

**DATED** \_\_\_\_\_

**Scarborough and Ryedale Commissioning Group (1)**

**and**

**North Yorkshire County Council (2)**

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**SECTION 75 PARTNERSHIP  
AGREEMENT**

**For the creation of shared planning and  
commissioning arrangements and a pooled  
fund for Health Care, Public Health and Adult  
Social Care Service in Scarborough and  
Ryedale**

**These arrangements include use of  
Section 75 powers to establish Pooled  
Fund and for shared planning and Commissioning  
arrangements**

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**Responsible Officers:**

**On behalf of NHS Scarborough and Ryedale Clinical Commissioning Group**

(Accountable Officer)

**On behalf of North Yorkshire County Council**

(Insert name and role of responsible officers for the purpose of this Agreement)

(The Council's Responsible Officers)

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**Schedule 1** *(to follow)*

Schedules describing the services to be provided under integrated commissioning and planning arrangements.

**Schedule 2** *(attached)*

Pooled Budgets

**Schedule 3** *(to follow)*

SRIPCB Governance specifications

**Schedule 4** *(to follow)*

Conflicts of Interest Principles

**Schedule 5** *(to follow)*

Governance Diagram

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### **Summary of Agreement**

Both North Yorkshire County Council and the SRCCG have a commitment to shared planning and commissioning arrangements and using a pooled budget for healthcare, public health and adult social care services.

These arrangements include a Better Care Fund (BCF).. The parties have noted that the BCF monies included within the pooled funds are subject to a pre-condition that they are deployed through a S75 pooled fund agreement. There is currently an existing Section 75 Agreement for the Better Care Fund and this agreement builds on the current arrangements and creates a stronger governance arrangement for the parties to work together on a wider remit.

Joint Planning and Commissioning and pooled budgets between NYCC and SRCCG are designed to cut across organisational boundaries, to improve the health and well-being of people in Scarborough and Ryedale and to provide better value for money.

Both NYCC and SRCCG have now agreed to extend these arrangements to provide for shared planning, oversight and commissioning arrangements for the people in Scarborough and Ryedale so that more joined up decisions can be made by each organisation and not just for those areas which have a pooled budget. The aim is to create a venue for shared strategic thinking and making better informed decisions for the public, which will be able to discuss all expenditure and prevention work across the NHS, Public Health and Adult Social care by the Parties. This will include, but not limited to, planning for Primary Care, Public Health, Extra Care, Living Well, Prevention, VCS Commissioning, Care and Support, Care Market, CHC, Intermediate Care and reablement, frailty services, mental health and Learning Development, Carers, Sub acute care, community health and other relevant services.

It is recognised that both organisations have and will continue to have good decision making processes exercised through the Council's Constitution and elected members and through the CCG's Governing Body. These arrangements ensure that both organisations remain sovereign to their own decision making and allows the joint arrangements to be responsible for services and budgets that are specifically delegated to them through agreement.

**1. Parties:**

- (1) **NHS SCARBOROUGH & RYEDALE DISTRICT CLINICAL COMMISSIONING GROUP** of [insert address] (“**the CCG**”);
- (2) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Northallerton, DL7 8AD (“**the Council**”)

**2. Introduction**

- 2.1 The purpose of this agreement is to put in place the arrangements required to govern and manage the **shared planning and commissioning arrangements and a pooled fund for Health Care, Public Health and Adult Social Care Service in Scarborough and Ryedale**. It will establish the Scarborough and Ryedale Integrated Planning and Commissioning Board Integrated Planning and Commissioning Board (SRIPCB) as the vehicle through which both parties will discharge their shared planning and commissioning responsibilities in respect of working together and operating the pooled funds. The agreement applies to the defined health, public health and social care services supplied to the residents of the North Yorkshire County Council and to patients registered with the GP Practices within the Scarborough and Ryedale area and whose medical services contracts are managed by the CCG. This agreement builds on any previous Section 75 agreements and is to be regarded as an entirely new arrangement, whilst keeping any existing arrangements in place..
- 2.2 A main aim of the SRIPCB is to provide a body to carry out strategic planning on a joint level which will have an oversight of both organisations and enhance joint working. Some of this joint working will be delivered through pooled budgets but the vision is to provide a wider focus on collaboration/planning across the whole geography.
- 2.3 Both organisations will remain sovereign for decision making regarding expenditure for their services, except where specifically agreed between the parties and each organisation will be responsible for obtaining the

appropriate legal authority through its own internal decision making process. The arrangement will allow discussions to take place regarding Health Care (including Primary care), Public Health and adult social care at a strategic level.

### **3. The Joint Vision**

3.1 The Parties have a shared vision of a timely transformation towards an integrated approach to the provision of health care, public health and social care services in Ryedale and Scarborough. The parties believe that significantly by both coordinating and integrating their planning and commissioning activities will help facilitate the best use of resources to support the local resident and patient population. This approach will be developed through the joint arrangements with an agreed Work plan including the Joint Commissioning Strategy.

### **4. Section 75 Document Purpose**

The purpose of this Section 75 agreement is to:

1. Provide a joint strategic planning body for a range of services to the public. The creation of the Integrated Planning and Commissioning Board will have oversight of the budgets for [insert details of budgets].

The Agreement will not cover the commissioning of a MCP, which will be commissioned by the CCG directly.

2. As part of the joint commissioning, to allow for the Pooled Fund arrangements, including provision for the new services set out in Schedule 1 These arrangements will be kept under constant review the ability to add additional services with the agreement of both parties.
3. Record the intentions of the Parties to work together in commissioning health, public health and social care services.



4. Describe the role of the Integrated Planning and Commissioning Board in the administration of the Pooled Fund and to make formal arrangements for its procedures and actions.
5. Make any necessary arrangements to ensure that the commissioning and planning of the defined functions takes place on the basis of and by reference to evidence based information and standards, and uses up-to-date service specifications and recognised and authoritative clinical protocols implemented with suitable and expert medical and social care advice.
6. Describe the joint work plan to be taken by the parties both through and outside the Integrated Planning and Commissioning Board in order to commission health, public health and social care services in an integrated way.
7. Describe the relationships between the parties as exercised through the Integrated Planning and Commissioning.
8. Provide for the development of formal joint commissioning arrangements by the parties through the Integrated Planning and Commissioning Board.
9. Make the necessary delegation, governance, audit and regulatory arrangements to facilitate the purposes listed above as agreed by each Organisation. Each organisation will remain sovereign for decision making through its own internal procedures.

## **5. Background to the Agreement**

- 5.1 The Parties are organisations working to improve the health and wellbeing of people resident in the Scarborough and Ryedale CCG area and patients registered to GP practices within the same area. They believe that outcomes for their served populations can be greatly enhanced by closer working Partnership arrangements.

- 5.2 The objective of the Partnership Arrangements is to improve the outcomes for health and social care users from commissioned services through closer working between the National Health Service and Local Government to the extent (from time to time and subject to the terms of this agreement) that it is lawful to do so and consistent with the obligations of the Parties to co-operate with each other in commissioning the care.
- 5.3 These Partnership Arrangements have been established pursuant to Section 75 of the Act and pursuant to the Regulations.
- 5.4 The Parties believe that the Partnership Arrangements proposed by this Agreement fulfil the objectives set out by the North Yorkshire County Council Health and Wellbeing Board within the Joint Health and Wellbeing Strategy, Scarborough and Ryedale CCG's Strategic Plan, the NHS Constitution and Guidance in so far as it relates to local, regional and national requirements, the Council Plan and the Council's relevant Strategic Directorate Business Plans.

## 6. Definitions and Interpretation

In this Agreement, unless the context otherwise requires:

**"The Authorised Officers"** means the Responsible Officers of the Parties as specified in the introductory page of this Agreement

**"The Act"** means the National Health Service Act 2006

**"The Chief Officers"** means the Chief Clinical Officer of the Clinical Commissioning Group and the Chief Executive Officer of the Council

**"The Commencement Date"** means [insert date 2017]

**"The Council"** means the North Yorkshire County Council

**"The Council's Functions"** means such functions of the Council as may be necessary to provide the Services specified in Schedule 1(1)

**"The Financial Year"** means a twelve month period commencing on 1 April and terminating on the following 31 March

**“The Functions”** means together Scarborough and Ryedale Clinical Commissioning Group Functions and the Council's Functions in so far as they relate to the agreement

**“The HSCA 2012”** means the Health and Social Care Act 2012

**“The Health-Related Functions”** shall mean the public health functions of the Council under the HSCA 2012 and any other functions that may be exercised by the Council in its commissioning or delivery of the Services specified in Schedule 1

**“The Initial Term”** means a period of one year and capable of extending thereafter on a year to year basis at the parties discretion and agreement for a maximum period of ten years from the date of this agreement and thereafter as agreed between the Parties by further negotiation

**“The Integrated Planning and Commissioning Board”** shall mean the joint arrangements made by the Parties to commission the integrated services

**“Commissioning Function Host”** shall mean the NYCC as the party responsible for hosting the integrated commissioning arrangements

**“Ancillary Service Commissioner” (ASC)** shall mean the party that has been nominated in writing within an Ancillary Service Commissioning Agreement to be the lead commissioner of a service that falls within Schedule 1 of this agreement but which the parties have agreed shall fall outside the Integrated Planning and Commissioning Board integrated commissioning arrangements

**“Ancillary Service Commissioning Agreement”** shall mean an agreement made between the parties under Clause 7.10.8

**“The MCP”** means the Multispecialty Community Provider to be established by the CCG or any provider which is procured for Community Services which is undertaken solely by the CCG. This will be commissioned solely by the CCG and the commissioning/procurement of the MCP will be outside of this agreement.

**“The NHS Functions”** means those 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

**“The Pooled Fund Host”** shall mean the Council as the Party responsible for the accounting for and audit of the pooled fund established under this agreement

**“The Pooled Fund”** means such fund or funds of monies received from separate contributions by the Parties for the purposes of providing the specified services to be commissioned through the Integrated Planning and Commissioning Board and which are set out in Schedule 1 of this agreement

**“The Pooled Fund Arrangements”** means the arrangements agreed by the Parties for establishing and maintaining the Pooled Fund

**“The Pool Fund Manager”** will be the nominated officer(s) who will be accountable to the Integrated Planning and Commissioning Board for the management of the Pooled Fund in accordance with the Pooled Fund Arrangements.

**“The Individual Pooled Service Budgets”** shall mean the budgets agreed between the Parties within the Integrated Planning and Commissioning Board to provide the services specified in Schedule 1 of this agreement from the Pooled Fund

**“The Individual Pooled Service Budget Managers”** being officers with delegated responsibility (for budgets and the commissioning of services within an Individual Pool Budget

**“The Parties”** means together Scarborough and Ryedale Clinical Commissioning Group and the Council

**“The Partnership Arrangements”** means the arrangements jointly agreed by the Parties for the purposes of providing the Services pursuant to the Regulations and Section 75 of the Act

**“Finance Lead”** shall mean the Section 151 Officer of the Council

**“Scarborough and Ryedale CCG”** means the Scarborough and Ryedale Clinical Commissioning Group

**“Scarborough and Ryedale CCG functions”** means such of those functions as described in Schedule 3 as may be necessary to provide the Services

**“The Regulations”** means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 SI No. 617 and any amendments and subsequent re-enactments

**“The Services”** means the services commissioned under this Agreement

**“The Service User”** means an individual in receipt of services commissioned under the agreement.

**“The Term”** means a period of means a period of seven years from the Commencement Date, plus any extended period as agreed by the Parties under clause 14.3;

**“The Scarborough and Ryedale area”** means the area of Scarborough and Ryedale CCG within the Boundary of North Yorkshire. It includes areas in which GPs listed by the CCG are practicing and for which commissioning responsibilities exist for the registered population

**“Losses”** means any and all direct losses, costs, claims, proceedings, damages, liabilities and any reasonably incurred expenses, including legal fees and disbursements

**The headings** in this Agreement are inserted for convenience only and shall not affect its construction and a reference to any Schedule or clause is to a Schedule or clause of this Agreement.

**Words importing the singular** number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

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

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

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

**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.

**Reference to the Parties** shall include their respective statutory successors, employees and agents subject to the provision of Clause 20.

**In the event of a conflict**, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.

**Non-exhaustive lists:** 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.

**Gender and persons :** 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.

**Singularity:** In this Agreement, words importing the singular only shall include the plural and vice versa.

**"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.

**Mode of formal communication:** Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.

**Money:** 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.

**References to this Agreement** within its text include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

**7. Appointment of the Planning and Commissioning Function and Pooled Fund Hosts and their duties**

- 7.1 The Parties propose to continue to build upon the existing Section 75 BCF model and provide a stronger governance mode with this agreement, under which the parties will commission the services described in Schedule 1 of this agreement and provide a forum for wide planning and integration. The Integrated Planning and Commissioning will be subject to the rules for meetings, voting arrangements and procedural rules set out in Schedule 3 to this agreement. The Integrated Planning and Commissioning Board will provide strategic direction in the areas of agreed joint financing, planning and commissioning set out in this agreement, with delegated authority for the development and operation of integrated planning, commissioning and service innovation in these areas, taking into account the wider strategic framework set by the Health and Wellbeing Board and the Joint Health and Wellbeing Strategy and within the strategic plans of the Parties, and informed by appropriate intelligence such as the JSNA. Integrated commissioning will initially take place by sharing the planning and commissioning arrangements and then commissioning services using separate contracts with providers through the Integrated Planning and Commissioning Board.. Under the agreement the Parties retain independence in their commissioning arrangements relating to the specified services and will determine what services will be integrated and/or pooled and how they will achieve this.
- 7.2 The parties will appoint NYCC through the Integrated Planning and Commissioning Board as the host for the integrated commissioning arrangements (which such expression shall have a different meaning to the role of Lead Service Commissioner referred to in this agreement) and NYCC as the host for the pooled fund. In order to facilitate these arrangements the following functions will be undertaken in the manner set out elsewhere in this agreement

- 7.2.1 To agree to, and oversee, the use of HSCA 2012 flexibilities for establishing and then operating pooled budgets and integrated commissioning between the Parties under the terms of this agreement.
- 7.2.2 To oversee the establishment of the Pooled Fund and then the establishment of lead commissioner arrangements through the Integrated Planning and Commissioning Board where agreed and in line with the Joint Commissioning Strategy, to administer the individual Pool Budgets (if appropriate) and to receive information from the Finance Lead and Individual Pool Budget Managers (where appropriate) with delegated responsibility for the access to an agreed level of funding from the Pooled Fund.
- 7.2.3 To approve the overall pooled budget, the component individual pool budgets and the required Party contributions to the Pool Fund.
- 7.2.4 To monitor the BCF in accordance with NHS England guidance, making use of recommended best practice templates and to report to the SRIPCB on a quarterly basis for sign off and in relation to any specific required annual returns.
- 7.2.5 To prepare proposals for managing the financial aspects of the Pooled Funds for consideration by both parties, including the initial separate management of the Parties contributions and then following the eventual pooling of the aligned resources the risk management arrangements associated with this.
- 7.2.6 To receive (as a minimum) quarterly information from the Pooled Fund Manager(s), to include both service and financial information, in a form to be agreed, to fulfil the Parties' performance management requirements.
- 7.2.7 To receive quarterly information from the officers to include both service and financial information, in a form to be agreed, to fulfil the Parties' performance management requirements.



- 7.2.8 To agree appropriate action resulting from the above reports where necessary.
  - 7.2.9 To resolve disputes or where necessary to refer such to dispute resolution procedures.
  - 7.2.10 To review the role and effectiveness of the integrated commissioning arrangements through achievement of planned objectives and targets, ultimately demonstrating improved outcomes for service users and making recommendations to the Council and CCG as to any amendment to its functions.
  - 7.2.11 To report, on an appropriate basis, on the integrated commissioning arrangements to ensure appropriate reporting and accountability to the parent organisations.
  - 7.2.12 To report to statutory bodies and other stakeholders by the inclusion of minutes on Parties' bodies agendas as appropriate and as agreed by each Party.
  - 7.2.13 Any other purposes as may be deemed appropriate by the Parties and agreed as set out in this agreement
- 7.3 The Council through the Integrated Planning and Commissioning Board will be the Pooled Fund Host with responsibility for accounting, audit and the financial reporting of the Pooled Fund and its collection, administration and for making payments out of it in relation to the performance of contracts agreed through the Integrated Planning and Commissioning Board in relation to the relevant Pooled Service Budget and such part of the Pooled Fund that is represented by it.
- 7.4 Where there is agreement on joint commissioning, the commissioning contracts will initially be between the party with responsibility for commissioning of that service and the provider selected by the Integrated Planning and Commissioning Board and subject to the integrated service delivery arrangements agreed. Following the establishment of integrated commissioning arrangements through the Pooled Fund, the contracting role may be undertaken by either Party or as otherwise provided for

under this agreement as long as both Parties agree and in line with the agreed Strategy.

## **8. Integrated Planning and Commissioning:**

### **8.1 Introduction:**

The planning and commissioning arrangements set out in this agreement shall be the means by which the Parties co-operate in order to provide the services described in Schedule 1 to this agreement through integrated commissioning and planning. This Agreement sets out the mechanism through which the Parties will work together in partnership through the Integrated Planning and Commissioning Board. During the period of this agreement the Parties will co-operate with a view to introduce integrated commissioning, where appropriate and with both Parties Agreement, through capitation and outcome based payments for services provided under the service contracts and the establishment of standard contracts and outcome assessment arrangements to support this. Where this is not appropriate the Parties will co-operate to ensure that planning and commissioning by both Parties is done in a coordinated and joined up manner.

### **8.2 Delegations:**

Under the arrangements the Parties retain independence and sovereignty in their commissioning arrangements relating to the specified services and will only delegate functions as agreed by both parties. With a view to working together in partnership (but not so as to create the legal relationship of partnership between them), in order to implement the integrated commissioning arrangements set out in this agreement and to make arrangements for the services to be provided under Schedule 1 the parties agree that:

8.2.1 The Council shall delegate to the CCG and the CCG agrees to exercise, on the Council's behalf, the Council's Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions (and where the Council agrees), and

8.2.2 To the extent to which it may legally do so, the CCG shall delegate 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 Council's Functions (and where the CCG agrees).

8.2.3 In the event that any delegation of powers by any of the Parties provide for under this agreement shall require obtaining the consent or approval of any Minister of the Crown, Government Department or any other body formally constituted for that (and other) purposes then the party required to seek such consent or approval shall use its best endeavours to do so and in a timely fashion, efficiently and without unreasonable delay.

8.2.4 The Parties shall only delegate such powers to each other as are required to implement the terms of this agreement and through consent and specifically reserve all other commissioning powers and functions to themselves.

### 8.3 **Partial or incomplete delegations:**

Where the powers of a Party to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant service specification in Schedule 1 and the Parties shall agree arrangements designed to achieve the greatest degree of delegation to the other Party necessary for the purposes of this Agreement which is consistent with those statutory constraints.

### 8.4 **Integrated planning and commissioning objectives:**

The Parties shall seek to achieve the following objectives in the course of making the integrated planning and commissioning arrangements under this agreement:

8.4.1 To continue to deliver the S75 services as covered by previous agreements and the defined services as have been specified in Schedule 1.

- 8.4.2 To deliver improved and improving service delivery efficiencies through the integrated planning and commissioning arrangements.
- 8.4.3 To work with the main NHS and other service providers within the locality to facilitate the planning and commissioning of services
- 8.4.4 To take any necessary steps to develop a future procurement strategy for the better integration of services.
- 8.4.5 To look at the possibility of introducing new service planning and commissioning arrangements involving the use of outcomes assessment frameworks to be developed by the Parties during the period of this agreement where appropriate.
- 8.4.6 Where the Parties propose to add a new Budget line to this Agreement a Scheme Specification for the new service shall be completed and agreed between the Parties.
- 8.4.7 The Parties shall not enter into a new Scheme Specification in respect of an additional contract unless they are satisfied that the Individual Scheme in question will improve the health and wellbeing of the population of Scarborough and Ryedale in accordance with this Agreement
- 8.4.8 Each Party shall keep the other Party and the Integrated Planning and Commissioning Board informed of the effectiveness of the arrangements including the Better Care Fund and any overspend or underspend in the Pooled Fund.

**8.5 Parties mutual responsibilities:**

The Parties agree that their boards, their officers and employees, their controlled subsidiaries and any independent contractors retained by either of the Parties or their controlled subsidiaries shall work together for the purposes of undertaking

integrated commissioning arrangements and achieving the objectives described in Clause 7.5 and in particular shall:

- 8.5.1 Co-operate with each other in the conduct of all activities relating to the objectives.
- 8.5.2 Make the necessary delegations as set out in Clauses 7.2 and 7.3, including any formal arrangements to give all necessary third party consents or notifications.
- 8.5.3 Make all and any agreed contributions into the Pooled Fund as set out in Schedule 1 promptly and without deductions for the purposes of providing the services.
- 8.5.4 Make any necessary arrangements to make payments from the pooled fund as may be required by the Integrated Planning and Commissioning Board in order to provide the services that have been commissioned under this agreement.
- 8.5.5 Operate all their related activities and services in a manner that is compatible with the objectives set out in Clause 7.4 so far as they are not inconsistent with their other legal obligations or formal service delivery arrangements.
- 8.5.6 Operate the integrated planning and commissioning arrangements and fulfilling all responsibilities relating to them as agreed in this agreement. Exercise candour in their dealings with each other and to conduct themselves transparently in any negotiations, including disclosing any reasonable prospect that there shall be a conflict of interest between them.
- 8.5.7 Exercise candour in their dealings with each other and conduct themselves transparently in any negotiations, including disclosing any reasonable prospect that there shall be a conflict of interest between them.

8.5.8 Unless otherwise specifically agreed in writing, overspends in a pooled arrangement are the responsibility of the relevant commissioning organisation.

**8.6 Legacy contracts, transition commissioning arrangements:**

8.6.1 Both Parties agree that any contracts for the full or partial delivery of the services specified in Schedule 1 that are continuing at the date of this agreement and which are between the parties and other providers (legacy contracts) will be unaffected by this agreement.

**8.7 Monitoring and review of the Integrated Planning and Commissioning Board**

The Responsible Officers of the Parties shall from time to time agree joint arrangements to monitor and review the manner in which the Integrated Planning and Commissioning Board exercises the delegated commissioning and regulatory powers set out in this agreement to ensure that they are exercised in compliance with the law and with the terms of this agreement and that the manner in which they are exercised is both effective and appropriate.

**8.8 Joint integrated commissioning arrangements through the Integrated Planning and Commissioning Board**

8.8.1 Both Parties shall work in cooperation and shall endeavour to ensure that the services specified in Schedule 1 are commissioned with all due skill, care and attention through the Integrated Planning and Commissioning Board arrangements.

8.8.2 Where appropriate each Party shall be responsible for making payments to Providers from the Pooled Fund of all sums pursuant to the terms of the contract negotiated on behalf of that Party through the Integrated Planning and Commissioning Board and for complying with the terms of that contract.

8.8.3 Both Parties shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification in Schedule 1

are commissioned through the Integrated Planning and Commissioning Board within each Parties Financial Contribution in respect of that particular Service in each Financial Year.

8.8.5 Each Party shall keep the other Party and the Integrated Planning and Commissioning Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in the Pooled Fund.

8.8.6 The Integrated Planning and Commissioning Board Integrated Planning and Commissioning Board will report back to both the Parties in the event of any failure by either of them to make payments required by this agreement.

8.8.7 The parties will make any necessary reports to the Health and Wellbeing Board outside the terms of this agreement as may be required under Chapter 7 of the HSCA 2012.

## 8.9 **Role of Integrated Planning and Commissioning Board**

The parties will commission the services specified in Schedule 1 through the strategic direction of the Integrated Planning and Commissioning Board. The administrative work involved in implementing the decisions taken by the Integrated Planning and Commissioning Board and in undertaking the commissioning arrangements for these services shall be under the overall direction of the Lead Commissioner. The parties may at their discretion after approval by the Integrated Planning and Commissioning Board either make their own commissioning arrangements or instruct the Integrated Planning and Commissioning Board to make such arrangements as may be required in relation to the services. The Integrated Planning and Commissioning Board shall oversee the integrated commissioning arrangements operated between the parties for the purposes of implementing this agreement.

**8.10 Specific Functions of the Integrated Planning and Commissioning Board:**

Without prejudice to the generality of the Clause 8(9) above the Integrated Planning and Commissioning Board shall undertake the following specific functions to enable it to make recommendations to the Parties:

- 8.10.1 Undertake population health and social care needs assessments as agreed by both parties
- 8.10.2 Carry out strategic planning of health and social care services as agreed by both parties
- 8.10.3 Undertake assurance activity of planned commissioning changes
- 8.10.4 Exercise the consultation responsibilities of commissioners in planning for the redesign
- 8.10.5 Undertake assurance (including clinical assurance) of system capacity, outcomes and delivery
- 8.10.6 Undertake assurance (including clinical assurance) of system quality and safety
- 8.10.7 Establish the weighted capitation payment linked to an age cohort as and if appropriate
- 8.10.8 Establish and oversee the operation of the outcomes framework as and if appropriate
- 8.10.9 Establish the procurement strategy for the schedule of services as outlined in the agreement as and if appropriate
- 8.10.10 Establish the acceptable provider forms and the scope of service delivery as and if appropriate
- 8.10.11 Consider assessment criteria for providers as required and agreed
- 8.10.12 Consider assessment criteria for providers as required and agreed



8.10.13 Oversee the development of an integrated planning and commissioning resource to align expertise and capacity within both Parties

**9. Pooled Fund:**

9.1 The Parties agree as follows:

9.1.1 The Council will be the Pooled Fund Host with the responsibility for accounting and audit and the financial reporting of the overall pool being exercised by the Finance Lead.

9.1.2 The *Parties* will determine delegation of financial responsibility to Individual Pooled Service Budget Managers who will work through the SRIPCB to commission all appropriate services on behalf of the Parties and provide appropriate information to the Parties and the SRIPCB.

9.1.3 The Standing Orders and Standing Financial Instructions of the Party by which an Individual Pooled Service Budget Manager is employed shall apply to the management of each Individual Pooled Service Budget through the SRIPCB under this Agreement.

9.1.4 The Parties will provide the SRIPCB and the Individual Pooled Service Budget Managers with all the necessary financial and administrative support to enable the effective and efficient management of the Pooled Fund and any Individual Pooled Service Budget.

9.1.5 The Parties will create a clear identifiable accounting structure within their financial systems (e.g. a separate cost centre) to enable effective monitoring and reporting of the Pooled Fund and the budgets of the Individual Pooled Services and the Finance Lead will be responsible for maintaining an overall accounting structure for the Pooled Fund.

9.1.6 The Individual Pooled Service Budget Managers will provide such information as is deemed necessary by the Parties to this Agreement, to the Integrated Planning and Commissioning Board, to enable effective performance management of the Services provided under this Agreement and any Pooled budget.

- 9.1.7 The Individual Pooled Service Budget Managers will be accountable for managing their Pooled Service Budget and forecasting expenditure and will notify the nominated finance officers of each party who must report to the Integrated Planning and Commissioning Board on the outputs and outcomes and the achievements of targets as set out in the service plans and objectives.
- 9.1.8 The Individual Pooled Service Budget Managers will be responsible for the management of each specific Individual Pooled Service Budget within financial balance and will report any potential or actual variations to any Individual Pooled Service Budget and its potential effect upon the Pooled Fund, as soon as practicably possible to the Integrated Planning and Commissioning Board following identification of any such variation;
- 9.1.9 Individual Pooled Service Budget Managers will follow their own statutory accounting and audit arrangements. A year-end Memorandum Account showing income received, expenditure and any balance remaining shall be prepared by the Pooled Fund Host and sent to the Parties for inclusion in their statutory accounts.
- 9.1.10 The Parties shall comply, at all times, with HMRC guidance as updated from time to time on VAT in respect of the respective Pooled Service Budgets and their Statutory Finance Officers shall consult with HMRC to agree an appropriate scheme for recovery of VAT.

## 9.2 **Operation of Pooled Budgets**

- 9.2.1 The Parties will agree their contribution to the Pooled Fund as set out in Schedule 2 each year in accordance with this clause 9. The contributions for the Financial Year [] are as set out in Schedule 2 here to and will be used as a basis for agreeing future Financial Year contributions from the Parties. Such annual contributions will be evidenced in writing by insertion into the said Schedule 2 as an agreed amendment.
- 9.2.2 The Parties agree that annual Pooled Fund will be confirmed by 31 March for the following Financial Year. The Board will receive notice of planned contributions within one week of each Party agreeing their respective budgets.

9.2.3 The Lead Commissioner shall ensure that VFM is actively secured at all times in making payments from Individual Pooled Service Budgets to deliver the services set out in Schedule 1.

9.2.4 Any monies specifically allocated by the government for particular client groups, services or specific projects shall be put into the relevant Pooled Service Budget subject to such discretions that funding allocations allow to the SRIPCB. The SRIPCB shall approve the expenditure plans for such grants. The appropriate Individual Pooled Service Budget manager will ensure that the conditions of the grant are met. Where grants are put into relevant Pooled Service Budgets any underspends in the grant will be carried over to the next financial year unless this is not allowed by the conditions of the grant.

9.2.5 For the avoidance of doubt, all funding between the organisations supplied under this Agreement is included in each party's annual contribution to the Pooled Fund.

9.2.6 Liabilities for any overspend will be the responsibility of the relevant Commissioning organisation.

**9.3 Contributions to the Pooled fund:**

- (i) Annual contributions to the Pooled Fund will be agreed between the parties and may consider, but no limited to the following: recurrently rolled forward Funds from previous year
- (ii) plus or minus agreed in-year changes where recurrent (overspends or underspends)
- (iii) plus or minus agreed inflationary uplift
- (iv) plus or minus planned and agreed changes, and
- (v) minus planned and agreed efficiency requirements

9.3.1 The parties agree that these changes must not have a detrimental financial impact on either party unless specifically agreed with the party adversely affected and approved by the Integrated Planning and Commissioning Board

- 9.3.2 Contributions agreed by Parties will be formally budgeted for prior to the start of the new financial year.
- 9.3.3 Where required, the organisation which is not hosting the Pool will pay its contribution to the Pooled Fund by 4 equal instalments on a fixed date agreed with the Pool Host in each year of this Agreement or as alternatively agreed. The amounts will be set out in Schedule 2.
- 9.3.4 The annual Pooled Fund will normally be calculated as the initial Pooled Fund for the previous year, plus any agreed in-year changes where it is decided these should be recurrent, plus any agreed inflationary uplift for the forthcoming year, plus any agreed planned changes for the coming year, plus any agreed efficiency requirements. The way in which such annual Pooled Fund will be determined shall be in accordance with the above provisions.
- 9.3.5 The contribution by the Council to the Pooled Fund shall be made upon the net figure after deductions for charges levied on Service Users, or any associated costs or expenses or as alternatively agreed.
- 9.3.6 The parties recognise that there may be scope to develop the Partnership and to bring other budgets and services in addition to those specified in Schedule 1 into pooled or aligned arrangements from time to time and any such changes will be treated as variations to this agreement and will be evidenced in writing and Scheduled to this agreement.
- 9.3.7 The Pooled Fund shall only be used for the provision of Services agreed to fulfil the Aims and Outcomes of this Agreement as set out at Schedule 1 to this Agreement.
- 9.3.8 Changes forecast to the total level of agreed Pooled Fund expenditure for the year shall be reported to the next meeting of the SRIPCB and the SRIPCB shall agree appropriate action to contain expenditure within an individually agreed Individual Pooled Service Budget or to utilise a surplus,

or exceptionally, where additional funding is thought to be required, shall submit a case of need to the Parties. Where additional funding is approved, the Parties will consider the appropriateness of continuing such level of funding as part of the Pooled Fund setting process for the following year.

- 9.3.9 Liabilities for any overspend will be the responsibility of the relevant Commissioning organisation.
- 9.3.10 Where an unforeseen overspend arises at the end of the Financial Year, the Parties will need to consider how best to fund this and its implications for future years. Parties have agreed that as a general principle overspends will not be tolerated and if this situation arises then actions will be approved in-year by the SRIPCB to avert this situation. In the event that overspends do arise then the nature of this will be explicitly set out by the Individual Pooled Service Budget Manager and the source understood by the SRIPCB. The responsible Party for commissioning the relevant service that is overspent, will be responsible for funding the pressure.
- 9.3.11 The SRIPCB will be responsible for negotiating any proposed arrangements for joint support in the instance of under or overspends in year within the overall spirit of Partnership arrangements and financial positions recognising that Parties retain statutory responsibility for this element of the service. Such negotiated proposals must be agreed between the parties before they shall be implemented. Where recurrent pressures are identified then the SRIPCB will consider whether it is necessary to instruct the Individual Pooled Service Budget Managers to develop robust recovery plans.
- 9.3.12 Where there is a surplus in an Individual Pooled Service Budget then the Pool Host shall identify this for in-year financial management purposes, taken in wider context with all other Pooled Service Budgets, and any recurrent impact of this on future year's contributions. Any in-year surpluses identified should be made explicit in the reports so that the SRIPCB can understand this in the wider context of all Individual Pooled Service Budgets

and give consideration to other options it feels are appropriate (such as applying this to other Pooled Service overspending areas or known pressures and/or carrying forward any surplus for the benefit of the service in future years or making an in-year repayment to the Parties based on percentage contributions). Where the surplus has a recurrent impact then Parties may propose options around retaining this for service investments or agreeing a recurrent deduction to party contributions which will be subject to review by the SRIPCB. Such agreement is to be indicated in writing in the minutes of the relevant meeting of the SRIPCB.

9.3.13 The Parties may not normally vary their annual contributions to the Pooled Fund during the course of the financial year to which the annual contribution applies. Any variations to the Parties' annual contributions must be recommended by the SRIPCB, having considered the wider context as outlined above, with such agreement indicated in writing in the minutes of the relevant meeting of the SRIPCB.

9.3.14 In the event of dispute or disagreement in relation to the liability or benefit for any overspend or underspend the matter may be referred by either Party in accordance with Clause 10

9.3.15 The *Pool Fund Manager* shall present a quarterly and an annual report (unless alternative arrangements are agreed in writing by both Parties) to the SRIPCB, which shall be provided to the relevant Parties and include income and expenditure received by or incurred from the Pooled Fund. Such reports shall include an item on potential overspend or underspend.

#### 9.4 **Financial accountability and risk sharing:**

9.4.1 Each party will maintain its existing financial accountability and internal and external audit arrangements and shall bear its own risks in relation to the integrated commissioning arrangements. By way of clarification this means that the Council will follow its Financial Procedure rules and the CCG will follow its own Standing Financial Instructions and Standing orders as last approved by the CCG Governing Body.

9.4.2 The approach to bearing risks will remain under continuous review by both parties in line with the objectives of the agreement relating to integrated commissioning and the management of the Pooled Fund. The default position (unless otherwise agreed by both Parties in writing) will be that the relevant commissioning Party who has responsibility for the service in question will be liable for the overspend.

**9.5 Pooled Fund: Overspend and underspend procedures**

9.5.1 Subject to Clause 9.2, the SRIPCB shall manage expenditure from the Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.

9.5.2 The Council as the host organisation of the Pooled Fund shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that expenditure from the Pooled Fund has been in accordance with Permitted Expenditure, the Pooled Fund has been managed by it in compliance with the terms of this Agreement and that regular reporting of overspends and underspends has taken place in accordance with Clause 8.8.5

9.5.3 In the event that any Pooled Service Budget Manager identifies an actual or projected variation then they must ensure that the SRIPCB is informed as soon as reasonably possible and the provisions of the relevant Service Specification are applied. The default position (unless otherwise agreed by both Parties in writing) will be that the relevant Commissioning Party who has responsibility for the service in question will be liable for the overspend.

**9.6 Non-financial contributions to the Pooled Fund; transfer of assets in lieu of money contributions**

The Services Specifications in Schedule 1 and the relevant budgets in Schedule 2 shall set out any non-financial contributions (and the service or services to which they relate) of each Party including staff (including the Pooled Service Budget

Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).

**9.7 Division of Pooled Fund into Individual Pooled Service Budgets (PSB's):**

The SRIPCB shall establish suitable arrangements for the purposes of creating pooled service budgets for the individual services to be provide under this agreement to be operated in accordance with the financial governance arrangements set out in this agreement and the budgets set out in Schedule 2

**9.8 Capital Expenditure**

No part of the Pooled Fund 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 the Council. The CCG does not have a capital budget. If a need for capital expenditure is identified this must be agreed by the Parties.

**9.9 Relationship between parties and SRIPCB, over-arching principle of financial probity**

9.9.1 All Parties shall promote a culture of financial probity and sound financial discipline and control in relation to the arrangements set out in this Agreement. The Council as the host of the pooled fund shall arrange for the audit of the accounts of the Pooled Fund and shall require the relevant internal auditors to make arrangements to certify an annual return of those accounts as may from time to time be required under Section 28(1) of the Audit Commission Act 1998 or other applicable legislation of similar effect

9.9.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access by them to any document, information or explanation they require from any employee, member of the Parties 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.



9.9.3 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties respective Standing Orders and Standing Financial Instructions).

9.9.4 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.

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

**9.10 Commercial confidentiality arrangements**

Information shall be shared between the parties in accordance with the data sharing arrangements set out in Clause 9.17 below save that no commercially sensitive information shall be communicated between the parties in the course of the operation of the Integrated Planning and Commissioning Board without the express agreement of the an officer of each of the parties appointed for that purpose

**9.11 Shared data protection arrangements under the Data Protection Act (the 1998 Act), the Freedom of Information Act (the 2000 Act) and the Environmental Protection Regulations 2004 (the 2004 Act)**

9.11.1 The Parties agree that they will each cooperate with each other to enable any Party receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Parties as appropriate and responding to any requests by the Party receiving a request for comments or other assistance.

9.11.2 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Party shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

9.11.3 Any processing of data that is undertaken by the Parties, their servants, employees, agents or subcontractors in the course of this agreement shall comply with the Fair Data Processing principals set out in the 1998 Act and shall be in accordance with the over-arching data processing policy

## 9.12 **Conflicts of interest**

The Parties shall comply with the agreed principles for identifying and managing conflicts of interest.

## 9.13 **Resolution of commissioning disputes between parties by mediation**

9.13.1 In the event of a dispute between the Parties arising out of this Agreement, either Party may serve written notice of the dispute on the other Party, setting out full details of the dispute

9.13.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Paragraph 9.13.1 At a meeting convened for the purpose of resolving the dispute

9.13.3 If the dispute remains after the meeting detailed in Clause 10.7.2 has taken place, the Parties' respective Authorised Officer or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

9.13.4 If the dispute remains after the meeting detailed in Clause 0 has taken place, then the Parties will attempt to settle such dispute by mediation in

accordance with an independent mediation procedure as agreed by the Parties in compliance with this agreement. To initiate mediation, either Party may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to the Centre for Effective Dispute Resolution (CEDR) or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, Clause 14 of the Model Mediation Procedure will apply (or the equivalent Clause of any other model mediation procedure agreed by the Parties). The Parties 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.

9.13.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Party's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

**10** [Not used]

**11** **Liabilities and Insurance and Indemnity**

11.1 Subject to Clause 8, if a Party ("First Party") incurs a Loss arising out of or in connection with this Agreement or in relation to the Services to be jointly commissioned under the terms of this agreement as a consequence of any act or omission of another Party ("Other Party") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the contract under which the Services are to be provided then the Other Party shall be liable to the First Party for that Loss and shall indemnify the First Party accordingly.

- 11.2 Clause 11.1 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party or the SRIPCB.
- 11.3 If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause then the Party that may claim against the other indemnifying Party will:
- 11.3.1 As soon as reasonably practicable give written notice of that matter to the Other Party specifying in reasonable detail the nature of the relevant claim
- 11.3.2 Not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Party (such consent not to be unreasonably conditioned, withheld or delayed)
- 11.3.3 Give the other Party and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the indemnifying Party and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purposes of assessing the merits of and if necessary, defending the relevant claim.
- 11.4 Each Party shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.

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

**12 Term of agreement:**

This Agreement shall come into force on the Commencement Date and shall continue until it is terminated in accordance with its terms. The duration of the arrangements for each Individual Service shall be as set out in the relevant Scheme Specification in Schedule 1.

**13 Continued co-operation between parties after end of agreement:**

The Parties shall continue to co-operate with each other or their statutory successors following the termination of this agreement (for any reason) with a view to ensuring the continuity of delivery of the services, the continuation, renewal or procurement of the services, any commissioning arrangements relating to them and the continued provision of health and social care to the served populations.

**14 Continuing contracts and liabilities arising from termination of agreement:**

In the event that this agreement is ended then any contracts made under it will be deemed to continue as between the parties to that agreement and the parties will seek to co-operate under Clause 13 in relation to the arrangements made under such contracts.

**15 Third party rights and contracts**

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.

**16. Governing and Applicable law**

16.1 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.

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

## 17 Complaints procedures

17.1 During the term of the Agreement, the Parties will develop and operate a joint complaints system. The application of a joint complaints system will be without prejudice to a complainant's right to use either of the Parties' statutory complaints procedures where applicable

17.2 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply

17.3 Where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council

17.4 Where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the CCG

17.5 Where a complaint relates partly to one or more of the Council's Health Related Functions and partly to one or more of the CCG's NHS Functions then a joint response will be made to the complaint by the Council and the CCG, in line with local joint protocol

17.6 Where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, and then the SRIPCB will set up a complaints subgroup to examine the complaint and recommend remedies. All complaints shall be reported to the SRIPCB

## **18 Review and variation**

- 18.1 The Parties shall review the integrated commissioning arrangements six months prior to expiry of the Term.
- 18.2 Review will comprise the delivery of the NHS Functions and the health-related Functions, the extent to which the objectives of the integrated commissioning arrangements are met, compliance with and fulfilment of national and local policies, financial arrangements and continuous improvement in quality of care through clinical governance.
- 18.3 The Parties may determine to renew the Partnership Agreement at the end of the Term.
- 18.4 The review and variation provisions in this Clause shall apply as a means of developing and refining the parties' respective functions in relation to the services and fulfilling the objectives of this Agreement.
- 18.5 If at any time during the term of this Agreement either party gives Notice to vary this Agreement, it shall be considered first by the SRIPCB for approval and then if approved will be recommended for approval by the other party. In the event of such mutual approval then a memorandum of agreement shall be prepared and executed by the parties and thereafter the variation shall be binding.
- 18.6 If the CCG or SMBC do not agree to the request to vary the agreement, then the variation shall not take place

## **19 Appointment of Legal Advisors**

The parties shall in all circumstances where it is practicable to do so take a single advisor approach to seeking legal advice in relation to the implementation of this agreement, any dispute arising from it or any proposed change to or modification of its terms, such advice being commissioned through the SRIPCB.

## **20 Appointment of Financial and Audit Advisors**

At all times the Parties shall retain their own financial and audit advisors for their financial and governance arrangements but may make arrangements for a single

advisor in relation to specific matters where it is practicable and desirable to do so, such advice being commissioned through the SRIPCB.

## **21 Responsibility for Public Statements and Press Releases**

The parties shall co-operate when issuing any public statement or press release relating to the terms of this agreement or any activity undertaken under it or discretion exercised by reference to it to the intent that both parties agree such statement or release which should represent the agreed position of both parties in relation to such matters.

## **22 Entire Agreement**

The terms herein contained together with the contents of the schedules constitute the complete Agreement between the Partners with respect to commissioning 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.

## **23 No Partnership or Agency**

Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee or agent and principal between the Parties.

## **24 Invalidity and Severability**

If any Clause or part of this Agreement is found by any court tribunal administrative body or authority of competent jurisdiction to be illegal invalid or unenforceable then that provision will to the extent required be severed from this Agreement and will be ineffective without as far as is possible modifying any other Clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

## **25 Counterparts**

This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.



**26 Notice**

All formal Notices relating to this Agreement shall be given by hand, pre-paid first class post (or in accordance with the Postal Services Act 2000 if applicable) or facsimile transmission confirmed by pre-paid letter to the addressee at the address given below or such other address as the addressee shall have for the time being notified to the other Party giving the notice and such notice shall be deemed to have been delivered either upon delivery if by hand or if by letter at the expiration of forty eight (48) hours after posting or if by facsimile, upon receipt.

**28 Addresses**

For the purposes of this agreement, the address of each Party shall be:

North Yorkshire County Council:

Chief Executive  
North Yorkshire County Council  
County Hall  
Northallerton  
DL7 8AD

Clinical Commissioning Group:

Chief Clinical Officer  
Scarborough and Ryedale Clinical Commissioning Group  
[INSERT ADDRESS]

**29 Force Majeure**

Neither Party will be liable to the other for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including fire, natural disaster, flood shortage or delay of power, fuel or transport.

**30 Termination**

30.1 This agreement will commence on [ [insert date] 2017] and run for one year. Thereafter it can be extended on a year to year basis at the parties' discretion and agreement for a maximum period of ten years.

- 30.2 This Agreement shall terminate upon the effluxion of time except where Clause 30.1 applies or the agreement is otherwise renewed on review by the parties.
- 30.3 In the event of dispute or disagreement relating to the terms and conditions of this Agreement, which cannot be resolved under this Agreement, then either Party may, by service of 6 months' notice in writing upon the other Party, terminate this Agreement.
- 30.4 In the event that the Agreement terminates, responsibility for the CCG's Functions exercised under the Agreement will be returned to the CCG and responsibility for the Council's Functions exercised under the Agreement will be returned to the Council.
- 30.5 Either Party may terminate the Agreement at any time with immediate effect in the event that:
- (i) There is a change in law that materially affects the Partnership Arrangements made pursuant to this Agreement under the Regulations or renders performance of any Party's obligations (or the obligations of any other party towards that Party) ultra vires.
  - (ii) One of the parties is in material breach of its obligations under this Agreement, provided that where the breach is remediable, the nondefaulting Party shall require the defaulting Party to remedy the breach and if the defaulting Party so remedies the breach within one month, such breach shall not give rise to a right to terminate the agreement.
- 30.6 In the event of immediate termination of the agreement the Pooled funds, including underspends and overspends shall be returned to the Parties based on proportions of contributions to the Pool. In the event of assets being purchased from the pool, the Parties will provide proposals to the SRIPCB for how these will be dealt with prior to the termination of the agreement. If these proposals cannot be agreed that Parties will refer to the dispute procedure at Clause 10.7.

30.7 Termination of the Agreement shall be without prejudice to the rights, duties and liabilities of the Parties or any of them that have accrued prior to termination.

### **31. Transferability of agreement**

In the event that any individual role or statutory function of any party that is a fundamental requirement for the effectiveness of this agreement shall be transferred to another organisation then:

31.1 The remaining Parties shall first seek to negotiate a continuation of this agreement with that organisation and if that shall not prove possible within a reasonable period (to be agreed between the Parties) then this agreement will be deemed to have ended due to supervening impossibility of performance.

31.2 Should either Party cease to exist or cease to be responsible for the defined functions then subject to any applicable ministerial direction or delegated legislation this agreement shall be deemed to continue with any other organisation that takes over substantially all its role or statutory function with the Scarborough and Ryedale boundaries.

## **Schedule One**

### **The services to be provided under integrated planning and commissioning arrangements.**

The following services are in scope for integrated planning and Commissioning arrangements which can be considered by the Integrated Planning and Commissioning Board (whilst recognising that the Parties are still sovereign over their own decision making):

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## **Schedule Two**

### **Pooled Budgets for 2016/17**

The following is a list of pooled Budgets (with the option to add to these list from time to time)

- Joint Innovation Fund £100k (with £50k contribution by each party)
- BCF Pooled budget will continue to be held under the existing Section 75 Agreements and renewals, whilst this agreement will allow the Integrated Planning and Commissioning Board to have strategic oversight of the total expenditure in Scarborough and Ryedale

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### Schedule Five Governance Diagram

