

Dated _____ 2019

THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON

and

**NHS CITY AND HACKNEY CLINICAL COMMISSIONING
GROUP**

**FRAMEWORK SECTION 75 AGREEMENT FOR THE
DEVOLUTION OF HEALTH AND SOCIAL CARE SERVICES IN
CITY OF LONDON (INCLUDING THE BETTER CARE FUND)**

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THIS AGREEMENT is made on day of 2019

PARTIES

- (1) **THE MAYOR AND COMMONALTY AND CITIZENS OF THE CITY OF LONDON** a corporation by prescription of Guildhall, PO Box 270, London EC2P 2EJ (the "**City**")
- (2) **NHS CITY AND HACKNEY CLINICAL COMMISSIONING GROUP** of 3rd Floor, Block A, St Leonard's Hospital, London, N1 5LZ (the "**CCG**")

each a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) The City, exercising its relevant local authority functions, has responsibility for commissioning and may provide social care services on behalf of the population of the City of London.
- (B) The CCG has the responsibility for commissioning health services pursuant to the National Health Service Act 2006 in the City of London.
- (C) The Parties wish to establish a pooled and aligned fund, and delegate the exercise of certain commissioning functions to each other, in order to integrate the commissioning of health and social care services, as set out in this Agreement.
- (D) This Agreement also sets out the arrangements for the Better Care Fund, which supports 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 Parties pool those funds in accordance with Section 75 of the 2006 Act. The pooled fund established for the purposes of this Agreement is broader than the Better Care Fund, and the requirements of the Better Care Fund plan (in terms of reporting, for example), shall only apply to the Better Care Fund element of the pooled fund.
- (E) 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.
- (F) The purpose of this Agreement is to set out the terms on which the Parties have agreed to collaborate and to establish a framework through which the Parties can secure the future provision of health and wellbeing services through lead or joint commissioning arrangements. It is also the means through which the Parties will pool funds and align budgets as agreed between the Parties.
- (G) The main **aims and objectives** of the Parties in entering in to this Agreement are to:
 - (i) meet the National Conditions and local objectives;
 - (ii) integrate the commissioning activities of the Parties in respect of the relevant populations (resident and GP registered) of City of London in line with the Health and Wellbeing Board's vision of integrated health and wellbeing, and through the pooling or aligning of financial resources and integrated governance create a sustainable health and wellbeing system with improved system performance;
 - (iii) agree strategies and ensure commissioning activity in order to make more effective use of resources to achieve improved health and wellbeing for the local population, improved outcomes and integrated service delivery and prioritise prevention and early intervention by ensuring people receive 'the right care in the right place at the right time';
 - (iv) help people take control of their lives and communities and ensure children, young

people and adults are safe and confident in their lives and communities and that people are treated with dignity and respect; and

- (v) to deliver Integrated Commissioning that will focus on developing joined up, population based, public health, and preventative and early intervention strategies and services and adopt an asset based approach to providing a single system of health and wellbeing, focusing on increasing the capacity and assets of people and place.
- (H) The Parties are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act, to the extent that exercise of these powers is required for this Agreement, and all other enabling powers.

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.

2012 Act means the Health and Social Care Act 2012.

Affected Party means, in the context of Clause 28, the Party whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event.

Agreement means this agreement including its Schedules and Appendices.

Aligned Commissioning means mechanisms by which the Parties commission services that are not included within a pooled arrangement, but which are closely related to those pooled commissioned services; and which are incorporated within the design of the overall integrated commissioned service. For the avoidance of doubt, aligned commissioning arrangements do not involve the formal delegation of any functions pursuant to Section 75 of the 2006 Act.

Aligned Fund means budgets for commissioning prescribed services (as set out in Part 3 of Schedule 1) which will be managed alongside the Pooled Fund.

Annual Review has the meaning set out in clause 24.1.

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

Best Value Duty means the duty on local authorities to provide best value and to provide services efficiently, effectively and economically and to strive for constant improvement of all services as set out in the Local Government Act 1999 and any similar duty.

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 Parties.

Better Care Fund Plan means the plan attached at Part 1 of Schedule 6 setting out the Parties plan for the use of the Better Care Fund.

Budget Contributions means the budget contributions made by each Party to the Integrated Commissioning Fund in any Financial Year.

CCG Contracts means any contract that the CCG holds but has agreed that the City should be the Lead Commissioner for, and therefore the CCG appoints the City to act as agent to manage the contract in accordance with Clause 15.

CCG Contingency Funds means funds apportioned by the CCG (in accordance with the Financial Framework) that the CCG has designated to cover financial risks where such risks are not otherwise mitigated through Services Contracts.

CCG Statutory Duties means the duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act and those duties that are set out in the 2012 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.

Chief Financial Officer(s) means either the person appointed by the City pursuant to section 151 of the Local Government Act 1972 or the person appointed to the role of chief finance officer by the CCG in accordance with paragraph 11 of Schedule 1A of the Health and Social Care Act 2012 or both of them as the context requires.

Commencement Date means 00:01 hrs on 1 April 2019.

Commissioning Plans means the plans setting out details of how the Integrated Commissioning Strategies (including but not limited to the Locality Plans) will be implemented and delivered.

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

- (a) the release of which is likely to prejudice the commercial interests of a Party or the interests of a Service User respectively; or
- (b) which is a trade secret.

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

City Contracts means any contract that the City holds but has agreed that the CCG should be the Lead Commissioner for, and therefore the City appoints the CCG to act as agent to manage the contract in accordance with Clause 15.

Data Controller, Data Processor, Data Subject, Personal Data, Processed, Processing and Special Categories of Personal Data will have the meaning ascribed to them by the DP Legislation.

Data Protection Officer means the individual detailed in Schedule 8 (Data Processing Schedule)

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 Party(s) to the Provider as a consequence of (i) breach by any or all of the Parties 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 Parties are, under the terms of the relevant Services Contract, liable to the Provider.

Dispute Resolution Procedure means the procedure set out at Clause 27.

DP Legislation means all applicable data protection and privacy legislation, regulations and guidance including: (i) Regulation (EU) 2016/679 (or, in the event that the UK leaves the European Union, all applicable legislation enacted in the UK in respect of the protection of Personal Data) (the "**General Data Protection Regulation**" or "**GDPR**") and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (ii) the Data Protection Act 2018;

Exit Plan means the exit plan described in Schedule 7 (Exit Planning Obligations).

Expiry Date means 23.59 hours on 31 March 2020.

Finance Economy Group means a group responsible for the financial management of the Integrated Commissioning Fund, as further set out in the Financial Framework.

Financial Framework means the financial framework agreed between the Parties in respect of this Agreement, as varied from time to time in accordance with Clause 34.2 and as set out in Schedule 3.

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 Party claiming relief.

Functions means the NHS Functions and the Health Related Functions.

Health Related Functions means those of the health related functions of the City specified in Regulation 6 of the Regulations from time to time as are relevant to the commissioning of the Services and which may be further described in the relevant Commissioning Plans, Service Specifications, Better Care Fund Plan and/or Scheme Specifications.

Host Partner means the Party that will host and provide the financial administrative systems for the Pooled Fund and undertake to perform the duties for which they will be responsible, as set out in paragraph 7(4) and 7(5) of the Regulations. The Parties have agreed that the Host Partner for the purposes of this Agreement shall be the City.

Health and Wellbeing Board means the Health and Wellbeing Board established by the City 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.

Information Framework means the information framework agreed between the Parties in respect of this Agreement, as amended from time to time in accordance with Clause 34.2.

Integrated Commissioning means arrangements by which Parties commission Services in relation to an Integrated Commissioning Strategy on behalf of each other; and in the exercise of commissioning of both the NHS Functions and Health Related Functions.

Integrated Commissioning Board (or "ICB") means the committees (including sub-committees) responsible for review of performance and oversight of this Agreement with the terms of reference as set out in Schedule 2.

Integrated Commissioning Fund means the total of the Pooled Fund and Aligned Fund.

Integrated Commissioning Strategies means the commissioning strategies and priorities agreed between the Parties about what services to commission within the area, and amended from time to time in accordance with Clause 34, and the agreed Integrated Commissioning Strategies as of the date of this Agreement are set out in Part 1 of Schedule 1.

Law means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;
- (c) any guidance, direction or determination with which the Party(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 Party(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 Party commissions Services in relation to an Integrated Commissioning Strategy or Commissioning Plan on behalf of the other Party in exercise of both the NHS Functions and the Health Related Functions.

Lead Commissioner means the Party responsible for commissioning an individual Service under a Commissioning Plan.

Locality Plan means a strategy designated as such by the Integrated Commissioning Board.

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

Month means a calendar month.

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

NHS Functions means those of the NHS functions of the CCG listed in Regulation 5 of the Regulations from time to time as are relevant to the commissioning of the Services and which may be further described in the relevant Commissioning Plans, Service Specifications, Better Care Fund Plan and/or Scheme Specifications.

NHS Standard Contract means a contract based on terms published by NHS England for the commissioning of health services in accordance with their obligations under Regulation 17(1) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012.

Non-Recurrent Payments means funding provided by a Party to the Integrated Commissioning Fund in addition to the Budget Contributions pursuant to arrangements agreed in accordance with Clause 10.2.

Overspend means any expenditure from the Integrated Commissioning Fund in a Financial Year which exceeds the budget agreement for that Financial Year.

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

Performance Payments means any sum over and above the relevant Contract Price

which is payable to the Provider in accordance with a Performance Payment Arrangement.

Permitted Budget means in relation to a Service, the budget that the Parties have set in relation to the particular Service or Services (including the budgets for all the commissioning staff of each Party), such details being included at Schedule 1 (Integrated Commissioning Strategies and Budget Contributions).

Permitted Expenditure has the meaning given in Clause 7.2.

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

Pooled Fund Manager means such officer of the Host Partner, nominated by the Host Partner from time to time to manage the relevant Pooled Fund.

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

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

Regulator means the Information Commissioner's Office and the European Data Protection Board or any successor body to either regulator from time to time and any other supervisory authority with jurisdiction over either Party.

Scheme Specification means a specification setting out the detailed arrangements relating to a particular BCF Service within a Commissioning Plan agreed by the Parties to be commissioned under this Agreement as set out in Part 2 of Schedule 6.

Service Specification means a specification setting out the detailed arrangements relating to a particular Service within a Commissioning Plan agreed by the Parties to be commissioned under this Agreement.

Services mean such health and wellbeing services as agreed from time to time by the Parties as commissioned under the strategies set out in this Agreement and "**Service**" shall be interpreted accordingly.

Services Contract means an agreement for the provision of Services entered into with a Provider by one or more of the Parties in accordance with the relevant Commissioning Plan, or, in 2017/18, in accordance with plans previously made by one of the Parties.

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

SVP means the City's Social Value Panel set up and established by the City to use to maximise social value outputs from the City's Services Contracts.

Task and Finish Group means a group responsible for the operational financial management and reporting for the Integrated Commissioning Fund, as further set out in the Financial Framework.

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

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 Parties shall include their respective statutory successors, employees and agents.
 - 1.5 In the event of a conflict between the terms in the main body of this Agreement and the Schedules the terms in the main body of this Agreement shall take precedence.
 - 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
 - 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
 - 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
 - 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
 - 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.
 - 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
 - 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.
2. **TERM**
- 2.1 This Agreement shall come into force on the Commencement Date and shall expire on the Expiry Date ("**Initial Term**"), subject to earlier termination in accordance with its terms or at law, unless the Parties agree in writing to extend the term of this Agreement, not later than [3 months] before the end of the Initial Term or any Extended Term, as applicable. For the avoidance of doubt, this Agreement may be extended for two further one year periods (each an "**Extended Term**").

2.2 The duration of the arrangements for each Service shall be as set out in the relevant Services Contract, and the duration of the arrangements for each Scheme Specification (where different to the term of this Agreement) shall be set out within the relevant Scheme Specification.

3. GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

3.1.1 the liabilities of the Parties 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 For the avoidance of doubt, in the performance of this Agreement, the Parties agree to:

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

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

3.2.3 provide early information and notice about relevant problems.

3.3 The Parties acknowledge that it is a requirement of the Better Care Fund that the CCG and the City establish a Pooled Fund for the purposes of supporting the integration of health and social care and to seek to achieve the National Conditions and local objectives. The Parties have agreed to establish such a Pooled Fund pursuant to this Agreement and in accordance with the Better Care Fund Plan and the Scheme Specifications. For the avoidance of doubt, the Better Care Fund Plan and the Scheme Specifications (and any requirements therein) shall only apply in respect of the Services commissioned pursuant to those Scheme Specifications. The Parties acknowledge and agree that the Better Care Fund will form part of the Pooled Fund for the purposes of this Agreement, however, only that part of the Pooled Fund will be subject to the requirements in the Better Care Fund Plan.

3.4 The Parties shall comply with their respective obligations as set out in with the Financial Framework and the Information Framework. Any reference to the Financial Framework or the Information Framework is a reference to the Financial Framework or the Information Framework as varied in accordance with Clause 34.2 from time to time.

4. PARTNERSHIP FLEXIBILITIES

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

4.1.1 Integrated Commissioning;

4.1.2 Lead Commissioning Arrangements;

4.1.3 Aligned Commissioning;

4.1.4 the establishment of one or more Pooled Fund;

in relation to the Services (the "**Flexibilities**").

4.2 The City delegates to the CCG and the CCG agrees to exercise, on the City'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 City and the City 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 Party to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to this Agreement and the Parties

shall agree arrangements designed to achieve the greatest degree of delegation to the other Party necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5. FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Parties can secure the provision of health and wellbeing services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Parties.
- 5.3 Where the Parties add a new Commissioning Plan to this Agreement it will need to be agreed by both Parties in accordance with the governance arrangements set out in this Agreement and include as a minimum details of who will act as the Lead Commissioner, the budget and other resource contributions of each Party.
- 5.4 The Parties shall not enter into a Commissioning Plan unless they are satisfied that the Commissioning Plan in question will improve health and well-being in accordance with this Agreement.
- 5.5 The introduction of any Commissioning Plans using Pooled Funds will be subject to business case approval by the Integrated Commissioning Board, unless otherwise agreed by the Parties.
- 5.6 The introduction of Commissioning Plans using Aligned Funds will be subject to business case approval by the Integrated Commissioning Board who will recommend them for approval by the relevant Party or Parties, unless otherwise agreed by the Parties.
- 5.7 The Parties agree to comply with the governance arrangements in Schedule 2.

6. COMMISSIONING ARRANGEMENTS

- 6.1 Where there are Integrated Commissioning arrangements in respect of individual Services, both Parties 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 Each Party shall be responsible for compliance with and making payments of all sums due from them to a Provider pursuant to the terms of a Services Contract.
- 6.3 Both Parties shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Commissioning Plan are commissioned within each Party's Budget Contribution in respect of that particular Service in each Financial Year.
- 6.4 The Parties shall comply with the arrangements in respect of the Aligned Commissioning as set out in the relevant Service Specification.
- 6.5 The Parties shall comply with the obligations set out in Schedule 7 (Exit Planning Obligations).
- 6.6 Each Party shall keep the other Party and other stakeholders regularly informed, through agreed governance arrangements, of the effectiveness of the arrangements including the Better Care Fund and any Overspend or underspend in a Pooled Fund or Aligned Fund through the agreed governance arrangements.

Appointment and Role of a Lead Commissioner

- 6.7 From time to time the Parties through the Integrated Commissioning Board shall appoint one of them to act as Lead Commissioner for an Integrated Commissioning Strategy, Commissioning Plan or an individual Service and unless agreed otherwise the Lead Commissioner shall:
 - 6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions;

- 6.7.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Budget Contributions of each Party in relation to each particular Service in each Financial Year;
- 6.7.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Service Specification;
- 6.7.4 contract with Provider(s) for the provision of the Services on terms agreed between the Parties;
- 6.7.5 comply with all relevant legal duties and guidance of both Parties in relation to the Services being commissioned;
- 6.7.6 where Services are commissioned using the NHS Standard Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 6.7.7 undertake performance management and contract monitoring of all Services Contracts;
- 6.7.8 put in place appropriate systems, as agreed by the Parties, to make sure that payments of all sums due to a Provider take place pursuant to the terms of any Services Contract;
- 6.7.9 provide the other Party with information in accordance with the Information Framework; and
- 6.7.10 keep the other Party and the Integrated Commissioning Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or underspend in a Pooled Fund or Aligned Fund.

7. ESTABLISHMENT OF THE POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Parties have agreed to establish and maintain a Pooled Fund for revenue expenditure as set out in the Commissioning Plan.
- 7.2 The Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and it is agreed that monies held in the Pooled Fund (except for the CCG Contingency Funds) may only be used for (i) the Permitted Budget, in order to commission prescribed services (either NHS Functions or Health Related Functions) that the Parties have agreed will contribute to the effective delivery of the prescribed services and (ii) Third Party Costs ("**Permitted Expenditure**").
- 7.3 The Parties may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Party. Failure to reach agreement on such issues may be resolved through the Dispute Resolution Procedure.
- 7.4 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by both Parties. The CCG Contingency Funds may only be used in accordance with the Financial Framework.
- 7.5 Pursuant to this Agreement, the Parties agree to appoint a Host Partner for the Pooled Fund who shall be responsible for:
 - 7.5.1 administering the record of the funds contributed to the Pooled Fund on behalf of itself and the other Party;
 - 7.5.2 administering the record of the funds expended by the Parties in relation to the Pooled Fund;

- 7.5.3 administering a record of the funds contributed and expended by the Parties in relation to Aligned Funds; and
 - 7.5.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.
- 7.6 For the avoidance of doubt each Party shall administer its own financial transactions initially within its own accounting ledger and seek reimbursement from the Host Partner out of the Pooled Fund.

8. POOLED FUND MANAGEMENT

- 8.1 The Parties hereby agree that the Host Partner shall appoint an officer to act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations, subject to the consent of the other Party (such consent not to be unreasonably withheld).
- 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 preparing and submitting to the Integrated Commissioning Board bi-monthly reports (or more frequent reports if required by the Integrated Commissioning Board) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Parties and the Integrated Commissioning Board to monitor the effectiveness of the Pooled Fund and to enable the Parties to complete their own financial accounts and returns; and
 - 8.2.3 compliance with the obligations set out in the Financial Framework.
- 8.3 Pursuant to this Agreement, the Parties agree to establishing a Finance Economy Group and a Task and Finish Group, with the composition and responsibilities of such groups further specified in the Financial Framework.
- 8.4 In carrying out the responsibilities under Clause 8.2 the Pooled Fund Manager shall be accountable to the Parties and have regard to the recommendations of the Finance Economy Group, the Task and Finish Group, and the Integrated Commissioning Board. Furthermore, the Pooled Fund Manager must comply with the Financial Framework and the Information Framework.
- 8.5 Both Parties acknowledge the importance of ensuring that there is sufficient financial management support for the Integrated Commissioning Fund, and the Chief Financial Officer (or equivalent) of each Party shall be responsible for ensuring this support.
- 8.6 The Integrated Commissioning Board may agree to the viring of funds within the Pooled Fund (subject to any specific requirements of the Financial Framework).

9. ALIGNED FUNDS

- 9.1 Any Budget Contributions agreed to be held within an Aligned Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Commissioning Plan. For the avoidance of doubt, an Aligned Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Regulations, and all non-pooled funds referred to in this Agreement shall be Aligned Funds.
- 9.2 Where an individual Service is being supported by an Aligned Fund, the Parties agree that responsibility for expending monies from an Aligned Fund shall not be delegated to the Lead Commissioner. The City shall be responsible for expending monies from the City's Aligned Fund, and the CCG shall be responsible for expending monies from the CCG's Aligned Fund.

- 9.3 The Parties shall work together to establish the financial and administrative support necessary to enable the effective and efficient management of an Aligned Fund, meeting all required accounting and auditing obligations.
- 9.4 Where there are shared Aligned Commissioning arrangements, both Parties shall work in cooperation and shall endeavour to ensure that:
- 9.4.1 the NHS Functions funded from an Aligned Fund are carried out within the CCG's Budget Contribution to an Aligned Fund for the relevant Service in each Financial Year; and
- 9.4.2 the Health Related Functions funded from an Aligned Fund are carried out within the City's Budget Contribution to an Aligned Fund for the relevant Service in each Financial Year.

10. **BUDGET CONTRIBUTIONS**

- 10.1 The Budget Contribution of the CCG and the City to the Pooled Fund and Aligned Funds for the first Financial Year of operation of each individual Service (including details of how such contributions shall be made) shall be as set out in Part 2 of Schedule 1 to this Agreement and the Better Care Fund Plan (as relevant), and each Party hereby agrees to make such Budget Contribution.
- 10.2 Future Budget Contributions going forward will be determined by the Parties, who shall seek to agree such details prior to 31 December of the preceding year and set out in writing on or before the 31 March of the preceding financial year in accordance with the Financial Framework. Following determination of future Budget Contributions, the Parties will formally vary this Agreement in accordance with Clause 34, to reflect the required updates to Schedule 1 (Integrated Commissioning Strategies and Indicative Budget Contributions) and other parts of the Agreement as required.
- 10.3 With the exception of Clause 17, no provision of this Agreement shall preclude the Parties from making additional contributions of Non-Recurrent Payments to the Integrated Commissioning Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be recorded in Integrated Commissioning Board minutes and recorded in the budget statement.
- 10.4 Any grant contributions (or other ring-fenced funding) shall be subject to the relevant conditions that apply and both Parties hereby agree to comply with those conditions.

Non-financial contributions

- 10.5 Both Parties shall review non-financial contributions toward the Integrated Commissioning Fund 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 Services Contracts and the Pooled Fund) as part of the annual review.

11. **CHARGING FOR SERVICES**

- 11.1 The Services provided through this Agreement for which the City normally charges will continue to attract a charge. There is no intention to increase or expand charging arrangements through this Agreement, although the City reserves the right to do this at any time.
- 11.2 All charges will be collected by the City.
- 11.3 Care plans will ensure that where a charge is made, it is carefully explained to Service Users at the outset, to avoid any misunderstanding that NHS services are being charged for.
- 11.4 Decisions about the charging policies to be adopted will rest with the City. Changes of policy will be reported to the Integrated Commissioning Board. The City will ensure that written operational policies exist which provide staff with clear guidance on which services are charged for and which are non-chargeable.

11.5 The City shall be liable for and release and indemnify and keep indemnified the CCG from and against all costs, claims, expenses, demands and liability arising from or as a result of the City charging for any services.

12. **RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS**

12.1 The Parties have agreed that the arrangements and obligations as set out in the Financial Framework shall apply to this Agreement.

Overspends in Pooled Funds

12.2 Subject to Clause 12.3, the Host Partner shall manage expenditure from the Pooled Fund within the Budget 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 the Pooled Fund has been in accordance with Permitted Expenditure and the Host Partner has informed the Integrated Commissioning Board in accordance with Clause 12.4.

12.4 In the event that the Finance Task and Finish Group identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Integrated Commissioning Board is informed as soon as reasonably possible.

Overspends in Aligned Funds

12.5 Where either Party forecasts an Overspend in relation to an Aligned Fund, that Party shall as soon as reasonably practicable inform the other Party and the Integrated Commissioning Board.

Risk share arrangements

12.6 The Parties have agreed risk share arrangements which provide for financial risks arising within the commissioning of services from the Pooled Fund and an Aligned Fund; and the financial risk to the pool arising from any payment for performance element of the Better Care Fund.

12.7 If the Integrated Commissioning Fund records an Overspend or underspend in any year, the balance of Overspend is recorded in the Party that holds the statutory responsibility for the function or budget which incurred the Overspend or underspend. The mechanisms for sharing risk and reward are set out in further detail in the Financial Framework.

12.8 Unless the Parties agree to the contrary, where:

12.8.1 any Overspend that is recorded at the end of any Financial Year; or

12.8.2 any Overspend is offset, during that Financial Year, by contributions from fund reserves accumulated in previous Financial Years;

12.8.3 any Overspend is met from the CCG Contingency Funds

the Parties shall be entitled to recover their share of those Overspends, through adjustment to their future Financial Years' contribution to the Integrated Commissioning Fund.

13. **INFORMATION FRAMEWORK**

13.1 The Parties agree to share information with each other relating to the Services commissioned under Commissioning Plans, in accordance with the Information Framework.

14. **PREMISES**

14.1 The Parties shall be responsible for providing any premises which are necessary for the commissioning of the Services and, where these requirements are not set out in the relevant Service Specification, they will be agreed by the Integrated Commissioning Board.

15. PRE-EXISTING CONTRACTS

- 15.1 Where from time to time the Parties have agreed to appoint a Lead Commissioner for a Service, the Party that is not the Lead Commissioner hereby appoints the other to act as agent to manage the CCG Contracts or the City Contracts (as the case may be) from the Commencement Date. Each Party shall make available to the other copies of the CCG Contracts or the City Contracts (as the case may be) to enable the other to carry out its role as agent.
- 15.2 The Parties may agree that, where necessary, and subject to the relevant contracting party's consent, the rights and obligations of the original contracting Party under the CCG Contracts or City Contracts (as the case may be) may be transferred to the other Party by way of novation or assignment.

16. GOVERNANCE AND PERFORMANCE MANAGEMENT

- 16.1 The Parties shall comply with their respective obligations as set out in Schedule 2 (Governance) and Schedule 5 (Performance Arrangements).

17. CAPITAL EXPENDITURE

- 17.1 Neither Pooled Funds nor Aligned 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 Parties. If a need for capital expenditure is identified this must be agreed by the Parties and the capital expenditure must comply with any applicable grant conditions.

18. VAT

- 18.1 The Parties shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant rules, procedures and guidance from HM Revenue and Customs.
- 18.2 The Parties shall agree that for the treatment of the Pooled Fund for VAT purposes:
- 18.2.1 The City will be the Host Partner and will hold and administer the Pooled Funds;
 - 18.2.2 [The City will be the Lead Commissioner for the Services set out in Schedule 1, Table 1];
 - 18.2.3 [The CCG will be the Lead Commissioner for the Services set out in Schedule 1, Table 2];
 - 18.2.4 The City will commission services for which it is the Lead Commissioner and recover VAT according to the local authority VAT regime (full recovery);
 - 18.2.5 The CCG will commission services for which it is the Lead Commissioner and recover VAT according to the NHS VAT regime (limited VAT recovery);
- 18.3 Any funds passing between the Parties under this Agreement do not represent consideration for a supply of services and shall be outside the scope of VAT.
- 18.4 The City shall reserve the right to review its VAT position at the Annual Review referred to in clause 24 of this Agreement.

19. AUDIT AND RIGHT OF ACCESS

- 19.1 Both Parties shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled Fund in accordance with the Regulations and section 7 of the Local Audit and Accountability Act 2014.
- 19.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access by them to any document, information or explanation they require from any employee or member of the Party in order to carry out their duties. This right is not limited to

financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

20. **LIABILITIES AND INSURANCE AND INDEMNITY**

20.1 Subject to Clause 20.2 and 20.3, if a Party ("**First Party**") incurs a Loss arising out of or in connection with this Agreement or a Services Contract as a consequence of any act or omission of another Party ("**Other Party**") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or a Services Contract then the Other Party shall be liable to the First Party for that Loss and shall indemnify the First Party accordingly.

20.2 Clause 20.1 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party or the Integrated Commissioning Board.

20.3 If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause 20 the Party that may claim against the other indemnifying Party will:

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

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

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

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

20.5 Where a Party is the Lead Commissioner for any Services Contract, it shall ensure that any Provider that they appoint will have adequate insurance (or equivalent indemnity arrangements through schemes operated by the National Health Service Litigation Authority) including but not limited to employers liability, public liability, professional indemnity insurance and clinical negligence, as appropriate to the services being undertaken by the Provider.

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

21. **STANDARDS OF CONDUCT AND SERVICE**

21.1 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties' respective constitutions, standing orders, standing financial instructions and codes of conduct).

21.2 The City is subject to the Best Value Duty. This Agreement and the operation of the Integrated Commissioning Fund is therefore subject to the City's Best Value Duty and the CCG will cooperate with all reasonable requests from the City which the City considers necessary in order to fulfil its Best Value Duty.

21.3 The City reserves the right to consult the City's SVP in the pre-procurement phase of any Services Contracts over the OJEU threshold, which the City may commission as Lead

Commissioner under this Agreement, regardless of whether the Service includes both NHS Functions and Health Related Functions;

- 21.4 The Parties acknowledge and accept that:
- 21.4.1 The City's SVP, where used, will make recommendations only to consider in respect of social value considerations for Services Contracts;
 - 21.4.2 The City's SVP is not a decision making body;
 - 21.4.3 The City is not bound to accept any of the recommendations made by the City's SVP in respect of the Services Contracts being procured by the City. Any recommendations made by the SVP which are not implemented will be reported back to the SVP by the City; and
 - 21.4.4 Where the CCG act as Lead Commissioner for any Services Contracts over the OJEU threshold which are commissioned by the CCG under this Agreement, then the CCG may, subject to the City's agreement, use the City's SVP to consider social value issues relevant to the Services Contracts.
- 21.5 The CCG is subject to the CCG Statutory Duties and these include a duty of clinical governance, through which it is accountable for securing continuous improvements to the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Fund are subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 21.6 The Parties are committed to an approach to equality and equal opportunities as represented in their respective policies. The Parties will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

22. **CONFLICTS OF INTEREST**

- 22.1 The Parties shall comply with their respective policies for identifying and managing conflicts of interest. Without prejudice to the generality of this clause, this should include:
- 22.1.1 any existing conflicts of interest or potential conflicts of interest;
 - 22.1.2 any conflict of interest or potential conflict of interest that may arise in the future;
 - 22.1.3 ensuring that additional employment (paid or voluntary) may not be undertaken by any staff working within this Agreement which conflicts with or is detrimental to any of the Parties' interests, or which in any way weakens public confidence or affects the ability of the Parties to discharge their duties under this Agreement;
 - 22.1.4 providing that each Party shall require that any employee employed as part of this Agreement considers that a conflict of interest exists in relation to their own role or position in connection with this Agreement, they shall notify and request guidance initially from their line manager (who shall inform the Integrated Commissioning Board where necessary);
 - 22.1.5 the Parties shall ensure that their respective policies for managing and identifying conflicts of interest under this Agreement are maintained and where practicable, consistent.
- 22.2 The Integrated Commissioning Board shall maintain a register of conflict of interests.
- 22.3 In the event of a conflict arising between the Parties' respective policies the matter shall be referred to the Authorised Officers for resolution acknowledging that NHS standards are strictly enforced by NHS England. Should the Authorised Officers be unable to reach a resolution the matter shall be determined as a dispute in accordance with Clause 27.

23. GOVERNANCE

- 23.1 Section 75 of the 2006 Act states that the partner organisations retain the statutory responsibilities and remain accountable for the prescribed services set out for each in the relevant legislation.
- 23.2 Overall strategic oversight of the development of Integrated Commissioning is vested in the City and may be delegated to its appropriate Committees and the CCG's Governing Body, which shall remain the statutory decision making bodies.
- 23.3 The Health and Well Being Board will provide strategic oversight of partnership working between the Parties and shall make recommendations to the Parties as to any actions it considers necessary.
- 23.4 The Parties have established the Integrated Commissioning Board to provide oversight and leadership for delivery of Integrated Commissioning.
- 23.5 The Integrated Commissioning Board is based on a committee in common committee structure. The Integrated Commissioning Board terms of reference are included at Part 2 of Schedule 2. (Governance)
- 23.6 The Parties will ensure membership is appropriate to carry out the required functions of the Integrated Commissioning Board.
- 23.7 The senior management and officers delivering Integrated Commissioning will be given sufficient relevant delegated authority to carry out their role.
- 23.8 Each Party has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Party's own statutory duties and organisation are complied with.
- 23.9 The Integrated Commissioning Board shall be responsible for making decisions relating to the Pooled Fund where necessary, in accordance with the relevant standing financial instructions and schemes of delegation. The Integrated Commissioning Board shall be responsible for making recommendations to the CCG's Governing Body or the City's appropriate committee, where necessary, in relation to an Aligned Fund.
- 23.10 The Integrated Commissioning Board shall be responsible for the overall approval of Commissioning Plans and business cases, save for the approval of BCF Plans, which shall be approved in accordance with the terms set out in Schedule 6 (Better Care Fund Plan)

24. REVIEW

- 24.1 Save where the CCG's Governing Body and the City's appropriate committee agrees alternative arrangements (including alternative frequencies) the Parties shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the Integrated Commissioning Fund, the provision of the Services and the VAT position within three months of the end of each Financial Year. The Integrated Commissioning Board will agree the frequency and scale of any other reviews, monitoring and reporting of activity and the performance of the integrated commissioning function.
- 24.2 The Integrated Commissioning Board shall within twenty 20 Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 24. A copy of this report shall be provided to the Parties.
- 24.3 In the event that the Parties fail to meet the requirements of the Better Care Fund Plan and NHS England the Parties shall provide full co-operation with NHS England to agree a recovery plan.

25. COMPLAINTS

- 25.1 In this Agreement, “complaints” shall include complaints, concerns and comments that come to the attention of the Parties through any source and in any medium; and shall include complaints about any aspect of the Services commissioned and about the function of commissioning.
- 25.2 The Parties agree that they and the Integrated Commissioning Board will adhere to the relevant policies of the Parties in responding to complaints. Complaints will be handled in accordance with the policies of the most appropriate Party. In the event of there being a dispute over which is the most appropriate Party, the role shall fall to the Lead Commissioner for the Service involved.
- 25.3 Analysis of the complaints handled by the Parties shall be reported to the Integrated Commissioning Board.

26. TERMINATION

- 26.1 Either Party may terminate this Agreement by giving not less than six (6) months’ written notice to the other Party at any time.
- 26.2 Each of the individual Services may be terminated in accordance with the terms set out in the relevant Services Contract provided that the Parties ensure that the Better Care Fund requirements continue to be met, and the obligations under this Agreement are met.
- 26.3 If any Party (the “**Relevant Party**”) fails to meet any of its obligations under this Agreement, the other Party may by notice require the Relevant Party to take such reasonable action within a reasonable timescale as the other Party may specify to rectify such failure. Should the Relevant Party fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 27.
- 26.4 Expiry or termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Parties’ rights in respect of any antecedent breach and the provisions of Clauses 18.4, 20 and 29.
- 26.5 Upon expiry or termination of this Agreement for any reason whatsoever the following shall apply:
- 26.5.1 the Parties 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 Parties is carried out smoothly and with as little disruption as possible to service users, employees, the Parties and third parties, so as to minimise costs and liabilities of each Party in doing so, and shall each commit sufficient resource to implement the Exit Plan;
- 26.5.2 where either Party has entered into a Services Contract which continues after the expiry or termination of this Agreement, both Parties shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to the expiry or termination and will enter into all appropriate legal documentation required in respect of this;
- 26.5.3 the Lead Commissioner shall make reasonable endeavors to amend or terminate a Services Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Commissioner in breach of the Services Contract) where the other Party 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 Parties shall have agreed in advance who shall be responsible for any such payment;
- 26.5.4 where a Services Contract held by a Lead Commissioner relates all or partially to Services which relate to the other Party’s Functions then, provided that the Services Contract allows it, the other Party may request that the Lead Commissioner assigns

the Services Contract in whole or part upon the same terms mutatis mutandis as the original Services Contract;

26.5.5 the Integrated Commissioning 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

26.5.6 expiry or termination of this Agreement shall have no effect on the liability of any rights or remedies of either Party already accrued, prior to the date upon which such termination takes effect.

26.6 In the event of termination in relation to an individual Service the provisions of Clause 26.5 shall apply mutatis mutandis in relation to the individual Service (as though references as to this Agreement were to that individual Service).

27. **DISPUTE RESOLUTION**

27.1 The following principles are to be adhered to for any dispute resolution:

27.1.1 The resolution of a dispute under this Agreement must maintain the quality of health and social care provision now and in the future, deliver the best possible outcomes, support innovation where appropriate, make care more cost-effective, and allocate risk fairly.

27.1.2 The resolution of a dispute under this Agreement must promote transparency and accountability. It should hold the Parties to the Agreement accountable to each other and to Service Users and citizens, and facilitate the sharing of appropriate information to achieve the ambition of the Parties.

27.1.3 The Parties must engage constructively with each other within the dispute resolution process when working to reach agreement.

27.2 This dispute resolution process shall operate as follows:

27.2.1 The Parties may refer any disputes arising out of this Agreement to the members of the Integrated Commissioning Board for resolution. If any dispute referred to the Integrated Commissioning Board is not resolved within **14** days of such referral, either Party, by notice in writing to the other, may refer the dispute to the chief executives (or equivalent) of the Parties, who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of the notice;

27.2.2 If the chief executives (or equivalent) fail to resolve the dispute within the allotted time, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution ("**CEDR**"); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.

27.2.3 To initiate mediation a Party shall:

27.2.3.1 give notice in writing ("**Mediation Notice**") to the other Party requesting mediation of the dispute; and

27.2.3.2 send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.

27.2.4 Neither Party may issue a Mediation Notice until the process set out in Clause 27.2.1 has been exhausted.

27.2.5 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made

its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. The Parties will cooperate with any person appointed as mediator, providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

27.2.6 Should either Party dispute the outcome of the mediation process referred to in Clause 27.2.5, the Parties may refer the dispute for final resolution by arbitration. It is agreed that:

27.2.6.1 the tribunal shall consist of one arbitrator agreed by the Parties;

27.2.6.2 in default of the Parties' agreement as to the arbitrator within 14 days, the appointing authority shall be the Chartered Institute of Arbitrators in London;

27.2.6.3 the seat of the arbitration shall be London;

27.2.6.4 the law governing the arbitration agreement shall be English; and

27.2.6.5 the language of the arbitration shall be English.

27.3 Nothing in this Agreement shall prevent either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of Service Users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.

28. **FORCE MAJEURE**

28.1 Neither Party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Party, or incur any liability to the other Party for any losses or damages incurred by that Party, to the extent that a Force Majeure Event occurs and the Parties agree that such affected Party is / has been prevented from carrying out its obligations by that Force Majeure Event.

28.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

28.3 As soon as practicable, following notification as detailed in Clause 28.2, the Parties shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 28.4, facilitate the continued performance of the Agreement.

28.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Party shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Party. For the avoidance of doubt, no compensation shall be payable by either Party as a direct consequence of this Agreement being terminated in accordance with this Clause 28.4.

29. **CONFIDENTIALITY**

29.1 In respect of any Confidential Information a Party receives from another Party (the "**Discloser**") and subject always to the remainder of this Clause 29, each Party (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

29.1.1 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

- 29.1.2 the provisions of this Clause 29 shall not apply to any Confidential Information which:
 - 29.1.2.1 is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - 29.1.2.2 is obtained by a third party who is lawfully authorised to disclose such information.
- 29.2 Nothing in this Clause 29 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.
- 29.3 Each Party:
 - 29.3.1 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
 - 29.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 29.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 29;
 - 29.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

30. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 30.1 The Parties agree that they will each cooperate with each other to enable any Party receiving a request for information under the 2000 Act or the 2004 Regulations to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to the other Party as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.
- 30.2 Each Party acknowledges that the other Party is subject to the requirements of the 2000 Act and each Party shall assist and co-operate with the other, at their own expense, to enable the other Party to comply with its information disclosure obligations.
- 30.3 Where a Party receives a request for information specifically in relation to a function of the other Party, it shall direct the request for information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving the request for information.
- 30.4 Where the request relates to functions of both Parties, the Party receiving the request will share the request with the other Party as soon as practicable after receipt and in any event, within two Working Days and that Party will assist and co-operate with the other as is necessary for it to respond to the request within the time for compliance. If either Party determines that information must be disclosed it shall notify the other Party of that decision at least two Working Days before disclosure. Each Party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- 30.5 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Party shall be in breach of Clause 29 or any other confidentiality clauses or agreements if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

31. INFORMATION SHARING AND DATA PROTECTION

- 31.1 The Parties agree that each shall be an individual Data Controller in relation to Personal Data exchanged under this Agreement. Each Party shall comply with its obligations as a Data Controller under the DP Legislation.

- 31.2 For the avoidance of doubt, the Parties hereby acknowledge and accept that:
- 31.2.1 The Data Controller for the City's Personal Data and Special Categories of Personal Data shall be the City; and
 - 31.2.2 The Data Controller for the CCG's Personal Data and Special Categories of Personal Data shall be the CCG.
- 31.3 Where the disclosing Party transfers Personal Data to the receiving Party, the disclosing Party shall ensure that any Personal Data that is transferred:
- 31.3.1 has been collected in accordance with the DP Legislation; and
 - 31.3.2 the fair processing notice given to the relevant Service User and / or Data Subject entitles the receiving Party to Process such Personal Data for the purposes set out in this Agreement.
- 31.4 In the event that the receiving Party determines that it is required to provide its own fair processing notice to Service Users and / or Data Subjects, the disclosing Party will provide accurate and up to date contact details for the Service Users and / or Data Subjects whose Personal Data has been transferred under this Agreement.
- 31.5 Where the disclosing Party relies on the consent of the Service User and / or Data Subject to meet its obligations under Clause 31.3, the disclosing Party warrants that:
- 31.5.1 the consent entitles the receiving Party to Process the Personal Data for the purposes set out in this Agreement;
 - 31.5.2 the consent has been collected in accordance with the DP Legislation; and
 - 31.5.3 it will promptly notify the receiving Party in the event that the relevant Service User and / or Data Subject withdraws his or her consent.
- 31.6 Neither Party shall Process Personal Data transferred under this Agreement for any purposes other than those set out in this Agreement, unless otherwise permitted or required by Law.
- 31.7 Where Personal Data are disclosed by one Party to the other for the purposes of this Agreement, and the disclosing Party alone continues to determine the purposes for which, and the manner in which, any such Personal Data and Special Categories of Personal Data will be Processed by the receiving Party, the disclosing Party will remain the Data Controller of that Personal Data, and the receiving Party will be a Data Processor.
- 31.8 In the event that one Party is acting as Data Processor on behalf of the other Party, details of the Personal Data to be processed in that capacity under this Agreement shall be recorded in Schedule 8 (Data Processing Schedule). The Data Processor shall Process the data in accordance with Schedule 8 (Data Processing Schedule).
- 31.9 In the event that one Party is acting as Data Processor on behalf of the other Party, the Data Processor shall assist the other Party in complying with all applicable requirements of DP Legislation. In particular, the Data Processor shall:
- 31.9.1 keep confidential any Personal Data obtained in connection with this Agreement, subject to the DP Legislation;
 - 31.9.2 implement and maintain appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful Processing and against accidental loss or destruction of, or damage;
 - 31.9.3 ensure that employees who have access to Personal Data have undergone training in respect of ensuring compliance with the DP Legislation and in the care and handling of Personal Data, and are also compliant with Clause 31.9.1

- 31.9.4 not disclose Personal Data to any third party in any circumstances except as required or permitted by this Agreement;
- 31.9.5 notify the other Party within twenty four (24) hours of any known breach of technical and/or organisational security measures, where the breach has affected or could have affected Personal Data transferred under this Agreement;
- 31.9.6 notify the other Party within twenty four (24) hours of any information security breaches or near misses or potential, actual, suspected or threatened unauthorised exposure, access, disclosure, Processing, use, communication, deletion, revision, encryption, reproduction or transmission of any component of the Personal Data, unauthorised access or attempted access or apparent attempted access (physical or otherwise) to the Personal Data or any loss of, damage to, corruption of or destruction of such Personal Data transferred under this Agreement;
- 31.9.7 allow the other Party to audit its compliance with the requirements of this Clause 31 on reasonable notice and/or to promptly provide the other Party with evidence of its compliance with the obligations set out in this Clause 31; and
- 31.9.8 not transfer any Personal Data received from the disclosing party outside the European Economic Area unless the transferor:
 - 31.9.8.1 complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller);
 - 31.9.8.2 ensures that the Data Subject has enforceable rights and effective legal remedies; and
 - 31.9.8.3 ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 31.10 Where a notification is required under Clauses 31.9.5 and 31.9.6, the Data Processor shall confirm to the other Party, the nature of the breach, including the categories and approximate number of Data Subjects and records concerned, and the remediation measures being taken to mitigate and contain the breach.
- 31.11 In the event of a request relating to Personal Data transferred under this Agreement from a Service User and / or Data Subject for the rectification or erasure of Personal Data or restriction of Processing, the Party who has received the request shall determine whether such request is valid under the DP Legislation (unless the Party who has received the request is acting as a Data Processor on behalf of the other Party, in which case the Data Processor shall report the request to the other Party within 72 hours of receipt). In the event that the Party which has received the request determines that the relevant Personal Data should be rectified or erased or that any Processing shall be restricted, it shall notify the other Party promptly. The Party receiving the notification shall rectify or erasure the Personal Data or restrict Processing (as applicable) promptly.
- 31.12 On receipt of any request or enquiry from a Regulator that relates to Personal Data transferred under this Agreement, each Party will notify the other (unless prohibited by law) and shall provide the other with all reasonable assistance to allow the Party in receipt of the request to respond.
- 31.13 Each party shall bear its own costs incurred in providing the assistance set out in Clauses 31.11 and 31.12.

32. OMBUDSMEN

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

33. PARTIES/NOTICES

33.1 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 Party shall be as set out in Clause 33.3 or such other address as each Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served if:

33.1.1 personally delivered, at the time of delivery;

33.1.2 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

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

33.2 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).

33.3 The address for service of notices as referred to in Clause 33.1 shall be as follows unless otherwise notified to the other Party in writing:

33.3.1 if to the City, addressed to:

City Comptroller, Guildhall, PO Box 270, London EC2P 2EJ; and

33.3.2 if to the CCG, addressed to:

Chief Officer, NHS City and Hackney CCG, 3rd Floor, Block A, St Leonard's Hospital, Nuttall Street, London N1 5LZ

34. VARIATION

34.1 Subject to Clause 34.2, no variations to this Agreement will be valid unless they are recorded in writing, in a deed of variation and signed for and on behalf of each of the Parties.

34.2 The members of the Integrated Commissioning Board may choose to exercise their delegated powers on behalf of their employer organisation (which, for the avoidance of doubt, in each case must either be the CCG or the City) to:

34.2.1 agree the addition of Commissioning Plans or Integrated Commissioning Strategies to this Agreement following the approval of a detailed business case by each of the Parties; and/or

34.2.2 consider the Annual Review of this Agreement pursuant to Clause 24 and implement agreed changes following the review; and/or

34.2.3 vary the Financial Framework, subject to the written approval of each of the Parties; and/or

34.2.4 vary the Information Framework, subject to the written approval of each of the Parties.

35. CHANGE IN LAW

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

35.2 On the occurrence of any Change in Law, the Parties shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Parties 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.

35.3 In the event of failure by the Parties to agree the relevant amendments to the Agreement (as appropriate), the Clause 27 (Dispute Resolution) shall apply.

36. WAIVER

36.1 No failure or delay by any Party 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.

37. SEVERANCE

37.1 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.

38. ASSIGNMENT AND SUB CONTRACTING

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

39. EXCLUSION OF PARTNERSHIP AND AGENCY

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

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

39.2.1 act as an agent of the other;

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

39.2.3 bind the other in any way.

40. THIRD PARTY RIGHTS

40.1 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.

41. **ENTIRE AGREEMENT**

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

42. **COUNTERPARTS**

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

43. **GOVERNING LAW AND JURISDICTION**

43.1 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.

43.2 Subject to Clause 27 (Dispute Resolution), the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – INTEGRATED COMMISSIONING STRATEGIES AND BUDGET CONTRIBUTIONS

[NOTE: Schedule 1 will be updated upon receipt of the 2019 - 2022 integrated commissioning strategies, budget contributions and aligned funds from the Parties. If PART ONE to PART THREE are reordered, then the applicable definitions contained in Clause 1 will also need to be updated.]

PART ONE – INTEGRATED COMMISSIONING STRATEGIES

PART TWO – BUDGET CONTRIBUTIONS

PART THREE – ALIGNED FUNDS

SCHEDULE 2 – GOVERNANCE

[NOTE: This Schedule is subject to amendment upon receipt of the new integrated commissioning governance structure and ToRs which are expected to be signed off by all three organisations in May/June 2019.]

PART ONE – OVERVIEW

1. The clinical and care principles by which the Pooled Fund will be operated will be overseen by the Integrated Commissioning Board. The Integrated Commissioning Board shall constitute committees in common of the Parties, and once the Partnership Regulations have been appropriately amended, the parties may decide to constitute the Integrated Commissioning Board as a Joint Committee of the CCG and the City in compliance with the Local Government Act 1972 and the 2006 Act, which permit the creation of a joint committee.
2. The Integrated Commissioning Board represents the interests of both Parties in securing improved operation of the local health economy.
3. The Integrated Commissioning Board will set out the key priorities and principles for the Pooled Fund through which improvements to clinical and care outcomes and to financial sustainability will be secured.
4. Decisions to pool funding and management of Services or commissioning areas will be made by the Integrated Commissioning Board.
5. Decisions to deploy funds from the CCG Contingency Fund will require the written authorisation of the CCG's Chief Financial Officer.
6. The management of the Integrated Commissioning Fund is facilitated via the Pooled Fund Manager, the Finance Economy Group and the Task and Finish Group, as further set out in the Financial Framework.
7. As the Health and Wellbeing Board includes representatives of a number of organisations (including providers) who are not statutory commissioners of local health and care services, it is not appropriate to require the Health and Wellbeing Board to take decisions relating to the Pooled Fund. The Health and Wellbeing Board will however be kept informed of the performance of the Integrated Commissioning Fund.
8. The Partners will comply with the agreed Conflicts of Interest Policy Statement as may be amended from time to time by the agreement of the Integrated Commissioning Board.

PART TWO – TERMS OF REFERENCE OF INTEGRATED COMMISSIONING BOARD

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PART THREE – TERMS OF REFERENCE OF THE TRANSFORMATION BOARD

SCHEDULE 3 – FINANCIAL FRAMEWORK

FINANCIAL FRAMEWORK

Between

City and Hackney Clinical Commissioning Group and

The Mayor and Commonalty and Citizens of the City of London

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Defined Terms

Defined terms in this Financial Framework shall have the same meaning as those give in the s75 Agreement. A selection of such defined terms (as well as other defined terms relevant for the Financial Framework) are included below for ease of reference:

Aligned Fund means budgets for commissioning prescribed services (as set out in Schedule 1 of the s75 Agreement) which will be managed alongside the Pooled Fund.

CCG – City and Hackney Commissioning Group, one of two partners to the Integrated Commissioning Fund and the s75 agreement

Council – City of London Corporation, one of two partners to the Integrated Commissioning Fund and the s75 agreement

DH – Department of Health

Financial Framework – (this document) describes the ground rules under which the financial decisions relating to the Integrated Commissioning Fund will be made.

Health and Wellbeing Board – established as a Council committee under s194 of the Health and Social Care Act 2012, the purpose of which is to promote more joined up delivery of services and involves oversight of achievement of the objectives of the integrated commissioning function; and oversight of proper governance of the integrated commissioning function

Integrated Commissioning Board – Committee in Common which has delegated decision making authority from CCG and Council to make decisions binding on both parties on use of the Integrated Commissioning Fund in accordance with its terms of reference and the s75 agreement.

Integrated Commissioning Fund means the total of the Pooled Fund and Aligned Fund.

Partners – the CCG and the Council are partners to the s75 agreement and the Integrated Commissioning Fund.

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

Pooled Fund Host means the Partner that will host and provide the financial administrative systems for the Pooled Fund and undertake to perform the duties for which they will be responsible, as set out in paragraph 7(4) and 7(5) of the Regulations

Section 75 agreement (s75) – section 75 of the NHS Act 2006: the legislation that allows the establishment of pooled funds between NHS bodies and local authorities at a local level.

SoDA – scheme of delegation of authorities, or equivalent, of the CCG, the Council and the Integrated Commissioning Board.

Transformation Board – means the Transformation Board set up in accordance with Terms of Reference included in the s75

Terms of the Financial Framework

1. CONSULTATION AND APPROVAL

1.1 The process for consulting on management and oversight of the Integrated Commissioning Fund and the Section 75 agreement (s75) agreement will include, as a minimum:

- Approval of the CCG (Governing Body)
- Approval of the Council, specifically the CSS Committee and P&R Committee, and (for the Better Care Fund) the Health and Wellbeing Board.

- 1.2 This Financial Framework is to be reviewed on an annual basis and may be varied in accordance with the provisions of the s75 agreement.
- 1.3 The process of consultation for the Financial Framework will be aligned with the development of the s75 agreement and the arrangements for the development of the Integrated Commissioning Fund. It forms a Schedule to the s75 agreement.
- 1.4 Approval of the inaugural Financial Framework will be by:
- the CCG (Governing Body)
 - the Council (Executive Cabinet)

2. **FREQUENCY OF REVIEW AND RENEWAL**

- 2.1 This Financial Framework will be reviewed and revised, as necessary on an annual basis. This review will involve the designated financial leads and governance leads of both Partners. The Integrated Commissioning Board will recommend approval of the reviewed Financial Framework to the:
- The CCG (Governing Body)
 - The Council
- 2.2 The Partners may, at some point in the future, agree to extend the period between formal review and variation of the Financial Framework. Any changes will be subject to approval as above.
- 2.3 Detailed guidance about specific aspects of this Financial Framework may be issued from time to time. This guidance will be approved by the Integrated Commissioning Board, or by specific groups or individuals as delegated.

3. **SCOPE OF THIS FINANCIAL FRAMEWORK**

- 3.1 This Financial Framework lays out the general rules and sets the scope for the management and expenditure of public sector funds originating from NHS and Local Government sources.
- 3.2 It supports the relationship between the Partners via the Section 75 Agreement and the use of Aligned Funds. It:
- Provides detail of the framework of the formal relationship with regard to the management of the Integrated Commissioning Fund;
 - Sets the expectation that the Partners will continue to work closely together; and with Providers, to ensure that the best quality care is provided and best value is achieved in the use of resources;
 - Recognises the statute and regulations under which the Pooled Fund is established i.e. section 75 of the National Health Services Act 2006 and NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.
- 3.3 This Financial Framework sets out the requirements and makes provision for governance and accountability of:
- The Integrated Commissioning Fund;
 - Authorities and responsibilities delegated from the Partners
 - Financial planning and management responsibilities;

- Budgeting and budgetary control, including forecasting.

3.4 This Financial Framework identifies the responsibilities of each Partner to:

- Support and facilitate the achievement of the objectives of the Integrated Commissioning Fund;
- Ensure that the objectives and functions of the Partners and of the Integrated Commissioning Fund are complementary and mutually supportive;
- Ensure due diligence and appropriate oversight of financial decisions;
- Ensure the achievement of the Partners' objectives.

Responsibilities

4. PARTNER RESPONSIBILITIES

4.1 The Partners have stated their commitment to developing Integrated Commissioning whilst ensuring the financial health of both Partners; and of other organisations in the local health and wellbeing economy.

4.2 The Partners recognise their obligation to comply with statute and regulations.

4.3 The Partners recognise that each Partner's ultimate responsibility for service provision and delivery is not changed. However, they will delegate decision making and administration, where this improves the way that services are commissioned and where it is feasible.

4.4 The Partners recognise specific responsibilities regarding services included within Integrated Commissioning:

- Obligations and commitments to the residents of; and patients registered within City of London;
- Obligations to the Provider community; delivering pace of change whilst creating a sustainable provider market.

5. RESPONSIBILITIES OF THE PARTNER ORGANISATIONS' LEADERSHIP

5.1 The Partners will agree and approve the strategic objectives for Integrated Commissioning. They will:

- Set the strategic objectives for the Partner organisation;
- Seek assurance that these are incorporated within the strategic priorities for Integrated Commissioning;
- Ensure that strategic objectives for integrated commissioning will be progressed through 2017/18 and annually thereafter, in line with the business planning timetable.

5.2 The Partners will approve the policy and performance framework (business plan) for Integrated Commissioning and will:

- Ensure the adequacy of the Integrated Commissioning function's business plan and alignment with the partners' plans
- Approve the adequacy of organisation, staffing and management of Integrated Commissioning

- Aim to have a harmonised business planning and monthly reporting timetable by Q1 of 2017/18 and going forward, such a timetable shall be available by Q3 of the preceding financial year.

5.3 The Partners will approve the authority and governance framework for Integrated Commissioning, including:

- Approving the key governance documents (where these are different from the Partner organisations' documents);
- Approve the use of the relevant Partners Standing Orders, Standing Financial Instructions, Schedule of Decisions Reserved, Scheme of Delegated Authorities etc. The Partners will endeavour to unify these where appropriate;
- Ensuring the performance of the Pooled Fund is scrutinised regularly and appropriately;
- Delivering scrutiny and pre-approval of significant new programmes and projects.

Governance documents are to be reviewed in accordance with what is specified within the relevant terms of reference (at least).

6. **RESPONSIBILITIES OF THE PARTNER ORGANISATIONS' AUTHORISED OFFICERS AND CHIEF FINANCIAL OFFICERS**

6.1 **Authorised Officer**

6.1.1 Each Partner is required to appoint a member of the senior management team to be the Authorised Officer for their organisation.

- Signing approval of certain changes to the s75 Agreement (as identified in the s75 Agreement);
- Ensuring the record of minutes of meeting of the Integrated Commissioning Board is maintained.

6.1.2 The scope of these roles will be subject to the delegations approved by each Partner.

6.1.3 Authorised Officers are to be members of the Integrated Commissioning Board.

6.2 **Chief Financial Officer**

6.2.1 The overriding responsibility of the Chief Financial Officers will be to gain assurance as to the satisfactory standard of financial management, accounting and reporting of the Integrated Commissioning Fund. Each Chief Financial Officer will:

- Ensure that the Integrated Commissioning arrangements are appropriate and sufficiently secure to safeguard public funds;
- Ensure that financial governance and internal controls conform to the requirements of regularity, propriety and good financial management; sufficient to deliver successful operations;
- Ensure that reporting of Integrated Commissioning on strategic, operational and financial performance, budgetary control and risk management is adequate and reliable.

6.2.2 The Council Chief Financial Officer will ensure that the specific obligations of the s151 officer are delivered in respect of transactions involving the funds of the Council.

- 6.2.3 The Chief Financial Officer of each Partner will ensure the adequacy of arrangements to deliver new services, programmes and projects.
- 6.2.4 The Chief Financial Officer of each Partner will report assurance to their respective Audit Committees.
- 6.2.5 The Chief Financial Officers shall operate any risk sharing pooling arrangement and management of any contingency sums as specified in this Framework.

7. RESPONSIBILITIES OF THE HOST PARTNER

- 7.1 The decision on the appointment of the Host Partner is agreed by both Partners, after assessment of the relative merits of each holding the role. **For the Pooled Fund the Council has been appointed as the Host Partner.** This appointment will be reviewed periodically and may be re-assessed in the light of developments at each Partner or determined by external developments.
- 7.2 The scope of role of the Host Partner is determined, in the first instance, by the decision to seek to minimise organisational change resulting from the development of the Integrated Commissioning arrangement. As a minimum, the Host Partner will deliver the regulatory requirements:
- Appoint the Pooled Fund Manager;
 - Deliver the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 7(4) and 7(5) requirements:
 - Accounts and audit
 - Managing the fund
 - Reporting to the partners and reporting frequency
 - Exercise NHS and health-related functions

8. RESPONSIBILITIES AND ROLE OF THE POOLED FUND MANAGER

- 8.1 The Pool Fund Manager is appointed by the Host Partner in accordance with requirements of the Section 75 Agreement and associated regulations.

Management of the Pooled Fund

- 8.2 Financial management of the Pooled Fund will be overseen by the Partners' Chief Financial Officers (CFOs) or equivalent.
- 8.3 The CFOs will lead a 'Finance Economy Group' comprising also of the Partners' CFOs. This group will be responsible for the strategic financial management of the Pooled Fund
- 8.4 A 'Task and Finish' group comprising of the Partners' deputy CFOs (or equivalent) will be responsible for the Pooled Fund operational financial management and reporting.
- 8.5 A summary of the responsibilities of the Finance Economy Group and Task and Finish Group are set out in the table below:

Finance Economy Group	Task and Finish Group
Maintaining an overview of all joint financial issues affecting the Parties in relation to the Services and the Pooled Fund.	Ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Commissioning Plans.
Ensure arrangements are in place in order that the Task and Finish Group provides all necessary information in time for the reporting requirements to be met.	Ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund and liaising with internal and external auditors as necessary.
Ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with the s75 Agreement.	Reporting to the Parties as required by the Integrated Commissioning Board and the relevant Commissioning Plans.
	Preparing and submitting reports to the Health and Wellbeing Board as required by it

8.6 The CFOs have responsibility for ensuring the Pooled Fund is adequately resourced in terms of finance support.

9. TERMINATION OF THE SECTION 75 AGREEMENT

9.1 The options for terminating the Section 75 Agreement are set out within the Section 75 Agreement.

9.2 This Financial Framework identifies the scale of risks that both Partners will accept, before considering the need to reduce the scale of the Integrated Commissioning Fund and/or terminate the Section 75 Agreement.

9.3 The Partners will agree mechanisms for entering emergency arrangements to reverse adverse trends, including:

- protocol for suspending the Host Partner's management arrangements for the Pooled Fund;
- structure of governance and management of the Section 75 Agreement or this Financial Framework in emergency measures.

9.4 The Partners agree that in the event that the financial forecast expenditure for the Integrated Commissioning Fund will exceed available resources (after application of any contingencies), a remedial action plan must be agreed by the ICB within 4 weeks and signed off by the two CFOs as providing assurance it will bring the fund back in to balance.

10. CESSATION OF THE POOLED FUND

10.1 Where the Pooled Fund is to be ceased, due to the termination of the Section 75 Agreement, the Partners must (amongst other obligations) comply with the Exit Plan. This may include considering the ownership of assets, and where particular liabilities and commitments will be apportioned. If the relevant Partner is not clearly identified, ownership will fall to the Partner acting as the Lead Commissioner. This applies to:

- Ownership of invested assets;
- Ownership of consequential service obligations.

10.2 Where the Section 75 Agreement is to be terminated due to the financial failure of one or both of the Partners, the Partners will agree the stages for realising the losses accumulated by the

Pooled Fund. The stages are:

- apportionment of financial risk;
- allocation and apportionment of financial risk as agreed between Partners;
- agreement of continuation of Services to Service Users.

The Partners acknowledge that they are public authorities, however “financial failure” in this context is interpreted to mean where the organisation is unable to provide viable recovery plans for both actual or forecast budgetary overspends or, where it cannot meet its financial obligations to its creditors. The Partners will need to both agree on whether a situation constitutes “financial failure” for the purpose of this section.

Scope and description of the Fund

11. SCOPE OF INTEGRATED COMMISSIONING

- 11.1 The Partners have agreed that the scope of the Integrated Commissioning Fund shall be as set out in the Agreement.
- 11.2 Commissioning funding will be pooled or aligned, at service and/or contract level. All services will be mapped to a relevant work stream of the four defined in the Devolution Business Case. Services not exercisable under Section 75 of the 2006 Act and, those services which are outside the current scope of the Pooled Fund but managed alongside the Pooled Funds will be mapped into Aligned Funds. Contracts will only be split where there is value in disaggregating the commissioning arrangement and where this can be managed effectively. The Partners’ financial ledger record will be designed to allow for the pooled and aligned elements of the fund to be identified and disaggregated clearly.
- 11.3 Either Partner will be allocated the Lead Commissioner role for each service area, or contract, based on the most logical and effective design for the commissioning function.
- 11.4 The Partners agree in principle that further Services may be added to the Integrated Commissioning Fund; or specific Services may be removed from the Integrated Commissioning arrangements, in future. The decision and approval approach to this process will follow best practice in business case development, analysis and challenge.
- 11.5 The Partners recognise that the City of London community is included in the approach to planning for commissioning of care in City of London. The Partners will maintain a close relationship with City of London for the health related service needs of the City of London residents and registered patients.
- 11.6 The scope of the Integrated Commissioning Fund is illustrated in Appendix 1 and includes both the CCG and Council’s commissioning resources and costs of administering these.

12. BETTER CARE FUND

- 12.1 The BCF is an element of the wider Pooled Fund.
- 12.2 For clarity, the Pooled Fund established under the s75 Agreement shall not be designated as the Better Care Fund, however, the Better Care Fund forms part of the overall Pooled Fund.
- 12.3 The Pooled Fund is combined with the Aligned Funds to make up the total value of the Integrated Commissioning Fund.

13. VALUE OF THE INTEGRATED COMMISSIONING FUND

- 13.1 The Integrated Commissioning Fund comprises the Pooled Fund and Aligned Fund.

13.2 The details of the Pooled Fund and Aligned Fund are set out in Schedule 1 of the s75 Agreement.

13.3 The stated intention is to maximise the resources and the scale of commissioning to be included in the Integrated Commissioning Fund, as either a Pooled Fund or Aligned Fund. The prescribed services that cannot be pooled, as summarised in SI(2000)617: NHS Bodies and Local Authorities Partnership Arrangements Regulations includes:

NHS

- Acute surgical (unlikely to be able to disaggregate from hotel services);
- Emergency ambulance;
- Radiotherapy;
- Termination of pregnancies;
- Endoscopy;
- Laser treatments (class 4);
- Other invasive treatments.

Local Government

- Adoption services (Adoption & Childcare Act, 2003);
- Appointment of mental health professional (MHA, 1983);
- MHP powers of entry (MHA, 1983);
- Safeguarding children in care homes (Children Act, 1989);
- Appointment of director of social services (LASSA, 1970).

13.4 Where possible, these services will be included in the Integrated Commissioning Fund as an Aligned Fund.

14. RANGE OF THE POOLED FUND (CROSS BOUNDARY FLOWS AND ISSUES)

14.1 The populations served by the Pooled Fund are not consistent between the Partners; and essential Integrated Commissioning extends beyond the boundaries of the Pooled Fund. The Partners agree to seek to avoid creating unnecessary barriers or inequalities of access for Service Users. They agree to seek to avoid creating perverse incentives in the design of commissioned and provided Services.

14.2 Funding inconsistencies are created by:

- Council residents registered with GPs outside of the City of London area;
- Non-Council residents registered with GPs within the City of London;
- Individuals not resident; and not registered with GPs in the area requiring services within the scope of the Integrated Commissioning arrangement;
- Service Users who receive Services who are not physically present in the borough.

14.3 Unwanted barriers and incentives to commissioning are created by:

- The ‘footprint’ of the main providers of NHS services extending into neighbouring areas,
- 14.4 Potential service level boundaries and inconsistencies may also occur as a result of the range of local government commissioned services that remain with the Council.

Statutory reporting requirements

15. ANNUAL FINANCIAL ACCOUNTS

- 15.1 The value of the budget for the Pooled Fund, as described in the Section 75 Agreement, will be material to both Partners; and as such will be subject to appropriate levels of external and internal audit scrutiny.
- 15.2 The annual financial accounts of both Partners will be required to include sufficiently detailed notes of the financial performance and records of the Integrated Commissioning arrangement:
- The structure of reporting to be followed for a “Joint Operation”, such as this Integrated Commissioning arrangement, is prescribed by the International Financial Reporting Standards (IFRS) in IFRS11(Joint arrangements) and IFRS 12 (Disclosure of interests in other entities);
 - The Statement of Financial Performance of the formal Pooled Fund is to be reported in the Host Partner’s accounts and reflected in the other Partner’s accounts;
 - The financial performance of Aligned Fund is to be reported within the body of the relevant Partner’s accounts;
 - The financial performance of the entirety of the Integrated Commissioning Fund; and the associated risk share arrangement, is to be reported as an explanatory note in both Partners’ accounts.
- 15.3 Planning for accounts preparation and required audit arrangements will take account of:
- Timetables for producing the annual accounts, their audit and reporting requirements; recognising the earlier reporting deadlines for NHS accounts. It is acknowledged that Council reporting deadlines are susceptible to change;
 - The scope of required reporting, including the contribution to the CCG Annual Report; and to the Council Annual Report;
 - The evidence required to support the annual statement on governance; and for reporting any financial concerns with the Integrated Commissioning Fund;
 - The evidence required to support the Head of Internal Audit Opinion and the external audit Regularity Opinion.
- 15.4 The annual financial accounts will be delivered within the requirements of the financial regimes and rules of each Partner, specific to over and underspending:
- CCG – Resource Allocation Budgeting impact and treatment of over and underspends – impact carried forward into next year’s allocation;
 - Council – not allowed to carry forward overspend for the year. Overspending to be met from reserves, but more likely to be addressed through service reviews across the Council during the year.

16. **ARRANGEMENTS FOR AUDIT AND COUNTER FRAUD**

16.1 The Partners agree that they will seek a joint approach and joined up arrangements for the internal audit of the Integrated Commissioning function and associated budget resources:

- Access arrangements for both sets of (internal and external) auditors will be agreed as part of the annual audit planning and scoping exercise;
- Deliver combined assurance to the CCG and Council where possible;
- Deliver each Head of Internal Audit (HoIA) opinion and shared assurance for both Partner organisations.

16.2 In terms of the external audit legal and regulatory requirement:

- The Integrated Commissioning arrangements will represent a material and significant element of each Partner organisation's audit;
- The audit will address the Pooled Fund fully within the Host Partner's accounts, with the required narrative note in the accounts of other Partner;
- The audit will address the aligned elements of the fund within the accounts of the Partner with the originating budget, or the Partner to which the funds were transferred through s76 or s256 of the National Health Services Act 2006, if such transfers occur;
- A note will be included in the accounts of both Partners setting out the results; and the risk share impacts, for the entirety of the Integrated Commissioning Fund.

16.3 The assurances required for the sign off of the audit of both sets of financial accounts will be agreed between the external auditors.

17. **LOCAL COUNTER FRAUD AND SECURITY MANAGEMENT SERVICES (LCFSMS)**

17.1 NHS Protect has confirmed that its focus will continue to be on NHS resources. The Partners agree that coverage of counter fraud culture and issues within the Integrated Commissioning arrangement will be joined up, as far as is practicable:

- The CCG and Council will agree arrangements for sharing the approach to promoting the counter fraud culture; and for investigating and addressing instances of suspicion of illegal activity;
- The Council counter fraud functions will continue to be delivered by its internal audit provider and specific fraud team.

Budget Setting

18. **BUDGET SETTING GROUND RULES**

18.1 The Policy for commissioning through the Integrated Commissioning Fund is compatible with and delivers effectively the strategic priorities of both Partners.

18.2 Funds can only be used to commission prescribed services (as described in various legislation); and services that the Partners agree will contribute to the effective delivery of the commissioning priorities.

18.3 Delivery of a balanced outturn is a pre-requisite of commissioning decisions.

18.4 (Future Target) Budgets subject to specified limitations; and budget resource will be transferrable between the Partners, to enable optimum delivery of commissioned services and

ensure best value in the use of resources. This will be recognised within each Partners medium term financial strategy.

18.5 The Partners agree that the Integrated Commissioning Fund will be reviewed during 2017/18 and updated accordingly in recognition of national funding decisions of the Government and associated agencies together with funding decisions taken by the Council and CCG.

18.6 Commissioning decisions take account of the potential impact on services retained by the Partners.

18.7 Commissioning decisions are sensitive to the potential impact on the wider community of Providers.

19. **BUDGET SETTING METHODOLOGY**

19.1 Prior to the commencement of each financial year following the commencement of the s75 Agreement, both Partners need to be satisfied that the other Partner's methodology for setting the annual budget is robust and reliable. If they are not, the issue shall be escalated through the appropriate Dispute Resolution Procedure. Each Partner will agree the other's methodology for setting the inaugural budget contribution; and future years' budgets. The factors that will be considered include:

- Clarity of the Services to be included in the Integrated Commissioning arrangement and risk share (Pooled Fund and Aligned Fund);
- Verification of budget determined for each Service;
- Assumed and modelled trends in demand;
- Deliverability of the savings targets applied;
- Sufficiency of the budget applied (e.g. compared with previous year outturn).

19.2 The Partners will agree:

- A transparent approach to setting budgets shared between the Partners;
- Validation of the key assumptions and approaches used by each Partner to determine the budget;
- Plans for migration to a more consistent approach to budget setting and demand forecasting that recognises the modelling challenges specific to each organisation.

19.3 Both Partners recognise the risk to resources from unmet need and rationed Services from previous years.

20. **ACCURACY OF ACTIVITY PROJECTIONS, TRENDS AND INTERVENTIONS**

20.1 The CCG approach differs depending on services but is a combination of totals agreed in contract negotiations with Providers and detailed demand modelling taking in to account of known activity, trends and forecast growth.

20.2 The Council approach is based on cost and volume analysis of likely trends in demand for Services. As part of this, the Council will:

- Determine the access eligibility thresholds for health related services, as defined by the Care Act 2014 and any flexibilities allowed;
- Determine the charges to be levied against Service Users, where this is an option.

21. ACCURACY OF COST PROJECTIONS

21.1 The Council commissioning budgets will be recognised in gross value, as well as in net value:

- Other budgets, where costs are partially offset by income from fees and charges and grants, will be included at their net value in the risk share calculations.

21.2 The Councils scope to assess the eligibility thresholds for access to services; and to set fees for services, will be taken into account when negotiating relevant contracts.

22. ADDRESSING CONFLICTS IN BUDGET SETTING PRIORITIES

22.1 It is expected that the Integrated Commissioning budget planning process will not adversely impact on the other commissioning obligations of the Partner:

- The Partners' oversight and scrutiny functions will have the opportunity to challenge any changes proposed. Any proposed changes to the budget planning process including harmonising the timetables will need to be signed off by the CFOs of each of the Partners. Any conflicting elements will be fed through to each Partner's governing body or equivalent.
- The scheme of delegations will provide a level of control over the approval of changes;
- Arrangements will be adopted for administering proposals for significant re-engineering; and compliance with business planning and investment proposal discipline, including comprehensive consultation.

22.2 It is expected that changes in the strategic direction of the Partners will not impact adversely on each other, or on the commissioning obligations of the Integrated Commissioning function.

23. USE OF INTEGRATED COMMISSIONING FUNDS

23.1 As set out in the s75 Agreement, the Integrated Commissioning Funds shall only be used for Permitted Expenditure.

24. FUTURE BUDGET SETTLEMENTS

Risk to be addressed: Financial settlements and budget uplifts for future years are insufficient to meet rising demands and rising costs

Possible scenarios:

- Local Government grant funding from government (Revenue Support Grant) is projected to reduce significantly over the next 3 years. The main sources of funding will then be Council Tax and Business Rates;
- NHS funding earmarked for health related services (Better Care Fund) is expected to increase in the next years.
- The size and trend in the gap between the two funding streams over the next 5 years is not certain.
- Both Partners may be required to produce medium term efficiency plans in order to receive multi-year financial settlements.
- NHS England may impose the need for the CCG to provide financial support to other areas within the North East London health economy.

24.1 Principles of response to these risks and future pressures:

- As far as is possible, the value of the single budgets will be kept at their equivalent current value
- Treatment of remaining resource gaps is likely to be addressed as additional savings targets

24.2 Mitigations:

The Partners will agree a protocol for agreeing amendments to the budget setting model in subsequent years. This will include consideration of:

- Treatment of prior year overspends
- Treatment of efficiency savings delivered from previous years

25. **BOUNDARIES TO THE FUND**

25.1 Budget setting will take account of boundaries on a number of planes:

- Pooled Fund versus retained funds;
- Pooled Fund versus Aligned Funds;
- Non-resident patients registered with GPs in City of London;
- City of London residents registered with GPs outside of City of London;

25.2 Budget setting will also to take account of patients registered with GP Practices in the City of London area, whilst recognising that they are outside of the Integrated Commissioning Fund arrangement.

26. **FINALISING THE PRIOR YEAR POSITION**

26.1 Both Partners acknowledge that the financial performance of the relevant budgets in the current year should be regarded as a key indicator of future years' risks; and of the scale of the savings targets agreed between the Partners. The following constraints will need to be accommodated:

- Current year out-turn position will not be known until very late in the process.

26.2 The value of the Integrated Commissioning Fund will be based on the budget allocations

- Indicative savings targets will be identified by the Partners from time to time.

27. **TREATMENT OF HISTORICAL OVERSPENDS / UNDERSPENDS**

27.1 CCG would account for prior year deficit as a negative balance on the RAB (Resource Account Budgeting) settlement and a prior year surplus as a positive balance.

27.2 The Council cannot record a year-end deficit; and must fund remaining overspends from reserves. Overspends identified during the year are addressed through service reviews and rationalisation of the scale of non-mandatory services provided, offsets from underspent directorates, or by allocation from reserves at the year-end.

28. **PRIOR YEAR AND IN-YEAR OVERSPENDS / UNDERSPENDS**

28.1 The Partners recognise that differences in funding regimes and freedoms result in a different response to recorded "overspends":

- The CCG cannot carry "reserves" between years. Underspends and overspends are recognised within the annual resource allocation. Overspends in one year result in reduced

allocation in the next. The CCG can set a budget that delivers a planned overspent position, but is expected to achieve balance over a 3 to 5 year period.

- The Council cannot record an overspend at the year-end; and has to account for overspent budgets through its reserves. But the reserves are limited and should be replaced through budget targets set in the subsequent year.

28.2 The Partners agree, in principle, that they will use these differing “flexibilities” in a combined approach to maximise protection to the Integrated Commissioning function. Any unused contingency sums in the Pooled Fund must remain in the Pooled Fund hosted by the Council and will form reserves available to the Integrated Commissioning Board in subsequent years.

28.3 Further detail in relation to the CCG Contingency Fund is set out in section 33 of this Financial Framework. Other contingencies available to the Partners may be provisions made from the balance sheet or accumulated reserves. Release of such contingencies shall be made following the approval of the relevant Partner that holds such contingency.

29. **TREATMENT OF UNDERLYING AND EMERGING DEFICIT:**

29.1 Underlying and emerging deficit will include:

- Unidentified deficit:
 - unmet need
 - unmet demand
- Identified deficit:
 - undelivered services
 - service delivery backlogs
 - waiting lists

29.2 The CCG and the Council agree to work together to identify responses to the threat of emerging unfunded demand pressures and growth in demand.

29.3 The first point of responsibility for addressing pressures through contracts will be the Lead Commissioner. A Lead Commissioner will be identified for each Service Contract.

29.4 Escalation arrangements will be agreed for Service Contracts and commissioning arrangements that appear to be overheating and indicate future losses. See section 9.3 of the Financial Framework.

30. **SETTING SUBSEQUENT YEARS' BUDGETS**

30.1 The Section 75 Agreement specifies that the Integrated Commissioning Fund will be subject to annual review. This will be alongside the medium term financial plans of each Partners.

30.2 The Partners agree to a shared approach to:

- Identifying and agreeing future trends in demand and service design;
- Checking sufficiency of growth funding;
- Identifying and accounting for changes in cost pressures;
- Identifying and agreeing savings and efficiency approaches. Ensuring the robustness of planned savings programmes;

- Setting criteria for values for savings targets:
 - Minimum and maximum allowed;
 - Reality checked and deliverable.
- 30.3 The Partners agree to design a robust business case approach to service redesign; and to its financial impact. This will involve:
- Robust analysis of overall savings projections;
 - Robust analysis of comparative impact on Partners; and recognition of the need to reflect (compensate) for these impacts in future budget setting;
 - Agreement on the impact on the risk share.
- 30.4 Where the CCG is able to drawdown funds from prior year RAB surpluses, these funds shall only be committed by the Integrated Commissioning Board to support its programme of work. Such funds can only be applied non-recurrently.
- 30.5 Where CCG Contingency Funds have been applied to meet in year cost pressures, it is the responsibility of the Integrated Commissioning Board to ensure effective measures are put in place to restore the CCG Contingency Funds in the following year.

Risk Sharing Framework

31. SCENARIOS OF OPERATIONAL PRESSURES AND RISKS IN BUDGET SETTING

31.1 The following sections set out a range of scenarios of risk:

Pressures on Partners' budgets

(A) Risk: Pressures within either Partner which results in shortfall in growth funding and/or increased savings targets

Possible scenarios are:

- Shifting priorities in the Council from other directorates and services;
- Internal pressure on overall CCG position resulting in pressure on budget allocation for City of London patients;
- Changes in targets set (externally) for performance in specific service area(s) within the Integrated Commissioning Fund.
- Increased savings targets set (externally).

Principles of response to these risks and future pressures:

- Impacts due to shifts in internal policy and priority have to be discussed by both Partners
 - Partners have to agree on how and when to apply accumulated savings;
- Impacts due to external policy and target changes to be regarded as required changes; and partners to agree response
 - Accumulated savings can be applied to offset, but need to recognise limited resource

(B) Risk: Available resources and budgets do not address current demand

Possible scenarios are:

- Growth rates in demand for services exceed available funding increase;
- New commissioning arrangements and single approach to commissioning identifies previously un-met need;
- Providers are carrying backlogs in activity that need to be delivered and need to be funded.

Principles of response to these risks and future pressures:

- The Integrated Commissioning function must seek to achieve a balanced financial out-turn;
- Providers of services will be encouraged, including through contracting, to manage service delivery costs within the allotted amount;
- Where possible, Services will be prioritised and needs assessed. Non-statutory services may be withdrawn, if impact is less significant than effect of rationing funds to areas of demand growth. Service rationing will not be organisation specific;
- Funds will be made available to promote more effective and streamlined provision of Services.

Savings targets, reserves and contingencies

(A) *Risk: Efficiency savings targets applied within budgets are undeliverable*

Possible scenarios are:

- A Partner is unable to show persuasive plans for achieving the savings expectations;
- Savings target exceeds sensible levels;
- Savings proposals would have an adverse and costly effect on other elements of the overall service delivery.

Principles of response to these risks and future pressures:

- Agreed process for identifying efficiency savings targets:
 - From service delivery re-design;
 - From QIPP expectations;
 - From benefits expected of merged commissioning;
 - From share of organisation's overall target;
- Agreed approach to identifying benefit shares with Providers.
- Agreed process for verifying likelihood of delivery of the savings targets:
 - Arrangements for assessing schemes to deliver;
 - Risk assessment for schemes; and response to higher risk proposals.
- Agreed arrangements for sharing the risk of under-delivery of efficiency savings targets;
- Arrangements for allowing late amendments to budgets and savings target:
 - E.g. QIPP schemes determined late.

(B) Risk: Insufficient resources to allow for a contingency or reserve to be set

Principles of response to these risks and future pressures:

- Partners will agree rules specifying whether contingency (both recurrent and non-recurrent) is a required element of the annual budget; and what this level is:
 - Proportion of annual total allocation designated to contingency target to be agreed;
 - Arrangements for agreeing contingency that is lower than the agreed target;
- Partners agree proposed treatment of any reserves brought into the Integrated Commissioning Fund:
 - Budgeted from savings in previous year(s);
 - Agreement of priorities and triggers for calls upon reserves;
- Treatment of unspent contingency, or other underspend of the total budget to be determined by the Partners:
 - Proportion, or target value to retain within the Integrated Commissioning Fund;
 - Treatment of any underspend to be returned to the Partners;
- Agreement on accounting for reserves. The CCG is unlikely to be able to report resource balances to carry forward:
 - But, the CCG would report the net position across the whole. The performance of City and Hackney and the rest of the CCG may, in total, allow for shadow reserves to be identified for the City of London element.

32. GOVERNANCE OF SERVICE REDESIGN

32.1 The Partners will agree a protocol for developing service re-design. Elements will be delivered within the Integrated Commissioning Strategy of the Integrated Commissioning Board. It will involve a formal project management procedure for planning significant changes in service delivery design, which:

- Identifies resource implications;
- Identifies staffing implications;
- Assesses the impact on commissioning intentions:
 - And status of agreements with providers;
- Assesses the impact on Service Contracts:
 - Potential differential share of savings between the CCG, the Council and the Provider;
 - Potential for budget shift impact in advance of risk share arrangement;
- Delivers alignment with wider service design agenda.

32.2 Formal approval arrangements will be implemented, involving both Partners and requiring formal sign-off of projects

32.3 The Partners will agree the approach to monitoring of the impact on budget allocations:

- Linked to potential recognition of impact in budget planning;

- Impact on financial risk share.

33. **CCG ACUTE CONTINGENCY**

- 33.1 The CCG will apportion some contingency budget which will be earmarked for CCG related pressures and risks. This is defined as the CCG Contingency Fund in the s75 Agreement. The CCG Contingency Fund will cover in-year cost pressures including acute contract over performance and managing any budgetary gaps that emerge.
- 33.2 The CCG Contingency Fund will not include the 0.5% unallocated strategic risk reserve required by NHS England as part of a system-wide NHS risk management approach.
- 33.3 Use of the CCG Contingency Fund will require approval by the CCG Chief Finance Officer. The CCG CFO will determine the apportionment of the CCG Contingency Funds between the Pooled Fund and the Aligned Fund at the start of each Financial Year, based on an analysis of risks.

The CFO may, at their discretion, extend the use of the CCG Contingency Funds sitting in the Aligned Fund to the Pooled Fund, especially if such action will minimise pressures on health, such as avoiding bed blockage. The CCG Contingency Funds will not be used outside of the scope of the Pooled Fund and Aligned Fund.

- 33.4 Where CCG related budget pressures are unable to be contained within the totality of CCG's Pooled budgets, the CCG CFO must inform the Integrated Commissioning Board, and the Integrated Commissioning Board must take immediate mitigating action at its next meeting to ensure the Fund is in balance.

Note: For 2017/18, no Local Authority contingency budget is included in the Pooled Funds.

34. **BUDGET VIREMENTS**

- 34.1 Budget virement means moving budgets between different budget lines. This process is designed to cover virements involving movement of budgets within the Pooled Funds (e.g. from one work stream to another or within a work stream from one service to another), or from Aligned Funds to Pooled Funds subject to approval from the relevant statutory body CFO.
- 34.2 The budget setting process aims to ensure that all budget holders receive realistic budgets at the start of the year in order that the business plan can be achieved. Nevertheless, there will inevitably be in-year changes, and this is where virement may be used.
- 34.3 There are occasions where virement are generally appropriate. These include:
- Adjustments to reflect changes that could not have been foreseen at the start of the year.
 - Where planned actions by managers mean that resources previously allocated for one purpose are no longer required for that purpose and are used for another agreed purpose.
 - Movement of Reserve budget to fund specific initiatives or mitigate budgetary risks where agreed by the Party funding the reserve.

34.4 Virement Rules and Processes

- A virement is not permitted from non-recurrent to recurrent expenditure
- A Virement is not permitted where the CCG or Council would be committed to additional recurrent funding in excess of commitments agreed within the CCG or Council's operating plan
- Virements within the Pooled Funds must be approved by the CFO/Finance Director for the relevant Partner seeking to make the budget change
- Virements to / from BCF parts of the Pooled Fund must be agreed by the Partners and in accordance with BCF guidance and rules.

35. VALUE OF FINANCIAL RISK FROM THE OTHER PARTNER

- 35.1 The Partners recognise the high risk of overspending of the Integrated Commissioning Fund but there is a shared commitment for the maximum resources to be included within the Integrated Commissioning Fund.
- 35.2 The Partners will be responsible for the management of their own deficit arising within the level of resources which they contribute to the Integrated Commissioning Fund. The detail of how this works operationally is set out in Clauses 12.7 and 12.8 of the s75 Agreement.

Managing the transactions of the Pooled Fund

36. TRANSACTIONS WITHIN THE POOLED FUND

- 36.1 Funding management arrangements, at the transaction level, will be designed in line with the principle of limited change and aim for consistency with the administrative approach of the previous year: Where practicable funds will remain with the respective Partner; and relevant transactions will be handled by them. If required, to fulfil specific s75 Pool rules, recharges will be applied to ensure that the entirety of the Pooled Fund record is accounted for within the Pooled Fund.
- 36.2 The mechanism of “cash” flow and contribution to the Pooled Fund is:
- Partner organisations will continue to access financial resources in the same way as they currently do: CCG draw down of funds; the Council transfer of cash. A regular reconciliation of transactions made by the Partners on behalf of the Pooled Fund shall be overseen by the CFOs and any net balance of the cash due to the Host Partner shall be enacted by the CFOs.
- 36.3 Expenditure from the Integrated Commissioning Fund:
- Contractual arrangements will be unchanged from the Partners’ existing arrangements, unless evolving integration necessitates redesign.
 - A Lead Commissioner will be identified for each contractual arrangement.
- 36.4 Specific arrangements and rules will be determined for the “direct payments” processes for Service Users (use of a holding bank account and “debit cards”).
- 36.5 Any potential impact of VAT regime differences will be reduced through the planned consistency of approach to:
- Identify the scale and scope of the issue;
 - Ensure that the correct VAT regime is applied to each transaction;
 - Identify NHS service elements versus health related service elements.
- 36.6 The Partners agree to assume a “fair proportions” contribution to the input of non-financial resources (staff, premises, equipment, support services etc.), in accordance with the existing arrangements. This assumption will be reviewed during the first year of the Integrated Commissioning approach.

Managing Financial Performance

37. BUDGET MANAGEMENT GENERAL ARRANGEMENTS

- 37.1 The starting principle is that the structure of the budget management and responsibility will evolve during 2017/18, rather than face a major re-structuring at the start of the year.
- 37.2 But the Partners expect to make clear and consistent progress, from the start of the financial year, towards a more joined up structure of budgetary control.
- 37.3 The financial regulations (SFIs, SoDA) of each Partner will be reviewed for consistency. Where required, the regulations will be amended to enable the proposed structures and responsibilities to be implemented.

Review of in-year budget allocation

- 37.4 The basic principle is that budget allocations to the Integrated Commissioning Fund will not change (in-year) once they have been agreed however agree that they will be reviewed during 2017/2018 and updated accordingly in recognition of national funding decisions of the Government and associated agencies together with funding decisions taken by the Council and CCG.
- 37.5 Resources, identified during the year, and specific to the services in the agreement and to the population served, will be adjusted accordingly. Examples include:
- Specific grants;
 - Funding from DH, NHS England, other government sources;
- 37.6 The Partners will agree a model whereby they retain the right to revisit allocations during the year provided that a minimum of three months' notice is given, unless both Partners agree otherwise (in writing)
- Risks arising from external sources (protocol for responding to pressures, faced by either partner, from external sources);
 - Risks arising from internal sources.

38. IN-YEAR FINANCIAL PERFORMANCE

Local operating rules

- 38.1 The Partners will implement administrative arrangements that will be based on existing arrangements, but will be developed, where beneficial, for the Integrated Commissioning function as a whole.
- 38.2 For individual schemes, the arrangements will reflect:
- Any legislative / funding restrictions or requirements
 - strategic priority restrictions
- 38.3 Reporting of performance (financial, contracts, quality etc.) will be delivered in terms of gross income and expenditure.
- 38.4 The forecasting approach for the Pooled Fund and the wider Integrated Commissioning Fund will be determined by the Partners.

Monitoring performance

38.5 The Partners will develop a model for monitoring monthly performance of the Integrated Commissioning Fund. This model will include:

- Actual and forecast expenditure and income;
- Arrangements for identified accruals for activity delivered;
- Monitoring of service backlogs.
- Cash transactions for receipts and payments.

Responding to overspend trends

Alerting Partners of the likely overspend

38.6 The Partners will develop an agreed approach to addressing trends towards overspending in the Integrated Commissioning Fund. Design of the tool for alerting partners of likely overspend will include:

- Triggers and thresholds;
- Agreed sensitivity measures;
- Trend analysis and alerts;
- Analysis of impact of/on related activities;
- Impact of progress along the annual timeframe – forecasting and sensitivity analysis over the medium term.

38.7 Escalation rules will address

- Scope for managing the situation including agreed delegations;
- Process for escalating to the other Partner.

The Partners' approach to responding to adverse trends will vary, depending on the value of the potential overspend and the progress along the annual timeline:

- differentiating response (scale, threshold etc.) according to progress through the financial year.

Managing potential overspends

38.8 Escalation arrangements for responding to overspends forecast through the year will include assessment of options for:

- Management of contracts (and contract adjustments);
- Management of demand;
- Service redesign.

38.9 The procedure includes arrangements for agreeing the response to; and flexibility allowed within the Integrated Commissioning Fund for changes in allocations, in-year:

- Both Partners options to curtail the Service at any point during the year.

38.10 Where elements of the trend to overspend are specific to one Partner, the Partners will agree:

- The priority of demand on available funds to offset overspends;
- The approach to allocating and apportioning risk (in year and forecast outturn) between the Partners.

38.11 Where elements of the trend to overspend exist within Integrated Commissioning elements i.e. where both Parties would otherwise separately contribute to the Service, the Partners will agree:

- The approach to allocating and apportioning risk between the Partners

38.12 The Partners will agree arrangements for emergency management of any recovery position, including:

- suspension of Host Partner's management of the Integrated Commissioning Fund;
- agreed amendments to the structure of governance and management of the Integrated Commissioning Fund in emergency measures.

39. **RESPONDING TO ANNUAL OVERSPENDS**

39.1 The Partners will develop arrangements for addressing Overspends not recovered at the year-end and/or projected in future years. These will include:

- Escalation thresholds for response, based on the value of the overspend;
- Mechanism of carry forward to next year's budget:
 - CCG accumulated loss;
 - The Council repayment to reserves (but more likely to have been addressed through reduction in service provision during the year);
- Apportion according to agreed risk share model for first element of overspend:
 - Split by % contribution to Pooled Fund;
 - Risk sharing limits set to identify maximum contribution to be made by either Partner;
- Allocate remainder according to overspend pattern, to responsible Partner:
 - In accordance with risk sharing agreement.

39.2 The Council's inability to carry-forward an Overspent position will be addressed through use of reserves, which will be recovered in the subsequent year(s).

40. **RESPONDING TO ANNUAL UNDERSPENDS**

40.1 The Partners will identify underspends as generated:

- By whole Pooled Fund;
- By specific Pooled Fund elements;
- By Partner responsibility.

40.2 Options for addressing underspends recorded at the year-end will include:

- Allocate to investment fund;

- Carry forward to next year's budget:
 - Legal restrictions (CCG RAB budgeting);
 - The Council scope to hold balance, but CCG to prove no draw-down in advance of need;
- Off-set against next year's budget;
- Return to Partners:
 - Mechanism for agreeing share of returns.

Other financial Considerations

41. DESIGN OF THE FINANCIAL LEDGER

41.1 Both Partners will design processes that deliver a clear audit trail of each element of the Integrated Commissioning Fund.

- Assurance on the accuracy and completeness of the records will be provided by the Partners;
- Assurance of compliance with s75 may be through a self-assessment and self-certification. But the Partners agree that this will be subject to an IA review, as a minimum.

42. FINANCIAL REPORTING RESPONSIBILITIES OF THE HOST PARTNER AND THE POOLED FUND MANAGER

42.1 The Partners will agree the arrangements for administering and managing the financial records of the Pooled Fund. Elements specific to the set-up of financial record include:

- Ledger and consolidations (developing the arrangement for combining the Integrated Commissioning Fund records of the Partners);
- Transactions (delivering the audit trail to show the transactions making up the Integrated Commissioning Fund record);
- Reporting.

42.2 The Partners will agree the financial performance reporting needs of each, including providing analysis and summaries of the financial performance of the Integrated Commissioning function, in accordance with the Partner organisations' requirements

- In accordance with timetables agreed by both Partners;
- Providing the details required by both Partners;
- Designed to meet the needs of the differing audience(s).

42.3 The Pooled Fund Manager will ensure the proper treatment specific aspects of the Pooled Fund and its transactions:

- Ring-fenced budgets, specific schemes and funding restrictions;
- VAT;
- Year-end treatment of surpluses;
- Audit.

- 42.4 The Pooled Fund Manager will ensure the provision of the annual return to Partners, identifying separately and in total: BCF and Pooled Fund
- Contributions to the Pooled Fund:
 - Expenditure from the Pooled Fund:
 - Treatment of the difference / risk share;
 - Detail for ring fenced schemes and restricted funds;
 - Reporting deadlines.

Requirements of partner organisations

- 42.5 The Partners will agree their respective requirements for the monitoring and reporting of the financial position:
- Financial contribution to the Integrated Commissioning Fund:
 - Expenditure and commitments;
 - Contract performance ;
 - Overall performance of the Integrated Commissioning Fund.
- 42.6 Assurance framework requirements:
- Sources of assurance;
 - Specific funding and ring fencing requirements in respect of appropriateness of spend.
- 42.7 Overview of management of the Integrated Commissioning Fund:
- Review arrangements;
 - Access to records, including audit access;
 - Ad hoc reviews.
- 42.8 And year-end requirements:
- Deadlines specific to NHS/LG and specific reporting requirements;
 - Accountable Officer / s151 Officer assurance requirements;
 - IFRS reporting requirement;
 - Governance statement requirements.

43. MANAGING THE CASH POSITION

- 43.1 The Host Partner will:
- Hold monies contributed to the Pooled Fund that are required for transactions generated from the Host Partner:
 - The timing of contributions will align to payment obligations;
 - Administer the payment processes for its own transactions;

- Administer the consolidation of the financial records of the Pooled Fund.

43.2 The Partners will adhere to the rules and restrictions applying to them:

- The CCG is required to limit cash draw-down to the monies required, when they are required:
 - Not allowed to draw excess cash;
 - Not allowed to earn interest, or investment income;
 - Not allowed to have a cash balance at the year-end;
- The Council is allowed to invest available cash to earn income on its own resource allocation:
 - The Council will determine how interest income is used; and is not obliged to include any part of that interest income in the Integrated Commissioning Fund.

43.3 Banking arrangements will reflect existing arrangements.

43.4 Transaction payments from the CCG and the Council will be unchanged from current arrangements. The Council should not suffer a reduced capacity to generate investment income from retained cash and investment balances. But, the Council will not be able to derive investment advantage through early draw-down of CCG funds.

44. **PAYMENT MECHANISMS**

44.1 The Partners acknowledge responsibility for paying all sums due to Providers, in compliance with contract terms.

44.2 The Partners will agree arrangements for making payments to Providers, such that Providers are not affected by any changes to the structure of commissioning from the Integrated Commissioning Fund.

44.3 The design of payment mechanism will ensure that the Integrated Commissioning Fund structure delivers the full process of receipt of invoice, confirmation of service delivery and standards compliance, confirming amount due to invoice amount, instructing payment.

44.4 Providers will not be affected adversely by any specific rules that apply to certain services managed through the Integrated Commissioning Fund.

44.5 Any specific arrangements for LG and NHS to comply with will be identified and addressed, as necessary.

45. **DIRECT PAYMENTS**

45.1 The Partners recognise the growing importance and impact of direct payments to Service Users for purchasing their own agreed packages of care.

45.2 The design of the resource allocation arrangements will deliver:

- Discipline over approval of proposed care plans and direct payments approach;
- Security of funding ahead of spend by Service Users (e.g. “debit card”, pre-approved spend)
- Approach to recovering unused funding from individual Service Users.

46. **INCOME OPPORTUNITIES**

46.1 **Grants and sponsorship**

46.1.1 The partners will seek to maximise uptake of opportunities of funding offered, including:

- Government Grant funding:
 - As an annual allocation;
 - Through one-off projects;
- Grants from other organisations;
- Sponsorship;
- Opportunities to charge for enhanced services commissioned.

46.2 **Chargeable health related services**

46.2.1 The Council will retain responsibility for assessing the contribution (to a provided social service) to be paid by Service Users.

46.2.2 The Council will retain responsibility for collecting the assessed contribution.

47. **VAT**

47.1 The Partners have set out terms relating to VAT in the main body of the s75 Agreement.

48. **CAPITAL INVESTMENT**

48.1 The financial arrangements for the Integrated Commissioning Fund will recognise and allow for the Council approach to delivering future service improvement through capital grants to achieve improved quality, lower cost accommodation for services:

- Disabled Facilities Grant

48.2 The Council will retain ownership of any assets that are to be retained.

48.3 The Council has the option to arrange on behalf of both Partners unsupported borrowing to support capital investment in the City of London economy.

49. **RESOURCES CONTRIBUTED BY PARTNERS**

49.1 Staffing, equipment, accommodation etc. resources provided by each Partner to the management and administration of the Integrated Commissioning Fund will be based, initially, on existing structures.

49.2 The Partners will agree the approach to ensuring a fair share of the cost of administering the Pooled Fund.

49.3 The Partners will identify the savings to be generated through the medium term plan to deliver greater levels of integration of CCG and the Council staff, to identify operational and financial benefits from integration; and will agree the resulting benefit share between Partners.

SCHEDULE 4 – INFORMATION FRAMEWORK

1. Background

This Information Framework provides guidelines as to the level of information to be shared between the Parties, for the purposes of facilitating effective Integrated Commissioning.

The Parties shall share information relating to the commissioning of Services by way of Services Contracts with Providers when acting as Lead Commissioner.

The Parties will also share information in order to help better understand financial issues that may be arising with regard to a particular Services Contract.

Whilst complying with their respective obligations under this Information Framework the Parties acknowledge and agree that any information sharing contemplated by this Information Framework shall take place subject to the terms of the Agreement, and specifically:

- i) Clause 6.7.9 of the Agreement, which sets out the obligation for the Lead Commissioner to provide the other Party with information as set out in this Information Framework; and
- ii) Clause 31 (Information Sharing and Data Protection).

2. Interpretation

In this Information Framework:

- i) the notification or provision of information to a receiving Party shall mean notification or provision of the information by the Lead Commissioner to that Party's Authorised Officer; and
- ii) references to any definitions, information or circumstances shall include references to the equivalent definitions, information or circumstances where the Lead Commissioner is entered into a contract by way of City Contract, CCG Contract or otherwise.

3. Variations

This Information Framework and the Parties' obligations contained herein may be varied in accordance with Clause 34.2.4 of the Agreement.

4. Obligations as Lead Commissioner

The capitalised terms used in this section are, except for where provided for in the Agreement, defined terms under the NHS Standard Contract, and shall be interpreted accordingly.

Notifications

Each Party acknowledges and agrees that where it is Lead Commissioner for any Services Contracts it shall notify the other Party:

If it receives or serves any of the following:

- a Change in Control Notification;
- a Notice of an Event of Force Majeure;
- a Contract Performance Notice;
- a Service Variation;
- a Variation;
- a notice in relation to a Suspension Event;
- an Exception Report;

- a Remedial Action Plan or Immediate Action Plan;
- notice of the appointment of an Auditor;
- a Material Sub-Contractor Change in Control;
- notice of a request for information under the FOIA, EIR or DPA (subject access request);
- notice in relation to the Health Service Ombudsman;

If it becomes aware of one of the following events occurring:

- a material breach of the Provider or Commissioners obligations under the Services Contract;
- a Suspension Event;
- a Provider Insolvency Event;
- a change in Consents;
- a Provider committing a Prohibited Act;
- a Data Breach or any Information Governance Breach;
- any circumstances that have a material and adverse effect on the ability of the Provider to provide the Services;
- any Provider default or Commissioner default (as contemplated by GC17.9 and GC 17.10 of the NHS Standard Contract);
- any breach of confidentiality obligations;
- any Information Breach;
- any publicity, coverage or publications which will both substantially and materially have a negative impact on either Party's or the Provider's reputation in relation to the Services or in the opinion of the Service Users

and provide information where requested by the other Party, in relation to the notification.

Disputes

The Lead Commissioner shall:

- advise the other Party of any matter which has been referred for Dispute and consult with the other Party where there is a material dispute, as part of that process; and
- notify the other Party of the outcome of any Dispute that is agreed by the Lead Commissioner or determined by Dispute Resolution.

Consultation

The Lead Commissioner shall consult with the other Party before attending:

- an Activity Management Meeting;
- a Contract Management Meeting; and
- a Review Meeting; and
- a Joint Activity Review;

and to the extent the Services Contract permits, raise issues reasonably requested by the other Party at those meetings.

Reports and Record Provision

The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Services Contract (including audit reports).

The Lead Commissioner shall provide the other Party with copies of any and all:

- CQUIN Performance Reports;
- CQUIN Reconciliation Accounts;
- Essential Services Continuity Plans;
- Immediate Action Plans;
- Incident Response Plans;

- JI Reports;
- Joint Activity Reviews;
- Succession Plans;
- Transition Arrangements;
- Review Records;
- Remedial Action Plans;
- Quality Requirements;
- Service Quality Performance Report;
- Safeguarding Policies;
- Activity Management Plans;
- Data Quality Improvement Plan (DQIP);
- Service Development and Improvement Plan (SDIP);
- Auditor's draft report;
- Auditor's Final Report; and
- HCAI Reduction Plan

Restrictions

The Lead Commissioner shall not:

- permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
- vary the Data Quality Improvement Plan (DQIP), Service Development and Improvement Plan (SDIP), Remedial Action Plan, Immediate Action Plan or any other Provider plans;
- agree (or vary) the terms of a Joint Investigation or associated Immediate Action Plan;
- suspend all or part of the Services;
- serve any notice to terminate the Services Contract (in whole or in part);
- agree (or vary) the terms of a Succession Plan or Transfer Arrangements,
- agree any substantive changes to the Services Contract in relation to an Auditor's final report;
- give any approvals under the Services Contract;
- agree to, or propose, any variation to the Services Contract (including any Schedule or Appendices);
- serve any notice.

without the prior approval of the other Party (acting through the Integrated Commissioning Board), such approval not to be unreasonably withheld or delayed.

SCHEDULE 5 – PERFORMANCE ARRANGEMENTS

1. INTRODUCTION

This Agreement between the City and the CCG establishes a framework for joining together the commissioning, provision, finances, performance management, and governance for the Services covered by the Agreement.

This Schedule outlines the arrangements for the performance management framework for the Agreement.

2. PURPOSE

This Schedule aims to ensure that Parties adopt an integrated performance management framework to ensure they plan, deliver, review and act on relevant information to commission improved outcomes for the people of the City of London.

This approach will ensure that the actions and investment of Parties will lead towards the achievement of national, regional and local performance targets as well as improving outcomes for the people of the City of London.

3. DEFINITION

Performance management is the overall process that integrates planning, action, monitoring and review. Performance management means knowing:

- What you are aiming for (e.g. purpose, mission, corporate aims, strategic goals etc.);
- What you have to do to meet these aims (e.g. business plan, project plan, etc);
- What the priorities are, and ensuring that there are sufficient resources (inputs);
- What the current performance is through monitoring and reporting; and
- How to review progress, detect problems and take action in a timely manner to ensure the outcome/target is achieved.

4. BENEFITS

Effective performance management enables relevant staff throughout the partnership to:

- Be clear what the strategic objectives are for commissioning; and
- Be clear what outcomes are to be delivered in any one Financial Year,

thereby ensuring better quality Services are delivered to local people.

5. OUTLINE FRAMEWORK

Essentially, the performance management framework consists of three processes in relation to joint commissioning, as set out below.

5.1 BUSINESS PLANNING PROCESS

- 5.1.1 Commissioning Plans that state the strategic objectives and key performance measures for a period of three to five Financial Years, and commissioning intentions for those objectives with timescales for achievement.

- 5.1.2 Services Contracts that state how performance will be monitored, reported, reviewed and necessary action taken, including performance indicators.

5.2 REPORTING AND REVIEW PROCESS

- 5.2.1 Overall progress against delivery of the outcomes in the Commissioning Plans.
- 5.2.2 Overall progress against delivery on the Services Contracts and identification of reasons for under performance.

5.3 PERFORMANCE IMPROVEMENT PROCESS

- 5.3.1 Ensuring action is taken where the continuation of current performance would lead to an outcome/target not being met.
- 5.3.2 Application of a range of tools and techniques to improve overall performance.

6. FRAMEWORK DETAIL

6.1 BUSINESS PLANNING PROCESS

- 6.1.1 It is the responsibility of the Parties to develop, and annually review, a Commissioning Plan on a rolling three financial year basis for the particular Service to be commissioned. Each strategy will be developed by adherence to the 'commissioning cycle' and in consultation with Service Users and carers.
- 6.1.2 It is the responsibility of the Parties to develop an annual Commissioning Plan. This Commissioning Plan will state the outcomes to be achieved, by when and what the risks are if they are not achieved.
- 6.1.3 Each outcome in the Commissioning Plan should be aligned to one of the strategic objectives. Any outcome that is not so aligned should be reviewed as to why it is being considered.
- 6.1.4 The relevant Party (whichever Party is agreed to be the Lead Commissioner for the relevant Services Contract) should then go through a process of developing, negotiating and agreeing a Services Contract with each Provider regarding the outcomes they are to deliver. It will be clear which Services are to be discontinued e.g. in the advent of a budget reduction.

6.2 Services Contracts with Providers should:

- 6.2.1 Take account of the requirements of the Better Care Fund Plan (if applicable) and the agreed Commissioning Strategies and annual plans of the City and the CCG;
- 6.2.2 Take account of legislative changes; and
- 6.2.3 Include a requirement on the Provider to develop a detailed service plan (e.g. stating what, by when, by who and the risk associated with not achieving the outcome) as to how the Provider intends achieving the said outcomes. It should also require the Provider to regularly measure progress against achieving the outcomes, to report this to the Lead Commissioner in a timely manner to an agreed frequency (e.g. monthly), and to provide a Performance Improvement Plan or Recovery Plan where financial under performance is significantly under target.
- 6.2.4 Include a process whereby outcomes may be added / removed as a result of changing needs.

6.3 REPORTING AND REVIEW PROCESS

- 6.3.1 Regular meetings should be held between the Host Partner and the Provider to review performance.
- 6.3.2 The Lead Commissioner will monitor Services, as part of a basket of measures that contribute to the delivery of key outcome, having regard to national, regional and local key performance indicators including:
 - 6.3.2.1 National ASCOF Measures;
 - 6.3.2.2 BCF Indicators (where relevant);
 - 6.3.2.3 Audit and inspection recommendations;
 - 6.3.2.4 Relevant Operational Plan indicators; and
 - 6.3.2.5 NHS Operating Framework targets.
- 6.3.3 These key indicators form part of a basket of performance measures. Activity and Financial indicators will be another part of the complete basket.
- 6.3.4 The basket of performance indicators will be monitored and reported to the Integrated Commissioning Board using, wherever possible, existing performance reports generated within either the City or the CCG, and making it clear where the areas of good performance and those of concern are, i.e. using a simple traffic light scheme with exception reporting on the key issues. Any other contractual key indicators will be added to the list of indicators. These will be for where the City has set specific key indicators for Services Contracts where the City is the Lead Commissioner.
- 6.3.5 The performance of all Providers should be reported, on a regular basis by the relevant Partner to the Integrated Commissioning Board.

6.4 PERFORMANCE IMPROVEMENT PROCESS

Where necessary the Lead Commissioner should require the Provider to undertake specific performance improvement initiatives where performance is significantly under target.

SCHEDULE 6 – BETTER CARE FUND

BACKGROUND

The Better Care Fund will form part of the Pooled Fund, however the Parties acknowledge and agree that the Pooled Fund will not be subject to the BCF Reporting Requirements and Governance – only the Better Care Fund elements of the Pooled Fund will be subject to those terms. For the avoidance of doubt, the Pooled Fund shall not be considered to constitute the Better Care Fund, however the Better Care Fund will be an element of the Pooled Fund.

The Parties acknowledge that this Schedule 6 will be updated by way of a variation following the publication of the of the Better Care Fund Guidance in 2019.

PART THREE – BCF REPORTING REQUIREMENTS AND GOVERNANCE

Reporting requirements

Reporting and monitoring of performance will be in line with NHS England reporting requirement and produced on a quarterly basis.

SCHEDULE 7 – EXIT PLANNING OBLIGATIONS

1. GENERAL ARRANGEMENTS

- 1.1 Upon termination of this Agreement (in whole or in part) the Parties agree to co-operate with each other in accordance with Clause 26.5.1 (Termination) of this Agreement, to ensure the orderly unwinding of the integrated and joint activities so as to minimise disruption to all Service Users and relevant staff, and to each commit sufficient resources to implement the Exit Plan.
- 1.2 For the avoidance of doubt:
 - 1.2.1 this Agreement may only be terminated (in whole or in part) in accordance with Clause 26 of this Agreement; and
 - 1.2.2 the contents of this Exit Plan are without prejudice to the provisions of this Agreement.

2. GUIDING PRINCIPLES

In carrying out the winding down of the integrated and joint activities the following guiding principles shall apply to the extent that they are appropriate and in accordance with applicable Law and any NHS or local authority guidance at the time the unwinding takes place.

For the avoidance of doubt, these principles will not apply to the extent that any matter has been dealt with under Section 3 below.

- 2.1 Stage 1:
 - 2.1.1 Exiting Party to notify both the other Party in accordance with Clause 26.1 (Termination) of this Agreement and the Integrated Commissioning Board of its intention to terminate this Agreement. Other Party to acknowledge exit notification; or
 - 2.1.2 Parties mutually agree in writing that the unwinding of this Agreement is in the best interests of Service Users.
- 2.2 Stage 2: Parties to determine the scope and nature of the exit requirements and establish an exit team with representatives from both parties who are reasonably familiar with the day-to-day functioning of this Agreement.
- 2.3 Stage 3: Parties to obtain approval/authorisation in accordance with their internal governance arrangements to initiate the unwinding process.
- 2.4 Stage 4: Parties to allocate relevant resources to the exit team in order to establish a detailed exit plan covering the extent of the Services to be unwound.
- 2.5 Stage 5: Parties to re-establish commissioning arrangements in accordance with their statutory duties or put in place arrangements for transfers to a third party.
- 2.6 Stage 6: The Parties shall agree the contents of any public announcement regarding the dissolution of the integrated and joint activities.
- 2.7 Stage 7: Notice of confirmation that this Agreement has been wound down in relation to all or part of the integrated and joint activities.

3. CONSEQUENCES OF TERMINATION APPLICABLE TO EXIT

- 3.1 Upon termination of this Agreement (in whole or in part), the following will apply in all instances:

- 3.1.1 Premises and assets shall be returned to the contributing Party in accordance with the terms of any leases, licences or other such applicable agreements;
- 3.1.2 Service Contracts: shall be dealt with in accordance with the provisions of Clauses 26.5.2, 26.5.3 and 26.5.4 of this Agreement;
- 3.1.3 ICB: shall continue to operate pursuant to Clause 26.5.5 of this Agreement, as applicable;
- 3.1.4 Overspends/Underspends: shall be dealt with in accordance with the provisions of Clauses 6.7.10, 12 and the Financial Framework.
- 3.1.5 Disputes: any disputes shall be dealt with in accordance with Clause 27 of this Agreement.
- 3.1.6 Data Protection: data shall be returned and / or destroyed in accordance with the plans set out in Schedule 8 (Data Processing Schedule) of this Agreement.

SIGNATURE PAGE to Exit Plan

SCHEDULE 8 - DATA PROTECTION SCHEDULE

1. Data Protection Officer details

1.1. The contact details of the City's Data Protection Officer are: Michael Cogher **[City to insert contact details]**

1.2. The contact details of the CCG's Data Protection Officer are: Keith James **[CCG to insert contact details]**

2. Processing, Personal Data and Data Subjects

Description	Details
<p>Subject matter of the Processing <i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i></p>	
<p>Duration of the Processing <i>[Clearly set out the duration of the processing including dates]</i></p>	
<p>Nature and purposes of the Processing <i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</i></p>	
<p>Type of Personal Data <i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]</i></p>	

<p>Categories of Data Subject <i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.]</i></p>	
<p>Plan for return and destruction of the data once the Processing is complete UNLESS requirement under union or member state law to preserve that type of data data <i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>	