

Delegated Decisions by Cabinet Member for Adult Social Care

***Thursday, 30 March 2023 at 3.00 pm
County Hall, New Road, Oxford, OX1 1ND***

Please note that due to guidelines imposed on social distancing by the Government the meeting will be held virtually.

If you wish to view proceedings, please click on this [Live Stream Link](#)
However, that will not allow you to participate in the meeting.

Items for Decision

The items for decision under individual Cabinet Members' delegated powers are listed overleaf, with indicative timings, and the related reports are attached.

Copies of the reports are circulated (by e-mail) to all members of the County Council.

These proceedings are open to the public



Martin Reeves
Chief Executive

March 2023

Committee Officer:

Committee Services

E-Mail: committeesdemocraticservices@oxfordshire.gov.uk

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

Items for Decision

1. Declarations of Interest

2. Questions from County Councillors

Any county councillor may, by giving notice to the Proper Officer by 9 am two working days before the meeting, ask a question on any matter in respect of the Cabinet Member's delegated powers.

The number of questions which may be asked by any councillor at any one meeting is limited to two (or one question with notice and a supplementary question at the meeting) and the time for questions will be limited to 30 minutes in total. As with questions at Council, any questions which remain unanswered at the end of this item will receive a written response.

Questions submitted prior to the agenda being despatched are shown below and will be the subject of a response from the appropriate Cabinet Member or such other councillor or officer as is determined by the Cabinet Member, and shall not be the subject of further debate at this meeting. Questions received after the despatch of the agenda, but before the deadline, will be shown on the Schedule of Addenda circulated at the meeting, together with any written response which is available at that time.

3. Petitions and Public Address

Members of the public who wish to speak at this meeting can attend the meeting in person or 'virtually' through an online connection.

Requests to speak must be submitted by no later than 9am four working days before the meeting. Requests to speak should be sent to committeesdemocraticservices@oxfordshire.gov.uk.

If you are speaking 'virtually', you may submit a written statement of your presentation to ensure that if the technology fails, then your views can still be taken into account. A written copy of your statement can be provided no later than 9 am 2 working days before the meeting. Written submissions should be no longer than 1 A4 sheet.

4. Section 75 agreement between BOB-ICB and OCC (Pages 1 - 82)

Cabinet Member: Adult Social Care

Forward Plan Ref: 2023/082

Contact: Ian Bottomley, Lead Commissioner Age Well Support,

ian.bottomley@oxfordshire.gov.uk

Report by Interim Corporate Director for Adult Social Care (**CMDASC4**).

The Cabinet Member for Adult Social Care is asked to

a) Approve

- i. the Agreement of a s75 NHS Act 2006 pooled commissioning budget with Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board from 1 April 2023. The draft Agreement is attached as Annex 1.
 - ii. delegation to Corporate Director of Adult Services and the Council s151 Officer to finalise the Agreement prior to signature in line with the Council's scheme of delegation
 - iii. the financial contributions as set out at paragraph 10 and the risk share set out at paragraph 30.
- b) Note
- i. The Agreement will commence on 1 April 2023. It has been approved for completion by the Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board at its meeting on 21 March 2023. The Agreement replaces that dating from 1 April 2013 with the former Oxfordshire Clinical Commissioning Group
 - ii. The Agreement gives authority to, and binds, the Council and the ICB to pool financial and other resources to deliver better outcomes for the people of Oxfordshire. The Agreement extends the approach to integrated commissioning led by the Council on behalf of the partners and will support the further development and implementation of partnership working in Oxfordshire. The Agreement incorporates the Better Care Fund for Oxfordshire.
 - iii. the governance arrangements for the new s75 Agreement
 - iv. that any future development of the s75 Agreement which proposes an expansion of strategic scope, and the relevant budgets may require wider public consultation

The new agreement will commence on 1 April 2023. It has been agreed by the Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board at its meeting on 21 March 2023. The new agreement replaces that dating from 1 April 2013 with the former Oxfordshire Clinical Commissioning Group

The s75 agreement gives authority to the Council and the ICB to pool financial and other resources to deliver better outcomes for the people of Oxfordshire. The new agreement extends our approach to integrated commissioning led by the Council on behalf of the partners and will support the further development and implementation of partnership working in Oxfordshire. The agreement incorporates the Better Care Fund for Oxfordshire.

Councillors declaring interests

General duty

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed 'Declarations of Interest' or as soon as it becomes apparent to you.

What is a disclosable pecuniary interest?

Disclosable pecuniary interests relate to your employment; sponsorship (i.e. payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licenses for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those member's spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

Declaring an interest

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest. If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

Members' Code of Conduct and public perception

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member 'must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself' and that 'you must not place yourself in situations where your honesty and integrity may be questioned'.

Members Code – Other registrable interests

Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of your other registerable interests then you must declare an interest. You must not participate in discussion or voting on the item and you must withdraw from the meeting whilst the matter is discussed.

Wellbeing can be described as a condition of contentedness, healthiness and happiness; anything that could be said to affect a person's quality of life, either positively or negatively, is likely to affect their wellbeing.

Other registrable interests include:

- a) Any unpaid directorships
- b) Any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority.

- c) Any body (i) exercising functions of a public nature (ii) directed to charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management.

Members Code – Non-registrable interests

Where a matter arises at a meeting which directly relates to your financial interest or wellbeing (and does not fall under disclosable pecuniary interests), or the financial interest or wellbeing of a relative or close associate, you must declare the interest.

Where a matter arises at a meeting which affects your own financial interest or wellbeing, a financial interest or wellbeing of a relative or close associate or a financial interest or wellbeing of a body included under other registrable interests, then you must declare the interest.

In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied:

Where a matter affects the financial interest or well-being:

- a) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

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Divisions Affected -

Delegated Decision by Cabinet Member for Adult Social Care

30 March 2023

Oxfordshire s75 NHS Act Pooled Commissioning Budget

Report by Interim Corporate Director of Adult Services

RECOMMENDATION

1. The Cabinet Member for Adult Social Care is RECOMMENDED to

a) Approve

- i. the Agreement of a s75 NHS Act 2006 pooled commissioning budget with Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board from 1 April 2023. The draft Agreement is attached as Annex 1.
- ii. delegation to Corporate Director of Adult Services and the Council s151 Officer to finalise the Agreement prior to signature in line with the Council's scheme of delegation
- iii. the financial contributions as set out at paragraph 10 and the risk share set out at paragraph 30.

b) Note

- i. The Agreement will commence on 1 April 2023. It has been approved for completion by the Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board at its meeting on 21 March 2023. The Agreement replaces that dating from 1 April 2013 with the former Oxfordshire Clinical Commissioning Group
- ii. The Agreement gives authority to, and binds, the Council and the ICB to pool financial and other resources to deliver better outcomes for the people of Oxfordshire. The Agreement extends the approach to integrated commissioning led by the Council on behalf of the partners and will support the further development and implementation of partnership working in Oxfordshire. The Agreement incorporates the Better Care Fund for Oxfordshire.
- iii. the governance arrangements for the new s75 Agreement
- iv. that any future development of the s75 Agreement which proposes an expansion of strategic scope, and the relevant budgets may require wider public consultation

Executive Summary

2. Oxfordshire has organised its joint commissioning arrangements around Section 75 (s75) NHS Act 2006 pooled funding agreements for many years. The current agreement was signed with effect from 1 April 2013 by the Council (OCC) and the then Oxfordshire Clinical Commissioning Group ("the CCG")

and has been varied in format and length on several occasions. The CCG's responsibilities under the agreement novated to the ICB from 1 July 2022. The latest extension to the current agreement expires on 31 March 2023.

3. The new Agreement incorporates the Oxfordshire Better Care Fund. It has been reviewed to reflect:
 - a. The development and implementation of the Integrated Commissioning Team for Health, Education and Social Care [HESC] hosted by the Council and funded jointly by the Council and the ICB since March 2021 and the ensuing delegations and commitments between the partners.
 - b. The vision for HESC of a "life course, tier need" approach to commissioning across health and social care that would focus on prevention, partnership, co-production and personalisation.
 - c. The opportunity and ambition set out in the Health & Care Act 2022 for increased system and partnership working, including the development of provider collaboratives.
4. The Agreement will be backed by a Memorandum of Understanding (MOU) which sets out the strategic direction of travel for the s75 and the mechanism for managing joint funded posts within HESC. The MOU will cover
 - (a) Background and scope of the s75 and partnership approaches more generally.
 - (b) Annual Development Plan for the s75 arrangements as required by the Agreement.
 - (c) Operating and governance arrangements for those parts of HESC that are not covered by the Agreement (eg Children and Young People's Services).
 - (d) The agreement to cover joint funded staff in terms of responsibilities and liabilities of both Partners.
5. The new s75 agreement in many areas is a continuation of the preceding agreement other than:
 - a. Those provisions relating to HESC set out in the s75.
 - b. The increased level of ambition that the agreement should be a strategic delivery vehicle for better health and care outcomes for Oxfordshire
 - c. Changes to the financial risk share in the current agreement
6. The key features of the new Agreement are as follows:
 - a. The agreement is open-ended: it can be varied at any point by agreement or on three months' notice.
 - b. The agreement can be terminated on six months' notice.
 - c. The agreement incorporates the budgets set out at pp54ff of the agreement and the contracts set out at pp 61ff.
7. The Agreement will govern the Better Care Fund (BCF) and contracts and arrangements for the delivery of hospital discharge, some aspects of admission avoidance, community capacity and prevention, mental health services for adults and children and services for adults living with learning disability and/or autism. It covers individual care packages commissioned by the Council and by the ICB in terms of NHS Continuing Healthcare.

8. It is the intention of the Council and the ICB that the Agreement could be reviewed and expanded regularly where this furthers system priorities, improves outcomes, develops partnerships and makes best use of the 'Oxfordshire pound'. Key areas that may be varied into the agreement include:
- a. Further alignment of funding and services that support independence, prevention and addressing health inequalities
 - b. Hospital admission services where these support the delivery of Better Care Fund and enable more people to be supported without admission to hospital
 - c. Expansion of the scope of the pooled budgets in relation to children and young people.
 - d. Increased alignment of mental health, primary and community health services where this collaboration improves outcomes and efficiency for the people of Oxfordshire

Exempt Information

9. Not applicable

The case for a s75 NHS Act 2006 Pooled Budget Agreement

10. The Council and the ICB held a s75 NHS Act Pooled Commissioning Budget since 2013, which was in turn the successor of prior arrangements with the former Primary Care Trust. The new Agreement will be supported by a combined Budget for 2023/24 of £413,406,400. This is made up as follows:

	£	£
Oxfordshire County Council		
Age Well	54,015,700	
Live Well - Physical Disability	19,538,400	
Live Well - Mental Health	8,682,400	
Live Well - Learning Disability	88,848,000	
iBCF	10,705,300	
Discharge Grant 2023/24	1,500,900	
Total OCC		183,290,700
BOB ICB:		
Age Well	78,269,000	
Live Well - Physical Disability	14,633,000	
Live Well - Mental Health	68,790,000	
Live Well - Learning Disability	18,542,000	
Discharge Grant 2023/24	3,185,200	
Total BOB ICB		183,419,200
Better Care Fund		
Social Care	27,828,500	
Health	18,868,000	
Total Better Care Fund		46,696,500
Total Pooled Fund		413,406,400

- (a) The Better Care Fund (including the Improved Better Care Fund grant) is incorporated into the Agreement and is designed to deliver
- (i) the partnership working and integration that reduces the need for people to be conveyed and admitted to hospital

- (ii) a reduction in the time people wait in hospital before discharge
 - (iii) a Home First approach to support people on discharge from hospital
 - (iv) a reduction in the number of Council funded permanent admissions to residential or nursing home care
 - (v) impact from reablement services on keeping people safe and well at home 91 days after an intervention.
 - b. The Better Care Fund plan and local trajectories against national targets are agreed by the Health & Wellbeing Board.
11. The pooled budget approach has enabled the Council and the ICB to develop joint approaches that have benefited our population:
- (a) The development of a mental health outcomes-based contract supporting recovery and wellbeing delivered by a partnership of NHS, social care, and voluntary and community sector organisations
 - (b) The development of the Home First model to support people to return home after a stay in hospital, integrating reablement and domiciliary care provided by the independent sector under the leadership of a multidisciplinary social care and health team hosted and led by the Council
 - (c) An integrated health and social care contract for equipment and assistive technology to support people at home, overseen by clinical leads from both social care and health
 - (d) An integrated pathway for people needing a step-down bed after an acute hospital stay bringing together independent nursing homes, and a multidisciplinary team across social care, hospital discharge and community therapists
 - (e) Generally, a common sense of purpose and established joint working practices that, for instance, supported Oxfordshire's covid response. This was especially true in relation to maintaining hospital capacity and flow where the county was able to rely to a larger extent on established jointly commissioned services and protocols than was the case in other systems
 - (f) The opportunity to manage system strategic risks at a senior level: for instance, the Oxfordshire response to the Transforming Care programme for people living with learning disability and/or autism
 - (g) The ability to manage financial risks across complex pathways. In the current agreement this has enabled the parties to agree an approach to the management of needs and associated costs that fall outside of the Mental Health Outcomes Based Contract and jointly to work with clinicians and providers to develop the care pathways to support our population.
 - (h) The ability to map performance across health and social care by bringing together a range of datasets in reports to Health & Wellbeing Board

12. In 2020/21 the Council and the then CCG developed the Health, Education and Social Care [HESC] integrated commissioning team to focus on outcomes for individuals and better value for the system from a new approach:
 - (a) A life course approach across Start Well, Live Well and Age Well that reflect how people use and experience services during their lives
 - (b) A tiers of need model that emphasises prevention, enablement, and support to intervene early, help people maintain independence in the wider community, and provide support and protection when they need it
13. This new commissioning approach moves away from condition-specific care linked to separately commissioned services. It seeks to
 - (a) support the person in their own community and enable them to gain and retain independence for as long as possible building on their own strengths and ambitions
 - (b) build advice, support, interventions, and care around the person rather than seek to slot the person into a service or pathway
 - (c) address health and care inequalities and develop services in a co-produced way
 - (d) create a consistent approach to the quality of support and care throughout commissioned services
 - (e) increase integration across social care and health investing money and resources where it will have the most impact to support these aims.
 - (f) Increase our use of technology and other innovative and person-centred ways to enable to manage their own care and health needs more independently in the community
 - (g) Create single purchasing and contracting opportunities where this supports the aims above and providers better value for the Oxfordshire pound
14. The new HESC team hosted by the Council came into place from 1 March 2021. It incorporates 18 joint funded posts and is headed by a joint funded Deputy Director, Commissioning who is employed by the Council and reports to the Corporate Director of Adult Services and Place Director in Oxfordshire for the ICB, with a “dotted line” relationship to the Director of Children’s Services and the Director of Public Health.
15. The current agreement needs to change to support these aims. Specifically, it needs to
 - (a) incorporate the delegations and commitments from the partners to clarify and support the functions of the HESC team, and
 - (b) Embrace the parties’ joint ambition to increase independence and prevention and support more people in their own community
16. The new Agreement does not map exactly onto the new structure. In setting up the Health, Education and Social Care team, it was the ambition of the Council that the scope of the team should include both Children’s services and Public Health. Some of these services are already in scope and some are currently aligned. The new Agreement should incorporate the flexibility to

extend the pooled budget to include these elements as set out above when appropriate

Scope of new s75 NHS Act 2006 agreement

17. The new Agreement covers those services set out in the old agreement and there are no plans to change this scope in terms of budgets or services in April 2023.
18. The main changes to the new agreement are as follows:
 - (a) In the new commissioning structure, the ICB has delegated certain functions in relation to NHS commissioning, performance and financial management to the County which are set out in the s75 agreement.
 - (b) To support the delivery of the Agreement the ICB and the Council will provide various support to commissioners in terms of contract and quality management, data and business intelligence, financial accounting and reporting and legal advice and support which are set out in the s75 agreement
 - (c) The Agreement is open-ended with a requirement that the partners review the performance of the agreement annually against agreed financial and delivery metrics annually and confirm that the agreement should continue subject to any required contract variations. Both parties are able to break the agreement on notice.
 - a. These arrangements will avoid the need for contract extensions by variation and require the partners actively to review the agreement each year
 - (d) The Agreement contains provisions for the future extension of scope of the agreement where that is agreed by the parties
19. **The Cabinet Member for Adult Social Care is asked to approve the Agreement of a s75 NHS Act 2006 pooled commissioning budget with Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board 1 April 2023 as set out above**
20. **The Cabinet Member for Adult Social Care is asked to approve delegation to Corporate Director of Adult Services and the Council s151 Officer to finalise the Agreement prior to signature in line with the Council's scheme of delegation**

Governance

21. In March 2021 the preceding Joint Management Groups for the current s75 agreement resolved to dissolve themselves and transfer their responsibilities for the management of the finance and performance of the pooled funds to the Joint Commissioning Executive.
22. This arrangement continues in the new Agreement. The Joint Commissioning Executive is accountable respectively to Cabinet and to the ICB Board for the management of budgets and performance of commissioned services funded by the pool and for any risks relating thereto. This includes national NHS measures managed via the services commissioned from the pooled budget.

23. The Joint Commissioning Executive is also responsible for the delivery of the Better Care Fund Plan and metrics to the Health & Wellbeing Board
24. **The Cabinet Member for Adult Social Care is asked to note the governance arrangements for the new s75 Agreement**

Strategic Alignment

25. The new Agreement will deliver the Council's obligations in respect of the Better Care Fund and those parts of the NHS Long Term Plan as fall within scope.
26. The new Agreement is fully aligned to the Health and Care Act 2022.

Corporate Policies and Priorities

27. The new Agreement supports the delivery of the Council's Corporate Vision for Thriving Communities.
 - (a) Strive to give every child a good start in life and protect everyone from neglect: the agreement includes the Child and Adolescent Mental Health Services and will support the development of an enhanced offer
 - (b) Enable older and disabled people to live independently and care for those in greatest need.
 - (c) Tackle inequality help people live safe and healthy lives and enable everyone to play an active part in their community.
 - (d) Support a thriving and inclusive local economy that recovers strongly from the COVID crisis.
28. The new Agreement will also support the Council's intention to create a fairer county, especially:
 - (a) Tackle inequalities in Oxfordshire
 - (b) Prioritise the health and wellbeing of residents
 - (c) Support carers and the social care system
 - (d) Create opportunities for children and young people to reach their full potential

Financial Implications

29. The financial contributions are set out at paragraph 10 above.
30. It is proposed, from April 2023, to amend the risk shares between the partners in the new Agreement as detailed below.

Service Area	How is risk assigned
Age Well	Aligned
Live Well – Physical Disability	Aligned
Live Well – ABI	Aligned
Live Well – Learning Disability	Aligned

Live Well – MH abated	OCC take first £200k, further risk split equally
Live Well – MH non abated	Aligned

aligned means that each partner takes the pressure or underspend associated with their own contribution and spend and subsequently there is no sharing of risk.

* "abated": social care costs relating to people aged 18-65 under the care of Oxford Health NHS FT but who are not in scope according to diagnostic criteria of the ICB's Outcomes Based Contract.

31. In summary the changes being proposed are that the Learning Disability risk and the Mental Health "non abated" risk will be aligned to the specific partner going forward. This significantly reduces the exposure of the Council to risks arising from NHS over-spend in the new Agreement.
32. **The Cabinet Member for Adult Social Care is asked to approve the financial contributions as set out at paragraph 10 and the risk share set out at paragraph 30.**

Thomas James, Finance Business Partner

Thomas.James@oxfordshire.gov.uk

Approved by

Lorna Baxter, s151 Officer for the Council

Lorna.baxter@oxfordshire.gov.uk

Legal Implications

Legislative Background

33. Under the Care Act 2014 local authorities have a mandatory duty to integrate care and support provision with health provision and health related provision. The National Health Service Act 2006 ("NHS Act 2006") allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised.
34. The powers permit the formation of a fund (pooled budget) made up of contributions by both parties "out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body or bodies and prescribed health-related functions of the authority or authorities" (section 75(2)(a)(ii), NHS Act 2006).
35. In addition the powers permit the exercise of certain prescribed functions of each body by the other (section 75(2)(b) and (c), NHS Act 2006) and the provision of staff, goods or services, or the making of payments between the two partners, in connection with the above arrangements (sections 75(2)(d)-(f), NHS Act 2006).
36. The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617) (the Regulations) (as amended by SI 2003/629 and SI 2012/3094), set out the rules governing such partnerships and the agreement

between the local authority and the NHS body (known as a s75 Agreement) must contain certain prescribed provisions.

Current Arrangements

37. There has been in place a s75 Agreement between Oxfordshire County Council ("the Council") and Oxfordshire Clinical Commissioning Group ("the CCG") since 2013 which itself consolidated a number of separate s 75 Agreements dating back to 2009. The current s75 Agreement has been extended by agreement a number of times and ends 31st March 2023. Since 1 July 2022 the agreement has been between the Council and the ICB.

The Proposed s 75 Agreement

38. The proposed s75 Agreement is designed to reflect new governance structures and formalise certain amendments agreed by the parties but essentially continue current arrangements subject to the changes outlined in this report.
39. Each partner will have all the usual contractual remedies where the other partner is in breach including the right to claim damages for all losses arising from a breach. It should be noted however that the nature of these agreements is one of partnership and trust between two public bodies. The bodies are engaged in a joint commissioning exercise with aligned interests rather than buying services from each other. There is a dispute resolution process which should be engaged before any legal action is taken.
40. It is proposed that the s75 Agreement will be a rolling contract where either partner can terminate the s75 Agreement and/or any pooled fund arrangement on 12 months' notice. In addition, termination may be on shorter notice in certain situations (e.g. where one party is in default or where it has not been possible to agree contributions for a forthcoming financial year).

Future Changes

41. It should be noted that any future proposed substantial expansion of delegated functions could also trigger a statutory obligation for the Council and the ICB to jointly consult those affected by the arrangements such as service users, carers, or voluntary groups.
42. It is recommended that the Memorandum of Understanding referenced at paragraph 4 above dealing with the HESC arrangements is made legally binding and negotiated and agreed with the ICB as soon as reasonably practical following completion of the s 75 Agreement.

Jonathan Pool, Solicitor
Jonathan.pool@oxfordshire.gov.uk

Approved by
Anita Bradley, Monitoring Officer for the Council
Anita.bradley@oxfordshire.gov.uk

Staff Implications

43. There are no staff implications associated with signing a new s75 agreement with the ICB. The resources to manage the funds and deliver the strategic intention are located within the HESC team which is jointly funded outside of the s75 agreement by the Council and the CCG. These arrangements will be governed in the MOU referred to at paragraph 4 above.

Equality & Inclusion Implications

44. The new Agreement maintains the scope of the current arrangements and seeks to address health and other inequalities especially in relation to older people, people living with physical disability, mental health issues or learning disability and/or autism. The Agreement will be a key enabler to support Oxfordshire's delivery of national equality and inclusion targets as set out in the Better Care Fund guidance and the NHS Long Term Plan
45. The new Health, Education and Social Care structure incorporates Oxfordshire Public Health and the Director of Public Health sits on the Joint Commissioning Executive and Public Health services are mapped onto the Life stage and tiers of need model. The annual plan for the s75 Agreement will reflect the Joint Strategic Needs Assessment and will set targets to address identified local equality and inclusion gaps.

Sustainability Implications

46. The development of a new s75 Agreement has no impact on sustainability. However, there are opportunities for the partners to explore how the new integrated commissioning arrangements can support both organizations' sustainability commitments. NHS England now requires that sustainability is considered and promoted as part of Oxfordshire's Better Care Fund Plan.

Risk Management

47. There is one identified risk in relation to the new s75 Agreement
 - (a) Further to the implementation of the Health and Care Act 2022 the MHS partner body to the s75 works across the whole of Buckinghamshire, Oxfordshire and West Berkshire, Wokingham and Reading District Councils. There is a risk that decisions on budgets and scope of the s75 agreement may be impacted by this broader geography.
 - (b) This risk is mitigated by the decision of ICB Board to approve the new Agreement at its meeting on 21 March 2023. This reflects the ICB Board's commitment to the development of the Oxfordshire "Place".
 - (c) Further, the development and delivery of the Better Care Fund will continue to be managed on a Health & Wellbeing Board footprint.

- (d) Any changes to the budgets and/or scope of the Agreement would need to be agreed by the Partners.
- (e) Therefore, this risk is mitigated for the Council.

Consultations

- 48. The move from the current to proposed s75 NHS Act 2006 agreement does not require consultation as the budgets involved and the client groups impacted do not change. This decision can therefore rely on the other earlier consultation prior to the current agreement.
- 49. Any future expansion of the Agreement (e.g., to include further services for Children and Young People) may trigger the requirement for consultation as set out in the Act. This would need to be explored before any further proposals were developed.
- 50. **The Cabinet Member for Adult Social Care is asked to note that any future development of the s75 Agreement which proposes an expansion of strategic scope and the relevant budgets may require wider public consultation**

Karen Fuller Interim Corporate Director of Adult Services

Annex: Draft s75 Agreement

Background papers: Nil

Contact Officer: Ian Bottomley, Lead Commissioner
07532 132975

ian.bottomley@oxfordshire.gov.uk

March 2023

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DATED _____ **2023**

OXFORDSHIRE COUNTY COUNCIL

and

BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST INTEGRATED CARE BOARD

AGREEMENT

S.75 NATIONAL HEALTH SERVICE ACT 2006

PARTNERSHIP AGREEMENT

[

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[DN: TO BE INSERTED]

- (iii) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services.
- G. The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the Act [and/or Section 65Z5 and 65Z6 of the Act] as applicable, to the extent that exercise of these powers is required for this Agreement
- H. The Partners are committed to better integration of the NHS Functions and the Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement. This Agreement will enable the Partners to discharge their respective functions for the benefit of Service Users better than if each Partner was acting independently.
- I. This Agreement follows consultation jointly by the Partners with such persons as appear to the Partners to be affected by these arrangements.
- J. This Agreement provides the framework within which the Partners will work together to achieve the aims, objectives and intended outcomes set out at Clause 3 and in Schedule 1 and the Partners acknowledge that such aims, objectives and intended outcomes shall encompass those set out in the BOB ICB's Operational Plan, the Council's Corporate Plan and the Oxfordshire Health & Wellbeing Board Better Care Plan as required under the Regulations and any successor legislation, regulations or guidance.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, except where the context otherwise requires, the following expressions shall have the meanings respectively ascribed to them:

- “Act”** means the National Health Services Act 2006;
- “Agreement”** means this Agreement comprising these terms and conditions together with all schedules (as may be varied in writing by the Partners) attached to it, and any variation of the Agreement from time to time agreed between the Partners;
- “Aims and Outcomes”** the objectives of the Parties in relation to Individual Schemes, setting out how the Partnership Arrangements are likely to lead to an improvement in the way in which the Functions are exercised;
- “Approved Expenditure”** means any expenditure approved by the Partners in writing or as set out in the Scheme Specification in

relation to an Individual Scheme above any Contract Price, Permitted Expenditure or agreed Third Party Costs;

- “Authorised Officers”** means the person notified by each of the Partners to the other from time to time as authorised to act on behalf of that Partner for the purposes of this Agreement (which person shall until further notice be for the Council Corporate Director of Adult Services from time to time and for the ICB the Executive Place Director (Oxfordshire);
- “Better Care Fund”** means the Better Care Fund made available to the to the Partners;
- “Better Care Fund Requirements”** means any and all requirements on the Partners in relation to the Better Care Fund set out in Law and guidance published by the Department of Health;
- “BOB ICB”** means Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (and any successor to its statutory function);
- “Care Standards Act”** means the Care Standards Act 2000 and any successor legislation, regulation or guidance;
- “Commencement Date”** means [1st April 2023];
- “Confidential Information”** means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement and the Services and:
- a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history;
 - b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or
 - c) which is a trade secret.

“

“Contract Price”	means any sum payable under a Service 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” or “OCC”	means Oxfordshire County Council (and any successor to its statutory function);
“Council Health Related Functions”	means such of the health-related functions of the Council as referred to in Regulation 6 of the Regulations as are necessary for the commissioning of the Services to the Service Users and which may be further described in the relevant Scheme Specification;
“Data Protection Legislation”	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR (as defined under section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018) and the Data Protection Act 2018 as the same may be amended, as well as any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
“Default Liability”	means any sum which is agreed or determined by Law or in accordance with the terms of a Service Contract to be payable by any Partner(s) to a Provider as a consequence of (i) breach of the Partner’s obligation(s) in whole or in part under a relevant Service Contract or (ii) any act or omission of a third party for which the Partner is, under the terms of a relevant Service Contract, liable to such Provider;
“Executive Director of Place”	means the BOB ICB’s Executive Place Director (Oxfordshire) from time to time
“EIR”	means the Environmental Information Regulations 2004 and all regulations made and guidance issued thereunder from time to time in force or any

superseding or amending enactment, regulations and guidance;

“Event of Force Majeure”	means an event or circumstance which is beyond the reasonable control of the Partner claiming relief under clause 25, including without limitation war, civil war, armed conflict or terrorism, strikes or lock outs, riot, fire, flood or earthquake, and which directly causes that Partner to be unable to comply with all or a material part of its obligations under this Agreement;
“Financial Contributions”	means the financial contributions of the Partners as set out in Schedule 3, Annex 2 and updated annually pursuant to Clause 10;
“Flexibilities”	has the meaning given in Clause 5 of this Agreement;
“Financial Year”	means the Financial Year from 1st April in any year to 31 st March in the following calendar year;
“Functions”	means the NHS Functions and the Council Health Related Functions;
“FOIA”	means the Freedom of Information Act 2000 and all regulations made and guidance issued thereunder from time to time in force or any superseding or amending enactment, regulations and guidance;
“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;
“HESC”	means the Health Education and Social Care joint commissioning team of the Council and BOB ICB led by the Deputy Director, Commissioning of the Council reporting into the PFG and JCE as described in Schedule 3 to this Agreement;
“HESC MOU”	means an agreement between the Partners setting out further details of the HESC working relationship to be agreed in writing by the Partners;

“HESC Scheme”	means the scheme which has been agreed by the Partners and which is included within this Agreement using the powers under Section 75 as documented in Schedule 3 of this Agreement;
“HESC Scheme Services”	means the services set out at Annex 4 of Schedule 3, and any other services agreed in writing by the parties that may be added to Annex 4 of Schedule 3 from time to time and as set out in HESC Scheme Specification;
“Host Partner”	means the Partner identified in Schedule 3 who undertakes day to day management of the Pooled Fund and who takes primary, although not exclusive, responsibility for preparing financial, performance and other reports as required;
“Individual Scheme”	means one of the schemes which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification, including the HESC Scheme;
“Information Sharing Protocol”	means an information sharing protocol agreed in writing by the Partners based on the principles and standards set out and referred to in Schedule 3, Annex, 8;
“Integrated Commissioning”	means arrangements by which both Partners commission Services in relation to an Individual Scheme on behalf of each other in exercise of both the NHS Functions and Council Health Related Functions through integrated structures;
“JCE”	means the joint commissioning executive board as defined and referred to in Schedule 3, Annex 3;
“Joint (Aligned) Commissioning”	means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75;

“Law”

means:

(a) any statute or proclamation or any delegated or subordinate legislation;

(b) any 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

(c) any judgment of a relevant court of law which is a binding precedent in England.

“Lead Commissioner”

means the Partner exercising the function of arranging for the provision of the Services on behalf of the Partners where such arranging constitutes the initial setting of the strategic direction, the design of the services to be funded by the Pool, consideration and oversight of procurement routes and if set out in a relevant Scheme Specification, management of the Service Contract performance as set out in Part 1 - Schedule 2;

“Lead Commissioning Arrangements” means the arrangements by which the Lead Partner commissions Services in relation to an Individual Scheme on behalf of the other Partner in exercise of both the NHS Functions and the Council Health Related Functions and which are further described in Schedule 2 of this Agreement;

“Lead Contractor”

means the Partner exercising the function of arranging for the provision of the Services on behalf of the Partners where such arranging constitutes running the procurement of the Service (acting on the advice and direction of the Lead Commissioner) and entering into the Service Contract as set out in Part 2 – Schedule 2. For avoidance of doubt, the Lead Contractor may also be the Lead Commissioner;

“Lead Partner”	means the Partner exercising the function of both the Lead Commissioner and the Lead Contractor and that is responsible for the entire commissioning of an Individual Service under a Scheme Specification;
“National Conditions”	means the national conditions as set out in the National Guidance as are amended or replaced from time to time;
“National Guidance”	means any and all guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately;
“NHS Body”	shall have the meaning set out in Regulation 3 of the Regulations;
“NHS Functions”	means such of the NHS functions of the BOB ICB as referred to in Regulation 5 of the Regulations as are necessary for the commissioning of the Services to the Service Users and set out at Schedule 5;
“Non-pooled Fund”	means a non-pooled fund comprising either the Council’s Financial Contribution or the BOB ICB’s Financial Contribution for the Services to the extent applicable;
“Operational Plan”	means the Operational Plan of the BOB ICB prepared pursuant to section 24 the Act or any other plan known to set out the BOB ICB’s strategy for improving the health of people for whom it is responsible and the provision of health care to such people;
“Overspend”	means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year;
“Partners”	means the Council and the BOB ICB, and “Partner” shall mean either one of them;

“Partnership Arrangements”	means the arrangements pursuant to section 75 of the Act jointly agreed between the Parties under this Agreement;
“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 7.7;
“PFG”	means the performance and finance group to be constituted and responsible for the day to day management of the Services and to whom the JCE may delegate decisions in accordance with and as further defined at Schedule 3, Annex 2;
“Pool Manager”	means the person determined from time to time under Clause 7.1;
“Pooled Fund”	means the fund of monies as set out in Schedule 3, Annex 2 maintained by the Host Partner being contributions from the Partners for the purpose of securing the Services or part of them pursuant to this Agreement;
“Pooled Fund Element”	means an element of the Pooled Fund ring-fenced for the purposes of overspend or underspend notification pursuant to Clause 8 as more particularly defined at Schedule 3;
“Prohibited Act”	means the following acts: <ul style="list-style-type: none"> (a) offering (directly or indirectly), promising or giving any person working for or engaged by a Partner a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper

performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence: (i) under the Bribery Act 2010; (ii) under any UK legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract between the Partners; or

(d) defrauding, attempting to defraud or conspiring to defraud a Partner;

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

“Regulations” means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, S.I. No. 617;

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

“Service Contract” means a contract entered into by a Partner or Partners in exercise of their obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme;

“Service Users” means those individuals for whom the Partners have a responsibility to commission the Services;

“Services” means the services as set out in each Scheme Specification including the HESC Scheme Services;

“Strategic Service Contract” means a Service Contract which the JCE resolves to be strategically important; **I**

“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 JCE;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246)

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

1.2 Save to the extent that the context or the express provisions of this Agreement otherwise require:

1.2.1 obligations undertaken or to be undertaken by more than a single person shall be undertaken jointly and severally;

1.2.2 words implying or specifically stating any gender include any other gender and words in the singular include the plural and words in the plural include the singular;

1.2.3 references to any statute or statutory provision shall be deemed to refer to any modification or re-enactment thereof for the time being in force whether by statute or by directive or regulation which is intended to have direct application within the United Kingdom;

1.2.4 the headings and the index are inserted for convenience only and shall be ignored in interpreting or in the construction of the terms of this Agreement;

1.2.5 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause of or schedule to this Agreement so numbered;

1.2.6 each obligation on the Partners shall be a direct obligation or an obligation to procure as the context requires;

1.2.7 any reference to “indemnity” or “indemnify” or other similar expressions shall mean that the relevant party indemnifies, shall indemnify and keep indemnified and hold harmless the other party; and

1.2.8 any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person who has taken over the functions or responsibilities of that person but without derogation from any liability of any original party to this Agreement.

2 TERM

2.1 This Agreement shall commence on the Commencement Date and shall continue subject to earlier termination as provided below:

2.1.1 on not less than six months' written notice by either Partner to the other or at a date mutually agreed by the Partners;

2.1.2 in accordance with Clause 21 below.

2.2 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, subject to the duration provisions of this Agreement which may be applied in whole to all Individual Schemes in force at the time or separately to each Individual Scheme without prejudice to other Individual Schemes (including without limitation the termination provisions of Clauses 2.1 and 21).

2.3 This Agreement supersedes the previous s.75 Agreement without prejudice to the rights and liabilities of the Partners under the previous s.75 Agreement.

3 GENERAL PRINCIPLES

3.1 Nothing in this Agreement shall affect:

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

3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.

3.2 The Partners agree to:

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

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

3.2.3 provide early information and notice about relevant problems.

3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

4 AIMS, OBJECTIVES AND INTENDED OUTCOMES

4.1 The aims, objectives and intended outcomes of the Partners in entering into this Agreement are to deliver their corporate objectives as set out below through an integrated approach to the planning, commissioning and delivery of care and support to our population.

4.2 ICB's aims are:

4.2.1 improved outcomes in population health;

- 4.2.2 tackle inequalities in health outcomes;
- 4.2.3 enhance productivity and value for money; and
- 4.2.4 support broader social and economic development in Oxfordshire.
- 4.3 Council's aims are:
 - 4.3.1 put action to address the climate emergency at the heart of its work;
 - 4.3.2 reduce inequalities in Oxfordshire;
 - 4.3.3 prioritise the health and wellbeing of residents and Service Users;
 - 4.3.4 support carers and the social care system;
 - 4.3.5 invest in an inclusive, integrated and sustainable transport network;
 - 4.3.6 preserve and improve access to nature and green spaces;
 - 4.3.7 create opportunities for children and young people to reach their full potential;
 - 4.3.8 play its part in a vibrant and participatory local democracy; and
 - 4.3.9 work with local businesses and partners for environmental, economic and social benefit.
- 4.4 Working together within this Agreement will enable the Partners to make better use of collective but finite resources and deliver more preventative, personalised, integrated and responsive services within the overall strategic direction of Oxfordshire's Joint Health and Wellbeing Strategy and Better Care Fund Plan, the Council's Corporate Plan, the BOB ICB's Operational Plan and the relevant joint commissioning strategies agreed by the Partners.
- 4.5 This Agreement will provide a mechanism for monitoring and assuring the impact of these arrangements, and provide a vehicle for future development of the Agreement as agreed by the Partners from time to time.
- 4.6 This Agreement will support the development of place-based partnerships as set out in the Health and Care Act 2022.
- 4.7 The objectives of the arrangements set out in this Agreement are:
 - 4.7.1 to deliver the national conditions of the Better Care Fund for Oxfordshire as determined from time to time by NHS England;
 - 4.7.2 to enable more robust and flexible joint commissioning structures between the ICB and the Council that are better placed to respond to the personalisation agenda, NHS Long Term

Plan and/or other policy and legislative developments both within the Better Care Fund and in the wider Agreement;

4.7.3 to improve financial decision making and essential operational efficiencies across the whole system of health and social care;

4.7.4 to develop services closer to home responding to expert opinion, good practice and Service Users' and carers' needs;

4.7.5 to facilitate integration of preventative strengths-based approaches with intermediate and long term care packages across the health and social care spectrum and provide a more seamless service to Service Users and their carers;

4.7.6 to promote greater local decision making across localities about adult health and social care services that secures more innovative ways of providing support and services to the Service Users and their carers; and

4.7.7 to promote ways of combating social exclusion, tackle inequalities and improve the health and social wellbeing of local communities.

4.8 The intended outcomes of the arrangements pursuant to this Agreement are:

4.8.1 increased independence, choice and control for Service Users and their carers;

4.8.2 better health and well-being achieved through preventative, practical and self-help services and support delivered in partnership with the voluntary and community sector to prevent decline, maximised incomes and access to leisure, transport and social opportunities;

4.8.3 improved ability to cope with critical points and transitions through the availability of intermediate care and community support, avoidance of inappropriate admissions to hospital or residential care and timely discharge from hospital that reduces lengths of stay when people are optimised for discharge;

4.8.4 extended timely use of community-based housing, equipment and other forms of innovation, enabling more Service Users to be supported at home or in extra care housing and preventing the need for unnecessary admission to hospital or to long term care; and

4.8.5 more effective commissioning for community-based care and support through better information and knowledge across the whole system.

4.9 The aims, objectives and intended outcomes set out in this Clause 4 will be achieved by:

4.9.1 using the statutory joint commissioning structure;

4.9.2 using the Flexibilities pursuant to this Agreement;

- 4.9.3 using the Agreement as a basis for service planning and strategic commissioning;
- 4.9.4 using evidence on the outcome for the population and for the system as the basis for improving standards and targeting resources; and
- 4.9.5 using funding flexibilities for maximum effect.

5 PARTNERSHIP FLEXIBILITIES

- 5.1 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:
 - 5.1.1 Lead Commissioning Arrangements;
 - 5.1.2 Integrated Commissioning;
 - 5.1.3 Joint (Aligned) Commissioning
 - 5.1.4 the establishment of one or more Pooled Funds,

in relation to Individual Schemes (the "**Flexibilities**").
- 5.2 Where there is Lead Commissioning Arrangements and the BOB ICB is Lead Partner the Council delegates to the BOB ICB and the BOB ICB agrees to exercise, on the Council's behalf, the Council Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 5.3 Where there is Lead Commissioning Arrangements and the Council is Lead Partner, the BOB ICB delegates to the Council and the Council agrees to exercise on the BOB ICB's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Council Health Related Functions.
- 5.4 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.
- 5.5 Unless otherwise set out in a Scheme Specification, at the Commencement Date the Partners agree that the Council is appointed as the Host Partner and Lead Partner for the commissioning of the Services

6 Commissioning arrangements

General

- 6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification.
- 6.2 The JCE will report back to the Health and Wellbeing Board as required by its Terms of Reference.
- 6.3 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 6.4 Each Partner shall keep the other Partner and the JCE regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.5 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
- 6.5.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme, such agreement may be set out in a Scheme Specification; and
- 6.5.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner), the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded, the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.
- 6.6 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts.
- 6.7 Nothing in this Agreement shall prejudice or affect:
- 6.8 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
- 6.9 the powers of the Council to set, administer and collect charges for any Council Health Related Function; or

- 6.10 the Council's power to determine and apply eligibility criteria for the purposes of assessment under the Care Act 2014.

Integrated Commissioning

- 6.11 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:

6.11.1 the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Council Health Related Functions are commissioned with all due skill, care and attention.

6.11.2 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

Lead Commissioning Arrangements

- 6.12 The Partners agree that the role of the Lead Partner in commissioning the Services may be separated into the role of a Lead Commissioner and the role of the Lead Contractor.

6.13 Each Scheme Specification shall set out the Partner that is the Lead Commissioner and the Partner that is the Lead Contractor or the Partner that is the Lead Partner.

- 6.14 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:

6.14.1 exercise the NHS Functions in conjunction with the Council Health Related Functions as identified in the relevant Scheme Specification;

6.14.2 endeavour to ensure that the NHS Functions and the Council Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.

6.14.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;

6.14.4 keep the other Partner and JCE regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund;

6.14.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned; and

6.14.6 ensure the proper discharge of the Partners' functions.

- 6.15 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Contractor shall:
- 6.15.1 be the contracting authority for the purpose of running the procurement of the Services;
 - 6.15.2 contract with Provider(s) for the provision of the Services, which for Strategic Service Contracts shall be on terms agreed with the other Partner; [
 - 6.15.3 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 6.15.4 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; and
 - 6.15.5 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 6.16 For avoidance of doubt, where a Partner is the Lead Partner, that Partner shall comply with Clauses 6.14 and 6.15.

7 THE POOLED FUND AND FINANCIAL CONTRIBUTIONS

- 7.1 In exercise of their respective powers under Section 75 of the Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to Clause 7.45, 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 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the JCE; and
 - 7.3.4 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the JCE,
- ("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 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:

7.5.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;

7.5.2 providing the financial administrative systems for the Pooled Fund; and

7.5.3 appointing the Pool Manager;

7.5.4 ensuring that the Pool Manager complies with its obligations under this Agreement.

7.6 The Financial Contributions shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall be made separately and in accordance with section 256 (or section 76) of the Act.

7.7 It is accepted that each Partner may make non-financial contributions including staff (including the Pool 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).

8 HESC SCHEME POOLED FUND

8.1 The Pooled Fund in respect of the HESC Scheme and the corresponding Host Partner and Lead Commissioner and Lead Contractor as the case may be for the HESC Scheme are set out in Annex 2 of Schedule 3 of this Agreement.

8.2 Payment mechanisms applicable to the HESC Scheme Pooled Fund are set out in Annex 2 of Schedule 3 of this Agreement.

8.3 The Financial Contributions of each Partner to the HESC Scheme Pooled Fund are set out in Annex 2 of Schedule 3 of this Agreement.

8.4 The Partners shall review the provisions at Schedule 3 of this Agreement annually and any changes to Schedule 3 shall be made in accordance with the procedures at Clause 10.

8.5 The annual report(s) provided by the Council under Schedule 3 will set out the spending of the Pooled Fund in relation to the BOB ICB's NHS Functions and the Council shall provide such information to the BOB ICB if the BOB ICB requests this from time to time.

9 POOLED FUND MANAGEMENT

General

- 9.1 The Pool Manager for the HESC Scheme shall be the Deputy Director for Joint Commissioning on behalf of the Council and the BOB ICB.
- 9.2 In the event that the Pool Manager identified in clause 9.1 (or as specified in the relevant Scheme Specification) has to be replaced, the replacement Pool Manager shall be such officer of the Host Partner as the Host Partner may from time to time nominate for this role in relation to the Pooled Fund who has been approved by the other Partner (such approval not to be unreasonably withheld) and who has been affirmed in the role by the JCE within 30 days of the commencement of each Financial Year. If not so nominated, approved and affirmed the Pool Manager shall be the Chief Finance Officer of the Council.
- 9.3 When introducing a Pooled Fund, the Partners shall agree:
- 9.3.1 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; and
- 9.3.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 9.4 The Pool Manager for each Pooled Fund shall have the following duties and responsibilities:
- 9.4.1 the day to day operation and management of the Pooled Fund;
- 9.4.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
- 9.4.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
- 9.4.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- 9.4.5 reporting to the JCE as required by this Agreement and by the JCE;
- 9.4.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
- 9.4.7 preparing and submitting to the JCE quarterly reports (or more frequent reports if required by the JCE) 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 JCE 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 Pool Manager in time for the reporting requirements to be met including (without

limitation) comply with any reporting requirements as may be required by relevant National Guidance;

- 9.4.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying quarterly reports referred to in Clause 9.2.7 above to the Health and Wellbeing Board.
- 9.5 In carrying out their responsibilities as provided under this clause, the Pool Manager shall:
- 9.5.1 have regard to National Guidance and the recommendations of the JCE; and
- 9.5.2 be accountable to the Partners for delivery of those responsibilities.
- 9.6 The Pool Manager shall be responsible for managing the budget of the Pooled Fund and forecasting and reporting to the JCE upon the targets and information in accordance with this Agreement and the Schedules and any further targets or performance measures that may be agreed by the JCE from time to time.
- 9.7 The Pool Manager shall arrange for the audit of the accounts of the Pooled Fund and shall require the Audit Commissioner to make arrangements to certify an annual return of those accounts as may be required under the Local Audit and Accountability Act 2014. The Pool Manager shall report to the Authorised Officers on behalf of the Council and the BOB ICB in accordance with the requirements of the Regulations. Any audit reports shall be made available to the Authorised Officer of each Partner and will be reported to the JCE. The Council's Authorised Officer shall in turn ensure reporting on the same to the officer of the Council responsible for the administration of its financial affairs under section 151 of the Local Government Act 1972.
- 9.8 The Pool Manager shall submit to the Partners a quarterly and annual return regarding the income of and expenditure from the Pooled Fund. Reports on performance against budget and targets and other information by which the Partners can monitor the effectiveness of the Pooled Fund arrangements will be agreed by the JCE as part of a monthly schedule of reporting.
- 9.9 The Pool Manager shall be responsible for authorising and the Host Partner shall make payments from the Pooled Fund in accordance with the relevant Scheme Specification.
- 9.10 The Pool Manager shall maintain and provide monitoring information for the JCE in the form and manner set out in Annex 3 of Schedule 3, for so long as any part of the Services is being provided to Service Users notwithstanding the expiry of the Agreement or any notice of termination pursuant to Clause 21.

- 9.11 The day to day management of these arrangements will be the responsibility of the PFG, whose terms of reference are set out in Annex 3 of Schedule 3.
- 9.12 Subject to the requirements of its constitution the Host Partner and Lead Commissioner shall implement the decisions of the JCE in respect of the Pooled Fund. For the avoidance of doubt this Agreement does not affect the statutory responsibilities of either Partner.
- 9.13 The costs of audit associated with the certification of the annual return for operation of this Agreement and the costs of provision of this Agreement and the costs of provision of information by the Pool Managers following a notice of termination shall be a charge to the Pooled Fund.
- 9.14 The Partners shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise. For the avoidance of doubt Services commissioned by the Council will be subject the VAT regime of the Council.
- 9.15 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.
- 9.16 Each Partner shall pay its own costs and expenses incurred from time to time in the negotiation and management of this Agreement, save as expressly otherwise provided in this Agreement.

10 THE SERVICES

- 10.1 The HESC Scheme Services shall be purchased for or provided to the Service Users in accordance with the objectives set out in Clause 4 and Annex 1 and Annex 4 of Schedule 3 of this Agreement.
- 10.2 The Council shall be the Lead Partner for the elements of the HESC Scheme Services as specified in Annex 4 of Schedule 3, and the BOB ICB hereby delegates to the Council the exercised of its NHS Functions to the extent necessary to enable the Council to perform its obligations under this Agreement.
- 10.3 The ICB shall be the Lead Contractor for the elements of the HESC Scheme Services as specified in Schedule 3, Annex 4 and the Council hereby delegates to the BOB ICB the exercise of its Council Health Related Functions to the extent necessary to enable the BOB ICB to perform its obligations under this Agreement.
- 10.4 The Lead Commissioner must consult the JCE if it has any doubts as to whether a Service Contract should be categorised as a Strategic Service Contract.
- 10.5 The eligibility of Service Users to receive the HESC Scheme Services shall be assessed in accordance with the provisions of Annex 4 of Schedule 3.

- 10.6 The Host Partner shall use reasonable endeavours to ensure that only eligible Service Users access the HESC Scheme Services.
- 10.7 If Services are provided to a Service User who was not eligible for the Services, or a Service User continues to receive Services after becoming ineligible, the Host Partner shall take immediate steps to ensure that the Services are withdrawn as soon as is practicable from that Service User in accordance with any requirements at Law or in accordance with the care plan that may have been agreed in relation to a Service User and the value of the Services provided to the Service User (and for the avoidance of doubt, in respect of a formerly eligible Service User who subsequently becomes ineligible, the value of the Services provided to that Service User from the point at which that Service User becomes ineligible) shall be treated as an overspend on the Pooled Budget in accordance with Clause 11 (Risk Share, Overspends and Underspends).
- 10.8 The Lead Commissioner and the Lead Contractor shall comply with all statutes and statutory regulations and directions relating to the provision of the Services and in particular, but without limitation, shall ensure that all contracts with care providers require that such element of the Services in any care home (as defined in the Care Standards Act) complies with any national minimum standards under the Care Standards Act.

11 RISK SHARE, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 11.1 The Partners have agreed risk share arrangements as set out in Annex 2 of Schedule 3, which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds as set out in National Guidance.

Overspends in Pooled Fund

- 11.2 The Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
- 11.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs provided that it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the PFG in accordance with Clause 11.4.
- 11.4 In the event that the Pool Manager identifies an actual or projected Overspend the Pool Manager must ensure that the JCE is informed as soon as reasonably possible and the provisions of Annex 2 of Schedule 3 shall apply.

Underspend

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

12 LIABILITY

12.1 Nothing in this Contract shall exclude or restrict the liability of either Partner:

12.1.1 for death or personal injury resulting from its negligence;

12.1.2 for fraud or fraudulent misrepresentation; or

12.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13 INDEMNITY AND INSURANCE

13.1 The Partners shall, so far as is possible at reasonable cost and allowable by law or guidance, agree and effect appropriate insurance arrangements in respect of all potential liabilities arising from this Agreement. In the case of the BOB ICB, it may arrange alternative cover in accordance with current NHS arrangements for property and third party liability (i.e. the Property Expenses Scheme and the Third Party Liabilities Scheme) administered by the NHS Litigation Authority in lieu of commercial insurance. Each Partner shall provide to the other upon request such evidence as that Partner may reasonably require to confirm that the insurance arrangements are satisfactory and are in force at all times.

13.2 Each Partner (Indemnifying Partner) shall indemnify the other Partner (Indemnified Partner) and its employees and agents against all claims and proceedings (to include any settlements or ex gratia payments made with the consent of the Partners and reasonable legal and expert costs and expenses) made or brought (whether successfully or otherwise) by or on behalf of any Service User (or his dependants) against the Indemnified Partner or any of its employees or agents for personal injury (including death) arising from acts or omissions by or on behalf of the Indemnifying Partner relating to the Services.

13.3 The indemnity set out in Clause 13.2 shall not apply to any such claim or proceeding:

13.3.1 to the extent that such personal injury (including death) is caused by the negligent or wrongful act(s) or omission(s) or breach of statutory duty of the Indemnified Partner, its employees or agents;

- 13.3.2 to the extent that such personal injury (including death) is caused by the failure of the Indemnified Partner, its employees or agents to provide the Services in accordance with this Agreement;
- (a) unless as soon as reasonably practicable following receipt of notice of such claim or proceeding, the Indemnified Partner shall have notified the Indemnifying Partner in writing of it and shall, upon the Indemnifying Partner's request and at the Indemnifying Partner's cost, have permitted the Indemnifying Partner to have full care and control of the claim or proceeding, using legal representation approved by the Indemnified Partner, such approval not to be unreasonably withheld;
- (b) if the Indemnified Partner, its employees or agents shall have made any admission in respect of such claim or proceeding or taken any action related to such claim or proceeding prejudicial to the defence of it without the written consent of the Indemnifying Partner (such consent not to be unreasonably withheld or delayed), provided that this condition shall not be treated as breached by any statement properly made by the Indemnified Partner, its employees or agents in connection with the operation of its internal complaints procedures, accident reporting procedures or disciplinary procedures or where such statement is required by law.
- 13.4 Each Partner shall keep the other Partner and its legal advisers fully informed of the progress of any such claim or proceeding, will consult fully with the other Partner on the nature of any defence to be advanced and will not settle any such claim or proceeding without the written approval of the other Partner (such approval not to be unreasonably withheld).
- 13.5 Without prejudice to the provisions of Clause 9.3.3, both Partners will use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any such claim or proceedings of which they are directly aware and shall keep each other reasonably informed of developments in relation to any such claim or proceeding even where they decide not to make a claim under this indemnity.
- 13.6 For the purposes of this indemnity the expression "agents" shall be deemed to include without limitation any nurse or health professional/social care worker or manager providing services to the Council or the BOB ICB under contract for services or otherwise and any person carrying out work for the Council or the BOB ICB under such a contract connected with such of the Council's or the BOB ICB's facilities and equipment as are made available for the treatment of patients.
- 13.7 Each Partner (Indemnifying Partner) shall indemnify and keep indemnified the other Partner (Indemnified Partner) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract,

negligence, wilful default or fraud of itself, the Indemnifying Partner's employees, or any of its representatives, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its representatives

- 13.8 In this clause 13.8 a “Shared Liability” means any loss suffered by or claim against a Partner in procuring or commissioning Services which is not caused by breach of contract, negligence, wilful default or fraud of such Partner or its representatives. The Partners shall use reasonable endeavours to agree an apportionment of a Shared Liability to the Partners in a reasonable and equitable manner taking into account the circumstances of and reasons for the Shared Liability. Where such agreement cannot be reached within 30 days of the Shared Liability arising the Shared Liability shall be apportioned to the Partners in proportion to their respective Financial Contributions to the element of the Pooled Fund which is being used to fund the Services relating to the Shared Liability and the Partners shall make such payments to each other so as to reflect such apportionment.

14 CONDUCT OF CLAIMS

- 14.1 In respect of the indemnities given in Clause 13:
- 14.1.1 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;
- 14.1.2 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.
- 14.1.3 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.

15 ANNUAL DEVELOPMENT PLAN

- 15.1 The Partners shall prepare a draft Annual Development Plan for each of the Services at least four weeks before the start of the Financial Year. The final plan will be agreed no later than 31 May each year. The Annual Development Plan shall:
- 15.1.1 set out the agreed Aims and Outcomes for the specific Services;

- 15.1.2 describe any changes or development required for the specific Services;
- 15.1.3 provide information on how changes in funding or resources may impact the specific Services; and
- 15.1.4 include details of the estimated contributions due from each Partner for each Service and its designation to the Pooled Fund.
- 15.2 The Annual Development Plan shall commence on 1 April at the beginning of the Financial Year and shall continue for 12 months.
- 15.3 The Annual Development Plan may be varied by written agreement between the Partners. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the Partners to make corresponding adjustments to the NHS body's Financial Contribution and the Council's Financial Contribution.
- 15.4 If the Partners cannot agree the contents of the Annual Development Plan, the matter shall be dealt with in accordance with Clause 34.
- 15.5 The Partners shall agree an Annual Development Plan in respect of the HESC Scheme within [insert time period] from the Commencement Date.

16 REVIEW AND REPORTING

- 16.1 The Partners shall report to each other both quarterly and annually on the exercise of their respective Functions which are the subject of the Partnership Arrangements pursuant to this Agreement and in accordance with this Clause 16.
- 16.2 The Partners shall review the operation of the Agreement annually no later than by 30th September in any year to review:
 - 16.2.1 the performance of the Partnership Arrangements against the Aims and Outcomes;
 - 16.2.2 the performance of the Services against the service levels and other targets contained in the relevant Service Contracts;
 - 16.2.3 plans to address any underperformance in the Services;
 - 16.2.4 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
 - 16.2.5 review of plans and performance levels for the following year; and
 - 16.2.6 plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

- 16.3 The Partners shall prepare an annual report following the annual review for submission to the JCE.
- 16.4 The Partners shall also consider any changes that may be required to assure delivery of Aims and Outcomes of the Agreement going forward:
- 16.4.1 the continuation and scope of the Agreement for the subsequent financial year;
- 16.4.2 their respective Financial Contributions to the Pooled Fund for that Financial Year. The Partners may at this time agree to vary such contributions and Annex 2 of Schedule 3 shall be amended accordingly; and
- 16.4.3 any further written agreement pursuant to clauses 17.3.3 and 17.4.3 to this Agreement.
- 16.5 The Partners shall also use reasonable endeavours in each Financial Year to agree by 1st March a draft budget for the following Financial Year. Such budget will be finalised once the Partners have agreed their Financial Contributions for the relevant Financial Year in accordance with Clauses 16.2, 16.3 and 16.4 above.
- 16.6 Reviews shall be conducted in good faith and in accordance with the governance arrangements set out in Annex 3 of Schedule 3, shall be based upon information to be provided as set out in Annex 3 of Schedule 3 and shall take account of:
- 16.6.1 reasonable increases for inflation;
- 16.6.2 any agreed addition or decrease of funds for development of the Pooled Fund against any agreed targets; and
- 16.6.3 any commitments under or in connection with any Service Contract.
- 16.7 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.
- 16.8 The Pool Manager shall submit a [monthly / quarterly] report to the PFG (the “**PFG Report**”) setting out:
- 16.8.1 the performance of the Partnership Arrangements against the performance management framework in the preceding month; and
- 16.8.2 any forecast overspend or underspend of the Financial Contributions.
- 16.9 The PFG Report shall be escalated to JCE in line with the PFG Terms of Reference.

17 **STANDARDS OF CONDUCT**

- 17.1 The Partners shall 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 BOB ICB is subject to BOB ICB Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with BOB ICB 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

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

19 GOVERNANCE

- 19.1 Schedule [x] sets out the governance arrangements for this Agreement. [DN: insert the terms of reference for JCE and PFG into the relevant schedule]
- 19.2 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the JCE and the Health and Wellbeing Board.
- 19.3 In respect of the HESC Scheme, the JCE shall monitor in accordance with Annex 3 of Schedule 3, the exercise by the Partners under this Agreement of the Partners' respective functions as set out in Clause [8] 5.
- 19.4 Approval of the JCE shall be required before the Lead Contractor enters into any Strategic Service Contract. Such approval may be given to a class or category of Strategic Service Contracts identified as needed through the relevant joint commissioning strategy.

20 TERMINATION

- 20.1 If the Council or the BOB ICB fails to meet any of its respective material obligations under this Agreement, the other Partner may by written notice require the Partner in default to take such reasonable action to rectify such failure within 30 calendar days of receipt of a notice identifying a failure. Should the Partner in default fail to rectify such failure within 30 calendar days, the other Partner may give written notice to terminate this Agreement immediately.
- 20.2 Either Partner shall be entitled to terminate this Agreement immediately by notice to the other, if the other Partner, its staff or anyone acting on its behalf:
- 20.2.1 commits a Prohibited Act in connection with this Agreement, or
- 20.2.2 gives any financial or other advantage to any person working for or engaged by the Partner giving such notice in connection with this Agreement.
- 20.3 Either Partner may terminate this Agreement in accordance with Clause 2.1.
- 20.4 Unless otherwise agreed in the relevant Scheme Specification, each Individual Scheme may be terminated by either Partner giving not less than 12 Months' notice in writing or such shorter notice period agreed between the Partners provided that:
- 20.4.1 such termination is possible in accordance with the National Guidance and Law; and
- 20.4.2 that the Partners ensure that the statutory Better Care Fund Requirements continue to be met, and
- for the avoidance of doubt the operation of the Agreement shall continue in respect of the remaining Individual Services.
- 20.5 Any purported termination of this Agreement under this Clause shall be without prejudice to any continuing obligations of the Partners under Clauses 8 and 12 and the continued operation of the JCE in accordance with Annex 3 of Schedule 3.

21 EFFECTS OF TERMINATION OR EXPIRY

- 21.1 Notwithstanding any notice of termination in accordance with Clause 2.1 or Clause 20:
- 21.1.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 21.1.2 the Partners shall continue to operate the Pooled Fund in accordance with this Agreement so far as is necessary to ensure fulfilment of the obligations in Clause 21.1.1;

- 21.1.3 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;
- 21.1.4 the Lead Contractor 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 Contractor in breach of the Service Contract) where the other Partner requests the same in writing provided that the Lead Contractor 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;
- 21.1.5 where a Service Contract held by a Lead Contractor 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 Contractor assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract; and
- 21.1.6 the JCE 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;
- 21.2 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.
- 21.3 In the event of termination in relation to an Individual Scheme the provisions of Clause 20.3 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).
- 21.4 Upon termination of the Agreement the Partners shall use reasonable endeavours to agree an apportionment of any underspend in relation to the Pooled Fund so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the underspend and such payments as shall be required to reflect this shall be made from the Pooled Fund to the Partners. Where such agreement cannot be reached within 30 days of termination the underspend shall be returned to the Partners in proportion to their respective Financial Contributions to the Pooled Fund.
- 21.5 Upon termination of the Agreement the Partners shall use reasonable endeavours to agree an apportionment of any overspend in relation to the Pooled Fund so terminated in a reasonable and equitable manner taking into account the circumstances of and reasons for the overspend and such payments as shall be required to reflect this shall be made by the Partners to the Pooled Fund. Where such agreement cannot be reached within 30 days of termination the Partners shall meet the overspend proportionately to their respective Financial Contributions to the Pooled Fund.

21.6 When determining whether there has been an underspend or overspend as at the date of termination all known liabilities in relation to the Pooled Fund should be assessed and quantified and taken into account.

21.7 The Partners shall continue to be responsible for any liabilities that arise following any payments made pursuant to Clause 21.4. Any liabilities that are subsequently quantified shall be apportioned between the Partners on the same basis as an overspend in accordance with Clause 21.5 and the Partners shall make such payments to each other or to the Pooled Fund as shall be required to reflect this.

22 VARIATION

22.1 Where the Partners agree that there will be:

22.1.1 a new Pooled Fund;

22.1.2 a new Individual Scheme; or

22.1.3 an amendment to the HESC Scheme,

the JCE shall agree the new or amended Individual Scheme and this must be signed by the Partners. A request to vary an Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification may be made by any Partner but will require agreement from all of the Partners in accordance with the process set out in Clause 30.3. The notice period for any variation unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

22.2 The following approach shall, unless otherwise agreed, be followed by the JCE:

22.2.1 on receipt of a request from one Partners to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the JCE will first undertake an impact assessment and identify those Service Contracts likely to be affected; and

22.2.2 the JCE will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Partners holding the Service Contract/s is not put in breach of contract; its statutory obligations or financially disadvantaged;

(a) wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and

(b) should this not be possible and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then

the financial risk will, unless otherwise agreed, be shared in proportion to the respective Financial Contributions of each Partner to the element of the Pooled Fund used to fund the relevant Services in the previous 12 months.

23 CONFIDENTIALITY

23.1 The Partners shall:

23.1.1 keep confidential any information obtained in connection with this Agreement and personal client data subject to the Data Protection Legislation; and

23.1.2 take appropriate technical and organisational measures against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of or damage to such personal data.

23.2 The Council and the BOB ICB shall keep confidential any information acquired through their conduct of this Agreement and will take all reasonable steps to ensure that their employees do not divulge such information to a third party, without the express consent of both Partners and the Client, except in accordance with the requirements for external audit, as may be required by law or where such information is already in the public domain.

23.3 The Partners must comply with the requirements of the Connecting for Health Information Governance Toolkit and have reached a minimum of level 2 for all criteria.

23.4 Nothing in this Clause 23 shall prevent the a 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.

23.5 Each Partner:

23.6 may only disclose Confidential Information to its employees, sub-contractors and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and

23.7 will ensure that, where Confidential Information is disclosed in accordance with Clause 24.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 23;

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

24 DISPUTE AND RESOLUTION

- 24.1 In the event of a dispute over the application or interpretation of this Agreement, the dispute may be referred by the Partners in writing as follows:
- 24.1.1 in the first instance to the Authorised Officers to resolve;
 - 24.1.2 if the dispute has not been resolved within 4 weeks of such referral to the Authorised Officers, either Partner may refer the matter in the second instance to the Chief Executive of the Council and the Chief Executive Officer of the BOB ICB;
 - 24.1.3 in the third instance if the dispute has not been resolved within 4 weeks of such referral to the Chief Executive of the Council and the Chief Executive officer of the BOB ICB then either Partner may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution's ("CEDR") Model Mediation Procedure;
 - 24.1.4 to initiate the mediation, either Partner may give notice in writing to the other requesting mediation in accordance with this Clause 25. The initiating party shall send a copy of such request to CEDR;
 - 24.1.5 if there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue;
 - 24.1.6 if the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.

25 EXCLUSION OF PARTNERSHIP AND AGENCY

- 25.1 Other than as expressly contemplated under section 75 of the Act and under the Regulations, the Partners expressly agree that nothing in this Agreement in any way creates a legal partnership or joint venture or relationship of employer and employee or principal and agent between them.
- 25.2 Neither Partner nor any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Partner, except where expressly permitted by this Agreement.

26 ASSIGNMENT AND SUB AGREEMENTS

The Partners shall not assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partner, which shall not be unreasonably withheld.

27 THIRD PARTY RIGHTS

No one other than a Partner, their successors and permitted assignees, shall have any right to enforce any of the terms of this Agreement.

28 PREVENTION OF CORRUPTION

28.1 Each Partner shall and shall procure that its Each Party Personnel shall) during the Term:

- (a) not commit a Prohibited Act;
- (b) not do or omit to do anything that would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
- (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- (d) notify the Council (in writing) if it becomes aware of any breach of Clause 29.3(a) or Clause 29.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage [in connection with performance of this agreement.

29 The Each Party shall maintain appropriate and up to date records showing all payments made by the Each Party in connection with this agreement and the steps taken to comply with its obligations under Clause 29.3.

30 COMPLAINTS

30.1 Complaints regarding the Services shall in the first instance be directed to the Provider and if not resolved will be managed according to the Council's Complaints Procedure or the NHS Complaints Procedures Act 1985 as appropriate and this will include information to all Service Users and their carers or established representatives on how to complain, which will be made known at the point of commencement of assessment and after referral to the Services for any potential service or support.

30.2 The Lead Contractor shall ensure that information is provided to all Service Users and their carers or established representatives on how to complain, which will be made known at the point of commencement of assessment and after referral to the Services for any potential service or support.

31 NOTICES

31.1 All notices under this Agreement shall only be validly given if given in writing, addressed as follows:

- 31.1.1 If to the Council, addressed to the Corporate Director of Adults at County Hall as above;
- 31.1.2 If to the BOB ICB, addressed to the Director of Place (Oxfordshire) at Sandford Gate at as above.

32 STATUTORY OBLIGATIONS

- 32.1 The Partners shall in the performance of their obligations under this Agreement comply with all relevant UK legislation including (without limitation) all statutes directives regulations orders codes of practice and best practice guidelines (as amended from time to time) and all provisions relating to such matters elsewhere in this Agreement.
- 32.2 Each Partner will note the other Partner's current and future obligations under Data Protection Legislation, the Freedom of Information Act 2000, the Human Rights Act 1998, the Equality Act 2010 and Part 1 of the Local Government Act 1999 (all as amended from time to time) and the appropriate enforcement agencies ("the Specified Legislation") and shall:
 - 32.2.1 comply with the Specified Legislation in so far as it places obligations upon that Partner in the performance of its obligations under this Agreement;
 - 32.2.2 facilitate the other Partner's compliance with its obligations under these provisions and comply with any reasonable requests for that purpose;
 - 32.2.3 act in respect of any person who receives or requests services under this Agreement as if that Partner were a public authority for the purpose of the Human Rights Act 1998.
- 32.3 Each Partner ("the First Partner") acknowledges that in responding to a request received by any Partner ("the Other Partner") under the FOIA or the Environmental Information Regulations 2004 ("the EIR") the Other Partner will be entitled to provide information relating to this Agreement or which otherwise relates to the First Partner.
- 32.4 The First Partner shall co-operate with the Other Partner in connection with any request received by the Other Partner under the FOIA or the EIR and such co-operation shall be at no cost to the Other Partner.
- 32.5 The Partners shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and of any other Acts pertaining to the health and safety of employees and shall ensure that any contractors carrying out work for any purpose relating to the Agreement likewise comply.
- 32.6 The Partners shall in connection with their provision of the Services comply with their obligations under Data Protection Legislation (including where appropriate obtaining registration thereunder) and avoid offending against the Computer Misuse Act 1990.

- 32.7 Each Partner shall take such steps as may be practicable to afford the other Partner access to information which is reasonably required by the first Partner in connection with any of its statutory functions and for any purpose connected with its rights and obligations under this Agreement.
- 32.8 Each Partner must exercise its reasonable endeavours to ensure the accuracy of any data entered into the computer system used in carrying out the Partners' obligations under the Agreement.
- 32.9 All data held on any computer system operated under this Agreement must immediately on termination of the Agreement be made available on request to the Partner with statutory responsibility for the relevant Service Users.
- 32.10 The Partners shall not in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person unlawfully discriminate against any person contrary to UK legislation relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise.
- 32.11 The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

33 CHANGE IN LAW

- 33.1 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.
- 33.2 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.
- 33.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 25 (Dispute Resolution) shall apply.

34 GOVERNING LAW

This Agreement shall be governed by and construed in all respects in accordance with the laws of England.

35 SURVIVAL

The following clauses shall survive termination or expiry of this Agreement: Clauses 1, 7, 8, 9, 11, 12, 14, 20, 21, 22, 23, 29 and this Clause 35.

36 FORCE MAJEURE

36.1 Where a Partner is (or claims to be) affected by an Event of Force Majeure, it shall take all reasonable steps to mitigate the consequences of it, resume performance of its obligations as soon as practicable and use all reasonable efforts to remedy its failure to perform.

36.2 Subject to clause 37.1, the Partner claiming relief shall be relieved from liability under this Agreement to the extent that because of the Event of Force Majeure it is not able to perform its obligations under this Agreement.

36.3 The Partner claiming relief shall serve initial written notice on the other Partner immediately it becomes aware of the Event of Force Majeure. This initial notice shall give sufficient details to identify the particular event. Detailed written notice shall be served within a further 5 working days. This detailed notice shall contain all relevant available information relating to the failure to perform as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it.

37 WAIVER

Any relaxation or delay of either Partner in exercising any right under this Agreement shall not be taken as a waiver of that right and shall not affect the ability of that Partner subsequently to exercise that right.

38 ENTIRE AGREEMENT

38.1 This Agreement constitutes the entire agreement and understanding of the Partners and supersedes any previous agreement between the Partners relating to the subject matter of this Agreement.

38.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.

38.3 Nothing in this clause 39 shall exclude any liability for fraud or any fraudulent misrepresentation.

39 SEVERANCE

If any provision of this Agreement shall become or be declared by a court of competent jurisdiction to be illegal invalid or unenforceable such illegality or unenforceability shall in no

way impair or affect the other provisions of this Agreement all of which shall remain in full force and effect.

40 FAIR DEALINGS

The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

IN WITNESS whereof the parties have executed this Agreement as a Deed the day and year first before written

THE COMMON SEAL of OXFORDSHIRE COUNTY COUNCIL

Was affixed to this Deed in the presence of:

.....Director of Law and Governance/Designated
Officer

EXECUTED as a **DEED** by)

BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST

INTEGRATED CARE BOARD)

)

..... Chief Finance Officer

.....Chief Executive Officer

SCHEDULE 1– TEMPLATE SCHEME SPECIFICATION: FOR USE IN ANY NEW SCHEMES

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

DN: This template shall be used for any new Individual Service Schemes agreed by variation in line with clause 23 of the agreement. The HESC Scheme is detailed in the schedules below.

1 OVERVIEW OF INDIVIDUAL SERVICE

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 and/or Non Pooled Funds as may be required.*

4 FUNCTIONS

Set out the Council's Functions and the ICB'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

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:

- (a) relevant contracts
- (b) arrangements for contracting. Will terms be agreed by both partners or will the Lead Partner 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

	ICB 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

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

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

If there is a Pooled Fund in respect of the Individual Scheme set out the protocol in respect of the pooled Fund.

(3) Audit Arrangements

What Audit arrangements are needed?

(4) Financial Management

*Which financial systems will be used?
 What monitoring arrangements are in place?
 Who will produce monitoring reports?
 What is the frequency of monitoring reports?
 What are the rules for managing overspends?
 Do budget managers have delegated powers to overspend?
 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 closure of accounts arrangement need to be applied?]*²

9 VAT

Set out details of the treatment of VAT in respect of the Individual Scheme 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*

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.

accounting to be used?

10 [GOVERNANCE ARRANGEMENTS

Is there a Scheme Lead

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?

11 NON FINANCIAL RESOURCES

Council contribution

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

ICB Contribution

	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?

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

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

Council staff to be made available to the arrangements

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

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

ICB 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?

14 LEAD OFFICERS

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

15 INTERNAL APPROVALS

Consider the levels of authority from the Council's Constitution and the ICB'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*

SCHEDULE 2 – LEAD COMMISSIONING ARRANGEMENTS

Part 1 – LEAD COMMISSIONER OBLIGATIONS

Part 1 sets out the responsibilities of the Lead Commissioner. The Lead Commissioner as defined in the Partnership is the Council, but the lead for specific contracts may be either the Council or the ICB as set out in Schedule 4.

- 1 The Lead Commissioner shall provide such cooperation, assistance and support to the Lead Contractor (including the provision of data and other information) as is reasonably necessary to enable the Lead Contractor to:
 - 1.1 resolve disputes pursuant to a Service Contract;
 - 1.2 comply with its obligations pursuant to a Service Contract and this Agreement;
 - 1.3 ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;
- 2 The Lead Commissioner shall not unreasonably withhold or delay consent requested by the Lead Contractor.
- 3 The Lead Commissioner shall:
 - 3.1 comply with the requirements imposed on the Lead Contractor pursuant to the relevant Service Contract in relation to any information disclosed to the other Partner;
 - 3.2 notify the Lead Contractor of any matters that might prevent the Lead Contractor from giving any of the warranties set out in a Services Contract or which might cause the Lead Contractor to be in breach of warranty.

SCHEDULE 2

Part 2 - LEAD CONTRACTOR OBLIGATIONS

- 1 The Lead Contractor shall notify the other Partners if it receives or serves notices pursuant to the Service Contract and provide copies of the same.
- 2 The Lead Contractor shall provide the other Partners with copies of any and all reports as required by the Service Contract.
- 3 The Lead Contractor shall consult with the other Partner before attending the various meetings required by the Service Contract and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.
- 4 If applicable, the Lead Contractor shall not:
 - 4.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
 - 4.2 vary any Provider Plans (excluding Remedial Action Plans);
 - 4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
 - 4.4 give any approvals under the Service Contract;
 - 4.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
 - 4.6 suspend all or part of the Services;
 - 4.7 serve any notice to terminate the Service Contract (in whole or in part);
 - 4.8 serve any notice;
 - 4.9 agree (or vary) the terms of a Succession Plan;without the prior approval of the other Partner (acting through the JCE) such approval not to be unreasonably withheld or delayed.
- 5 The Lead Contractor shall advise the Lead Commissioner of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of the Lead Commissioner as part of that process.
- 6 The Lead Contractor shall notify the Lead Commissioner of the outcome of any dispute that is agreed or determined by dispute resolution procedure.
- 7 The Lead Contractor shall share copies of any reports submitted by the Provider to the Lead Contractor pursuant to the Service Contract (including audit reports)

Schedule 3- HESC SCHEME SPECIFICATION

Annex 1

Purpose

1. Oxfordshire County Council and BOB ICB agreed to create “HESC” the Health, Education and Social Care integrated commissioning structure to accelerate integration between health and local authorities and drive the level of transformational change needed to improve health and social care outcomes for the population of Oxfordshire.
 2. The new HESC structure was initiated on 1 March 2021 and will over time bring together commissioning budgets from BOB ICB, OCC Public Health, OCC Adult Social Care and OCC Children’s education and social care.
 3. The purpose of this structure is to deliver the parties’ shared ambition that reframes the previous service-focussed approach to the design and contracting of care into one which
 - a. Will deliver better outcomes by adopting a whole life cycle through starting, living and ageing well and
 - b. Is focussed on those interventions that support independence and self-care via a tiers of need model covering prevention, enablement and support and protect
 4. OCC and BOB ICB believe that a person-centred more preventative approach to commissioning support across health and social care by building it around the needs and lives of our population, rather than fitting people into our services will be both more impactful and more efficient as we shift towards prevention and reduce the need for, and the time spent in, more formal care.
 5. This approach will eliminate the hand-offs between historically siloed services and encourage innovation. HESC staff will work to the following behaviours that will underpin this new approach to integrated commissioning
2. The specific delegations made within this Agreement between the Partners are as set out in Annex 5 to Schedule 3. This section sets out the commitments of each Partner in addition to the obligations of the Lead Commissioner and Lead Contractor as above.

Overview

3. The HESC integrated commissioning team will work in partnership across OCC and BOB ICB to deliver the HESC strategic model. This schedule sets out those commitments that the Partners will make to deliver that ambition in addition to those formal joint-funded strategic commissioning posts set out in Annex 6 to Schedule 3.

OCC

4. HESC joint-funded strategic commissioning posts are located within the broader HESC integrated commissioning team and will work with the Strategy and Innovation, Quality and Improvement and Brokerage teams as set out in the HESC MOU
5. The Strategic Contract Management and Procurement Hub will work with HESC joint commissioning to provide management and negotiation of strategic contracts, advice on procurement approaches and support with procurement where that is the identified commissioning route.
6. OCC will provide:

6.1 strategic financial support and management accounting to support the functions set out in this Agreement

6.2 performance management and business intelligence to support HESC performance monitoring and strategic planning including in the development and delivery of the Oxfordshire Better Care Fund plan

6.3 support with information governance and information technology to support the HESC function. This will include the data identified as necessary to support the joint commissioning function

6.4 OCC will provide communications support to the HESC integrated commissioning team.

6.5 OCC will provide legal advice support to HESC integrated commissioning team in relation to OCC's accountable functions

BOB ICB

7. As set out in Annex 1 and 5 to Schedule 3 BOB ICB delegates its strategic commissioning functions to OCC as host of the HESC integrated commissioning team in respect of the Pooled Fund.

8. To support the delivery of these functions BOB ICB will provide the following support via the Commissioning Support Unit

7.1 management and negotiation of Strategic Service Contracts, advice on procurement approaches and support with procurement where that is the identified commissioning route. performance management and business intelligence to support HESC performance monitoring and strategic planning including in the development and delivery of the Oxfordshire Better Care Fund plan

9. BOB ICB will provide:

7.1 strategic financial support and management accounting to support the functions set out in Annex 3

7.2 support with information governance and information technology to support the HESC structures as set out in Annex 8. This will include the data identified as necessary to support the joint commissioning function

7.3 BOB ICB will provide Information and officer support for those functions set out in Annex 5, para 7 and 8 relating to quality management and assurance within NHS contracts

7.4 Access to clinical advice to support NHS strategic commissioning functions

7.5 referral points for those areas of escalation as set out in Annex 5 to Schedule 3 including access to legal advice for BOB ICB accountable functions where that responsibility has been delegated as part of this agreement.

Commissioning Structures to deliver the HESC ambition

6. This approach is underpinned and will be delivered by

- a. A new HESC integrated commissioning team including 18 posts jointly funded by OCC and BOB ICB and led by a Deputy Director reporting to the Directors of Adult Social Care, Children's Services and Public Health at OCC and the Deputy CEO at

BOB ICB. This structure is hosted by OCC. The structure is set out in the Memorandum of Understanding between the Partners

- b. A new OCC structure in respect of procurement and strategic contract management as delivered by the OCC Strategic Contract Management and Procurement Hub
7. OCC as host of the HESC integrated commissioning team is the Lead Strategic Commissioner for the pooled funds set out in Schedule 2. This includes for all those services set out in Schedule 4.
8. BOB ICB delegates its responsibility for those NHS services and functions set out in Annex 4 to this Schedule. These delegations are set out in Annex 5 to this Schedule .
9. OCC and BOB ICB commit those functions required to support OCC as host of the HESC integrated commissioning team. These commitments are set out in Schedule 2.

Commissioning approach

10. The commissioning approach to delivery of this agreement is set out in the Memorandum of Understanding between the Partners

HESC and scope of this s75 NHS Act 2006 Pooled Budget Agreement

11. This s75 agreement is the successor to preceding agreement that covered
 - a. Adults with Support Needs (including children and adolescent mental health services)
 - b. The Better Care Fund for adults, including the statutory Better Care Fund budgets and deliverables
12. Those budgets and services that were commissioned with them have been taken forward into the new agreement as set out in Annex 2 and 4 to this Schedule. It is the intention of OCC and BOB ICB that these funds should be expanded over time to support the joint strategic aims of the partners and this agreement will be amended by way of variation when this is agreed.
13. This agreement hosts Oxfordshire's Better Care Fund and associated plan and deliverables as specified by NHS England annually.

Governance for the Pooled Funds

14. The governance arrangements for the Pooled Funds are set out in Annex 3 to this Schedule
15. Arrangements for BOB ICB employed staff hosted by OCC are set out in Annex 6 to this Schedule
16. Arrangements for GDPR and data sharing between the partners are set out at Annex 7 to this Schedule

Annual Plan and strategic priorities

17. The partners shall set strategic priorities in an Annual Development Plan as set out in Clause 16 of the Agreement that will be agreed in the HESC Joint Commissioning Executive.
18. The plan for 2023/24 will be attached to this Annex as Appendix 1

Future changes to this agreement

19. It is the intention of the Partners' that the budgets at Annex 2 Schedule and the services at Annex 4 to this Schedule will be expanded as this agreement goes forward where that supports the joint strategic ambition. Such changes would be agreed and appended to this Agreement in line with Clause 23 and Schedule 1. The Partners' intentions are set out in a Memorandum of Understanding

Annex 2
Finance

Structure and scope

1. There is one Pooled Fund and so one scheme which will be allocated across the life stages and tiers of need to support the strategic intentions of the partners as set out in Annex 1 to this Schedule. This allocation will be developed and may be amended over time.
2. OCC is the Lead Commissioner for the funds included in the pool except where these are designated to the BOB ICB as set out in para 18-21 below and in Annex 4 to this Schedule.
3. The Pooled Fund will incorporate the Better Care Fund for Oxfordshire. This will be reported separately to NHS England in line with national planning and reporting requirements.

Contributions to the Pooled Fund

4. The contributions of each party to the pooled budget for 2023/24 are as follows as at 20 February 2023 based on the known position, with the BOB ICB still in the budget setting process at the time of writing. Both OCC and BOB ICB are in the process of finalising budgets and therefore the below table sets out the known contributions at the time of the agreement. Amendments will be made in year to adjust for any further changes to contributions such as non-recurrent allocations and inflation funding.

	£	£
Oxfordshire County Council		
Age Well	54,015,700	
Live Well - Physical Disability	19,538,400	
Live Well - Mental Health	8,682,400	
Live Well - Learning Disability	88,848,000	
iBCF	10,705,300	
Discharge Grant 2023/24	1,500,900	
Total OCC		183,290,700
BOB ICB:		
Age Well	78,269,000	
Live Well - Physical Disability	14,633,000	
Live Well - Mental Health	68,790,000	
Live Well - Learning Disability	18,542,000	
Discharge Grant 2023/24	3,185,200	
Total BOB ICB		183,419,200
Better Care Fund		
Social Care	27,828,500	
Health	18,868,000	
Total Better Care Fund		46,696,500
Total Pooled Fund		413,406,400

5. The contributions to the Pooled Fund will be agreed annually as set out in Clause 16 (Annual Development Plan) and Clause 17 (Annual Review).
6. In proposing contributions to the Pooled Fund, the parties will work together to:
 - a. Identify the impact of any changes to the proposed contributions and how these should be mitigated.
 - b. Wherever possible align budget-setting approaches to support the strategic intentions set out in Annex 1 to this Schedule and in line with the Aims and Objectives set out in Clause 4.
7. Where one partner proposes to reduce a contribution in relation to a jointly commissioned service this will be supported by a savings plan agreed by the parties in accordance with the variations provisions set out in the Agreement at Clause 10, 16 and 17
8. Partners can reduce contributions in respect of non-recurrent services when such services end.

9. Either partner may propose to increase contributions at any time.
10. Contributions to risk shared services should be reviewed annually to ensure funding remains proportionate to needs.
11. Any changes to contributions should be agreed by JCE.

Overspends/underspends and risk share agreement

12. Management of the pooled funds will be delegated to the Pool Manager and over and under spends will be managed in line with the governance arrangements for the Pooled Fund as set out in Clause 10 and Annex 3 to this Schedule.
13. The risk share agreed at the Commencement date of the agreement is as below:
 - a. Learning Disabilities
BOB ICB will manage 100% of the variation on CHC placements, LD health block contract, health carers costs, and transactional processing. OCC will manage 100% of the variation on social care support costs, including social care carers costs.
 - b. Acquired Brain Injury (ABI)
Each partner will retain underspends or manage any overspend against their own contribution on an aligned basis.
 - c. Mental Health
£1.2m funding within the pool relates to the cost of service users with assessed Mental Health needs but who fall outside the scope of the Outcome Based Contract (OBC) with Oxford Health NHS Foundation Trust. The council contribution was reduced by £0.2m to £0.5m in 2019/20 reflecting anticipated improvements to the pathway for these service users.
 - i. To maintain equity between the partners any overspend against the budget of £1.2m up to £0.2m will be wholly owned by the county council (as this would only have arisen as the council had reduced its contribution by £0.2m). Any overspend arising from spend above £1.4m will be shared equally between BOB ICB and Oxfordshire County Council with the intention of working jointly to improve the pathway for these service users and reduce the overall spend in the longer run. The first £0.2m of any underspend against the £1.2m budget will benefit the BOB ICB financial position and any underspend after that will be shared equally.
 - ii. Any other over or underspends within other Mental Health services will be aligned to the funding organisation.
The OBC contract is due to be extended from 1 April 2023 and is currently undergoing a review which may change how this operates in the medium term. Should any changes affect risk then this agreement will need to be reviewed.
 - d. Over and Under 65 and Physical Disabilities (now Age Well and Live Well)
Each partner will retain underspends or manage any overspend on their element of the Pool.
14. The risk share agreement will be reviewed and agreed annually by variation to this agreement. The risk share agreement will be agreed in the light of the performance of the pooled budget in the previous year and the proposed contributions and agreement of any changes to funding and savings plans for the new year. This process will be led by the Pool Manager and supported by the Director of Finance for OCC and Chief Financial Officer for the BOB ICB, each partner working on behalf of the JCE.

Timing of, and responsibility for, payments

15. Oxfordshire County Council and Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (BOB ICB) will make monthly payments to each of the pooled funds and to each other for services commissioned on their behalf, subject to receipt of an invoice, unless agreed otherwise. Regular contributions between the partners will be paid monthly, one month in advance, on receipt of an appropriate invoice.
16. The Lead Contractor for any service will be responsible for making payments to the Provider due under that contract.

Income

17. Contributions to the cost of Care Act assessed needs will be included in the Pooled Fund.

Annex 3

Governance of the Pooled Fund

Governance for s75 pooled budget

Definitions

- Joint Commissioning Executive [JCE]: the executive level body established by the Partners to manage the pooled funds and deliver the performance areas within scope of the Health, Education and Social Care function and responsible to Cabinet and Governing Body for these functions as set out at paragraph 2 below.
- Performance and Finance Group [PFG]: the group established by Joint Commissioning Executive to provide day to day management of finance and delivery of performance and chaired by the Deputy Director, Commissioning as set out at paragraph 3 below. This group is made up of Health, Education and Social Care and other County Council and BOB ICB staff
- Health, Education and Social Care [HESC]: the integrated commissioning team established by the Partners and led by the Deputy Director, Commissioning reporting into Performance and Finance Group and Joint Commissioning Executive. The structure of this team will be set out in the HESC MOU

1. Governance of Pooled Funds

- 1.1 The JCE has been established by the Partners to deliver the joint commissioning function including services funded by this pooled budget across Health, Education and Social Care [HESC]. The scope of HESC is broader than the scope of this Agreement (see Memorandum of Understanding agreed by the Partners)
- 1.2 JCE is the Executive Level Board accountable to each Partner (Oxfordshire County Council Cabinet and BOB ICB Board) for deployment of pooled funds and management of associated risks and delivery of performance in scope of those pooled funds.
- 1.3 JCE reports to the Oxfordshire Health & Wellbeing Board on progress with the HESC strategy. The Corporate Director of Adult Services also acts as the delegated officer from the Oxfordshire Health & Wellbeing Board in respect of the plan and performance of the Better Care Fund
- 1.4 PFG is the officer level group that provides assurance to JCE for management and deployment of the pooled funds and for delivery of the national and local performance that are within scope of the pooled funds.
- 1.5 PFG is chaired by the Deputy Director, Integrated Commissioning HESC who is the Pooled Budget Manager for this s75 agreement.
- 1.6 Where the Deputy Director is unable to chair PFG, they will identify another member of the group to deputise as chair.

2. Role of JCE in respect of the Pooled Fund

The role of the JCE shall be to:

Strategy and Governance

- a) Agree an Annual Development Plan in line with Clause 15 of the Agreement
- b) Receive an Annual Report and Review of the Agreement in respect of the operation and performance of this Agreement further to Clause 9 and development recommendations for the Annual Development Plan
- c) annually and formally agree those parts of the HESC plan to be delivered via the Pooled Fund.
- d) report progress quarterly against key outcomes within the Oxfordshire Health and Wellbeing Strategy and the Better Care Fund metrics to the Oxfordshire Health & Wellbeing Board
- e) Monitor the Partners' respective functions as in Clause 9
- f) Agree any variations to the Agreement as set out in Clause 23
- g) Agree whether a service contract should be categorised as a Strategic Service Contract and give approval to enter into a Strategic Service Contract as set out in Clause 9
- h) Manage any conflicts of interest for the Partners arising from the operation of this Agreement

Finance

- i) Receive monthly finance highlight reports from the Pool Manager as set out Clause 10 and below in this Annex.
- j) Agree such variations to this Agreement on behalf of the Partners from time to time as it sees fit in line with Clause 17
- k) Review and agree annually revisions to contributions as in Clause 17.
- l) Agree a scheme of financial delegation with the Pool Manager.
- m) Set such protocols and guidance as it may consider necessary to enable the Pool Manager to approve expenditure from the Pooled Funds.

Performance

- n) Receive monthly performance reports from the Pool Manager on trajectories agreed local and national key performance indicators

Risk

- o) Review financial risks escalated from the PFG by the Pool Manager and assure actions that are put in place to address the variation.
- p) Review performance risks escalated from the PFG by the Pool Manager in relation to delivery of objectives, performance of commissioned services, and reputation of the Partners in relation to the Pooled Budget and assure actions that are put in place to address these risks
- q) review annually the Pool Manager report on the overspend and underspend provisions of Annexe 2 to this Schedule.

Membership

Corporate Director of Adult Services, Oxfordshire County Council

Director of Finance, Oxfordshire County Council

Director of Public Health, Oxfordshire County Council

Director of Children's Services, Oxfordshire County Council

Executive Director of Place , BOB ICB

Director of Finance, BOB ICB

3. PFG

3.1 PFG Role

The role of the PFG shall be to:

Governance

- a) review the operation of this Agreement annually and report to JCE
- b) Develop recommendations to JCE for the Annual Development Plan
- c) Identify and manage any conflicts of interest between the Partners and escalate to JCE when they cannot be resolved in PFG

Finance

- d) Review monthly finance reports as set out in this Schedule.
- e) Manage any under and overspends in line with this agreement
- f) Provide monthly highlight reports to JCE
- g) Escalate any financial risks to JCE for assurance re the proposed mitigating action
- h) Recommend such variations to this Agreement to JCE as indicated from time to time as it sees fit.

Performance

- i) Review monthly performance reports
- j) Manage any under or over performance against agreed targets
- k) Prepare reports for Health & Wellbeing Board for sign off by JCE
- l) Escalate any significant performance risks to JCE for assurance re proposed action

Risk

- m) monitor the appropriate reports quarterly to assess any risk that expenditure might exceed the contributions to the Pooled Fund and that where there is such a risk ensure actions are put in place to address the overspend.
- n) review risks quarterly in relation to delivery of objectives, performance of commissioned services, and reputation of the Partners in relation to the Pooled Budget
- m) review any other risks quarterly relating to the performance of this agreement

- n) Prepare a report on any risks for JCE
 - t) review annually the overspend and underspend provisions in Annex 2 to this Schedule of the Agreement and make recommendations to JCE

3.2 PFG Support

PFG will be supported by officers from the Council and the BOB ICB from time to time as set out in Schedule 2. These may be involved in assisting the PFG in implementation of the aims, objectives and intended outcomes as specified in Annex 1 to this Schedule and performance targets as agreed by the JCE.

3.3. Meetings

- 3.3.1 The PFG will meet monthly.
- 3.3.2 PFG members will receive an agenda and accompanying reports and papers at least 5 working days before each meeting.
- 3.3.3 However, it is recognised that on occasions and dependent on dates of meetings it may not always be possible to produce financial reports this far in advance, in which case they will be circulated as far in advance of the meeting as possible.

3.4. Membership

Deputy Director HESC Pool Manager and Chair

Lead Commissioners Starting, Living, Ageing Well, Brokerage and Quality

Area Manager OCC Operations

OCC Finance Business Partner

Assistant Director Finance, BOB ICB

Performance Lead OCC

Quality Lead BOB ICB

3.5. Decision Making

- 3.5.1 Decisions of the PFG shall be made by those members present in line with the plan and priorities set by the JCE. Where there is disagreement between the Partners the Pooled Budget Manager as Chair shall have discretion to take such action or inaction as it decides

in accordance with its obligations under this Agreement. All decisions shall be recorded in writing. Minutes of the meetings to include all decisions made shall be kept and reported to JCE within 14 days of every meeting.

- 3.5.2 The views of those in attendance will be taken into account for all of the work of the PFG including decision making. These views will be recorded in the minutes of the meeting. This will include agreement or disagreement to the decisions made by voting members.

3.6. Confidentiality

From time to time the PFG will be discussing both financially and commercially sensitive information and personal client and carer information. It is important that all members of the PFG and all other attendees are clear that they must treat the information as confidential and that they must discuss and use such information outside the PFG only where it is appropriate to do so in order for them to fulfil their obligations

4. Role of Pool Manager

In addition to the responsibilities of the Pooled Manager as set out in the Agreement, the Pool Manager shall:

- 4.1 Prepare monthly finance and performance reports for review by PFG;
- 4.2 Prepare monthly, quarterly and annual reports on finance and performance to PFG for approval and submission to the Partners via JCE
- 4.3 preparation of an annual budget for approval by JCE;
- 4.4 manage the Pooled Fund on a day-to-day basis; and
- 4.5 report to JCE forecast overspend / underspend on Pooled Funds and submit an action plan to bring the budget back into balance or seek guidance from JMG on actions to achieve balance.

Annex 4

Services in scope of the HESC Scheme

1. OCC and BOB ICB have developed the HESC integrated commissioning approach to reshape the nature and extent of commissioned services and other inputs and resources over time
 2. At the commencement of this agreement the services commissioned by the pooled funds are set out below
 3. Annex 5 sets out those NHS functions delegated by BOB ICB to OCC in respect of the services and contracts below
 4. Schedule 1 6 sets out those commitments on the part of both Partners which will support the delivery of the HESC integrated commissioning approach in respect of the services and contracts below
- 5. Start Well (children and young people)**

Service	Provider(s)	Lead Commissioner	Lead Contractor & quality lead
Child & Adolescent Mental Health Services	Oxford Health NHSFT	OCC (HESC)	BOB ICB
Children's Therapy Equipment Services	NRS	OCC (HESC)	OCC

6. Live Well (adults)

Service	Provider(s)	Lead Commissioner	Lead Contractor & quality lead
Homecare, supported living and residential care for people with Learning Disability and/or autism	Various	OCC (HESC)	OCC
Day services and respite for people living with Learning Disability and/or autism	Various	OCC (HESC)	OCC
Community Health Services for People Living with Learning Disability and/or autism	Oxford Health NHSFT	OCC (HESC)	BOB ICB
Outcomes based health and social care contract for adults living with severe mental illness	Oxford Health NHS FT (and sub-contractors)	OCC (HESC)	BOB ICB
Social care services for people who fall outside of the outcomes based contract	Various	OCC (HESC)	OCC (HESC)

Service	Provider(s)	Lead Commissioner	Lead Contractor & quality lead
Community Eating Disorder Services	Oxford Health NHSFT	OCC (HESC)	BOB ICB
Psychological therapy services for people with mild to moderate anxiety and depression	Oxford Health NHS FT	OCC (HESC)	BOB ICB
Community Psychological Medicine	Oxford Health NHSFT	OCC (HESC)	BOB ICB
S12 Doctors	Various	OCC (HESC)	BOB ICB
Assessment and support for people with high functioning autism	TBC	OCC (HESC)	BOB ICB
Specialist rehab and residential care for people living with acquired brain injury	Various	OCC (HESC)	BOB ICB
Residential and domiciliary NHS Continuing Healthcare for adults with physical disability	Various	OCC (HESC)	BOB ICB

7. Age Well (older adults)

Service	Provider(s)	Lead Commissioner	Lead Contractor & quality lead
Residential and domiciliary care for older adults	Various	OCC (HESC)	OCC
Residential and domiciliary NHS Continuing Healthcare for older adults	Various	OCC (HESC)	BOB ICB
Care Home Support Service	Oxford Health NHS FT	OCC (HESC)	BOB ICB
GP support for care homes	Various	OCC (HESC)	BOB ICB
Prevention services: information, advice, carers' support; dementia support services	Various	OCC (HESC)	OCC
Home Improvement Agency	Various	OCC (HESC)	OCC
Equipment and assistive technology	NRS and Careium	OCC (HESC)	OCC
Community and in-patient mental health services for older adults	Oxford Health NHS FT	OCC (HESC)	BOB ICB
Strength & balance classes	Age UK	OCC (HESC)	BOB ICB
Falls Service	Oxford Health NHS FT	OCC (HESC)	BOB ICB
Reablement services	Various	OCC (HESC)	OCC
Hospital discharge support	Age UK	OCC (HESC)	BOB ICB
Discharge hub beds	Various	OCC (HESC)	OCC

Service	Provider(s)	Lead Commissioner	Lead Contractor & quality lead
Community Hospital beds	Oxford Health NHS FT	OCC (HESC)	BOB ICB
Emergency multi-disciplinary assessment and treatment centres	Oxford Health NHS FT	OCC (HESC)	BOB ICB
Hospital at Home	Oxford Health NHS FT PML Limited	OCC (HESC)	BOB ICB
Hospital discharge hub	Oxford University Hospitals NHS FT	OCC (HESC)	BOB ICB

Service Contracts

8. The Services purchased via the Pooled Fund may be commissioned via either an NHS or OCC contract in line with the advice from the OCC Contracting and Procurement Hub. The management of these arrangements is set out at Schedule 1 and Annex 5 to this Schedule.

Eligibility for Services

9. Eligibility for Services delivered from the Pooled Fund will be determined by the Lead Commissioner's operational teams in line with the Care Act 2013, BOB ICB Chief Nurse in line with the NHS Continuing Health Framework, Mental Health Act 1983 and other relevant legislation and/or as set out in the service specifications attached to purchase contracts issued via OCC or BOB ICB
10. BOB ICB will determine eligibility for NHS services in line with NHS Continuing Healthcare Framework Regulations and the s117 Mental Health Act aftercare
11. In general terms the approach to HESC joint commissioning is to promote prevention and strengths-based approaches to care. This means that a wider cohort of the population may come within scope for preventative services than meet the strict eligibility requirements of Care Act, NHS Continuing Healthcare and s117 Mental Health Act aftercare

Annex 5

BOB ICB functions and responsibilities delegated to OCC

Overview

1. As set out in Clause 9 and Annex 1 to this Schedule the HESC integrated commissioning team leads on all strategic commissioning related to the Pooled Fund
2. As the HESC integrated commissioning structure is hosted by OCC this requires clarification of those BOB ICB responsibilities that are delegated to OCC within this Agreement to support the Partners' strategic intentions
3. OCC confirms acceptance of these delegated functions within this Agreement
4. BOB ICB cannot delegate accountability for those functions associated with this Agreement and set out below. Therefore, the limits to this delegation are set out below.

General

5. BOB ICB delegates strategic commissioning responsibility to OCC for the budgets set out in Annex 2 and the services set out in Annex 4 to this Schedule.
6. Via the HESC Integrated Commissioning team OCC will
 - a. Assure delivery, performance and outcomes of those services commissioned from the pool with NHS funding
 - b. Provide assurance for that delivery to NHS England, the Integrated Commissioning Board or any other body, including regular and ad hoc reports as specified by assuring bodies
 - c. Review and make strategic commissioning recommendation re the future shape, model, extent and investment of those services at (6a) to the Joint Commissioning Executive
 - d. Implement any strategic commissioning decisions agreed by the Joint Commissioning Executive
 - e. (6d) will include
 - i. Any engagement with the public, service users, clinicians or other stakeholders
 - ii. Analysis of demand and capacity and modelling of the impact and benefits of any proposed new model
 - iii. Project and programme management for the change, including the appropriate governance to authorise the project and assure delivery and management of risks relating to the project/programme
 - iv. Communications relating to the change
 - v. Procurement via the OCC Hub if that is the route identified in the Joint Commissioning Executive decision
 - vi. Issue and subsequent management of the contract if procurement via the OCC Hub
 - vii. Evaluation of the change
7. BOB ICB will monitor and manage any NHS contracts for services at (6a) and take remedial action as indicated in respect of
 - a. Performance against nationally defined standard and contractual key performance indicators
 - b. Adherence to NICE and other clinical standards
 - c. Complaints and other forms of patient and other feedback
 - d. Serious incidents
 - e. Safeguarding concerns
 - f. Media and communications relating to the service
 - g. Risk management relating to any of the issues at (7a-7f) above)
8. BOB ICB will provide OCC and the HESC integrated commissioning team with the information necessary (including but not limited to those items set out at para 7a-7g) to fulfil its delegated functions under para 6 above.
9. BOB ICB will retain direct responsibility for any functions (including but not limited to those at 7a-7g) that are not delegated to OCC within this s75 agreement.
10. BOB ICB will lead on any financial or other contract negotiations in relation to the services at (6a) which are managed within an NHS contract with the support of the strategic commissioners within HESC.
 1. Where there is a change proposed to the model in terms of finance or function which has been approved by Joint Commissioning Executive, BOB ICB will provide

- contract management and negotiation support to HESC strategic commissioners to deliver the planned change if that is the agreed route for implementation
2. Where BOB ICB receives new or additional funding in respect of services under (6a), proposals for the deployment of these funds will be approved by JCE prior to the implementation of any changes
11. BOB ICB retains its accountability for all the functions delegated to OCC above. HESC strategic commissioners will report as required by BOB ICB to provide assurance to the BOB ICB Governing Body for the discharge of these functions

Continuing Healthcare [CHC]

12. BOB ICB delivers assessment, care planning and sourcing packages of care further to the NHS Continuing Healthcare Framework.
13. BOB ICB delegates to OCC the purchasing budgets to support the commissioning of services delivered to people eligible for NHS Continuing Healthcare. These arrangements may be developed in the future as set out in the Memorandum of Understanding between the Partners.
14. BOB ICB will manage any complaints in respect of CHC decision-making and any legal claims issued against the ICB. BOB ICB will identify a role/person for referrals from HESC Integrated Commissioning Team
15. HESC integrated commissioning team will provide support and information to enable BOB ICB to fulfil these functions

Deprivation of Liberty [DOLs] Safeguards

BOB ICB will manage DoLs processes relating to CHC directly with the support of Oxford Health as contracted by the ICB

Mental Health Act

16. BOB ICB delegates to OCC via the HESC integrated commissioning team
 - a. the sourcing of s12 doctors
17. Where BOB ICB is summonsed to attend a Mental Health Act Tribunal or there is a legal claim against BOB ICB, this will be managed by the ICB to avoid a potential conflict of interest for OCC. BOB ICB will identify a person/role for HESC integrated commissioning team to refer to in these circumstances
18. HESC integrated commissioning team will provide support and information to enable BOB ICB to respond to proceedings

Care and Treatment Reviews

19. Where there is a summons to a Mental Health Act Tribunal or another form of legal claim, this will be managed by BOB ICB. BOB ICB will identify a person/role for HESC integrated commissioning team to refer to in these circumstances
20. HESC integrated commissioning team will provide support and information to enable BOB ICB to respond to proceedings as set out in (23)

Acquired Brain Injury [ABI] funding decisions

21. BOB ICB and the Council organise a joint panel that approves funding for the rehabilitation of patients impacted by Acquired Brain Injury.
22. BOB ICB delegates to OCC via the HESC integrated commissioning team responsibility for decisions made in the ABI Panel
23. The budget for ABI will be managed by HESC integrated commissioning team as set out in Annex 2 and 3 to this Schedule

Raising purchases orders and approving invoices, managing budgets-finance

24. BOB ICB delegates to OCC via the HESC integrated commissioning team responsibility for raising purchase orders and approving invoices relating to NHS services funded by the Pool.
 - a. BOB ICB will provide access to the NHS SBS payments system for relevant staff
25. BOB ICB delegates to OCC via HESC integrated commissioning team responsibility for reviewing finance management information and managing budgets in scope in line with Annex 3 to this Schedule.
 - a. BOB ICB will assure that cost centre budget reports be sent directly to the named HESC lead.

Freedom of information [FOI] requests, media/other requests and complaints

26. BOB ICB retains the responsibility for managing FOI, media and other requests and complaints for any areas covered by the Pooled Fund
27. However, OCC undertakes to support these functions via the HESC integrated commissioning team and to ensure response in line with quality and time standards.
28. In some cases, OCC will not be able to respond to FOI requests for services in scope where historical information is not available to HESC staff

Annex 6
Information Sharing Protocol

