

Appendix 1

Dated

2014

THURROCK BOROUGH COUNCIL

and

**NHS THURROCK CLINICAL COMMISSIONING
GROUP**

**FRAMEWORK PARTNERSHIP AGREEMENT
RELATING TO THE COMMISSIONING OF
HEALTH AND SOCIAL CARE SERVICES
BETTER CARE FUND PROGRAMME**

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ERROR! BOOKMARK NOT DEFINED.

THIS AGREEMENT is made on day of
2014

PARTIES

- (1) **THURROCK COUNCIL** of Civic Offices, New Road Grays, Essex, RM17 6SL (the "**Council**")
- (2) **NHS THURROCK CLINICAL COMMISSIONING GROUP** of 2nd Floor Civic Offices, New Road Grays, Essex, RM17 6SL(the "**CCG**")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Thurrock.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Thurrock.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose.
- (D) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future provision of health and social care services. It is also the means through which the Partners will pool funds.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
 - a) improve the quality and efficiency of the Services;
 - b) meet the National Conditions and Local Objectives;
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;
 - d) In the first instance, to focus on people aged 65 years and over, in particular those at risk of hospital admission and permanent admission to residential care or nursing care;
 - e) Empower citizens who have choice and independence and take personal responsibility for their health and wellbeing;

- f) Present health and care solutions that can be accessed close to home;
 - g) Commission and provide health care services tailored around the outcomes the individual wishes to achieve;
 - h) Focus on prevention and timely intervention that supports people to be healthy and live independently for as long as possible, and
 - i) Develop systems and structures that enable and deliver a co-ordinated and seamless response [CP to confirm to DT if there is any further wording here]
- (G) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

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

Agreement means this agreement including its Schedules and Appendices.

Approved Expenditure means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price and Performance Payments.

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

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

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

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

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

Commencement Date means 00:01 hrs on 1 April 2015

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

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

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

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

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

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

Force Majeure Event means one or more of the following:

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

(h) any other event,
in each case where such event is beyond the reasonable control of the Partner claiming relief

Functions means the NHS Functions and the Health Related Functions

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

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

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

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

Individual Scheme means one of the schemes which is agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification in Schedule 2.

Law means:

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

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

Month means a calendar month.

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

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

Non-Recurrent Payments means funding provided by a Partner to the Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause [8.4].

Overspend means any expenditure from the Pooled Fund in relation to an Individual Scheme in a Financial Year which exceeds the Financial Contributions for that Individual Scheme for that Financial Year.

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

Integrated Commissioning Executive means the partnership board responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

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

Performance Payments means any sum over and above the relevant Contract Price which is payable to the Provider in accordance with a Performance Payment Arrangement.

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

Permitted Expenditure has the meaning given in Clause [7.3].

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

Pooled Fund means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations, and as set out in the relevant Scheme Specification.

Pooled Fund Manager means such officer of the Host Partner which includes a Section 113 Officer for the Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause [10].

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

Provider Contracts means those contracts entered into by a Partner in order to deliver the Individual Schemes

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

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

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

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

SOSH means the Secretary of State for Health.

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

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006

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

1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.

- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause [22].
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

3 GENERAL PRINCIPLES

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

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish the Pooled Fund in relation to the Individual Schemes (“the Flexibilities”)
- 4.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.

- 5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 shall be completed and agreed between the Partners. The initial scheme specifications are set out in schedule 1 part 2.
- 5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Integrated Commissioning Executive, [subject to any further requirement to report back to the Health and Wellbeing Board as set out in Schedule 2.

6 COMMISSIONING ARRANGEMENTS

- 6.1 The Partners shall comply with the arrangements in respect of commissioning as set out in the relevant Scheme Specification.
- 6.2 The Integrated Commissioning Executive will report back to the Health and Wellbeing Board as required by its terms of reference.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 It is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 7.3.1 *the Contract Price;*
 - 7.3.2 *where the Council is to be the Provider, the Permitted Budget;*
 - 7.3.3 *Performance Payments;*
 - 7.3.4 *Third Party Costs;*
 - 7.3.5 *Approved Expenditure*
- ("Permitted Expenditure")*
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.

- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for the Pooled Fund as set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
- 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 7.6.2 providing the financial administrative systems for the Pooled Fund; and
 - 7.6.3 appointing the Pooled Fund Manager;
 - 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
- 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager in respect of each Individual Scheme where there is a Pooled Fund shall have the following duties and responsibilities:
- 8.2.1 the day to day operation and management of the Pooled Fund;
 - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.2.5 reporting to the Integrated Commissioning Executive as required by the Integrated Commissioning Executive and the relevant Scheme Specification;
 - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Scheme Specifications in accordance with this Agreement;
 - 8.2.7 preparing and submitting to the Integrated Commissioning Executive Quarterly reports (or more frequent reports if required by the Integrated Commissioning Executive) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Integrated Commissioning

Executive to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.

8.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.

8.3 In carrying out their responsibilities as provided under Clause [8.2] the Pooled Fund Manager shall have regard to the recommendations of the Integrated Commissioning Executive and shall be accountable to the Partners.

8.4 The Integrated Commissioning Executive may agree to the virement of funds between Individual Schemes.

9 NON POOLED FUNDS - NOTE THIS CLAUSE HAS BEEN DELETED AS NON-POOLED FUNDS WILL NOT BE UTILISED

10 FINANCIAL CONTRIBUTIONS

10.1 The Financial Contribution of the CCG and the Council to the Pooled Fund for the first Financial Year of operation of each Individual Scheme shall be as set out in the relevant Scheme Specification.

10.2 The Financial Contributions in each Financial Year, excluding NHS acute Payment 4 performance financial contributions, as set out in section 7 shall be paid to the fund quarterly in advance receivable the first day of the month commencing 1st April 2015.

10.3 The NHS acute Payment 4 Performance financial contributions shall be paid to the fund quarterly in arrears receivable on 1st day of the quarter commencing 1st July in accordance with the release of payment for performance to non-acute NHS commissioning as set out in the National Guidance.

10.4 The Financial Contributions of the Council will be made as set out in the each Scheme Specification.

10.5 With the exception of Clause [13], no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Integrated Commissioning Executive minutes and recorded in the budget statement as a separate item.

11 FURTHER CONTRIBUTIONS

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

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The partners have agreed risk share arrangements as set out in schedule 3, which provide for financial risks arising within the Individual Schemes of the Pooled Fund and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.

Overspends in Pooled Fund

- 12.2 Subject to Clause [12.2], the Host Partner for the Pooled Fund shall manage expenditure from the Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.
- 12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend of an Individual Scheme occurs PROVIDED THAT the only expenditure from that Individual Scheme has been in accordance with Permitted Expenditure and it has informed the Integrated Commissioning Executive in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Integrated Commissioning Executive is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule 3 shall apply.

Underspend

- 12.5 In the event that expenditure from the Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

13 CAPITAL EXPENDITURE

The 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 agreed by the Partners.

14 VAT

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

15 AUDIT AND RIGHT OF ACCESS

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled

Fund, taking note that external audit processes will change when Audit Commission is dissolved on 31 March 2015.

- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 [Subject to Clause 16.2, and 163, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Integrated Commissioning Executive.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
 - 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement.

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

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Fund is therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

18 CONFLICTS OF INTEREST

The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 7.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the partners is vested in the Health and Wellbeing Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 19.2 The Partners have established a Integrated Commissioning Executive to meet the roles and obligations set out in schedule 2.
- 19.3 The Integrated Commissioning Executive is based on a joint working group structure. Each member of the Integrated Commissioning Executive shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Integrated Commissioning Executive to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2.
- 19.4 The terms of reference of the Integrated Commissioning Executive shall be as set out in Schedule 2.

- 19.5 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 19.6 The Integrated Commissioning Executive shall be responsible for the overall approval of the Individual Scheme and Services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.7 Each Scheme Schedule shall confirm the governance arrangements in respect of the Individual Scheme (and related Service) and how that Individual Scheme (and related Service) is reported to the Integrated Commissioning Executive and Health and Wellbeing Board.
- 19.8 Each Scheme Schedule shall confirm the governance arrangements in respect of the Individual Scheme (and related Service) and how that Individual Scheme (and related Service) is reported to the Integrated Commissioning Executive and Health and Wellbeing Board.

20 REVIEW

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

21 COMPLAINTS

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, in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.

- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund requirements continue to be met.
- 22.3 If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other 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 23.
- 22.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners’ rights in respect of any antecedent breach and the provisions of Clauses [to be inserted at signing]
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of any integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 22.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 22.6.3 the Host 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 Host Partner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Host Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
- 22.6.4 where a Service Contract held by a Host 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 Host Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.

22.6.5 the Integrated Commissioning Executive shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and

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

22.7 In the event of termination in relation to an Individual Scheme or Service the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme or Service (as though references as to this Agreement were to that Individual Scheme or Service).

23 DISPUTE RESOLUTION

23.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute.

23.2 The Authorised Officers shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.

23.3 If the dispute remains after the meeting detailed in Clause 23.1 has taken place, the Chief Executive of the Council (or nominee) and the Accountable Officer of the CCG (or nominee) shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

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

24 FORCE MAJEURE

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

25 **CONFIDENTIALITY**

- 25.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
- 25.3 Each Partner:

- 25.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and
- 25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
- 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

- 26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
- 26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

27 OMBUDSMEN

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

28 INFORMATION SHARING

The Partners will follow the Information Governance Protocol set out in schedule 8, and in so doing will ensure that the operation this Agreement complies comply with Law, in particular the 1998 Act.

29 NOTICES

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
 - 29.1.1 personally delivered, at the time of delivery;
 - 29.1.2 sent by facsimile, at the time of transmission;

- 29.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
- 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).
- 29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:
- 29.3.1 if to the Council, addressed to the Director of Adults, Health and Commissioning, Thurrock Borough Council, Civic Offices, New Road Grays, Essex, RM17 6SL;
- Tel: [01375 364029](tel:01375364029)
E.Mail: rharris@thurrock.gov.uk
- and
- 29.3.2 if to the CCG, addressed to the Chief Operating Officer, Thurrock CCG, 2nd Floor Civic Offices, New Road Grays, Essex, RM17 6SL;
- Tel: 01375 365810
Email: thurrock.ccg@nhs.net

30 VARIATION

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

31 CHANGE IN LAW

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

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

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

32 WAIVER

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

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

35 EXCLUSION OF PARTNERSHIP AND AGENCY

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

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

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

37 ENTIRE AGREEMENT

- 37.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.
- 37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

38 COUNTERPARTS

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

39 GOVERNING LAW AND JURISDICTION

- 39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 39.2 Subject to Clause 23 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

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

THE CORPORATE SEAL of)
THURROCK)
COUNCIL)
was hereunto affixed in the)
presence of:

Signed for on behalf of
THURROCK CLINICAL
COMMISSIONING GROUP

Authorised Signatory

SCHEDULE 1 – SCHEME SPECIFICATION

– Template Scheme Schedule

TEMPLATE SCHEME SCHEDULE

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

1 OVERVIEW OF INDIVIDUAL SCHEME

Insert details including:

- (a) *Name of the Individual Scheme*
- (b) *Relevant context and background information*
- (c) *Whether there are Pooled Funds:*

The Host Partner for Pooled Fund X is [] and the Pooled Fund Manager, being an officer of the Host Partner is []

2 AIMS AND OUTCOMES

Insert agreed aims of the Individual Scheme

3 THE ARRANGEMENTS

Set out which of the following applies in relation to the Individual Scheme:

- (1) Lead Commissioning;*
- (2) Integrated Commissioning;*
- (3) Joint (Aligned) Commissioning;*
- (4) the establishment of one or more Pooled Funds as may be required.*

4 FUNCTIONS

Set out the Council's Functions and the CCG's Functions which are the subject of the Individual Scheme including where appropriate the delegation of such functions for the commissioning of the relevant service.

Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)

5 SERVICES

*What Services are going to be provided within this Scheme. ?
Are there contracts already in place?
Are there any plans or agreed actions to change the Services?
Who are the beneficiaries of the Services? ¹*

¹ This may be limited by service line –i.e. individuals with a diagnosis of dementia. There is also a significant issue around individuals who are the responsibility of the local authority but not the CCG and Vice versa See note [] above

6 COMMISSIONING, CONTRACTING, ACCESS

Commissioning Arrangements

Set out what arrangements will be in place in relation to Lead Commissioning/Joint (Aligned) commissioning. How will these arrangements work?

Contracting Arrangements

Insert the following information about the Individual Scheme:

relevant contracts

arrangements for contracting. Will terms be agreed by both partners or will the Lead Commissioner have authority to agree terms

what contract management arrangements have been agreed?

What happens if the Agreement terminates? Can the partner terminate the Contract in full/part?

Can the Contract be assigned in full/part to the other Partner?

Access

Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible.

7 FINANCIAL CONTRIBUTIONS

Financial Year 201.../201

	CCG contribution	Council Contribution
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial Year 201.../201

	CCG contribution	Council Contribution
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		

	CCG contribution	Council Contribution
Pooled Fund Y		

Financial resources in subsequent years to be determined in accordance with the Agreement

8 FINANCIAL GOVERNANCE ARRANGEMENTS

[(1) As in the Agreement with the following changes:

(2) Management of the Pooled Fund

Are any amendments required to the Agreement in relation to the management of Pooled Fund

Have the levels of contributions been agreed?

How will changes to the levels of contributions be implemented?

Have eligibility criteria been established?

What are the rules about access to the pooled budget?

Does the pooled fund manager require training?

Have the pooled fund managers delegated powers been determined?

Is there a protocol for disputes?

(3) Audit Arrangements

What Audit arrangements are needed?

Has an internal auditor been appointed?

Who will liaise with/manage the auditors?

Whose external audit regime will apply?

(4) Financial Management

Which financial systems will be used?

What monitoring arrangements are in place?

Who will produce monitoring reports?

Has the scale of contributions to the pool been agreed?

What is the frequency of monitoring reports?

What are the rules for managing overspends?

Do budget managers have delegated powers to overspend?

Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?

How will overspends and underspends be treated at year end?

Will there be a facility to carry forward funds?

How will pay and non pay inflation be financed?

Will a contingency reserve be maintained, and if so by whom?

How will efficiency savings be managed?

How will revenue and capital investment be managed?

Who is responsible for means testing?

Who will own capital assets?

How will capital investments be financed?

*What management costs can legitimately be charged to pool?
 What re the arrangement for overheads?
 What will happen to the existing capital programme?
 What will happen on transfer where if resources exceed current liability
 (i.e. commitments exceed budget) immediate overspend secure?
 Has the calculation methodology for recharges been defined?
 What closure of accounts arrangement need to be applied?]*

9 VAT

Set out details of the treatment of VAT in respect of the Individual Service consider the following:

- *Which partner's VAT regime will apply?*
- *Is one partner acting as 'agent' for another?*
- *Have partners confirmed the format of documentation, reporting and*
- *accounting to be used?*

10 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

*Will there be a relevant Committee/Board/Group that reviews this Individual Scheme?
 Who does that group report to?
 Who will report to that Group?*

Pending arrangements agreed in the Partnership Agreement, including the role of the Health & Wellbeing Board, Partners to confirm any bespoke management arrangements for the Individual Scheme

11 FURTHER RESOURCES

Council contribution

	Details	Charging arrangements ³	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

CCG Contribution

² We note that some of the information overlaps with the information that is included in the main body of Agreement, however, we consider it is appropriate that this is considered for each Scheme in order to determine whether the overarching arrangements should apply.

³ Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

	Details	Charging arrangements ⁴	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

12 STAFF

Consider:

- *Who will employ the staff in the partnership?*
- *Is a TUPE transfer secondment required?*
- *How will staff increments be managed?*
- *Have pension arrangements been considered?*

Council staff to be made available to the arrangements

Please make it clear if these are staff that are transferring under TUPE to the CCG.

If the staff are being seconded to the CCG this should be made clear

CCG staff to be made available to the arrangements

Please make it clear if these are staff that are transferring under TUPE to the Council.

If the staff are being seconded to the Council this should be made clear.

13 ASSURANCE AND MONITORING

Set out the assurance framework in relation to the Individual Scheme. What are the arrangements for the management of performance? Will this be through the agreed performance measures in relation to the Individual Scheme.

In relation to the Better Care Fund you will need to include the relevant performance outcomes. Consider the following:

- *What is the overarching assurance framework in relation to the Individual Scheme?*
- *Has a risk management strategy been drawn up?*
- *Have performance measures been set up?*
- *Who will monitor performance?*
- *Have the form and frequency of monitoring information been agreed?*
- *Who will provide the monitoring information? Who will receive it?*

⁴ Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

14 LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address	Fax Number
Council					
CCG					

15 INTERNAL APPROVALS

- Consider the levels of authority from the Council's Constitution and the CCG's standing orders, scheme of delegation and standing financial instructions in relation to the Individual Scheme;
- Consider the scope of authority of the Pool Manager and the Lead Officers
- Has an agreement been approved by cabinet bodies and signed?

16 RISK AND BENEFIT SHARE ARRANGEMENTS

Has a risk management strategy been drawn up?

Set out arrangements, if any, for the sharing of risk and benefit in relation to the Individual Scheme.

17 REGULATORY REQUIREMENTS

Are there any regulatory requirements that should be noted in respect of this particular Individual Scheme?

18 INFORMATION SHARING AND COMMUNICATION

What are the information/data sharing arrangements?

How will charges be managed (which should be referred to in Part 2 above)

What data systems will be used?

Consultation – staff, people supported by the Partners, unions, providers, public, other agency

Printed stationary

19 DURATION AND EXIT STRATEGY

What are the arrangements for the variation or termination of the Individual Scheme.

Can part/all of the Individual Scheme be terminated on notice by a party? Can part/all of the Individual Scheme be terminated as a result of breach by either Partner?

What is the duration of these arrangements?

Set out what arrangements will apply upon termination of the Individual Service, including without limitation the following matters addressed in the main body of the Agreement

- (1) maintaining continuity of Services;*
- (2) allocation and/or disposal of any equipment relating to the Individual Scheme;*
- (3) responsibility for debts and on-going contracts;*
- (4) responsibility for the continuance of contract arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the contract arrangements);*
- (5) where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners.*

Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement.

20 OTHER PROVISIONS

Consider, for example:

- *Any variations to the provisions of the Agreement*
- *Bespoke arrangements for the treatment of records*
- *Safeguarding arrangements*

PART 2 – AGREED SCHEME SPECIFICATIONS

[Scheme Specifications will be prepared in line with the Better Care Fund Plan]

SCHEDULE 2 – GOVERNANCE

1 Integrated Commissioning Executive

The membership of the Integrated Commissioning Executive will be as follows:

CCG:

- Mandy Ansell (Chief Operating Officer(CCG)) or her successor
- Ade Olarinde (Chief Finance Officer) or his successor
- Mark Tebbs (Head of Integrated Commissioning) or his successor

or a deputy to be notified to the other members in advance of any meeting;

the Council:

- Roger Harris (Director of Adult Health and Commissioning) or his successor
- Sean Clark (Head of Finance) or his successor
- Catherine Wilson (Strategic Lead for Commissioning) or her successor

or a deputy to be notified in writing to Chair in advance of any meeting;

2 Role of Integrated Commissioning Executive

3 The Integrated Commissioning Executive shall:

Provide strategic direction on the Individual Schemes

receive the financial and activity information;

review the operation of this Agreement, including by way of formal Annual Review, and performance manage the Individual Services;

agree such variations to this Agreement from time to time as it thinks fit;

review risks Quarterly and agree annually a risk assessment and a Performance Payment protocol;

review and agree annually revised Schedules as necessary; and

request such protocols and guidance as it may consider necessary in order to enable the Pooled Fund Manager to approve expenditure from the Pooled Fund;

4 Integrated Commissioning Executive Support

The Integrated Commissioning Executive will be supported by officers from the Partners from time to time.

5 Meetings

The Integrated Commissioning Executive will meet at least Quarterly at a time to be agreed within following receipt of each Quarterly report or other reports of the Pooled Fund Manager.

The quorum for meetings of the Integrated Commissioning Executive shall be a minimum of two representatives from each of the Partner organisations. Attendees may attend meetings via telephone or teleconference facility.

Decisions of the Integrated Commissioning Executive shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Integrated Commissioning Executive. If no unanimity is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.

Minutes of all decisions shall be kept and copied to the Authorised Officers within seven (7) days of every meeting.

6 Delegated Authority

The Integrated Commissioning Executive is authorised within the limit of delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to authorise an officer of the Host Partner to enter into any contract for services necessary for the provision of Services under an Individual Scheme.

7 Information and Reports

The Pooled Fund Manager shall supply to the Integrated Commissioning Executive on a Quarterly basis the financial and activity information as required under the Agreement.

8 Post-termination

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

9 Extra-Ordinary or Urgent Meetings

If there are urgent or extra-ordinary matters to be considered the Integrated Commissioning Executive may choose to meet between the Quarterly interval in order to take decisions on urgent issues.

10. Annual Governance Statement

The Integrated Commissioning Executive will prepare an annual governance statement, which will be included in a report to the Health and Wellbeing Board, on an annual basis.

SCHEDULE 3 – RISK SHARE AND OVERSPENDS

Pooled Fund Management

Overspend

- 1 The Integrated Commissioning Executive shall consider what action to take in respect of any actual or potential Overspends
- 2 The Integrated Commissioning Executive shall acting reasonably having taken into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints agree appropriate action in relation to Overspends which may include the following:

whether there is any action that can be taken in order to contain expenditure;

whether there are any underspends that can be dealt with by virement to or from any Individual Scheme maintained under this Agreement;

Subject to clause [3] below, how any Overspend shall be apportioned between the Partners, such apportionment to be just and equitable taking into consideration all relevant factors.

- 3 The Partners will adopt the position agreed by the Health and Wellbeing Board, that the Better Care Fund for 2015/16 (and any subsequent years if extended) should be fixed at the agreed value of the Pooled Fund (as set out in the Scheme Specifications), with the effect that any expenditure above the value of the Pooled Fund should fall to the Council or the CCG depending on whether the expenditure is incurred on the Health Related Functions (in which case the Council will be liable) or NHS Functions (in which case the CCG will be liable).

Payment for Performance

- 4 The Partners will manage the risk of under-performance against the total emergency admissions target set locally, in accordance with the approach agreed by the Health and Wellbeing Board, and set out in the Thurrock BCF Plan. In particular the approach will be that it is managed by delaying expenditure commitments in relation to the BCF Scheme 7 (Payment for Performance), equivalent to the target, until the target is achieved, and payment of the target sum can be released into the Pooled Fund by NHS Thurrock CCG. Where the target is achieved, the payment for performance element of the fund will be used as a contribution to the protection of adult social care.

5 Reputational Risk

Both Partners have plans and policies in place to manage reputational issues. Each Partner will co-operate with the other in managing any reputational risk that may arise with that other Partner.

6. Clinical Liability

For the avoidance of doubt, the Partners agree that the Council will not be liable for Losses or Default Liability arising from the performing or overseeing of certain clinical tasks, such as clinical/medical diagnosis, or the prescription of medicine ("Clinical Liability"). It is recognised by the Partners that the Council is not able to source appropriate insurance for Clinical Liability. Clinical Liability will be met by the contractor or provider performing or overseeing these tasks, if there is one, or failing same it will be met by the CCG, which will ensure appropriate insurance is in place for same.

SCHEDULE 4 – JOINT WORKING OBLIGATIONS
– CO-ORDINATING COMMISSIONER OBLIGATIONS

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

1 The Co-ordinating Commissioner shall notify the other Partners if it receives or serves:

a Change in Control Notice;
a Notice of a Event of Force Majeure;
a Contract Query;
Exception Reports
and provide copies of the same.

2 The Co-ordinating Commissioner shall provide the other Partners with copies of any and all:

CQUIN Performance Reports;
Monthly Activity Reports;
Review Records; and
Remedial Action Plans;
JI Reports;
Service Quality Performance Report

3 The Co-ordinating Commissioner shall invite the other Partners to attend any and all:

Activity Management Meetings;
Contract Management Meetings;
Review Meetings;
and, to raise issues reasonably at those meetings in line with the objectives of this agreement.

4 The Co-ordinating Commissioner shall not:

vary any Provider Plans (excluding Remedial Action Plans);
agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
give any approvals under the Service Contract;
agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
suspend all or part of the Services;
serve any notice to terminate the Service Contract (in whole or in part);
serve any notice;
agree (or vary) the terms of a Succession Plan;
without the prior approval of the other Partners (acting through the Integrated Commissioning Executive) such approval not to be unreasonably withheld or delayed.

5 The Co-ordinating Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.

- 6 The Co-ordinating Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution.
- 7 The Co-ordinating Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports).
- 8 The Co-ordinating Commissioner shall report to the other Partners on the performance of the Individual Schemes in relation to:
reduction in non-elective activity (general and acute)
admissions to residential care homes
effectiveness of reablement
delayed transfers of care
patient/ service user experience

– OBLIGATIONS OF THE OTHER PARTNER

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

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

SCHEDULE 5 – PERFORMANCE ARRANGMENTS

1. Introduction and context

Thurrock Council and Thurrock Clinical Commissioning Group (CCG) have expressed a clear intention to develop a more integrated approach to performance that encompasses the achievement of key objectives contained within the Better Care Fund (BCF) and other related enabling strategies.

This schedule outlines the approach to implementing a new health and social care performance scorecard. The primary aim of the scorecard will be to monitor the BCF core measures and related health, social care and public health measures contained within local strategies. It will also ensure a clear alignment with national outcomes frameworks.

The scorecard will provide a regular update to the Thurrock Integrated Commissioning Executive (ICE) and Council / CCG Boards on the performance of the BCF and related priorities. It will also be presented to the Health and Well-Being Board to enable a line of sight into health and social care performance.

2. Principles

- The Integrated Commissioning Executive (ICE) will be accountable for the scorecard and report
- Clear ownership and accountability will be established for performance measures
- Main performance monitoring tool for the Better Care Fund – replacing those currently in use
- Support integration between social care, health and public health performance measures
- Collaboration in production of the scorecard to facilitate provision of insightful commentary
- Accessible and proportionate
- Enable benchmarking with other areas

3. Alignment with national outcomes frameworks

The health and social care scorecard adopts relevant measures from the NHS, ASC and Public Health outcome frameworks where these align with local priorities. The core BCF measures also correlate with the outcome frameworks.

4. Commissioned services

Clear expectations for commissioned services and schemes post April 2015 will be set out in formal performance specifications as part of contract agreements (s75). Services / providers will be held to account for delivery of key performance measures and outcomes in relation to relevant schemes/services. Where appropriate and of benefit, these will link into the reporting process. Further detail on this is expected following the planned Whole System Re-Design Workshop in January 2015 and the outputs of the review of existing s256 schemes.

5. Suggested content and measures

Provisional scorecards are attached in appendix 1. The worksheet format is not final and is merely illustrative for the purposes of this agreement. The first worksheet is the BCF core measures scorecard. The second worksheet brings together related health, social care and public health measures. These are shown as an initial foundation for their links to both local and national priorities. Further discussion is needed with the ICE and relevant officers to firm up measures for inclusion.

The first four Schemes of the BCF relate to health and social transformation and scaling up integration between health and social care. These are Locality Service Integration, Frailty Model, Intermediate Care and Prevention and Early Intervention.

Consideration has been given to aligning indicators to these Schemes. However, given the cross-cutting nature of the objectives and planned outcomes this has proved difficult – the majority of measures can be used to measure success in all four Schemes.

Instead we intend to use the outcomes themes of the national NHS, adult social care and public health outcomes frameworks. However, this can be reconsidered.

6. Proposed reporting structure and process

The proposed reporting process is set out in the table below. The Data and Intelligence Group (DIG) (or similar group incorporating performance leads) will be responsible for the design, collation, updating and compiling of the scorecard and supporting reports.

Service leads will be responsible for provision of commentary.

Thurrock ICE will be responsible for review and sign off scorecard and reports.

The DIG will also support the ongoing development of the scorecard and report e.g. ensuring it continues to meet local priorities and supporting ad-hoc analysis into particular issues and questions (resource allowing).

The ICE and DIG will work together to facilitate collaborative working on performance issues, areas of shared interest and additional in-depth analysis activity.

Reporting process

When	What	Where
Monthly	<ul style="list-style-type: none"> • BCF core measures scorecard • Key health, adult social care and public health measures • Monthly progress/highlights plus commentary on core measures 	<ul style="list-style-type: none"> • Integrated Commissioning Executive (ICE)
Quarterly	<ul style="list-style-type: none"> • BCF core measures scorecard • Key health, adult social care and public health measures • Expanded report taking into account: <ul style="list-style-type: none"> • Additional commentary and analysis • Improvement actions e.g. scope for more detailed service input • Supplementary information e.g. from commissioned services 	<ul style="list-style-type: none"> • Integrated Commissioning Executive (ICE) • ASC DMT • CCG Board • Health & Well-Being Board
Mid Year / Annual	<ul style="list-style-type: none"> • BCF core measures scorecard • Key health, adult social care and public health measures • Expanded report taking into account: <ul style="list-style-type: none"> • Nationally available data • Benchmarking and comparative analysis e.g. trends • Additional commentary and analysis • Improvement actions e.g. scope for more detailed service input • Supplementary information e.g. from commissioned services 	<ul style="list-style-type: none"> • Integrated Commissioning Executive (ICE) • ASC DMT • CCG Board • Health & Well-Being Board

Health and Social Care Performance Scorecard - Better Care Fund Measures

Performance Measure	Previous Outturn	Target / Plan	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Year To Date	RAG Against Target	Direction of Travel
Total non-elective admissions in to hospital (general & acute), all-age, per 100,000 population	13,846 (Jan 14-Dec 14)	3.5% reduction on 2014 outturn (13,361)															
Comments:																	
Permanent admissions of older people (aged 65 and over) to residential and nursing care homes, per 100,000 population	644.9 (13-14)	603.5 (14-15) 587.6 (15-16)															
Comments:																	
Delayed transfers of care (delayed days) from hospital per 100,000 population (aged 18+).	622.7 (13-14) calc. from quarterly outturns)	622.6 (14-15) calc. from quarterly outturns)															
Comments:																	
Proportion of older people (65 and over) who were still at home 91 days after discharge from hospital into reablement / rehabilitation services	89.9 (13-14)	90.3 (14-15) 90.9 (15-16)															
Comments:																	
Reduction in the proportion of people (aged 65+) assessed by RRAS that require immediate hospital admission per 10,000 population aged 65+	41.3 (13-14)	35.7 (14-15) 34.8 (15-16)															
Comments:																	

Health and Social Care Performance Scorecard - Better Care Fund Measures

Performance Measure	Previous Outturn	Target / Plan	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Year To Date	RAG Against Target	Direction of Travel
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Comments:																	

SCHEDULE 6– BETTER CARE FUND PLAN

[Note the Better Care Fund Plan will be inserted here]

DRAFT

SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL

[Note – the Council is advised that the Department of Health is currently concluding a draft protocol which may be utilised in this schedule, and inserted shortly.]