Sharing Protocol.pdf

SCHEDULE 9 – PAYMENT PROTOCOL

1. Payments into the Pooled Fund are set out in the payment schedule attached below and will be initiated by BACS transfer on the first working day of the month by the Partners.
2. The Host Partner shall arrange for the transfer of money into the relevant Partner account by BACS transfer on the fourth working day of the month as shown in the payment schedule below.
3. Each Partner shall be responsible for the payments to Providers contracted to deliver the services as set out in Schedule 1.
4. A quarterly reconciliation meeting will be held by the Finance Planning and Performance Sub Group to reconcile monthly planned payments with actual payments with the balance being paid back into the Pooled Fund (such balance may include any Service Credits received). Payments into the pool will be adjusted to take account of any underspend (in accordance with paragraph 9 and 10 of Schedule 3).
5. Each Partner shall have the right to impose a fine for late payment in accordance with paragraphs 6 and 7 below.
6. For the purposes of this agreement the Council may fine individual CCGs for late payments net of the contribution to be paid to the late paying CCG. The fine will be levied at the LIBID (London Interbank Bid rate) of the day(s) payment is overdue plus 1% for each day of late payment.
7. Individual CCGs may fine the Council for late payments of the due amount specified in the payment schedule below. The fine will be levied at the LIBID (London Interbank Bid rate) of the day(s) payment is overdue plus 1% for each day of late payment.

2018/19 Better Care Fund Payment Profile

Contributing partner	Annual Contribution £	Protecting Social Services £	Carers £	Care Act Implementation £	Annual Payment to NCC £	Net Monthly Payment to NCC £
NHS Bassetlaw	£7,835,799	£2,429,216	£240,640	£312,209	£2,982,065	£248,505
NHS Mansfield and Ashfield	£13,058,612	£4,152,072	£305,717	£515,645	£4,973,434	£414,453
NHS Newark and Sherwood	£8,301,017	£2,510,121	£197,344	£320,370	£3,027,835	£252,320
NHS Nottingham North and East	£9,587,911	£3,166,694	£223,007	£378,593	£3,768,294	£314,025
NHS Nottingham West	£6,499,099	£2,419,881	£140,027	£255,161	£2,815,069	£234,589
NHS Rushcliffe	£7,233,662	£2,379,429	£161,809	£279,018	£2,820,256	£235,021
Nottinghamshire County Council	£6,441,437	£0	£0	£0		
Nottinghamshire County Council	£21,590,371	£0	£0	£0		
Total	£80,547,908	£17,057,413	£1,268,544	£2,060,996	£20,386,953	£1,698,913