



**Brighton & Hove  
City Council**

# **HEALTH & WELLBEING BOARD ADDENDUM 2**

**4.00PM, TUESDAY, 19 MARCH 2019**

**COUNCIL CHAMBER, BRIGHTON TOWN HALL**



# ADDENDUM

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Report of the Head of Legal Services, the Director of Partnerships and Commissioning Integration BHCCG and the Head of Adult Social Care Commissioning

*Contact: Barbara Deacon Tel: 01273 296805*  
*Ward Affected: All Wards*





*Although a formal committee of Brighton & Hove City Council, the Health & Wellbeing Board has a remit which includes matters relating to the Clinical Commissioning Group (CCG), the Local Safeguarding Board for Children and Adults and Healthwatch.*

Note: The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) was that the report had to be circulated to partners prior to publication.

Title:	Brighton & Hove Better Care Fund – Section 75 Agreement
Date of Meeting:	19th March 2019
Report of:	<p>Elizabeth Culbert            Head of Legal Services, Brighton &amp; Hove City Council  <a href="mailto:elizabeth.culbert@brighton-hove.gov.uk">elizabeth.culbert@brighton-hove.gov.uk</a></p> <p>Ashley Scarff            Director of Partnerships and Commissioning Integration BHCCG  <a href="mailto:ashley.scarff@nhs.net">ashley.scarff@nhs.net</a></p> <p>Andy Witham            Head of Adult Social Care Commissioning  <a href="mailto:andy.witham@brighton-hove.gov.uk">andy.witham@brighton-hove.gov.uk</a></p>
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Wards Affected:	ALL
<b>FOR GENERAL RELEASE</b>	
<b>Executive Summary</b>	
This report seeks approval to delegate authority to the Executive Director, Health	



and Social Care and Director of Partnerships and Commissioning Integration to extend the current s75 Agreement to govern the 2019-2020 Better Care pooled fund.

## **Glossary of Terms**

**BHCCG** – Brighton & Hove Clinical Commissioning Group

**BCF** – Better Care Fund

**IBCF** – Improved Better Care Fund

**HWB** – Health & Wellbeing Board

**NHSE** – National Health Service England

## **1. Decisions, recommendations and any options**

- 1.1.1 That the Board notes the update in relation to Better Care Fund Proposals for 2019/2020 as set out in paragraph 2.6 of the report;
- 1.1.2 That the Board authorises the Executive Director Health and Adult Social Care and the Director of Partnership and Commissioning Integration to finalise and enter into a variation to the Section 75 Partnership Agreement for the commissioning of health and social care services from the Brighton & Hove Better Care Fund to cover the period 2019-2020.

## **2. Relevant information**

- 2.1 The Health and Wellbeing Board on 14 November 2017 authorised the Council and the then CCG Chief Operating Officer to enter into a new s75 Agreement for the commissioning of health and social care services from the Brighton & Hove Better Care Fund to cover the period 2017-2019. A copy of the Agreement is attached at Appendix 1.
- 2.2 Since the Agreement was signed, the Board has received update reports on a regular basis, subject to reporting dates to NHS E. The last reports were 11<sup>th</sup> September 2018 and 29<sup>th</sup> January 2019. These reports highlighted both the successes achieved and challenges still faced. The successes include the reduction in delayed transfer of care, reduction in admissions to hospital as well as providing more aids and adaptations to maximise independence and enable residents to remain at home. The challenges include the financial

pressure and adequate step down beds. The next progress report is due to be reported to the Board in June 2019.

2.3 The council and CCG wish to continue with the current programme of work for 2019/2020. The reasons for this are both national and local.

2.4 Nationally there is a lack of clarity over what may happen with the BCF and IBCF after 2020. Locally work has been done to integrate services, as required by national policy, where it makes sense to better meet residents needs. The Board has had recent reports updating them on the Health & Wellbeing HUBS and the Integrated Care Partnership. Work also needs to be done to review the BCF programme locally to ensure we are ready for either a continued BCF or new funding regime. Given this having stability in 2019/2020:

- would enable this review to take place to ensure we reflect local need
- provide a framework to provide the necessary flexibility to adapt the programme to reflect potential changes in national policy and strategy.

2.5 The Section 75 Agreement provides a governance framework for the commissioning and delivery of the Better Care Fund and the management of budget and expenditure.

### Overview of funding contributions

2.6 The seven projects that are the focus of the 2017-2019 Better Care Fund Plan are set out below with a summary of their funding contributions for 2019/20, The Section 75 Agreement describes how any potential overspend or underspend will be identified, and any action required to bring expenditure back into line with budget.

### Draft Budget 2019-2020

Programme Areas	2019/20 Budget			
	CCG	BHCC	iBCF	Total
Increasing System Capacity	325,125	0	0	325,125
Integrated Discharge Planning	8,083,884	0	1,733,000	9,816,884
Protecting Social Care	5,353,890	1,889,097	0	7,242,987
Supporting Recovery & Independence	3,169,953	458,720	0	3,628,673
Person Centred Integrated Care	924,681	0	0	924,681
Dementia Planning	164,394	0	0	164,394

Homelessness	601,773	20,000	0	621,773
<b>Total</b>	<b>18,623,700</b>	<b>2,367,817</b>	<b>1,733,000</b>	<b>22,724,517</b>

### 3. Important considerations and implications

#### Legal:

- 3.1.1 As set out in the report, it is a requirement that the Better Care Fund is managed locally though a pooled budget. The power to pool budgets between the Council and the CCG is set out in the NHS Act 2006 and requires a formal Section 75 Agreement. Regulations prescribe the format and minimum requirements for a Section 75 Agreement and a template Better Care Fund Section 75 Agreement has been made available by the Department of Health and will be used for this purpose. An extension to the Section 75 Agreement is required as the existing Agreement expires in March 2020. The new agreement will reflect the new funding arrangements and priorities as set out in the Better Care Fund Plan 2019-2020.

Lawyer consulted: Elizabeth Culbert

Date: 11 March 2019

#### 3.2 Finance:

The Better Care fund is a section 75 pooled budget which totals £24.692m for 2018/19, including £3.483m Improved Better Care funding (iBCF). The CCG contributes £18.624m to the pooled budget and the Council contributes £6.068m including the iBCF. Any spend variance at outturn is to be presented to the Finance & Performance Board who will then make recommendations to the Better Care Steering Group on the appropriate risk share. We are in the process of setting the 2019/20 budget which will be completed in line with the NHS England timetable. The draft budget is within paragraph 2.6.

The financial performance of the Better Care fund will be regularly reported to the Health & Wellbeing Board.

Finance Officer consulted: Sophie Warburton

Date: 15/03/2019

#### Equalities:

- 3.3 Equality Impact Assessments will be developed in relation to individual commissioning processes carried out under the projects.

### 4. Supporting documents and information





Appendix 1: Copy BCF s75 2017 - 2019 Agreement

Appendix 2: Programme schedules



**Dated** \_\_\_\_\_ **2018**

**BRIGHTON & HOVE CITY COUNCIL**  
**and**  
**BRIGHTON & HOVE CLINICAL COMMISSIONING GROUP**

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**AGREEMENT FOR THE COMMISSIONING OF HEALTH  
AND SOCIAL CARE SERVICES FROM THE BRIGHTON &  
HOVE BETTER CARE FUND**

**SECTION 75 NATIONAL HEALTH SERVICE ACT 2006**

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**THIS AGREEMENT** is made on                day of                                2018

## **PARTIES**

- (1) **Brighton & Hove City Council** of Hove Town Hall, Norton Road, Hove BN3 2LS (the "**Council**")
- (2) **Brighton & Hove Clinical Commissioning Group** of Hove Town Hall, Norton Road, Hove BN3 2LS ((the "**CCG**")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of Brighton & Hove.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in Brighton & Hove.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a Pooled Fund for this purpose.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also a means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
  - a) improve the quality and efficiency of the Services;
  - b) meet the National Conditions and Local Objectives; and
  - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.
- (G) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

## **1 DEFINED TERMS AND INTERPRETATION**

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

**1998 Act** means the Data Protection Act 1998.

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

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

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

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

**Agreement** means this agreement between the Council and the CCG comprising these terms and conditions and including its Schedules and Appendices.

**Annual Report** means the annual report produced by the Partners in accordance with clause 20

**Approved Expenditure** means any expenditure approved by the Partners in writing or as set out in the Scheme Specification in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

**Best Value** means duty of Best Value under the Local Government Act 1999.

**Better Care Fund Quarterly Report** means the quarterly report produced by the Partners and provided to the Health and Wellbeing Board

**Better Care Fund 2015 Agreement** means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2015

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

**Better Care Fund Plan** means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund [as attached as Schedule 6].

**Better Care Fund Requirements** means any and all requirements on the CCG and Council in relation to the Better Care Fund set out in Law and guidance published by the Department of Health.

**Better Care Fund Steering Group** means the officer board responsible for review of performance and oversight of this Agreement as set out in clause 19.2 and Schedule 2 or such other arrangements for governance as the Partners agree.

**Better Care Fund Steering Group Quarterly Reports** means the reports that the Pooled Fund Manager shall produce and provide to the Better Care Fund Steering Group on a Quarterly basis

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

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

**Commencement Date** means 00:01 hrs on 1 April 2018.

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

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

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

**Data Protection Legislation** this includes:

- (a) The General Data Protection Regulation(EU) 2016/679, effective from 25<sup>th</sup> May 2018;
- (b) the Data Protection Act 1998 (DPA 1998);
- (c) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (d) the Regulation of Investigatory Powers Act 2000;
- (e) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699);
- (f) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;
- (g) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426); and
- (h) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable.

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

**Finance and Performance Board** – means the Board that shall monitor budget performance of the Better Care Fund and identify recommendations for action to the Better Care Fund Steering Group

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

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

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

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

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

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



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

**Host Partner** means the Partner that will host the Pooled Fund or the Non Pooled Fund as the case may be.

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

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

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

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

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

**Law** means:

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

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

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

**Local Objectives** means those as referred to in the "Agreed Scheme Specifications" in Schedule 1 to this Agreement.

**Loss** means all damage, loss(es), 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 National Guidance as are amended or replaced from time to time.

**National Guidance** means any and all guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately.

**NHS** means the National Health Service of the United Kingdom

**NHS England means** executive non-departmental public body of the Department of Health.

**NHS Litigation Authority means the** executive non-departmental public body, sponsored by the Department of Health and Social Care now known as NHS Resolution.

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

**Non Pooled Fund** means a non-pooled fund established and maintained by the Partners in accordance with the Regulations and in accordance with clause 9 of this Agreement.

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

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

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

**Permitted Expenditure** has the meaning given in clause 7.3.

**Personal Data** has the meaning given to that term in the Data Protection Legislation in force from time to time..

**Pooled Fund** means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations and in accordance with clauses 7 and 8 of this Agreement.

**Pooled Fund Manager** means such officer of the Host Partner as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with clause 7.

**Provider** means a provider of any Services commissioned under the arrangements set out in this Agreement including the Council where the Council is a provider of any Services.

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

**Sensitive Personal Data** and **Special Category Data** has the meaning given to that term in the Data Protection Legislation in force from time to time.

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

**Services Contract** means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme.

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

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

**Term** means the period of one year commencing on the Commencement Date and ending, for the avoidance of doubt on 31 March 2019.

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

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

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

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

- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2 TERM**

- 2.1 This Agreement shall come into force on the Commencement Date, and shall continue for the Term.
- 2.2 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners.
- 2.3 This Agreement supersedes the Better Care Fund 2015 Agreement without prejudice to the rights and liabilities of the Partners under the Better Care Fund 2015 Agreement.

## **3 GENERAL PRINCIPLES**

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

## **4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission Services. This may include one or more of the following commissioning mechanisms:
- 4.1.1 Lead Commissioning Arrangements;
  - 4.1.2 Integrated Commissioning;
  - 4.1.3 Joint (Aligned) Commissioning

4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

- 4.2 Where there are Lead Commissioning Arrangements and the CCG is Lead Partner, the Council delegates to the CCG and the CCG agrees to exercise on the Council's behalf the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 Where there are Lead Commissioning Arrangements and the Council is Lead Partner, the CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.
- 4.5 At the Commencement Date the Partners agree that the following shall be in place:
- 4.5.1 The following Individual Schemes under Lead Commissioning Arrangements with the Council as the Lead Partner:
- (a) Homelessness
- 4.5.2 The following Individual Schemes under Lead Commissioning Arrangements with CCG as the Lead Partner:
- (a) Dementia Planning
- 4.5.3 The following Individual Schemes with Joint (Aligned) Commissioning:
- (a) Increasing System Capacity
  - (b) Integrated Discharge Planning
  - (c) Supporting Social Care
  - (d) Supporting Recovery and Independence
  - (e) Person Centred Integrated Care

## **5 FUNCTIONS**

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.
- 5.3 The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1.
- 5.4 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for that Individual Scheme shall be completed and approved by each Partner in accordance with the variation procedure set out in clause 30, PROVIDED ALWAYS;
- 5.4.1 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.

- 5.4.2 The introduction of any Individual Scheme will be subject to business case approval by the Better Care Fund Steering Group.

## **6 COMMISSIONING ARRANGEMENTS**

### **General**

- 6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification
- 6.2 The Better Care Fund Steering Group will report back to the Health and Wellbeing Board as required by its terms of reference.
- 6.3 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 6.4 Each Partner shall keep the other Partner and the Better Care Fund Steering Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.5 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
- 6.5.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
- 6.5.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.)
- 6.6 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts.

### **Integrated Commissioning**

- 6.7 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:
- 6.7.1 the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 6.7.2 the Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

### **Appointment of a Lead Partner**

- 6.8 Where a new Individual Scheme is added to this Agreement the Lead Partner will be appointed by the Partners by agreement.

- 6.9 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
- 6.9.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
  - 6.9.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
  - 6.9.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
  - 6.9.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
  - 6.9.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
  - 6.9.6 where Services are commissioned using the NHS standard form contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
  - 6.9.7 undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;
  - 6.9.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
  - 6.9.9 keep the other Partner and Better Care Fund Steering Group regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

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

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain a Pooled Fund for revenue expenditure as set out in the Scheme Specifications. At the Commencement Date there shall be a single Pooled Fund in respect of this Agreement.
- 7.2 The Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to clause 7.4, it is agreed that the monies held in the Pooled Fund may only be expended on the following:
- 7.3.1 the Contract Price;
  - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
  - 7.3.3 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Better Care Fund Steering Group and
  - 7.3.4 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Better Care Fund Steering Group.

("Permitted Expenditure")

- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of both Partners.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on any Default Liability unless this is agreed by both Partners in writing in accordance with clause 7.4.
- 7.6 Pursuant to this Agreement, the Partners agree that the CCG shall be the Host Partner for the purposes of the Regulations
- 7.7 The Host Partner shall be the Partner responsible for:
  - 7.7.1 the financial management and the reporting of all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
  - 7.7.2 providing the financial administrative systems for the Pooled Fund; and
  - 7.7.3 appointing the Pooled Fund Manager, subject to clause 8.1 and
  - 7.7.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **8 POOLED FUND MANAGEMENT**

- 8.1 The Partners agree that the “Chief Finance Officer” of the CCG shall act as Pooled Fund Manager for the purpose of section 7(4) of the Regulations
- 8.2 The Pooled Fund Manager shall have the following duties and responsibilities:
  - 8.2.1 the day to day operation and management of the Pooled Fund;
  - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
  - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
  - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
  - 8.2.5 reporting to the Better Care Fund Steering Group as required by this Agreement and by the Better Care Fund Steering Group;
  - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
  - 8.2.7 preparing and submitting to the Better Care Fund Steering Group Quarterly Reports within a reasonable time (or more frequent reports if required by the Better Care Fund Steering Group) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Better Care Fund Steering Group to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) complying with any reporting requirements as may be required by relevant National Guidance and/or international guidance and reporting standards;



8.2.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports within a reasonable time referred to in clause 8.2.7 above to the Health and Wellbeing Board.

8.3 In carrying out their responsibilities as provided under clause 8.2, the Pooled Fund Manager shall:

8.3.1 have regard to National Guidance and the recommendations of the Better Care Fund Steering Group; and

8.3.2 be accountable to the Partners for delivery of those responsibilities.

8.4 The Better Care Fund Steering Group may agree to amending the allocation of the Pooled Fund between Individual Schemes provided this accords with the relevant financial rules and/or regulations.

## **9 NON POOLED FUNDS**

9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of regulation 7 of the Regulations.

9.2 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:

9.2.1 which Partner shall be the Host Partner of the Non-Pooled Fund

9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.

9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.

9.4 Both Partners shall ensure that any Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification

9.5 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:

9.5.1 the NHS Functions funded from a Non-Pooled Fund are carried out within the CCG Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and

9.5.2 the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

## **10 FINANCIAL CONTRIBUTIONS**

10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 1 and referred to in Schedule 3.

10.2 The Partners shall use reasonable endeavours to agree by 31<sup>st</sup> January 2019 draft budgets for the following financial year.

10.3 With the exception of clause 13, no provision of this Agreement shall preclude the Partners from making additional non-recurrent contributions to the Pooled Fund from time to time by mutual agreement. Any such additional contributions shall be explicitly recorded in Better Care Fund Steering Group minutes and recorded in the budget statement as a separate item.

## **11 NON FINANCIAL CONTRIBUTIONS**

- 11.1 The Partners agree to set out in a schedule by 30th September 2018 the non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support, legal, procurement and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).
- 11.2 The Partners agree to keep the non-financial contributions under review and to include the Schedule of non-financial resources in the annual review of this Agreement as specified in clause 20.

## **12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS**

### **Risk share arrangements**

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

### **Overspends in Pooled Fund**

- 12.2 Subject to clause 12.3, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to 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 it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Better Care Fund Steering Group in accordance with clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend, the Pooled Fund Manager must ensure that the Better Care Fund Steering Group is informed as soon as reasonably possible and the provisions of Schedule 3 shall apply.

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

- 12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund, that Partner shall as soon as reasonably practicable inform the other Partner and the Better Care Fund Steering Group.
- 12.6 Where there is a Lead Commissioning Arrangement, the Lead Partner is responsible for the management of the Non-Pooled Fund. If the Lead Partner forecasts an Overspend then the Lead Partner shall as soon as reasonably practicable inform the other Partner and the Better Care Fund Steering Group.

### **Underspend**

- 12.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Schedule 3 shall apply. Such arrangements shall be subject to the Law and the standing orders and standing financial instructions (or equivalent) of the Partners.

## **13 CAPITAL EXPENDITURE**

- 13.1 Except as provided in clause 13.3, neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or Services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners.
- 13.2 If a need for capital expenditure is identified this must be agreed by the Partners.
- 13.3 The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

#### **14 VAT**

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

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

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.
- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.
- 15.3 The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

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

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Better Care Fund Steering Group.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this clause 16. the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
- 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
- 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its

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

- 16.4 Neither Partner shall be liable to the Other Partner for claims by third parties arising from any acts or omissions of the Other Partner in connection with the Services before the Commencement Date.
- 16.5 Each Partner shall ensure that they maintain policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of any Loss shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement)
- 16.6 Each Partner shall at all times take all reasonable steps to minimise and mitigate any Loss for which the Other Partner is entitled to bring a claim against the other pursuant to this Agreement.

### **Conduct of Claims**

- 16.7 In respect of the indemnities given in this clause 16:
  - 16.7.1 the Indemnified Partner shall give written notice to the Indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
  - 16.7.2 the Indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the Indemnified Partner, the Indemnifying Partner shall consult with the Indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the Indemnified Partner informed of all material matters.
  - 16.7.3 the Indemnifying and Indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

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

- 17.1 The Partners shall provide the respective Services or procure that they are provided and shall be accountable to the other Partner for the benefit of Service Users:
  - 17.1.1 To ensure the proper discharge of the Partners' Functions;
  - 17.1.2 with reasonable skill and care, and in accordance with best practice guidance;
  - 17.1.3 in accordance with its standing orders or other rules on contracting; and
  - 17.1.4 in accordance with all applicable Law.
- 17.2 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective standing orders and standing financial Instructions).
- 17.3 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partner will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.4 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its

services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.

17.5 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

## **18 CONFLICTS OF INTEREST**

18.1 The Partners shall comply with the policy for identifying and managing conflicts of interest as set out in Schedule 7 of this Agreement.

## **19 GOVERNANCE**

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

19.2 The Partners have established a Better Care Fund Steering Group which will:-

- Provide system wide leadership and accountability for delivery of the Better Care Agenda across Brighton & Hove health and care economy;
- Be accountable to the Health and Wellbeing Board;
- Receive reports in relation to Individual Schemes on a monthly basis on the following aspects:-
  - Progress against milestones;
  - Risks and issues;
  - Dependencies;
  - Benefits;
  - Use of resources/budget against plan.

19.3 The Better Care Fund Steering Group is based on a joint working group structure. Each member of the Better Care Fund Steering Group shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Better Care Fund Steering Group to carry out its objects, roles, duties and functions as set out in this clause 19 and Schedule 2.

19.4 The governance arrangements in relation to this agreement and the terms of reference for the Better Care Fund Steering Group shall be as set out in Schedule 2 and may be amended or varied by written agreement from time to time.

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

19.6 The Finance and Performance Board shall be responsible for the financial management set out in clause 12 and Schedule 3.

19.7 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.

## **20 REVIEW**

20.1 The Partners shall produce a Better Care Fund Quarterly Report within 30 days of the end of each Quarter which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board

- 20.2 Save where the Better Care Fund Steering Group agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement, the Pooled Fund and any Non Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.3 Subject to any variations to this process required by the Better Care Fund Steering Group, Annual Reviews shall be conducted in good faith.
- 20.4 The Partners shall within 20 Working Days of the Annual Review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Better Care Fund Steering Group within a reasonable time.
- 20.5 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

## 21 COMPLAINTS

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

## 22 TERMINATION & DEFAULT

- 22.1 Without Prejudice to other rights and remedies at law, and unless terminated under clause 22.2 or 22.3, either Partner may terminate this Agreement prior to the end of the Term, by giving the other Partner not less than three Months’ notice in writing, provided always that;

22.1.1 such termination shall not take place prior to the termination or expiry of all Individual Schemes and all Better Care Fund requirements continue to be met.

- 22.2 Either Partner (for the purposes of this clause 22.3, the First Partner) may terminate this Agreement in whole or part with immediate effect by the service of written notice on the other Partner (for the purposes of this clause 22.3, the Second Partner) in the following circumstances:

22.2.1 if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement under clause 22.3, if the Second Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner (Remediation Notice) to do so;

22.2.2 there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or

- 22.3 The provisions of clause 22.5 shall apply on termination of this Agreement.

- 22.4 Upon termination of this Agreement for any reason whatsoever the following shall apply:

22.4.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;

22.4.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

- 22.4.3 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing provided that the Lead Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
  - 22.4.4 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
  - 22.4.5 The Better Care Fund Steering Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
  - 22.4.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.5 The provisions of the following clauses shall survive termination of expiry of this Agreement: 22.5.1 Clauses 15, 16, 22.5, 26 and 28.

## **23 DISPUTE RESOLUTION**

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.
- 23.2 The Authorised Officer of each Partner shall meet in good faith as soon as reasonably possible and in any event within seven (7) days of notice of the dispute being deemed served pursuant to clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in clause 23.2 has taken place, the Council's chief executive and the CCG's accountable officer or nominees shall meet in good faith as soon as reasonably possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners.
  - 23.4.1 To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator.
  - 23.4.2 The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners).
  - 23.4.3 The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.5 Nothing in the procedure set out in this clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## 24 FORCE MAJEURE

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

## 25 CONFIDENTIALITY

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

## 26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS



- 26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 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 other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
- 26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

## **27 OMBUDSMEN**

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

## **28 INFORMATION SHARING**

- 28.1 The Partners will comply with the information governance protocol as agreed between the Partners from time to time.
- 28.2 Each Partner shall (and shall procure that any of its representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

## **29 NOTICES**

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
- 29.1.1 personally delivered, at the time of delivery;
  - 29.1.2 sent by facsimile, at the time of transmission;
  - 29.1.3 posted, on the second working day after the day of postage; and
  - 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).
- 29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:
- 29.3.1 if to the Council addressed to the Executive Director Adult Social Care and Health, at;
    - (a) Hove Town Hall, Norton Road, Hove, BN3 4AH

(b) Email: (robert.persey@brighton-hove.gov.uk)

29.3.2 if to the CCG addressed to the Director of Commissioning, at;

(a) Hove Town Hall, Norton Road, Hove, BN3 4AH

(b) (c.clark6@nhs.net)

### **30 VARIATION**

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

### **31 CHANGE IN LAW**

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

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

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

### **32 WAIVER**

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

### **33 SEVERANCE**

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

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

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

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

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

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

### **36 THIRD PARTY RIGHTS**

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

### **37 ENTIRE AGREEMENT**

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

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

### **38 COUNTERPARTS**

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

### **39 GOVERNING LAW AND JURISDICTION**

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

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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

Executed as a DEED by affixing the

COMMON SEAL of )  
 )  
**BRIGHTON & HOVE CITY COUNCIL** )  
 )

in the presence of:

---

Authorised Signatory

Signed as Deed by

**CLINICAL COMMISSIONING GROUP**  
acting by Chris Clark, director of  
Commissioning for Brighton and Hove  
CCG:

In the presence of:

.....

Name of witness:  
Address of witness:

Occupation of witness:

## SCHEDULE 1 – AGREED SCHEME SPECIFICATIONS

Programme Name	Commissioning Lead and Lead Officer(s)	Objectives
Increasing System Capacity	Joint (Aligned) Commissioning  Director of Commissioning, (CCG)/ Head of Adult Social Care Commissioning (BHCC)	<ul style="list-style-type: none"> <li>• Additional social worker investment to support 7 day week working</li> <li>• Increased social worker and mental health nurse resource in IPCT's</li> </ul>
Integrated Discharge Planning	Joint (Aligned) Commissioning  Director of Commissioning, (CCG)/ Head of Adult Social Care Commissioning (BHCC)	<ul style="list-style-type: none"> <li>• Enhancing the use of assistive technology to facilitate hospital discharge</li> <li>• The local authority, CCG and acute hospital are committed to a roll out of Home First. The additional resources identified will ensure sufficient assessment capacity to achieve these aims.</li> <li>• Falls and repeat incidents places increased demand on the acute hospital this initiative will enhance our preventative services in this regard.</li> </ul>
Protecting Social Care	Joint (Aligned) Commissioning  Director of Commissioning, (CCG)/ Head of Adult Social Care Commissioning (BHCC)	<ul style="list-style-type: none"> <li>• Increased investment in prevention of admission to hospital, earlier but well planned and supported discharge and rapid response services;</li> <li>• Development and investment in the Homefirst programme and utilisation of Trusted Assessors;</li> <li>• Further investment in adult social care to meet statutory need;</li> <li>• Support for the independent care sector to support timely discharge from hospital;</li> <li>• Maintaining investment in carers' services including meeting the requirements of the Care Act;</li> <li>• Further investment in advocacy services in response to the Care Act requirements from April 2015;</li> <li>• Further development and investment in Information &amp; Advice services to support the preventive approach and ensure compliance with Care Act requirements. 'My Life' Portal in place with links to carers and public self-assessment;</li> <li>• First phase of Service Redesign completed with increased social work capacity; social work services now aligned with GP clusters.;</li> </ul>

		<ul style="list-style-type: none"> <li>• Increased investment in Mental Health Social Work;</li> <li>• Increased investment in preventative services that delay or reduce potential current and future demand upon services.</li> </ul>
Supporting Recovery & Independence	<p>Joint (Aligned) Commissioning</p> <p>Director of Commissioning, (CCG)/ Head of Adult Social Care Commissioning (BHCC)</p>	<ul style="list-style-type: none"> <li>• Continued investment in Community Equipment Store</li> <li>• Commissioning a range of Carers Support Services including integrated Carers Hub service.</li> </ul>
Person Centred Integrated Care	<p>Joint (Aligned) Commissioning</p> <p>Director of Commissioning, (CCG)/ Head of Adult Social Care Commissioning (BHCC)</p>	<ul style="list-style-type: none"> <li>• Development of Better Care Pharmacists and Primary Care</li> <li>• Development of Care Navigation Service</li> <li>• Development of Befriending Neighbourhood Care Service</li> </ul>
Dementia Planning	<p>Brighton &amp; Hove Clinical Commissioning Group</p> <p>Director of Commissioning, (CCG)</p>	<ul style="list-style-type: none"> <li>• Build on dementia training programmes that have been delivered to the workforce, ensuring access to wider independent and community, voluntary and third sector partners.</li> <li>• Ensure that equitable access to care and support is available to people living with dementia in care homes and adopt best practice service models to ensure that people living with dementia and their carers in Brighton and Hove, receive timely services and support appropriate to their needs.</li> </ul>
Homelessness	<p>Brighton &amp; Hove City Council</p> <p>Head of Adult Social Care Commissioning (BHCC)</p>	<ul style="list-style-type: none"> <li>• Supporting delivery of single person homelessness services and supporting the delivery of the city wide Rough Sleeping Strategy</li> </ul>

## Better Care Fund Pooled Fund Contributions 2017-2019

	2017/18 Budgets			
Programme Areas	CCG	BHCC	BHCC (IBCF)	Total
Increasing System Capacity	321,534	0	2,246,990	2,568,524
Integrated Discharge Planning	7,761,589	0	2,053,660	9,815,249
Protecting Social Care	4,833,379	1,743,131	551,130	7,127,640
Supporting Recovery & Independence	3,050,726	217,510	241,220	3,509,456
Person Centred Integrated Care	1,512,419	0	0	1,512,419
Dementia Planning	209,016	0	0	209,016
Homelessness	587,338	20,000	0	607,338
<b>Total</b>	<b>18,276,000</b>	<b>1,980,641</b>	<b>5,093,000</b>	<b>25,349,641</b>

	2018/19 Budgets			
Programme Areas	CCG	BHCC	BHCC (IBCF)	Total
Increasing System Capacity	321,534	0	2,246,990	2,568,524
Integrated Discharge Planning	7,761,589	0	2,053,660	9,815,249
Protecting Social Care	4,833,379	1,743,131	551,130	7,127,640
Supporting Recovery & Independence	3,050,726	217,510	241,220	3,509,456
Person Centred Integrated Care	1,512,419	0	0	1,512,419
Dementia Planning	209,016	0	0	209,016
Homelessness	587,338	20,000	0	607,338
<b>Total</b>	<b>18,276,000</b>	<b>1,980,641</b>	<b>5,093,000</b>	<b>25,349,641</b>

## SCHEDULE 2 – GOVERNANCE

### 1 Better Care Fund Steering Group

1. The membership of the Better Care Fund Steering Group will be as follows:

- 1.1 Director of Commissioning, Brighton & Hove Clinical Commissioning Group (Co Chair):  
or a deputy to be notified to the other members in advance of any meeting;
- 1.2 Executive Director Health and Adult Social Care, Brighton & Hove City Council (Co Chair):  
or a deputy to be notified in writing to Chair in advance of any meeting;

Such other officers to be agreed between the Partners, which may include:-

Ramona Booth, Deputy Director of Performance Planning and Informatics	BHCCG
Jane Lodge, Head of Equalities, Engagement and Community	
Voluntary Sector Commissioning	BHCCG
Carl Burns, Programme Manager	BHCCG
Deborah Crisp, Deputy Chief Finance Officer	BHCCG
Nigel Manvell, Deputy Chief Finance Officer	BHCC
Andy Witham, Head of Adult Social Care Commissioning	BHCC
Grace Hanley, Assistant Director Health and Adult Social Care	BHCC
Cat Harwood-Smith, Head of Performance, Business Improvement and Modernisation	BHCC

### 2 Role of Better Care Fund Steering Group

- 2. The Better Care Fund Steering Group shall:
  - 2.1 Provide strategic direction on the Individual Schemes
  - 2.2 Receive the financial and activity information;
  - 2.3 Review the operation of this Agreement and performance manage the Individual Services;
  - 2.4 Agree such variations to this Agreement from time to time as it thinks fit;
  - 2.5 Review and agree annually a risk assessment;
  - 2.6 Review and agree annually revised Schedules as necessary;
  - 2.7 Request such protocols and guidance as it may consider necessary in order to enable teach Pooled Fund Manager to approve expenditure from a Pooled Fund;
  - 2.8 Cooperate with the Pooled Fund Manager in meeting reporting requirements in accordance with relevant National Guidance.



- 2.9 Report directly to the Health and Wellbeing Board on a Quarterly basis in accordance with relevant National Guidance.

### **3 Better Care Fund Steering Group Support**

The Better Care Fund Steering Group will be supported by officers from the Partners from time to time.

### **4 Meetings**

- 4.1 The Better Care Fund Steering Group will meet monthly at a time to be agreed following receipt of each Quarterly report of the Pooled Fund Manager.
- 4.2 The quorum for meetings of the Better Care Fund Steering Group shall be a minimum of one representative from each of the Partner organisations.
- 4.3 Decisions of the Better Care Fund Steering Group shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Better Care Fund Steering Group. If no unanimity is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.
- 4.4 Where a Partner is not present and has not given prior written notification of its intended position on a matter to be discussed, then those present may not make or record commitments on behalf of that Partner in any way.
- 4.5 Minutes of all decisions shall be kept and copied to the Authorised Officers within seven (7) days of every meeting.

### **5 Delegated Authority**

The Better Care Fund Steering Group is authorised within the limited of delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

- 5.1 To authorise commitments which exceed or are reasonably likely to lead to exceeding the contributions of the Partners to the aggregate contributions of the Partners to the Pooled Fund; and
- 5.2 To authorise a Lead Partner to enter into any contract for services necessary for the provision of Services under an Individual Scheme.

### **6 Information and Reports**

The Pooled Fund Manager shall supply to the Better Care Fund Steering Group on a monthly basis the financial and activity information as required under the Agreement.

### **7 Post-termination**

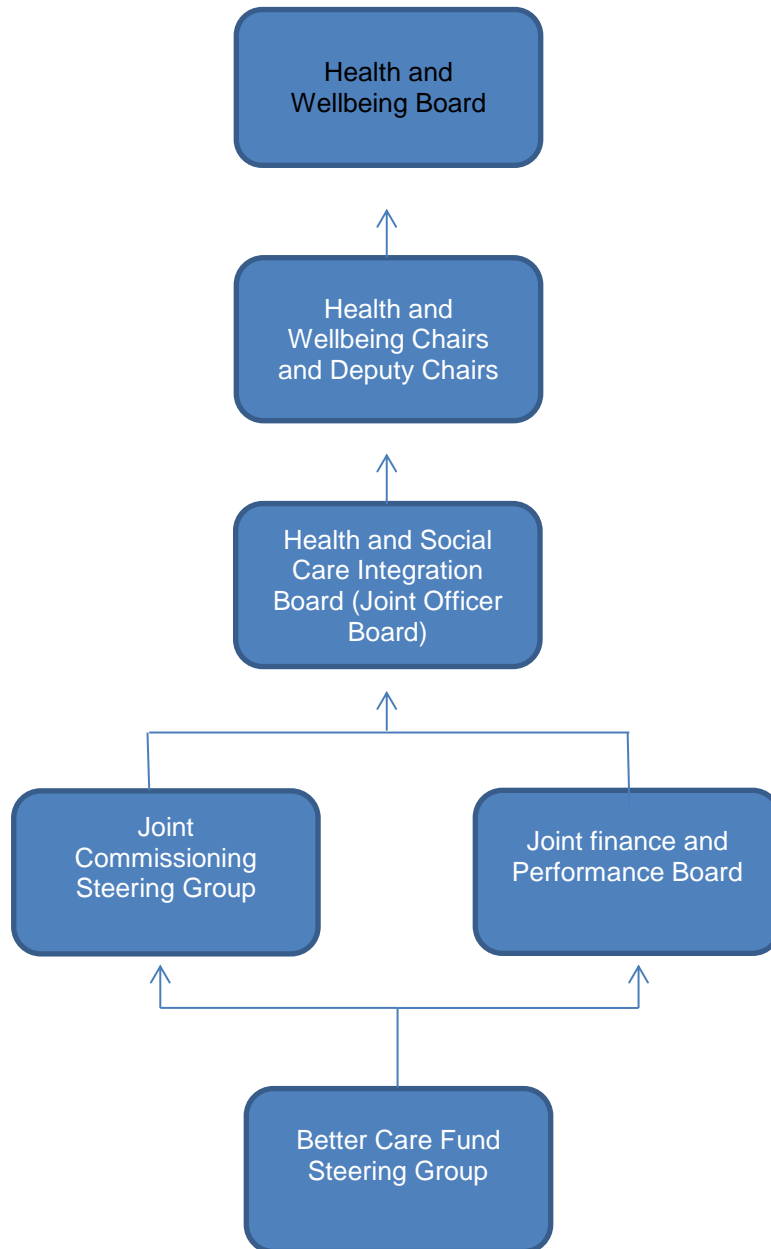
The Better Care Fund Steering Group shall continue to operate in accordance with this Schedule following any termination of this Agreement but shall endeavour to ensure that the benefits of any contracts are received by the Partners in the same proportions as their respective contributions at that time.

In addition to the Better Care Fund Steering Group, a **Joint Finance and Performance Board** oversees work streams associated with Finance and Performance reporting and provides leadership and accountability for delivery of financial arrangements associated with the Better Care Fund. The Better Care Fund Steering Group reports to the Finance and Performance Board (as set out in the diagram attached at Appendix 1).

The Terms of Reference for the **Joint Finance and Performance Board** are attached at Appendix 2.

SCHEDULE 2 – APPENDIX 1

BETTER CARE FUND GOVERNANCE ARRANGEMENTS



## Finance and Performance Board

### Terms of Reference

#### **1. Background**

- 1.1 In August 2013 the Government announced the creation of pooled budgets in 2015/16 to ensure closer integration between Health and Social Care. This funding has been described as “a single pooled budget for health and social care services to work more closely together in local areas, based on a plan agreed between the NHS and Local Authorities”. The aim of the Better Care Fund 2017/2019 continues to be to provide an opportunity to transform care for the most vulnerable people through increased integration of services.

#### **2. Purpose**

- 2.1 The main purpose of the Finance and Performance Board is to provide system wide leadership and accountability for delivery of financial arrangements associated with the ‘Better Care’ agenda across Brighton and Hove health and social care economy. Overseeing various work-streams associated with Finance and Performance reporting, it will provide expert financial advice and guidance in relation to the Better Care Fund. It will also ensure the internal and external reporting requirements in terms of Finance and Performance are met.

- Supporting the framework developed as part of integrated care.
- Ensuring there is clarity on financial arrangements associated with the Better Care Fund pooled budget.
- Ensuring that the whole system benefits from integration, demonstrates efficiencies, focuses on cost avoidance, and contributes to improved outcomes through clear and transparent financial management and accounting.
- Identify financial risks and to develop contingency plans and robust risk sharing agreements across the constituent organisations.

#### **3 Responsibilities**

- 3.1 To work to the vision for integration of health and care from a Finance and Performance reporting perspective.
- 3.2 To understand the total NHS and Local Authority finances and directing those resources to support integration as required. This will include challenging, advising and informing on the targeting of transferred NHS resources to social care and creating opportunities for supporting integration.
- 3.3 To develop a financial model which supports the spectrum of integration, including risk and benefit sharing, proposing changes to existing payment mechanisms and contractual arrangements where necessary.
- 3.4 To take an economy wide approach to managing difficult issues and where appropriate to use freedoms and flexibilities available to maximum advantage locally.
- 3.5 To receive regular reports from the Better Care Fund Steering Group and respective organisations on Finances and Performance within the integrated care agenda and identify actions as required.
- 3.6 To ensure all other reporting requirements are met and in line with the national guidance and timescales.

#### **4 Membership and attendance**

4.1 The Finance and Performance Board shall be comprised of:

<b>Name</b>	<b>Position</b>
Dave Kuenssberg (Chair)	Chief Finance Officer, BHCC
Nigel Manvell	BHCC
Rob Persey	BHCC
Cat Harwood Smith	BHCC
Chris Clark	B&H CCG
Debra Crisp	B&H CCG
Ramona Booth	B&H CCG

4.2 Members should be of a senior level with a lead responsibility for finance and/or performance for their respective organisations.

4.3. Members should designate a deputy in the event of being unable to attend a meeting. The deputy will be expected to remain the same person from within the respective organisations and will be expected to act in the capacity of the member/lead.

4.4 Members will be responsible for ensuring that their own organisation or group is fully briefed on discussions and recommendations.

4.5 Membership will be kept under review and in future Provider representatives may be invited to be part of the Board.

#### **5. Quorum**

5.1 The quorum shall be a minimum of one representative from each of B&H CCG and BHCC.

#### **6 Frequency and structure of meetings**

6.1 The Finance and Performance Board will meet on a monthly basis. The frequency of meetings will be reviewed every 6 months.

6.2 All communications relating to meetings will be disseminated and papers/ reports circulated in a timely manner.

6.3 Agenda items should be forwarded to the Chair one week prior to meetings.

6.4 Admin support will be provided by B&H CCG.

#### **7. Recommendations and reporting lines**

7.1 The Finance and Performance Board is part of a larger governance structure focussing on health and wellbeing across Brighton and Hove.

#### **8. Review of Terms of Reference**

8.1 These Terms of Reference will be reviewed on at least a 3 monthly basis and updated in line with emerging national guidance.

### **SCHEDULE 3– FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS**

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

2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.

#### Financial Contributions

3 The Financial Contributions from each organisation are set out Schedule 1 of this agreement.

#### Risk Share

4. The Parties agree that Risk Share shall be managed in accordance with clauses 6-9 of this Schedule 3.

#### Pooled Fund Management

5 The Pooled Fund Manager shall report financial performance to the Finance and Performance Board who will monitor budget performance and identify necessary actions to the Better Care Fund Steering Group to ensure the pool is managed within the agreed pooled budget.

The partners agree to operate the pool under the principles of fairness and transparency with neither party intentionally setting out to pass financial risks or to benefit at the expense of the other partner. The partners agree to assess the cause of any overspend or underspend at outturn and will use this assessment to determine how the risk or benefit is shared between partners.

#### Overspends and Underspends

Should there be a projected outturn overspend or underspend, the Pooled Fund Manager will report the assessed cause to the Finance & Performance Board who will make recommendations to the Better Care Fund Steering Group regarding the appropriate share or use of risks or benefits by the partnership.

Actions that the Better Care Steering Group may take include:

- agreeing an action plan to reduce expenditure;
- identifying underspends that can be vired from any other Fund maintained under this agreement
- requesting additional contributions from the respective Partners; and
- if no additional contributions are available, agreeing a plan of action, which may include decommissioning all or any part of a Scheme to which the Fund relates subject to any required consultation with staff, services users or stakeholders and subject to each Partners' governance arrangements in relation to decision making .

6. The Better Care Fund Steering Group shall, acting reasonably, having taken into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints agree appropriate action in relation to outturn Overspends/Underspends which may include the following:

6.1 consideration of whether there are any underspends that can be vired from any other fund maintained under this Agreement;

6.2 recommendation to the Partners as to how any Overspend/Underspends shall be apportioned between the Partners, such apportionment to be just and equitable taking into consideration all relevant factors and request additional contributions or return contributions accordingly;

8. The Partners agree to co-operate fully in order to establish an agreed position in relation to any outturn Overspend/Underspend.
9. Where there is an overspend in a Non Pooled Fund at the end of the Financial Year or at termination of the Agreement such overspend shall be met by the Partner whose financial contributions to the relevant Non Pooled Fund were intended to meet the expenditure to which the overspend relates save to the extent that such overspend is not the fault of the other Partner.

## SCHEDULE 4– JOINT WORKING OBLIGATIONS

### Part 1 – LEAD PARTNER OBLIGATIONS

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

- 1 The Lead Commissioner shall notify the other Partners if it receives or serves:
  - 1.1.1 a Change in Control Notice;
  - 1.1.2 a Notice of a Event of Force Majeure;
  - 1.1.3 a Contract Query;
  - 1.1.4 Exception Reportsand provide copies of the same.
- 2 The Lead Commissioner shall provide the other Partners with copies of any and all:
  - 2.1.1 CQUIN Performance Reports;
  - 2.1.2 Monthly Activity Reports;
  - 2.1.3 Review Records; and
  - 2.1.4 Remedial Action Plans;
  - 2.1.5 JI Reports;
  - 2.1.6 Service Quality Performance Report;
- 3 The Lead Commissioner shall consult with the other Partners before attending:
  - 3.1 an Activity Management Meeting;
  - 3.2 Contract Management Meeting;
  - 3.3 Review Meeting;and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.
- 4 The Lead Commissioner shall not:
  - 4.1.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
  - 4.1.2 vary any Provider Plans (excluding Remedial Action Plans);
  - 4.1.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
  - 4.1.4 give any approvals under the Service Contract;
  - 4.1.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);

- 4.2 suspend all or part of the Services;
  - 4.3 serve any notice to terminate the Service Contract (in whole or in part);
  - 4.4 serve any notice;
  - 4.5 agree (or vary) the terms of a Succession Plan;  
without the prior approval of the other Partners such approval not to be unreasonably withheld or delayed.
- 5 The Lead Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
  - 6 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
  - 7 The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

**Part 2 - OBLIGATIONS OF THE OTHER PARTNER**

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

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



## SCHEDULE 5– PERFORMANCE ARRANGEMENTS

The Better Care Fund Steering Group will receive monthly update reports on performance and expenditure and will report these to the Finance and Performance Board.

### Better Care Programme Performance Monitoring

A high level summary of performance against the national metrics, local key performance indicators, financial performance and delivery of the national conditions is submitted monthly to the Better Care Fund Steering Group and informs the quarterly report for the Health & Wellbeing Board. Agreed Key Performance Indicators that will be reported to the Health & Wellbeing Board include those set out in the table below:-

Better Care heading	Measure	Reporting Frequency	Source
Increasing System Capacity	Social Care Delayed Days per day per 100,000 18+ population	Monthly	NHS Stats - DToC
Integrated Discharge Planning	% of older people at home 91 days after hospital discharge into reablement	Annually	SALT Return
Integrated Discharge Planning	The proportion of older people aged 65 and over offered reablement services following discharge from hospital.	Annually	SALT Return/ HES Episode stats
Integrated Discharge Planning	% Emergency readmission within 30 days of discharge from hospital (B&H CCG)	Monthly	Dr Foster
Integrated Discharge Planning	Average Length of Stay for older people (65+)	Monthly	Dr Foster
Protecting Social Care	Proportion of support plans that have a % telecare as a component	Quarterly	LA Data
Person Centred Integrated Care	Non-elective Admissions (G&A specialties)	Monthly	NHS Stats - MAR
Person Centred Integrated Care	Admissions to nursing and residential homes (65+)	Monthly	Funded admission stats
Person Centred Integrated Care	Overall A&E atts	Monthly	HES

## SCHEDULE 6– BETTER CARE FUND PLAN



Better Care Plan  
2017-2019 SUBMISSI

## **SCHEDULE 7 - POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST**

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

## **SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL**

The Partners agree to develop an Information Governance Protocol which shall apply to this Agreement and to review the same as part of the Annual Review.

## Appendix 2

Programme Name	Commissioning Lead	Objectives
Increasing System Capacity	Jointly Responsible	<ul style="list-style-type: none"> <li>• Additional social worker investment to support 7 day week working</li> <li>• Increased social worker and mental health nurse resource in IPCT's</li> </ul>
Integrated Discharge Planning	Jointly Responsible	<ul style="list-style-type: none"> <li>• Enhancing the use of assistive technology to facilitate hospital discharge</li> <li>• The local authority, CCG and acute hospital are committed to a roll out of Home First. The additional resources identified will ensure sufficient assessment capacity to achieve these aims.</li> <li>• falls and repeat incidents places increased demand on the acute hospital this initiative will enhance our preventative services in this regard.</li> </ul>
Protecting Social Care	Jointly Responsible	<ul style="list-style-type: none"> <li>• Increased investment in prevention of admission to hospital, earlier but well planned and supported discharge and rapid response services;</li> <li>• Development and investment in the Homefirst programme and utilisation of Trusted Assessors;</li> <li>• Further investment in adult social care to meet statutory need;</li> <li>• Support for the independent care sector to support timely discharge from hospital;</li> <li>• Maintaining investment in carers' services including meeting the requirements of the Care Act;</li> <li>• Further investment in advocacy services in response to the Care Act requirements from April 2015;</li> <li>• Further development and investment in Information &amp; Advice services to support the preventive approach and ensure</li> </ul>

		<p>compliance with Care Act requirements. 'My Life' Portal in place with links to carers and public self-assessment;</p> <ul style="list-style-type: none"> <li>• First phase of Service Redesign completed with increased social work capacity; social work services now aligned with GP clusters.;</li> <li>• Increased investment in Mental Health Social Work;</li> <li>• Increased investment in preventative services that delay or reduce potential current and future demand upon services.</li> </ul>
Supporting Recovery & Independence	Jointly Commissioned	<ul style="list-style-type: none"> <li>• Continued investment in Community Equipment Store</li> <li>• Commissioning a range of Carers Support Services including integrated Carers Hub service.</li> </ul>
Person Centred Integrated Care	Jointly Commissioned	<ul style="list-style-type: none"> <li>• Better Care Pharmacists and Primary Care</li> <li>• Care Navigation Service</li> <li>• Befriending Neighbourhood Care Service</li> </ul>
Dementia Planning	CCG	<ul style="list-style-type: none"> <li>• We will build on dementia training programmes that have been delivered to the workforce, ensuring access to wider independent and community, voluntary and third sector partners.</li> <li>• We will work to ensure that equitable access to care and support is available to people living with dementia in care homes and adopt best practice service models to ensure that people living with dementia and their carers in Brighton and Hove, receive timely services and support appropriate to their needs.</li> </ul>
Homelessness	Local Authority	<ul style="list-style-type: none"> <li>• Supporting delivery of single person homelessness services and supporting the delivery of the city wide Rough Sleeping Strategy</li> </ul>



