

Appendix One – Section 75 Agreement for the Better Care Fund and Improved Better Care Fund

DATED

2021

NHS MANCHESTER CLINICAL COMMISSIONING GROUP

and

MANCHESTER CITY COUNCIL

**S75 PARTNERSHIP AGREEMENT RELATING TO THE COMMISSIONING OF
HEALTH AND SOCIAL CARE SERVICES FROM THE BETTER CARE FUND AND
IMPROVED BETTER CARE FUND**

THIS DEED is dated

2021

PARTIES

- (1) **NHS MANCHESTER CLINICAL COMMISSIONING GROUP** of Parkway 3, Parkway Business Centre, M14 7LU (the “**CCG**”); and
- (2) **MANCHESTER CITY COUNCIL** of Town Hall, Albert Square, Manchester M60 2LA (the “**Council**”),

each a “**Partner**” and together the “**Partners**”.

BACKGROUND

- (A) The Council is the Local Social Services Authority for the City of Manchester within the meaning of the Local Authority Social Services Act 1970 and has responsibility for commissioning and/or providing social care and public health services on behalf of the population of the City of Manchester.
- (B) The CCG is a statutory body comprising members who are general practices, created pursuant to the NHA 2006 and has the responsibility for commissioning defined healthcare services for persons registered with its members and unregistered persons who usually reside within its geographic boundary.
- (C) Section 75 of the NHA 2006 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.
- (D) On 1 April 2015, the Council entered into a partnership agreement, pursuant to section 75 of the NHA 2006 with the NHS Central Manchester Clinical Commissioning Group, the NHS South Manchester Clinical Commissioning Group and the NHS North Manchester Clinical Commissioning Group (the “**Three Manchester CCGs**”) in relation to the Better Care Fund, which was 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 (the “**BCF Agreement**”). On 1 April 2017 the Three Manchester CCGs merged to form the NHS Manchester Clinical Commissioning Group (the “**CCG**”).
- (E) On 27 April 2016 the Manchester Health and Wellbeing Board adopted the Locality Plan as the key strategic plan which underpins the transformation of health, social care and public health provision in the City of Manchester.
- (F) The CCG and the Council entered into a partnership agreement pursuant to section 75 of the NHA 2006 (the “**2017 Agreement**”) with a commencement date of 1 April 2017. The CCG and the Council have agreed that the 2017 Agreement will terminate on the date of this Agreement.

- (G) In March 2021, to respond to emerging national policy changes, a new section 75 NHA 2006 agreement dated [DATE] was entered into between Manchester City Council and Manchester University NHS Foundation Trust in relation to the operation and financing of the Manchester Local Care Organisation (the “**MLCO Partnership Agreement**”).
- (H) The purpose of this Agreement is to set out the terms on which the Partners have now 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 Commissioning Arrangements or Joint Commissioning Arrangements in relation to the BCF and the IBCF. It is also the means through which the Partners will pool the BCF and the IBCF monies to create a single BCF Pooled Fund between the Partners.
- (I) The aims and benefits of the Partners in entering into this Agreement are to:
- (i) improve the quality and efficiency of the Services;
 - (ii) meet the Local Objectives and the National Conditions which as at the date of this Agreement are as follows:
 - delivering a jointly agreed plan between the Partners, signed off by the Health and Wellbeing Board;
 - ensuring that the CCG financial contribution to adult social care is maintained in line with the uplift to the CCG minimum contribution;
 - investing in NHS-commissioned out-of-hospital services, and
 - delivering a plan for improving outcomes for people being discharged from hospital.
 - (iii) make more effective use of resources through the establishment and maintenance of the BCF Pooled Fund for revenue expenditure on the Services.
- (J) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the NHA 2006 and/or Section 13Z(2) and 14Z(3) of the NHA 2006 as applicable, to the extent that exercise of these powers is required for this Agreement. The Partners are satisfied that the arrangements set out in this Agreement are likely to lead to an improvement in the way in which their respective Functions are exercised.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

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

2017 Agreement: has the meaning given in paragraph (F) of the Background.

Affected Partner: means, in the context of Clause 20, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event.

Agreement: means this agreement including its all Schedules and

Appendices.

Approved Expenditure: means any expenditure approved by the Partners in writing in relation to any Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

Authorised Officers: means the Council's Authorised Officer and the CCG's Authorised Officer.

BCF Pooled Fund: means the pooled fund which will include both Better Care Fund and Improved Better Care Fund monies, established and maintained by the Partners as a pooled fund in accordance with the Regulations.

Best Value: means the Council's duty to make arrangements to secure continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness as required by the Local Government Act 1999.

Better Care Fund (or BCF): means the Better Care Fund as described in the government's policy paper 2021-2022 Better Care Fund policy framework, published 19 August 2021 and any policy framework or guidance which supersedes such policy framework.

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 BCF Pooled Fund.

CCG Authorised Officer: means the CCG Head of Finance and Contracting.

CCG Statutory Duties: means the duties of the CCG pursuant to Sections 14P to 14Z2 of the NHS Act 2006.

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 on 1 April 2021.

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 funded by the BCF Pooled and:

- (a) which comprises Personal Data, Sensitive Personal Data, Special Categories of Personal Data and/or Personal Data covered by Article 10 of the UK GDPR or which relates to any Service User or his treatment, care plan 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.

Council Authorised Officer: means the Council's Head of Group Finance for Adult Services;

Data Protection Contact: means the person appointed by each Partner in accordance with paragraph 1.3 of Schedule 6 and identified in paragraph 10 of Appendix 1 (Data Sharing Protocol) of Schedule 6.

Data Protection Legislation: mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.

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

Disabled Facilities Grant: a means-tested grant that enables the home of disabled homeowners and private tenants to be adapted to meet their needs.

Disclosing Partner: means the Partner that provides and discloses Confidential Information to the Receiving Partner;

Dispute Resolution Procedure: the procedure set out in Clause 19;

DPA 2018: means the Data Protection Act 2018

EIR: means the Environmental Information Regulations 2004;

Financial Contributions: means the financial contributions made by each Partner to the BCF Pooled Fund for the relevant Financial Year.

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

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of

practice issued by the Information Commissioner or relevant government department concerning this legislation.

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 pandemic, contamination or virus outbreak (excluding any pandemic, epidemic or outbreak of Covid-19); 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 are relevant to the commissioning of the Services.

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

Host Partner: means the Partner responsible for hosting the BCF Pooled Fund, being the CCG as at the Commencement Date.

Improved Better Care Fund or IBCF: means the funding that was provided by central government to the Council as IBCF grant and which was paid to the Council via grant made under Section 31 of the Local Government Act 2003. The monies which are provided under the IBCF will form part of the BCF Pooled Fund.

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 Service: means one of the schemes which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 NHS Act 2006.

Information: has the meaning given under section 84 of FOIA.

Joint Commissioning Arrangements: means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint commissioning arrangement does not involve the delegation of any Functions pursuant to Section 75.

Law: means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

Lead Commissioning Arrangements: means the arrangements by which one Partner commissions Services in relation to an Individual Service 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.

Local Objectives: means the local objectives agreed between the Partners and set out in the Locality Plan, as amended from time to time.

Locality Plan: means the Manchester Locality Plan – A Healthier Manchester adopted by the Manchester Health and Wellbeing Board on 27 April 2016 as updated and amended from time to time.

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

Manchester Local Care Organisation (“MLCO”): means the partnership arrangements entered into between the (1) the Council (2) Manchester University NHS Foundation Trust (3) Greater Manchester Mental Health NHS Foundation Trust and (4) Manchester’s GP practices for the delivery of integrated out of hospital health and social care services for Manchester in accordance with the Locality Plan.

MLCO Partnership Agreement: has the meaning given in paragraph (G) above.

Month: means a calendar month.

National Conditions: means the national conditions set out in the National Guidance as amended or replaced from time to time.

National Guidance: means any and all guidance in relation to the BCF and the IBCF as issued from time to time by NHS England, the Ministry of Housing, Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately. As at the date of this Agreement the most recent National Guidance is contained in the government’s policy paper *2021-2022 Better Care fund policy framework*, published 19 August 2021.

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.

NHSA 2006: means the National Health Service Act 2006.

NHS England: means the National Health Service Commissioning Board established under section 1H of the NHSA 2006.

NHS Standard Form Contract: means the NHS Standard Contract mandated for the commissioning of NHS clinical services published and updated from time to time by NHS England.

Non-Recurrent Payments: means funding provided by a Partner to the BCF Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 7.4.

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

Partner: means either the CCG or the Council, and “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 Individual Service.

Permitted Expenditure: has the meaning given in Clause 5.3.

Personal Data: has the same meaning as set out in Data Protection Legislation.

Personal Data Disclosing Partner: means a Partner who makes available any Shared Personal Data to another Partner.

Personal Data Receiving Partner: means a Partner who receives Shared Personal Data from a Personal Data Disclosing Partner.

Pooled Fund Manager: means such officer of the Host Partner which includes a Section 113 Officer for the BCF Pooled Fund established under an Individual Service as is nominated by the Host Partner from time to time to manage the BCF Pooled Fund in accordance with Clause 5. As at the date of this Agreement the responsibilities of the Pooled Fund Manager for the BCF Pooled Fund will be undertaken by the individual stated at paragraph 12 of Schedule 4.

Pooled Fund Manager Quarterly Reports: means the reports that the Pooled Fund Manager shall produce and provide to each of the Partners on a Quarterly basis.

Processing: has the meaning given to it in the Data Protection Legislation,

and the terms “**Process**” and “**Processed**” shall be construed accordingly.

Processor: has the meaning given to it in the Data Protection Legislation.

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

Quarter: means one of the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;

- (c) 1 October to 31 December; and
- (d) 1 January to 31 March;

and “**Quarterly**” shall be interpreted accordingly.

Receiving Partner: means the Partner that receives Confidential Information from the Disclosing Partner.

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

Regulatory Body: means those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Partners.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

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

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 referenced in Schedule 2.

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 Services in accordance with the relevant Individual Service.

Shared Personal Data: means any Personal Data and/or Special Category Personal Data of any Service User(s) or Staff that fall(s) within any of the categories of Personal Data specified in paragraph 4 (Categories of Personal Data) of Appendix 1 (Data Sharing Protocol) of [Schedule 4] and means in particular such data as any Disclosing Partner makes available under this Agreement and that a Receiving Partner receives under this Agreement.

Special Categories of Personal Data: means the Personal Data covered by Article 9(1) of the UK GDPR.

Standing Financial Instructions: the document regulating the conduct of each of the Partners, its officers and agents in relation to all financial matters. They explain the financial responsibilities, policies and procedures to be adopted by each of the Partners. As at the date of this Agreement each of the Partners has their own Standing Financial Instructions.

Standing Orders: sets out the practice and procedures of each of the Partners as regulated by the NHTA 2006 and all other relevant legislation. As at the date of this Agreement each of the Partners has their own Standing Orders.

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

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

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

Variation: means any written variation to this Agreement in line with Clause 25.

Working Day: means 9.00 am to 5.00 pm on any day except Saturday, Sunday, a public or bank holiday in England.

- 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 The Schedules form part of this Agreement and shall have effect as if set out

in full in the body of this Agreement. Any reference to this Agreement includes 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 references 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 communications 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 take effect on the Commencement Date.
- 2.2 This Agreement shall continue in force until April 1 2022, unless it is terminated before April 1 2022 in accordance with the provisions of clause 18.1.
- 2.3 This Agreement may be extended for a further period beyond April 1 2022 by written agreement between the Partners.

2A TERMINATION OF THE 2017 AGREEMENT

- 2A.1 The Partners agree that the 2017 Agreement is terminated as at the date of this Agreement.

3. GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

3.1.1 the rights and powers, duties and obligations of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions);

3.1.2 any power or duty of the Council to set, administer, collect and recover charges for the provision of any services (including the Services) in the exercise of any of the Health-Related Functions; or

3.1.3 the Council's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990 and the Care Act 2014;

3.1.4 the arrangements that the Council has entered into under the MLCO Partnership Agreement; or

3.1.5 the arrangements that the Council has entered into with Greater Manchester Mental Health Foundation Trust under a section 75 partnership agreement dated [] 2019.

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.

4. DECISION MAKING ARRANGEMENTS

4.1 The Partners agree that they shall exercise their respective Functions in relation to the use of the BCF Pooled Fund in accordance with their respective governance arrangements including constitutions, schemes of delegation and Standing Financial Instructions / Standing Orders.

4.2 Overall strategic oversight of the BCF Pooled Fund is vested in the Health and Wellbeing Board, which for these purposes shall make appropriate recommendations as to any action it considers necessary. The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction to shape the use of the BCF Pooled Fund.

4.3 Each Partner shall cooperate with the other Partner and keep the other Partner and the Health and Wellbeing Board regularly informed of the effectiveness of the arrangements

4.4 The Health and Wellbeing Board will not:

- 4.4.1 formally authorise commitments against either the individual or aggregate contributions of the Partners; nor
- 4.4.2 authorise a Lead Commissioner to enter into any contract for services necessary for the provision of Services under an Individual Service.
- 4.5 Formal decisions upon expenditure for Services within the Better Care Fund will be authorised through the respective Partners' governance arrangements, in line with their delegated levels of authority.
- 4.6 Decisions taken by the Partners will be reported to the Host Partner within 30 Working Days of the decision. The Host Partner will report all decisions notified to it by other Partners in the next scheduled report to the Health and Wellbeing Board.
- 4.7 The Partners' respective governing body/ Cabinet will retain responsibility for delivering the aims and objectives of this Agreement and for all decisions and Services related to this Agreement. Each Partner is responsible for ensuring there are robust internal governance and control arrangements in place to ensure that the standards of accountability and probity required of all Partners are upheld and that each Partner's statutory duties and organisational requirements are complied with.

4A PARTNERSHIP FLEXIBILITIES

- 4A.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:
 - 4A.1.1 Lead Commissioning Arrangements;
 - 4A.1.2 Integrated Commissioning;
 - 4A.1.3 Joint (Aligned) Commissioning
 - 4A.1.4 the establishment of one or more pooled fundsin relation to Individual Services (the "**Flexibilities**")
- 4A.2 Where there is 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.
- 4A.3 Where there is 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.

- 4A.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 Individual Service 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.
- 4A.5 At the Commencement Date the Partners have agreed the commissioning arrangements set out in Schedule 3.

4B FUNCTIONS

- 4B.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.
- 4B.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.
- 4B.3 The Individual Services included as part of this Agreement at the Commencement Date are set out in Schedule 2.
- 4B.4 Where the Partners wish to add a new Individual Service to this Agreement the Partners shall seek to vary this Agreement in accordance with Clause 25 and Schedule 5, provided that the Partners consider that the Individual Service in question will improve health and well-being in accordance with this Agreement.

4C COMMISSIONING ARRANGEMENTS

General

- 4C.1 The Partners shall comply with the commissioning arrangements as set out in Clause 4A.
- 4C.2 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 4C.3 Each Partner shall keep the other Partner and the Health and Wellbeing Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in the BCF Pooled Fund.
- 4C.5 Where there are Lead Commissioning Arrangements in respect of an Individual Service then prior to any new Services Contract being entered into the Partners shall agree in writing:
- 4C.5.1 how the liability under each Services Contract shall be

apportioned in the event of termination of the relevant Individual Service; and

4C.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 Service.)

4C.6 The Partners shall comply with the arrangements in respect of Joint Commissioning as may be set out in this Agreement.

Appointment of a Lead Partner

4C.7 Where there are Lead Commissioning Arrangements in respect of an Individual Service the Lead Partner shall:

4C.7.1 exercise the relevant NHS Functions in conjunction with the relevant Health Related Functions;

4C.7.2 endeavour to ensure that the relevant NHS Functions and the relevant 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.

4C.7.3 commission Services for individuals who meet the relevant eligibility;

4C.7.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;

4C.8.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;

4C.8.6 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;

4C.8.7 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;

- 4C.8.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 4C.8.9 keep the other Partner regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in the BCF Pooled Fund.

5. ESTABLISHMENT OF A BCF POOLED FUND

- 5.1 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 from the BCF Pooled Fund.
- 5.2 The BCF Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement, in particular with the financial framework in Schedule 4.
- 5.3 It is agreed that the monies held in the BCF Pooled Fund may only be expended on the following (any expenditure must meet at least one of these criteria) in so far as such expenditure is directly linked to the exercise of the NHS Functions or Health Related Functions which are the subject of the arrangements under this Agreement, related to health and social care commissioning for the population of Manchester, in line with Locality Plan, and approved by the Health and Wellbeing Board:
 - 5.3.1 the protection of health care, the exercise of NHS Functions and Health Related Functions;
 - 5.3.2 the protection of social care services and the exercise of social care related functions with a clear health benefit;
 - 5.3.3 Third Party Costs relating to agreed Individual Services;
 - 5.3.4 the Contract Price for agreed Individual Services as recorded in Schedule 2 ;
 - 5.3.5 for Council provided services, the Permitted Budget; and
 - 5.3.6 Approved Expenditure
("Permitted Expenditure").
- 5.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 5.5 For the avoidance of doubt, monies held in the BCF Pooled Fund may not be expended on Default Liabilities unless this is agreed by the Partners in writing.

6. BCF POOLED FUND MANAGEMENT

- 6.1 Pursuant to this Agreement, the Partners agree to appoint the CCG as the Host Partner for the BCF Pooled Fund. The Host Partner shall be the Partner responsible for:
- 6.1.1 holding the BCF Pooled Fund as a whole including all monies contributed to the BCF Pooled Fund on behalf of itself and the other Partners and paying out monies from the BCF Pooled Fund in accordance with this Agreement;
 - 6.1.2 recording contributions to the BCF Pooled Fund, expenditure from the BCF Pooled Fund and subsequent variances in relation to a budget for a whole service where it is part of the BCF Pooled Fund, and contributions made to other budgets from within the BCF Pooled Fund, winter pressure funding, Improved Better Care Fund or other contributions in line with Permitted Expenditure;
 - 6.1.3 providing the financial administrative systems for the BCF Pooled Fund to include in year reporting of the position, year-end forecast and cashflows;
 - 6.1.4 appointing the BCF Pooled Fund Manager; and
 - 6.1.5 ensuring that the BCF Pooled Fund Manager complies with their obligations under this Agreement and the Regulations, including the obligation to submit to the Partners the Pooled Fund Manager Quarterly Reports, and an annual return, about the income of, and expenditure from, the BCF Pooled Fund and other information by which the Partners can monitor the effectiveness of the BCF Pooled Fund arrangements.
- 6.2 Management costs incurred in respect of hosting the BCF Pooled Fund will not be charged as Permitted Expenditure under this Agreement without formal agreement of all the Partners.
- 6.3 The BCF Pooled Fund Manager in respect of each Individual Service within the BCF Pooled Fund shall have the following duties and responsibilities:
- 6.3.1 the day to day operation and management of the BCF Pooled Fund;
 - 6.3.2 ensuring that all expenditure from the BCF Pooled Fund is in accordance with the provisions of this Agreement;
 - 6.3.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the BCF Pooled Fund;
 - 6.3.4 ensuring that full and proper records for accounting purposes are kept in respect of the BCF Pooled Fund;
 - 6.3.5 NOT USED

- 6.3.6 ensuring action is taken to manage any projected Underspend or Overspend relating to the BCF Pooled Fund in accordance with this Agreement;
 - 6.3.7 preparing and submitting to the Partners and the Health and Wellbeing Board annual reports (or more frequent reports if required by the Partners and/or the Health and Wellbeing Board) about the income and expenditure from the BCF Pooled Fund together with such other information as may be required by the Partners and/or the Health and Wellbeing Board to monitor the effectiveness of the BCF 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 BCF Pooled Fund Manager in time for the reporting requirements to be met;
 - 6.3.8 preparing a jointly agreed plan between Partners to be submitted for approval by the Health and Wellbeing Board, as required; and
 - 6.8.4 preparing and submitting the reports required as set out at paragraph 11 of Schedule 4.
- 6.4 In carrying out their responsibilities as provided under Clause 6.3 the BCF Pooled Fund Manager shall have regard to the National Guidance and the recommendations of the Health and Wellbeing Board and shall be accountable to the Partners.
- 6.5 All Partners are required to provide the relevant and required information to allow effective management of the BCF Pooled Fund.

7. FINANCIAL CONTRIBUTIONS

- 7.1 The Financial Contributions of the CCG and the Council to the BCF Pooled Fund for the relevant Financial Year of operation of this Agreement shall be as set out in Schedule 1.
- 7.2 The Partners' agreed contributions are based upon:
- 7.2.1 The mandatory minimum contributions as specified by NHS England and the Ministry for Housing Communities and Local Government in respect of the Better Care Fund, including;
 - i) Minimum NHS contribution ring-fenced from CCG allocation (includes funding to support local authority delivery of reablement, Carers Breaks and implementation of duties to fund carer support under the Care Act 2014)
 - ii) Disabled Facilities Grant
 - iii) Improved Better Care Fund grant
 - iv) Winter Pressures grant, and
 - 7.2.2 Other non-mandated contributions as approved by the Partners for

contribution towards the BCF Pooled Fund, and as specified in Schedule 1.

7.3 The Partners will record all contributions and the components of the BCF Pooled Fund for the relevant Financial Year in Schedule 1. Changes to the contributions and the components of the BCF Pooled Fund for the following Financial Year will be updated by signed variation by no later than 31 March. This will include any nationally mandated uplifts.

7.4 The funding schedules will record:

7.4.1 The Partners and their total opening Financial Contributions;

7.4.2 Any funding to be transferred between the Partners as required by NHS England or the Ministry for Housing, Communities and Local Government;

7.4.3 The value of funding to be set aside by each Partner for nationally required purposes as mandated by the National Guidance, including:

- (i) reablement services responsibilities;
- (ii) the transfer of health funding for social care purposes;
- (iii) the implications of the Care Act;
- (iv) the Disabled Facilities Grant, and
- (v) agreement to invest in NHS-commissioned out-of-hospital services.

7.5 NOT USED

7.6 The Partners may make additional contributions of Non-Recurrent Payments to the BCF Pooled Fund from time to time subject to Clause 9 and in accordance with Clause 25.

8. NON-FINANCIAL CONTRIBUTIONS

8.1 The Partners have agreed that they will each maintain their existing resources (including staff resources), systems, processes, and premises which support the delivery of the Services commissioned from the BCF Pooled Fund.

8.2 Unless agreed otherwise between the Partners, each Partner shall continue to provide non-financial contributions at no charge to the other Partner or the BCF Pooled Fund, as required in order to support the delivery of the Services commissioned from the BCF Pooled Fund.

9. RISK SHARE ARRANGEMENTS, OVERSPENDS AND UNDERSPENDS

9.1 Schedule 1 indicates the value of the resources contributed to the BCF Pooled Fund by each Partner. No financial commitment shall be entered into that will exceed the value of the BCF Pooled Fund specified in the Financial Contributions table in Schedule 1 – either in aggregate, or by reference to an individual Partner's Financial Contributions - unless additional contributions are made during the Financial Year subject to this Clause 9 and in accordance with Clause 25.

9.2 The Partners are only permitted to commit their own resources against Permitted Expenditure and Services. This means that each of the Partners are only permitted to commit up to the value of their Financial Contributions as identified in Schedule 1.

9.3 For the avoidance of doubt:

9.3.1 A Partner will not have any rights to financial reimbursement or recourse from the other Partner for any costs incurred by them in respect of payments for Services resulting in amounts in excess of their Financial Contributions as identified in Schedule 1.

9.3.2 Each Partner will be individually and unilaterally liable for any costs incurred above their respective Financial Contributions as identified within Schedule 1 and shall not seek any further reimbursement from the other Partner to this Agreement in the relevant Financial Year, unless otherwise specifically agreed in line with clause 7.6.

9.3.3 A Partner may not draw upon the other Partner's funds to support their own overspends, or additional investment in relation to new Approved Expenditure if their own Financial Contributions have already been fully committed, unless otherwise specifically agreed in accordance with clause 25.

9.3.4 These provisions may be exceptionally varied by mutual agreement of the Partners in writing in accordance with Clause 25.

9.4 Any uncommitted balances within any of the Partners' Financial Contributions, resulting from slippage in planned Permitted Expenditure or Approved Expenditure, or other surplus resources not fully committed in the relevant Financial Year, shall revert to the contributing Partner in the relevant Financial Year, unless separate approval is granted by the Partner's governing body to apply the funding for the purposes of other Permitted Expenditure or Approved Expenditure. In such circumstances, additional planned expenditure which will vary existing Permitted Expenditure or Approved Expenditure will be varied into Schedule 1 in line with the Variation Procedure in Schedule 5.

10. CAPITAL EXPENDITURE

10.1 Except as provided in Clause 10.2 the BCF Pooled Fund shall not normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be separately agreed by the Partners.

10.2 For the avoidance of doubt, the Partners agree that the Disabled Facilities Grant does not fall within the restrictions on capital expenditure set out in Clause 10.1.

11. VAT

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

12. LIABILITIES AND INSURANCE AND INDEMNITY

- 12.1 Subject to Clause 12.2 and 12.3, if a Partner (the “**First Partner**”) incurs a Loss arising out of or in connection with this Agreement as a consequence of any act or omission of the other Partner (the “**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.
- 12.2 Clause 12.1 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.
- 12.3 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 12, the Partner that may claim against the other indemnifying Partner will:
- 12.3.1 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;
- 12.3.2 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);
- 12.3.3 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 the power or control so as to enable the Other 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.
- 12.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).
- 12.5 Each Partner shall at all times take all reasonable steps to minimise and

mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

Conduct of Claims

12.6 In respect of the indemnities given in this Clause 12:

12.6.1 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.

12.6.2 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.

12.6.3 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.

13. STANDARDS OF CONDUCT AND SERVICE

13.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Constitutions, Standing Financial Instructions and Standing Orders).

13.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the BCF Pooled Fund is therefore subject to the Council's obligations for Best Value and the CCG will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

13.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical and corporate governance, which is a framework through which it is accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence of clinical care will flourish. This Agreement and the operation of the BCF Pooled Fund are therefore subject to ensuring compliance with the CCG Statutory Duties and governance obligations.

13.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies.

14. CONFLICTS OF INTEREST

The Partners shall comply with the policy for identifying and managing conflicts of interest as agreed by the Partners from time to time.

15. NOT USED

16. REVIEW OF THIS AGREEMENT

16.1 The Partners and the Health and Wellbeing Board shall review this Agreement in relation to the BCF Pooled Fund within 12 Months of the date of this Agreement and in light of the current central government national legislative changes to the delivery of health and social care services.

17. COMPLAINTS

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

18. TERMINATION AND DEFAULT

18.1 This Agreement may be terminated by either Partner giving not less than 6 Months' notice in writing to terminate this Agreement.

18.2 If any Partner (the "**Relevant Partner**") fails to meet any of its obligations under this Agreement, the other Partner may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partner may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 19.

18.3 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach.

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

18.4.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the BCF Pooled Fund and its associated 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.

18.4.2 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;

18.4.3 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;

18.4.4 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; and

18.4.5 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.

18.5 In the event of termination in relation to an Individual Service the provisions of Clause 18.4 shall apply mutatis mutandis in relation to the Individual Service (as though references as to this Agreement were to that Individual Service).

19. DISPUTE RESOLUTION

19.1 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.

19.2 NOT USED

19.3 The Authorised Officers shall meet in good faith as soon as possible within notice of the dispute being served pursuant to Clause 19.1 at a meeting convened for the purpose of resolving the dispute.

19.4 If the dispute remains after the meeting detailed in Clause 19.3 has taken place, the Partners' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant meeting for the purpose of resolving the dispute.

19.5 If the dispute remains after the meeting detailed in Clause 19.4 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.

19.6 Nothing in the procedure set out in this Clause 19 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.

20. FORCE MAJEURE

- 20.1 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.
- 20.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as possible. 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.
- 20.3 As soon as practicable, following notification as detailed in Clause 20.2, 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 20.4, facilitate the continued performance of the Agreement.
- 20.4 If the Force Majeure Event continues for a period of more than 60 days, either Partner shall have the right to terminate the Agreement by giving 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 20.

21 CONFIDENTIALITY

- 21.1 In respect of any Confidential Information a Receiving Partner receives from a Disclosing Partner and subject always to the remainder of this Clause 21, the Receiving Partner undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Disclosing Partner's prior written consent provided that:
- 21.1.1 the Receiving Partner shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 21.1.2 the provisions of this Clause 21 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.
- 21.2 Nothing in this Clause 21 shall prevent the Receiving Partner 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.
- 21.3 Each Partner:

21.3.1 may only disclose Confidential Information to its employees and professional advisers to the extent strictly necessary for such employees to carry out their duties under the Agreement; and

21.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 21.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 21;

21.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

21A INFORMATION SHARING

21A.1 In relation to the sharing of Personal Data, the Partners agree to comply with the data protection and information governance obligations set out at Schedule 6.

22. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

22.1 The Partners agree that they will co-operate with each other to enable any Partner receiving a request for Information under the FOIA or the EIR 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.

22.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the FOIA and the EIR. No Partner shall be in breach of Clause 21 if it makes disclosure of Information in accordance with the FOIA and/or the EIR.

23. 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.

24. NOTICES

24.1 Any notice to be given under this Agreement shall be in writing and shall be delivered personally or sent by first class mail or email. The address for service of each Partner shall be as set out in *Clause 24. 2* 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:

24.1.1 personally delivered, at the time of delivery;

24.1.2 posted, and sent by first class at the expiration of 72 hours after posting; and

24.1.3 sent by email, at the time of transmission.

24.2 The address for service of notices as referred to in *Clause 24.1* shall be as follows unless otherwise notified to the other Partner in writing:

24.2.1 if to the Council, addressed to:

Manchester City Council
Town Hall
Albert Square
Manchester
M60 2LA
[Email]

24.2.2 if to the CCG, addressed to:

NHS Manchester CCG
Parkway 3
Parkway Business Centre
Manchester
M14 7LU
mhcc.corporategovernance.manchester@nhs.net

25. VARIATION

25.1 Subject to Clause 25.2 below, no variation to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners, following the variation procedure set out in Schedule 5.

25.2 Where either Partner wishes to:

25.2.1 increase their respective Financial Contributions to the BCF Pooled Fund within a Financial Year in respect of an existing Individual Service (provided that such increase is not linked to the introduction of a new Individual Service, or a change in the scope or extent of an existing Individual Service, and does not impact financially on the other Partner);
or

25.2.2 where a Partner needs to vary their Financial Contributions within a Financial Year as a result of changes in National Guidance or as mandated by a Regulatory Body,

the Partners may make such variations to their Financial Contributions without the agreement of the other Partner provided that such decision is made by the relevant Partner in accordance with the requirements of that Partner's Constitution, Standing Financial Instructions and Standing Orders and the other Partner is kept informed of the variation to the Financial Contributions pursuant to this Clause 25.2 at all stages of its consideration and execution.

26. CHANGE IN LAW

- 26.1 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.
- 26.2 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.
- 26.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), *Clause 19* (Dispute Resolution) will apply.

27. WAIVER

- 27.1 The failure of either Partner to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Partner thereafter to enforce such provision.
- 27.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

28. SEVERANCE

- 28.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 28 shall not affect the validity and enforceability of the rest of this Agreement.

29. ASSIGNMENT AND SUB-CONTRACTING

- 29.1 The Partners shall not sub-contract, assign or transfer the whole or any part of this Agreement.
- 29.2 The prohibition in Clause 29.1 shall not apply to any assignment to a statutory successor of all or any part of a Partner's statutory functions.

30. EXCLUSION OF PARTNERSHIP AND AGENCY

- 30.1 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.

30.2 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:

30.2.1 act as an agent of the other;

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

30.2.3 bind the other in any way.

31. THIRD PARTY RIGHTS

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

32. ENTIRE AGREEMENT

32.1 This Agreement, together with the contents of the Schedules, contain the whole agreement between the Partners with respect to the subject matter hereof and supersede all prior communications, representations, arrangements, understandings and agreements between the Partners relating to that subject matter.

32A COUNTERPARTS

32A.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

33. GOVERNING LAW AND JURISDICTION

33.1 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.

33.2 Subject to Clause 19 (Dispute Resolution), the Partners irrevocably agree that the courts of England 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.

**SCHEDULE 1
BETTER CARE FUND POOLED FUND : SUMMARY FINANCIAL
CONTRIBUTIONS**

2021/22

Service Description	Budget			Actual		
	CCG	Council	TOTAL	CCG	Council	TOTAL
	£'000	£'000	£'000	£'000	£'000	£'000
Adult Community Services	43,227		43,227	43,227		43,227
Care Act	1,748		1,748	1,748		1,748
Adult Social Care	15,356		15,356	15,356		15,356
Integrated Community Teams	5,903		5,903	5,903		5,903
Intermediate Care	1,894		1,894	1,894		1,894
Reablement	13,788		13,788	13,788		13,788
Sub Total	81,915	-	81,915	81,915	-	81,915
Care Act	- 1,748	1,748	- 0	- 1,748	1,748	- 0
Protection of Social Care	- 15,356	15,356	-	- 15,356	15,356	-
iBCF: Adult Social Care Grant		28,150	28,150		28,150	28,150
iBCF: Improved Better Care Fund		2,666	2,666		2,666	2,666
Disabled Facilities Grant		8,483	8,483		8,483	8,483
TOTAL	64,811	56,402	121,213	64,811	56,402	121,213

Note: For 2021/22 only H1 budgets were set for the CCG, so values for H2 are indicative only. MCC has received full year allocations for the iBCF and Disabled Facilities Grant

SCHEDULE 2 - BETTER CARE FUND POOLED BUDGET: DETAILED FINANCIAL CONTRIBUTIONS

Line Description	TOTAL Closing Budget 2021/2022			Line Description	TOTAL Closing Budget 2021/2022
Cardiac Rehab	37,794			TCS - Manual Handling Team	187,125
Continence	487,371			TCS - Nursing Home (30%)	128,654
Domestic Abuse Training Project	79,703			TCS - Occupational Therapy	78,806
Primary Care End of Life Facilitators	35,054			TCS - Stoma Care	101,626
Lift Receptionist	247,914			TCS PRIMO Tier 2	295,338
LCO Growth	1,208,068			TCS - Tier 2 Other Clinical Support	280,377
MacMillan Nursing	338,143			TCS - Tier 2 Other Scheduled Care	199,445
Nurse post funding	80,615			TCS - Tissue Viability (44%)	169,198
Occupational Therapy Services	645,111			TCS - Treatment Centre	681,405
OT Service transfer from UHSM	42,805			TCS - Withington Property Transfer	151,233
Orthopaedic Outreach	68,290			Diabetes Specialist Nurse	128,485
Out of Hours Nursing - Central	808,274			Tissue Viability Citywide Service	277,844
Oxygen Service	85,441			Community Neuro Rehab Team	920,633
Parkinsons Disease	113,292			COPD	470,621
Physio	3,982,906			COPD *	137,519
Plurex drains	11,281			Early supportive discharge	193,285
Podiatry	1,248,017			Integrated Assessment Team	212,181
Pre TCS	1,618,027			MPATH (MANCHESTER PATHWAY FOR HOMELESS)	367,278
Removal Of Associate Income Flows	-			Locality Team A&L	448,989
Locality Team A&L	833,837			Locality Team CW&F	503,243
Locality Team CW&F	934,592			Locality Team G&L	628,928
Locality Team G&L	1,168,009			Locality Team MR&H	410,692
Locality Team MR&H	762,713			IV Therapies	434,895
Active Case Management Service	716,707			Con Care Beds	2,682,822
Acute Respiratory Assessment Service (ARAS)	239,727			Complex Discharge Team	360,495
ARAS	51,500			Intermediate Care	3,995,299
Audiology non AQP block	304,043			HOME FROM HOSPITAL Business Case	146,964
Cardiac Rehab Plan (activity based payments)	98,047			MANCHESTER CITY COUNCIL - MEAP	998,136
COBWEB (Catheter and Stoma Prescribing)	112,865			Intermediate Care Enhanced Beds Pilot - Social Workers	77,504
Community Diabetes Service	118,437			IV THERAPY PASS THROUGH COSTS	43,250
Community Physiotherapy	450,264			LEG CIRCULATION BUSINESS CASE (PAHT)	19,589
Community Stroke Rehabilitation Team	411,963			Community Food and Nutrition pilot	72,268
Continence (North Locality)	522,752			Crisis Response Pilot	1,190,361
DA - Cardiorespiratory Services	16,354			Discharge Team North	187,469
DA - Physiotherapy	322,995			Intermediate Care *	1,946,090
Discharge to Assess	658,544			Intermediate Care Enhanced Beds Pilot	1,108,187
District Nursing * (NM Investment)	318,846			IV therapy Pilot	438,055
District Nursing including Evenings and Nights Service/Rapid Response	4,629,223			Navigator Service	247,653
Leg Circulation Service	121,343			NMNC Pilot	864,555
Lymphodemia	193,686			Non Stock Health Equipment Budget	5,555
MacMillan CRES	6,929			Palliative Care	688,202
Macmillan Services (North Locality)	619,114			Stroke Early Supported Discharge Pilot	234,900
Additional Nursing for Intermediate Care Facility	279,318			Intermediate Care Drugs	32,229
Occupational Therapy Services	79,578			Carer Support	84,382
Podiatry	581,730			Care Homes Primary Care	442,908
Removal of cross boundary flows from North Manchester CCG baseline	-			Community Geriatrician	178,507
Speech & Language (Provider to Provider)	171,512			TCS - Active Case Management	873,237
Tier 2 / Pulmonary Rehab	93,464			TCS - Community Diabetes (40%)	112,107
Tier 2 Orthotics	20,846			TCS - Community Physiotherapy (50%)	254,958
Tier 2 Physiotherapy	103,785			TCS - Continence (50%)	227,627
Tissue Viability Citywide Service (North Locality)	393,689			TCS - COPD (75%)	144,723
Treatment Rooms Service - North District	100,648			TCS - Coronary Heart Disease and Cardiac Rehab (50%)	58,511
Balancing PAHT contract	439,081			TCS - Nursing Home (70%)	300,192
Anti-Coag Self-Test	2,412			TCS - Tissue Viability (56%)	215,342
Community SALT	61,975			Other TCS not included in AHP	966,323
Continuous Blood Glucose Monitoring	1,634			Intermediate Care	707,977
Critical Care Outreach	95,333			TCS - Discharge Liaison	420,140
Day Care	105,800			TCS - Health Equipment Non Stock	7,459
De-waxing	6,878			TCS - Intermediate Care	2,346,427
Disablement Services	686,815			TCS - Tier 2 Other Unscheduled Care	149,437
Orthotics	254,370			Disablement Services	852,832
COBWEB	58,069			TCS - District Nurses	1,472,033
Phlebotomy	114,999			Care Act Funding	2,002,751
TCS - Community Diabetes (60%)	168,160			Disabled Facilities Grant	8,482,757
TCS - Community Physiotherapy (50%)	254,958			Improved Better Care Fund	28,149,724
TCS - Continence (50%)	227,627			Winter Pressures Grant	2,666,050
TCS - COPD (25%)	48,241			Social Care Funding - maintaining eligibility criteria	7,729,114
TCS - Coronary Heart Disease and Cardiac Rehab (50%)	58,511			Social Care Funding - reablement services	1,879,872
TCS - District Nurses	3,672,690			Social Care Funding - early supported hospital discharge schemes	418,959
TCS - Expert Patient Programme	167,571			Social Care Funding - social worker establishment	2,191,055
TCS - Macmillan	243,352			Delayed Transfer of Care / Home Care	2,023,490
TCS - Macmillan CRES	9,301			Extra Care	858,000
				TOTAL POOLED BUDGETS	121,212,976

SCHEDULE 3 – COMMISSIONING RESPONSIBILITIES - DRAFT

[This schedule has been agreed to be agreed post commencement]

At the Commencement Date the Partners have agreed the following Commissioning Arrangements:

- 1 The following Individual Services with Lead Commissioning Arrangements with Council as Lead Partner:
(a) [INSERT]
- 2 The following Individual Services with Lead Commissioning Arrangements with CCG as Lead Partner:
(a) [INSERT]
- 3 The following Individual Services with Joint Commissioning Arrangements with Council as Lead Partner:
(a) [INSERT]
- 4 The following Individual Services with Joint Commissioning Arrangements with CCG as Lead Partner.
(a) [INSERT]

SCHEDULE 4 – FINANCIAL FRAMEWORK

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

1. Funding Contributions

- 1.1. All minimum nationally mandated sums as set out in the National Guidance from both health and care resources will be transferred to the BCF Pooled Fund. Partners reserve the right to review their discretionary additional contributions to the BCF Pooled Fund in line with the process referred in this Schedule, subject to the relevant notices being served and implications of any associated commitments against the resources being managed appropriately.
- 1.2. Partners may agree to contribute additional recurrent or non-recurrent funding to the BCF Pooled Fund over and above the nationally mandated minimum sums.
- 1.3. Any contributions to the BCF Pooled Fund must be made in accordance with the relevant Partner's own internal governance relating to budget virements or new commitments.

2. Annual Plans

- 2.1. The Health and Wellbeing Board will annually ratify the overall proposals from the Partners to be funded from their shares of the BCF Pooled Fund.
- 2.2. The Partners will agree the range and scope of Services to be funded through each element of the BCF Pooled Fund as part of the Financial Contributions in Schedule 1 by no later than 31 March.

3. Existing Commitments

- 3.1. A significant proportion of the BCF Pooled Fund will support the continued funding of specific services commissioned by the Partners, up to the maximum values specified in the Financial Contributions table in Schedule 1.
- 3.2. The BCF Pooled Fund is also intended to fund the implications for the Council of its responsibilities under the Care Act 2014.

4. Improved Better Care Fund

- 4.1. The Improved Better Care Fund refers to original grant announced in 2015 and the additional funding announced in the 2017 Spring Budget. Additional monies were made available to Local Authorities for the Improved Better Care Fund which has been paid directly to Local Authorities. According to central government guidance, the Improved Better Care Fund grant which has been paid to the Council may be used only for the purposes of meeting adult social care needs; reducing pressures on the NHS, including supporting more people

to be discharged from hospital when they are ready; and ensuring that the local social care provider market in the City of Manchester is supported.

- 4.2. Central government's conditions for the Improved Better Care Fund grant to the Council is that it must be pooled as part of the BCF Pooled Fund.

5. Financial probity

- 5.1. The Partners will comply with the relevant Clauses within this Agreement surrounding the expected standards of financial governance and financial management in the conduct of all affairs relating to the exercise of this Agreement and in particular, in respect of their responsibilities as commissioners for the Services to be supported through the BCF Pooled Fund
- 5.2. The Partners will comply with their respective governance arrangements and Clause 14 in respect of conflicts of interest.

6. Financial management

- 6.1. In line with the agreed commissioning responsibilities for the Services funded from the BCF Pooled Fund as set out in Schedule 3, each Partner will be responsible for making payments directly to the relevant suppliers of Services in line with each Partner's financial procedures.
- 6.2. Until future arrangements are varied, each Partner will be responsible for making payments against each Services Contract to which they are a party which forms part of the Permitted Expenditure under the various elements of the BCF Pooled Fund. Accordingly, each Partner will be responsible for the management of all working balances in respect of their directly managed contracts for Services which form part of the Permitted Expenditure and for which the Partner is the commissioner of the contract concerned.

7. Investments and Disinvestments

- 7.1. Neither Partner shall make any disinvestments from the BCF Pooled Fund unless agreed in writing between the Partners in accordance with the variation arrangements specified at Clause 25 and in Schedule 5.
- 7.2. As previously outlined, additional funding can be added to the BCF Pooled Fund in accordance with Clause 25.

8. Internal Approvals

- 8.1. The Partners are responsible for ensuring that appropriate schemes of delegation are in place within their organisations to ensure that approvals are provided in line with appropriate and delegated expenditure limits.

9. Accounting Records

- 9.1. All Partners will ensure that proper records are kept for all transactions relating to Permitted Expenditure in relation to Services Contracts under the BCF Pooled Fund and to support accounting, financial reporting and audit arrangements for the overall BCF Pooled Fund.

10. Financial Reporting

- 10.1. Partners must work together and provide accurate and timely information for financial reporting to the Pooled Fund Manager. Financial reporting will include but not limited to:

- Annual accounts
- BCF Pooled Fund reporting
- Health and Wellbeing Board

11. BCF Reporting

- 11.1. The expected reporting requirements for the BCF Pooled Fund are as per clause 6.3 of the main Agreement, the Pooled Fund Manager is required to ensure reporting is performed in line with requirements. This will include:

- submitting to the Partners Quarterly reports, and an annual return, about the income of, and expenditure from, the BCF Pooled Fund and other information by which the Partners can monitor the effectiveness of the BCF Pooled Fund arrangements.
- annual approval of the BCF Pooled Fund by the Health and Wellbeing Board, including information on prior year outturn.
- completion of BCF Pooled Fund required returns to NHSE&I. These are usually on a Quarterly basis.
- any other additional reports as required.

12. Pooled Fund Manager

- 12.1. At the date of this Agreement the Pooled Fund Manager responsibilities will be undertaken by Senior Planning & Policy Manager.

13. Regularity

- 13.1. The Partners will ensure that all funding and other monies from any grants received shall be applied in a proper manner and in accordance with any funding or grant criteria, as applicable. In the event a Partner misapplies monies the Partner in default shall reimburse the monies that were misapplied.

14. Audit Inspection and Right of Access

- 14.1. 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 in accordance with the Regulations and the Local

Audit and Accountability Act 2014.

- 14.2. 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.
- 14.3. The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law.
- 14.4. The Partners shall cooperate with any investigation undertaken by any Regulatory Body.

Schedule 5 – VARIATIONS TO THE AGREEMENT

1. General provisions

- 1.1 The provisions of this Agreement may be varied at any time by agreement in accordance with this Schedule 5 and in writing in the form of a Template Variation Agreement as specified in Schedule 5 Part 1, signed by the Partners' authorised signatories. All agreed Variations must be recorded in Schedule 5 Part 2 - Recorded Variations.
- 1.2 The Proposing Partner must have regard to the impact of the proposed variation on the execution of this Agreement and Services supported through the Better Care Fund.
- 1.3 Any Variation Proposal must set out sufficient detail about the Variation Proposal and the date on which the Proposing Partner requires it to take effect.

2. Variation Proposals relating to the terms and conditions of this Agreement

- 2.1 If a Partner wishes to propose a Variation to the Agreement, the Proposing Partner must send a written Variation Proposal to the other Partner using the Template specified in Schedule 5 Part 1.
- 2.2 The other Partner in receipt of the Variation Proposal must respond to the Proposing Partner within 10 Working Days following receipt.
- 2.3 NOT USED
- 2.4 NOT USED
- 2.5 NOT USED
- 2.6 The Variation Proposal will not take effect within the scope of this Agreement until both Partners have signed the Variation Proposal and it has been recorded in Part 2 to this Schedule 5.
- 2.7 If the Partner in receipt of the Variation Proposal is not in agreement with the Variation Proposal, it will refer the matter to a meeting of the Partners within 30 Working Days following the date of written rejection being sent to the Proposing Partner (or such other timescale as mutually agreed by the Partners) to discuss the Variation Proposal and the Partners must use reasonable endeavours to agree an outcome to the Variation Proposal.
- 2.8 If the Variation Proposal is agreed subsequent to the meeting referred in 2.7, the Partners will sign the Variation Proposal at the meeting and it shall be recorded in Part 2 this Schedule 5 and this Agreement shall be deemed varied accordingly.

- 2.9 If the Partners are unable to reach agreement following the review meeting, the Partners will follow the Dispute Resolution Procedure. If a Variation Proposal would or might have a cost implication for any Partner:
- 2.9.1 the Proposing Partner must provide a full and detailed cost and benefit analysis of the Variation Proposal; and
 - 2.9.2 subject to Law and Guidance, the Partners will have absolute discretion to refuse or withdraw the Variation Proposal; and
 - 2.9.3 the Partner in receipt of the Variation Proposal will have no liability to the Proposing Partner for any costs arising from the Variation Proposal if the Proposing Partner implements it other than in accordance with this Agreement.
- 2.10 If, having followed the procedure set out above in this paragraph 2, the Partner in receipt of the Variation Proposal acts unreasonably in relation to the Variation Proposal, the Proposing Partner may terminate its participation in this Agreement in accordance with Clause 18.
- 2.11 The right of the Proposing Partner to terminate its participation in this Agreement under paragraph 2.10, will not apply if:
- 2.11.1 the Variation Proposal is substantially a proposal that the other Partner should contribute to the Proposing Partner's Services without formal agreement to share additional financial risks; or
 - 2.11.2 the proposal does not meet the requirements of a Variation Proposal.

3. Variation Proposals affecting a Partners' Funding Contributions or Individual Service

- 3.1 The process described in paragraph 2 will not apply where the Proposing Partner issues a Variation Proposal to amend either its own non-mandated funding contributions or Individual Service for which it is the Lead Partner (save in the circumstances set out in Clause 25.2, in which case the process set out in Clause 25.2 will apply). This paragraph 3 will apply to such circumstances:
- 3.1.1 the Proposing Partner will have the rights to vary by submission of an authorised Variation Proposal Template per Schedule 5 Part 2:
 - 3.1.1.1 the value of its own non-mandated contributions, provided that notice periods are followed as set out in Schedule 1;
 - 3.1.1.2 the content and scope of Individual Service(s) for which it is the Lead Partner provided that any changes to the Individual Service(s) meet the requirements of Permitted Expenditure and

the aims and objectives of this Agreement and do not affect in any way the rights, obligations or risks of the other Partner to this Agreement.

- 3.2 The Partner in receipt of the Variation Proposal will acknowledge receipt within 10 working days.
- 3.3 Where a Variation Proposal under paragraph 3 relates to a change to or termination of an Individual Service that is lead commissioned and affects more than the Proposing Partner, the Proposing Partner must identify any estimated financial and other implications of the Proposal for the other Partner.
- 3.4 If the Variation Proposal is rejected, the rejecting Partner will respond to the Variation Proposal in writing to the Proposing Partner setting out any concerns with the contents of the Variation Proposal and the actions required to address such concerns or the reasonable grounds for that refusal.
- 3.5 If the Partner in receipt is in agreement with the Variation Proposal, it will confirm agreement within 10 working days of confirmation of receipt.
- 3.6 The Variation Proposal will not take effect within the scope of this Agreement until both Partners have signed the Variation Proposal and it has been recorded in Part 2 to this Schedule 5.
- 3.7 If the Variation Proposal is not agreed, the procedure described in paragraphs 2.7 to 2.11 will apply.
- 3.8 Where an agreed Variation Proposal under paragraph 3 involves the withdrawal of a Service:
 - 3.8.1 the Variation Procedure described in this paragraph 3 also requires adherence to Clause 22 (Termination); and
 - 3.8.2 if the Proposing Partner withdraws from or stops commissioning the Individual Service(s) before the date agreed for that withdrawal, the Proposing Partner will be wholly liable to the Provider(s) for all reasonable costs and losses directly attributable to the early withdrawal or de-commissioning of that Individual Service(s) without rights of recourse to the other Partner to this Agreement or the affected Individual Service(s).

Part 1 – Template Variation Proposal and Recorded Variations

[Name]
[Address]

[Date]

Re: [Title of Variation Proposal and Proposing Partner]

Variation Proposal: [Enter Reference Number e.g. V001/MCCG]

Dear [Contact Name],

In accordance with the variation procedure described in Clause 25 and Schedule 5 of the section 75 partnership agreement relating to the commissioning of health and social care services from the Better Care Fund and Improved Better Care Fund between NHS Manchester Clinical Commissioning Group and Manchester City Council dated [DATE] (**Partnership Agreement**), this Variation Proposal is issued by [relevant Partner] to [relevant Partner].

- 1) [Describe proposed Variation to be made and rationale]
- 2) [Describe the governance routes through which this variation has already been considered, if applicable].
- 3) [Describe any cost implications associated with the proposal for the other Partner.]
- 4) [If there are any supporting documents, e.g. a new report format, a new services specification, revised annual expenditure plan etc, include a copy of this on a separate page of the variation proposal as an Appendix.]

Upon receipt of this Variation Proposal, [relevant Partner] is requested to follow the procedure within Schedule 5 of the Partnership Agreement.

Upon agreement of the Proposed Variation, the Variation will take place [[with immediate effect] or [enter a specific date if the Variation is to come into effect at a later date]].

All other terms and conditions of the Agreement remain unchanged.

Yours sincerely,

[Authorised Partner signatory]

Variation Proposal: [Enter reference number as above]

I hereby agree to the above referenced Variation Proposal dated [XX]:

SIGNED by

for and on behalf

of the Proposing Partner

Date:

SIGNED by

for and on behalf

of Host Partner

Date:

**Signature of this page will affect the
Variation proposed on the page
above.**

SIGNED by

for and on behalf

**of NHS Manchester Clinical
Commissioning Group**

Date:

Part 2 – Recorded Variations

Variation Number		Description of Variation	Date of Variation Proposal	Partner proposing the Variation	Date of Variation Agreement

SCHEDULE 6 – INFORMATION SHARING

1 DATA SHARING

- 1.1 The Partners agree that Article 26 (Joint Controllers) of the UK GDPR applies to their sharing of Shared Personal Data under this Agreement. In order to comply with the requirements of Article 26, each Partner shall Process the Shared Personal Data in accordance with this Schedule 6, and each Partner shall comply with the exercise by Data Subjects of their rights under Data Protection Legislation in accordance with this Schedule 6. Without prejudice to Article 82 of GDPR, where applicable, each Partner shall be responsible and liable for its own acts and omissions, and there shall be no joint and several liability.
- 1.2 In the event that any information sharing between the Partners under this Agreement is not within the scope of existing information sharing arrangements documented separately between the Partners before the Commencement Date, the Partners will populate Appendix 1 (Form of Data Sharing Protocol) of this Schedule 6 with the details of (or reference to) the limited purposes of the Processing of Shared Personal Data, data retention, the types of Personal Data that may be Processed, and the categories of Data Subjects to whom the Shared Personal Data relate as soon as possible following execution of this Agreement.
- 1.3 Each Partner will nominate a member of its staff as a lead contact for the purposes of this Schedule 6 (“**Data Protection Contact**”). Each Partner’s Data Protection Contact as at the Commencement Date is identified in paragraph 10 of Appendix 1 (*Data Sharing Protocol*) and each Partner shall notify the other Partner, as soon as reasonably possible, of any changes in the Data Protection Contact or his or her details.

2 SECURITY

- 2.1 Each Partner shall implement the security measures specified in paragraph 7 of Appendix 1 (Security).

3 REVIEW

- 3.1 The Partners shall review this Schedule 6 (and the Partners’ activities under and in connection with this Schedule 6) on the date and frequency specified in paragraph 11 of Appendix 1 (Data Sharing Protocol).

APPENDIX 1 - FORM OF DATA SHARING PROTOCOL

1.	Permitted Purposes	The Partners acknowledge and agree that they will hold and share Shared Personal Data for the purposes of carrying out their respective obligations as described in the Agreement. In particular, the Partners shall use the Shared Personal Data for the purposes of: 1. [INSERT DETAILS OF PURPOSES FOR WHICH DATA IS BEING SHARED]
3.	Data Retention	The Partners shall not retain or Process Shared Personal Data for longer than is necessary to carry out the Permitted Purposes.
4.	Categories of Personal Data	See Appendix 2
5.	Legal Bases for Processing	
6.	Agreed Methods of Sharing Personal Data	[Secure email via .../OTHER METHOD]
7.	Security	A Data Protection Impact Assessment was completed and detailed process map of all data and information flows between the Partners. The [PARTNER] is the principal holder of personal data and established security arrangements and IG practices ensure the security required. All data submitted to the [PARTNER] for reporting and management purposes is anonymised.
8.	Data Quality	Each Partner shall ensure that Shared Personal Data are accurate.
9.	Data Minimisation	Each Partner shall ensure that the Shared Personal Data are adequate, relevant and limited to what is necessary for the Permitted Purposes.
10.	Data Protection Contacts	The Council & the CCG Data Protection Contact: Name: [INSERT] Email: [INSERT]
11.	Review Date/Frequency	The Partners agree to review this protocol at least annually.

APPENDIX 2 - CATEGORIES OF PERSONAL DATA AND LEGAL BASIS FOR PROCESSING

Data Subjects	Category of data	Legal basis for processing relied upon by the CCG and the Council
<p>[INSERT CATEGORIES OF DATA SUBJECT FOR WHICH DATA IS BEING SHARED (E.G. SERVICE USERS, CARERS, SERVICE USER FAMILY, REFERRER, CCG STAFF, COUNCIL STAFF)]</p>	<p><u>Personal Data</u> [INSERT DETAILS OF PERSONAL DATA BEING SHARED FOR EACH CATEGORY OF DATA SUBJECT. IF THE DETAILS ARE THE SAME FOR MULTIPLE CATEGORIES OF DATA SUBJECT, THEY CAN BE GROUPED TOGETHER]</p>	<p><u>[FOR EACH PURPOSE FOR WHICH DATA IS BEING SHARED (AS LISTED IN APPENDIX 1, STATE HERE THE LEGAL BASIS FOR PROCESSING BEING RELIED UPON]</u></p>
	<p><u>Special Category Personal Data</u> [INSERT SPECIAL CATEGORY PERSONAL DATA BEING SHARED]</p>	<p><u>[FOR EACH PURPOSE FOR WHICH DATA IS BEING SHARED (AS LISTED IN APPENDIX 1, STATE HERE THE LEGAL BASIS FOR PROCESSING BEING RELIED UPON]</u></p>

EXECUTION PAGE

THE COMMON SEAL of

THE COUNCIL OF THE CITY OF

MANCHESTER was hereunto
affixed in pursuance of an Order of
the Council of the said City:

Authorised Signatory

EXECUTED as a **DEED**
by the affixing of the **COMMON SEAL** of

NHS MANCHESTER CCG

in the presence of:

Authorised Signatory

Authorised Signatory