



Dated2018

Shropshire Council

and

NHS Shropshire Clinical Commissioning Group

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

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THIS AGREEMENT is made on 2018

PARTIES

- (1) **SHROPSHIRE COUNCIL** whose offices are at Shirehall, Abbey Foregate, Shrewsbury, Shropshire SY2 6ND (the "**Council**")
- (2) **NHS SHROPSHIRE CLINICAL COMMISSIONING GROUP** William Farr House, Mytton Oak Rd, Shrewsbury SY3 8XF (the "**CCG**")

BACKGROUND

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

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

2014 Act means the Care Act 2014.

2018 Act means the Data Protection Act 2018

Affected Partner means, in the context of Clause 23, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event

Agreement means this agreement including its Schedules and Appendices.

Annual Report means the annual report produced by the Partners in accordance with Clause 20 (Review)

Approved Expenditure means any additional expenditure approved by the Partners in relation to an Individual Service above any Contract Price Permitted Expenditure Performance Payments or agreed Third Party Costs .

Associated Person: means in respect of the Council, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which the Council has a shareholding or other ownership interest; OR any other body that substantially performs any of the functions of the Council that previously had been performed by the Council

Authorised Officers: means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement and notified by each Partner to the other in writing. The Authorised Officers at the Commencement Date are: the Accountable Officer for and on behalf of the CCG and the Director of Adult Social Care for and on behalf of the Council.

BCF Quarterly Report means the quarterly report produced by the Partners and provided to the HWBB

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

Better Care Fund Assurance Framework: is the framework used to assess Better Care Fund Plan in accordance with national guidelines.

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

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

Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

Care Act means the Care Act 2014 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation

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

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

Commencement Date means 00:01 hrs on XXXXXXXX 2018.

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

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

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

Data Protection Legislation: this includes:

- a) Prior to 25th May 2018:

the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive)

Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner; and

b) After 25th May 2018:

(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time

(ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy;

(iii) all applicable Law about the processing of personal data and privacy

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

Expiry Date: means the last date of the Term following the expiry of a notice to terminate this Agreement given by one Partner to the other in accordance with clause 22

Financial Contributions means the financial contributions made by each Partner to a Pooled Fund or which are made the subject of a Non Pooled Fund for expenditure on the Services in any Financial Year.

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

Force Majeure Event means one or more of the following:

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

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

Functions means the NHS Functions and the Health Related Functions

GDPR: means the General Data Protection Regulations coming into force in the UK with effect from 25th May 2018

Health Related Functions means those of the health related functions of the Council, specified in Regulation 6 of the Regulations (as amended or replaced by the Care Act) as relevant to the commissioning of the Services and which may be further described in the relevant Scheme Specification.

Health and Wellbeing Board means the Health and Wellbeing Board (**HWBB**) established by the Council pursuant to Section 194 of the Health and Social Care Act 2012 and which is responsible for the performance and oversight of this Agreement as set out in Schedule 2 (Governance).

Health and Wellbeing Delivery Group: is a subgroup of the HWBB that supports the delivery of the HWB Strategy. It also supports the delivery of the BCF through its subgroup – the Joint Commissioning Group. The group works to the vision and aims of the HWBB and works to take a whole system approach to improving population health.

Healthy Lives Prevention Programme: is the Shropshire partnership prevention programme that focuses on taking a whole system approach to reducing demand on services and relies on working together in partnership to deliver activity; it works across organisations and partnership groups and supports integration across health and care as set out in the Health and Wellbeing Strategy.

Health and Wellbeing Strategy is the strategy produced by the HWBB to describe key local health and care issues and explaining the role of the HWBB towards making improvements to these issues

Improved Better Care Fund (IBCF) the IBCF was first announced in the 2015 Spending Review, and is a paid as a direct grant to local government, with a condition that it is pooled into the local BCF plan.

JCG: means the Shropshire Joint Commissioning Group whose terms of reference are set out in Schedule 2 to this Agreement

Joint Needs Assessment

LED: Law Enforcement Directive (Directive (EU) 2016/680)

Local Objectives: Objectives as set out in the Better Care Fund Plan

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

Month means a calendar month.

National Conditions mean the national conditions as set out in 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 Functions means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the CCG as are relevant to the commissioning of the Services and which may be further described in each Service Schedule

Non Pooled Fund means the budget detailing the Financial Contributions of each of the Partners which are not included in the Pooled Fund but which will be spent to fund the Individual Schemes as set out in the relevant Scheme Specifications and in accordance with any Joint (Aligned) Commissioning Arrangements.

Non-Recurrent Payments means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 8.3

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

Out of Hospital Programme (also known as Care Closer to Home): is the programme of work to redesign health and care provision in communities across Shropshire.

Out of Hospital Programme (also known as the Care Closer to Home Board): is the Board that governs the Care Closer to Home work and puts forward proposals for transformation to health and care provision to the CCG governing body.

Partner means each of the CCG and the Council, and references to "**Partners**" shall be construed accordingly and such reference shall include each Partner's employees (paid or unpaid) agents, servants, consultants and contractors.

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

Permitted Expenditure has the meaning given in Clause 7.3.

Personal Data means prior to 25th May 2018: Personal Data as defined by the 1998 Act and after 25th May 2018, Personal Data as referred to in the GDPR.

Pooled Fund means any pooled fund established from the Financial Contributions of the Partners as particularly set out in Schedule 3 and maintained by the Partners as a pooled fund in accordance with the Regulations in order to fund an Individual Scheme, as more particularly described in the relevant Scheme Specification.

Pooled Fund Manager means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 8

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

Prohibited Act: the following constitute Prohibited Acts:

a) to directly or indirectly offer, promise or give any person working for or engaged by the Partners 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) to directly or indirectly request, agree to receive or accept 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
- ii) under legislation creating offences concerning fraudulent act;
- iii) at common law concerning fraudulent acts relating to this Agreement and any other contracts with the [Partners]; or

d) defrauding, attempting to defraud or conspiring to defraud the [Partners]

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

Regulations means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 as amended or replaced by the Care Act

Regulated Activity: in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

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

Regulated Provider: as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006

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

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

Scheme Specification means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement, and set out in Part 2 of Schedule 1.

Section 75 means section 75 of the 2006 Act.

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

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

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

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

Shropshire Together: Shropshire Together is the brand that supports the HWBB and partnership communication activity across health and care (including Healthy Lives Prevention Programme)

SOSH means the Secretary of State for Health.

Sustainability and Transformation Partnership (Plans) – STP - The NHS and local councils have formed partnerships in 44 areas covering all of England, to improve health and care. Each area has developed proposals built around the needs of the whole population in the area, not just those of individual organisations.

Term: means the period commencing on the Commencement Date and expiring on the Expiry Date

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 JCG.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

Underspend means any expenditure from a Pooled Fund or Non Pooled Fund in respect of an Individual Scheme in a Financial Year which is less than the Financial Contributions allocated to that Individual Scheme for that Financial Year

VCSA: is the Voluntary and Community Sector Assembly and is a membership organisation that acts as the voice of the VCSE sector in Shropshire, and supports partnership working between the statutory and community sectors

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

2. In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
3. Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
4. Any reference to the Partners shall include their respective statutory successors, employees and agents.
5. In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
6. Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
7. In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
8. In this Agreement, words importing the singular only shall include the plural and vice versa.
9. In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
10. Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
11. Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
12. All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2. TERM

1. This Agreement shall take effect from the Commencement Date.
2. This Agreement shall continue until it is terminated in accordance with Clause 22.
3. The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification and for the avoidance of doubt the duration of each Individual Scheme shall not go beyond the duration of this Agreement.

3 GENERAL PRINCIPLES

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; or
 - 3.1.2 any power or duty to recover charges for the provision of any services in the exercise of any local authority function.
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. For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

4 PARTNERSHIP FLEXIBILITIES

1. This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:
 - 4.1.1 Lead Commissioning Arrangements;
 - 4.1.2 Integrated Commissioning
 - 4.1.3 Joint (Aligned) Commissioning
 - 4.1.4 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

2. Where there is Lead Commissioning Arrangements and the CCG is Lead Commissioner the Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.

3. Where there is Lead Commissioning Arrangements and the Council is Lead Commissioner, the CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
4. Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

1. The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.

5.1.1 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission or otherwise secure provision of the Services in accordance with their obligations under this Agreement.

5.1.2. The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Schedule 1 Part 2

2. Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 and shall be completed and agreed between the Partners, through working groups and governance set out in . The Scheme Specification current at the date of this Agreement is set out in Schedule 1
3. The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
4. The introduction of any Individual Scheme will be subject to business case approval by the JCG or by delegated authority as directed by the HWBB, and the CCG and the Council governing processes as appropriate. The business case will also recommend the commissioning arrangements in relation to new schemes.

6. COMMISSIONING ARRANGEMENTS

General

1. The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification
2. The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
3. Each Partner shall keep the other Partner and the JCG and where applicable, the HWWB, 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.

Integrated Commissioning / Joint (Aligned) Commissioning

4. Where there are Integrated or Joint (Aligned) Commissioning arrangements in respect of an Individual Scheme, both Partners shall work in cooperation and shall endeavour to ensure that the Functions are able to be exercised by the relevant Partner in compliance with its statutory duties and so as to ensure that the Services are commissioned and provided with due skill, care and attention. Where there is Integrated or Joint (Aligned) Commissioning then prior to any new Service Contract being entered into the Partners shall agree in writing how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme
5. In Integrated Commissioning Arrangements, the Partners agree that they shall both be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract, details to be described in schedule 3.
6. Both Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
7. 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.
8. The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification. Where one Partner is acting as Provider or sole commissioner as part of a Joint (Aligned) Commissioning arrangement, it shall ensure that the Services which are the subject of those arrangements are commissioned and (where appropriate) provided with due skill, care and attention and in accordance with any Scheme or Service Specification. A Partner acting as a Provider or sole commissioner of a Service in a Joint (Aligned) Commissioning arrangement shall report to the HWBB and the relevant governance arrangements for the Council and the CCG, for the delivery and commissioning of the relevant Services in accordance with the National Conditions and the Local Objectives.
9. The JCG will report back to the HWBB as required by its terms of reference set out in Schedule 2.

Lead Commissioner

10. Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
 - 5.10.1 list of exercise the Functions as identified in the relevant Scheme Specification;
 - 5.10.2 endeavour to ensure that the Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.

- 5.10.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 5.10.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
- 5.10.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 5.10.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 5.10.7 perform the obligations of the Commissioner with all due skill, care and attention
- 5.10.8 undertake performance management and contract monitoring of all Service Contracts;
- 5.10.9 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 5.10.10 keep the other Partner regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund and if applicable, a Non Pooled Fund.

6 ESTABLISHMENT OF A POOLED FUND

1. In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
2. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
3. It is agreed that the monies held in a Pooled Fund may only be expended on the following:
 - 6.3.1 the Contract Price;
 - 6.3.2 the Permitted Budget;
 - 6.3.3 Performance Payments;
 - 6.3.4 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in writing by the JCG or the HWBB following authorisation from the Partners, further to clause 8.22 below, where appropriate

- 6.3.5 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the JCG or the HWBB when required

("Permitted Expenditure")

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 or JCG and if required, by the HWBB.
5. For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with clause 7.4.
6. The Host Partner for the Better Care Fund Pooled Budget is agreed as the Council. The Host Partner shall be the Partner responsible for:
 - 6.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partner;
 - 6.6.2 providing the financial administrative systems for the Pooled Fund; and
 - 6.6.3 appointing the Pooled Fund Manager;
 - 6.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.
 - 6.6.5 any other expenditure connected with the provision of the Services and approved by the Partners

7 POOLED FUND MANAGEMENT

1. The Pooled Funds identified as part of the Better Care Fund will be managed by the Pooled Fund Manager and shall have the following duties and responsibilities:
 - 7.1.1 the day to day operation and management of the Pooled Fund;
 - 7.1.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 7.1.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund and reporting processes;
 - 7.1.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 7.1.5 reporting to the JCG and the HWBB as required;
 - 7.1.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 7.1.7 preparing and submitting to the JCG and the HWBB Quarterly reports (as required or more frequent reports if required) 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 HWBB to monitor

the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns;

- 7.1.8 ensuring that the Partners are able to meet all of their statutory financial reporting requirements arising in connection with this Agreement including the Partners' own audit obligations (the time frame for the delivery of such reporting requirements, to be agreed by the JCG in accordance with the Partners' respective requirements); and
 - 8.1.9 preparing and submitting reports to the HWBB as may be required by it and any relevant National Guidance.
2. In carrying out its responsibilities as provided under Clause 8.1 the Pooled Fund Manager shall have regard to National Guidance and the directions of the JCG and/or HWBB as applicable and shall be accountable to the Partners for delivery of those responsibilities.
- 7.2.1 The Partners shall provide all information necessary to the Pooled Fund Manager to enable it to comply with its obligations set out in Clause 8.1
 - 7.2.2 The virement of Financial Contributions within Pooled Funds allocated to Individual Schemes shall only be permitted if recommended by the HWBB (or the JCG through delegated authority) and authorised by the Partners further to their own respective governance arrangements.
3. Subject to clause 8.2.2, the JCG may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

8 MANAGEMENT OF NON- POOLED FUNDS

- 1. Any Financial Contributions agreed to be held within a Non- Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. For the avoidance of doubt, a Non- Pooled Fund does not constitute a Pooled Fund for the purposes of Regulation 7 of the Partnership Regulations.
- 2. When introducing a Non- Pooled Fund, the Partners shall agree:
 - 1.1.1. which Partner if any shall host the Non- Pooled Fund; and
 - 9.2.2 how and when Financial Contributions shall be made to the Non- Pooled Fund.
- 3 Each Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non- Pooled Fund for which they are the host, meeting all required accounting and auditing obligations.
- 4 Both Partners shall ensure that any Services commissioned or provided, using a Non- Pooled Fund are commissioned or provided (as applicable) solely in accordance with the relevant Scheme Specification.
- 5 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:

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

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

9 FINANCIAL CONTRIBUTIONS

1. The Financial Contribution of the CCG and the Council to the Pooled Fund or Non-Pooled Fund shall be as set out in Schedule 3
2. The Partners agree that they shall commence negotiations regarding the financial contributions to be made to each Individual Scheme for the first Financial Year following 31st March 2019 by no later than 6 months prior to that date and that they shall use their reasonable endeavours to reach agreement on those Financial Contributions no later than 3 months prior to that date. The provisions of this clause shall apply mutatis mutandis in respect of subsequent Financial Years.
3. Each Scheme Specification and Schedule 3 shall be updated by way of a variation to this Agreement in accordance with Clause 34 below to reflect any new or revised Financial Contributions to be made during the Term.
4. Financial Contributions will be paid as set out in each Scheme Specification.
5. With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Joint Commissioning Group minutes and recorded in the budget statement as a separate item.

10 NON- FINANCIAL CONTRIBUTIONS

1. Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Commissioner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.
2. Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Service Contracts and the Pooled Fund).

11 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

1. The Partners have agreed risk share arrangements as set out in Schedule 3 , which provide for risk share arrangements arising within the commissioning of services from

the Pooled Funds as set out in National Guidance and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.

12.1 the Partners agree that, in order to comply with the National Conditions, they shall establish the Pooled Funds that are described in Clause 7, out of which payments may be made, in accordance with the provisions of this Agreement to secure delivery of the Services (as described in the Scheme Specifications). The Partners will work together to achieve the Local Objectives in ensuring the delivery (or provision) of those Services out of the monies that are allocated to the Pooled Funds and the Non-Pooled Funds.

12.2 Details of the Pooled Funds and Non-Pooled Funds and the Scheme Specifications to which they relate are set out in Schedule 3 of this Agreement.

Overspends in Pooled Fund

2. The Host Partner for the Pooled Fund shall manage expenditure from the Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
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 Joint Commissioning Group and the other partner and decision making groups.
4. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the JCG and Partners are notified as soon as practicably possible and adhere to Schedule 3

Overspends in Non-Pooled Funds

5. Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partner and the JCG.
6. Subject to clause 9.3 where there is a Lead Commissioning Arrangement the Lead Commissioner is responsible for the management of the Non-Pooled Fund. The Lead Commissioner shall as soon as reasonably practicable inform the other Partner and the JCG

Underspends in Pooled Fund

7. 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 (through the JCG) how the surplus monies shall be spent, carried forward and/or returned to the Partners. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

12 CAPITAL EXPENDITURE

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

13 VAT

1. The Partners shall agree the treatment of the Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.
2. Subject to Clause 14.1, Services commissioned by the Council will be subject to the VAT regime of the Council and Services commissioned by the CCG will be subject to the VAT regime of the National Health Service.

14 AUDIT AND RIGHT OF ACCESS

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

15 LIABILITIES AND INSURANCE AND INDEMNITY

1. Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement or a Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

2. Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the JCG and/or HWBB.
3. If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:
 - 15.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
 - 15.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 15.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
4. Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).
5. Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.
6. Neither Partner shall be liable to the other Partner for claims arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.
7. Conduct of Claims in respect of the indemnities given in this Clause 16:
 - 16.7.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
 - 16.7.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters.

16.7.3 the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

16 STANDARDS OF CONDUCT AND SERVICE

1. The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
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.
3. The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
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.

17 CONFLICTS OF INTEREST

The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in Schedule 7 Policy for the Management of Conflicts of Interests

1. Overall strategic oversight of partnership working between the Partners is vested in the HWBB, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
2. The HWBB, Healthwatch and the overview and scrutiny committees have signed a memorandum of understanding to ensure good lines of communication and a collective understanding of each other's roles

19 GOVERNANCE

1. Overall strategic oversight of partnership working between the Partners is vested in the HWBB, which for these purposes shall agree the BCF Plan and make recommendations to the Partners as to any action it considers necessary. For the avoidance of doubt, It s the responsibility of the CCG and the Council to approve and deliver the BCF plan.
2. The Partners have established a JCG to ensure implementation of the Better Care Fund plan and conduct financial and performance monitoring

3. The JCG is based on a joint working group structure and its purpose is to drive the development and delivery of the health and wellbeing work/action plans including the Better Care Fund plan. It is made up of the relevant directors and senior representatives of the Partners who will have individual delegated responsibility from the Partner employing them to make decisions together with representatives from other stakeholder organisations (as set out in Schedule 2) which enable the JCG to carry out its objects, roles, duties and functions as set out in this clause 19 and the terms of reference for this group are set out in Schedule 2 of this Agreement
4. It is the responsibility of the JCG and the HWBB in conjunction with partners in the STP, to ensure that strategic objectives across health & the local authority are aligned. Strategic issues are resolved through the HWBB and its subgroups, and the STP and its subgroups.
5. Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties are complied with and HWBB shall be responsible for the overall approval of the BCF Plan, ensuring compliance and the strategic direction of the Better Care Fund.
6. Each Service Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the HWBB.

20 REVIEW

1. The Partners shall produce a BCF Quarterly Report which shall be provided to the HWBB in such form and setting out such information as required by National Guidance and any additional information required by the HWBB or National Commissioning Board
2. Save where the JCG agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the Pooled Fund, and, if applicable, the Non-Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
3. Subject to any variations to this process required by the JCG, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements.
4. The HWBB will receive regular reports on the Better Care Fund throughout the year, with a final annual report on the Better Care Fund, the Pooled budget, the Non-Pooled Fund and this Agreement.
5. In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

21 COMPLAINTS

- 1 Subject to the remaining provisions of this clause 21 a Partners' own complaints procedures shall apply to complaints received by it in connection with the Services commissioned or provided by it pursuant to this Agreement or in connection with its obligations pursuant to this Agreement.

- 2 Each Partner will endeavour to put in place reasonable and proportionate procedures to report complaints that they receive to the other Partner. The Partners agree to consult with and to assist one another in connection the management of complaints generally and to respond collectively where appropriate.
- 3 The Partners shall comply with National Guidance and local complaints protocols developed from time to time in determining how to address and manage complaints.

22. TERMINATION & DEFAULT

1. This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
2. Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification and contracting arrangements of the Lead Commissioner, provided that the Partners ensure that the Better Care Fund requirements continue to be met.
3. If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partner may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partner may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
4. Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and any terms of this Agreement which either expressly or by implication survive termination of this Agreement
5. In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
6. Upon termination of this Agreement for any reason whatsoever the following shall apply:
 - 21.6.1 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;
 - 21.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

- 21.6.3 where necessary, the Lead Commissioner 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 Commissioner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Commissioner 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.
- 21.6.4 where a Service Contract held by a Lead Commissioner 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 Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract (for the avoidance of doubt, where Joint (Aligned) Commissioning arrangements are in place and one Partner is the sole commissioner of a Service, the commissioning Partner shall be entitled to continue to commission that Service under the relevant Service Contract at its own cost, following termination of this Agreement);
- 21.6.5 the JCG shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 21.6.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
7. In the event of termination in relation to an Individual Scheme or Service the Partners shall ensure that the Better Care Fund requirements of the Partners can continue to be met and the provisions of Clause 22.5 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

22 DISPUTE RESOLUTION

1. In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute. in order to commence the dispute resolution procedure set out in this Clause 23.
2. The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
3. If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
4. If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed

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

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

23 FORCE MAJEURE

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

24 CONFIDENTIALITY

1. In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

24.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and

- 24.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - (b) is obtained by a third party who is lawfully authorised to disclose such information.
2. Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
3. Each Partner:
- 24.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and
 - 24.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
 - 24.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

25 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

1. The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.
2. Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act and the Local Authority Transparency Code 2015.

26 OMBUDSMEN

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

27 INFORMATION SHARING

The Partners will follow the Information Governance Protocol set out in Schedule 8, and in so doing will ensure that the operation of this Agreement complies with Law, in particular the 1998 Act, 2000 Act and the 2004 Act, GDPR and the 2018

Act and will at all times observe the Data Protection Legislation and honour the confidentiality of any data supplied for the performance of this Agreement and in so far as such data constitutes Personal Data within the meaning prescribed by the Data Protection Legislation will at all times comply fully with the 1998 Act and GDPR principles as are applicable at the relevant time and relative thereto and will at all times indemnify each other from and/or against any cause of action which may be brought against either Partner consequent to any breach or non-observance by the other Partner

28 NOTICES

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

28.1.1 personally delivered, at the time of delivery;

28.1.2 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and

28.1.3 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

2. In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

3. The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:

28.3.1 if to the Council, addressed to the Chief Executive:

Shropshire Council
Shirehall
Abbey Forgate
Shrewsbury
Shropshire
SY2 6ND

Tel: 0345 678 9000

Email: customer.service@shropshire.gov.uk

and



28.3.2 if to the CCG, addressed to the Chief Executive;

Shropshire Clinical Commissioning Group
William Farr House
Mytton Oak Road
Shrewsbury
Shropshire
SY3 8XL

Tel: 01743 277500

30. PROHIBITED ACTS

- 1 Neither Partner shall commit a Prohibited Act
- 2 If either of the Partners commits any Prohibited Act or commits any offence under the Bribery Act with or without the knowledge of the other Partner in relation to this Agreement, the non-defaulting Partner shall be entitled:
 - a) Exercise its right to terminate this Agreement and to recover from the defaulting Partner the amount of any loss resulting from the termination; and
 - b) To recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- 3 Each Partner must provide the other Partner upon written request with all reasonable assistance to enable that Partner to perform any activity required for the purposes of complying with the Bribery Act. Should either Partner request such assistance the Partner requesting assistance must pay the reasonable expenses of the other Partner arising as a result of such request.
- 4 The Partners must have in place an anti-bribery policy for the purposes of preventing any of its employees, agents servants consultants or contractors from committing a prohibited act under the Bribery Act and must be enforced where applicable.
- 5 Should either Partner become aware of or suspect any breach of this clause, it will notify the other Partner immediately. Following such notification, the defaulting Partner should respond promptly and fully to any enquiries of the other Partner, co-operate with any investigation undertaken by the non-defaulting Partner and allow the non-defaulting Partner to audit any books, records and other relevant documentation.

31 SAFEGUARDING

The Partners shall ensure that all Providers have appropriate Safeguarding policies in place and shall require such policies to be implemented where applicable. Where the services or activities being undertaken with respect to any Individual Scheme are Regulated Activities the Partners shall require Providers to comply with all relevant requirements of the Disclosure and Barring Service.

32 HEALTHWATCH

1. The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision making concerning the Services commissioned.

- 2 The Partners shall ensure that its contracts with Providers require co-operation with Local Healthwatch where applicable

33 STAFFING (TUPE, SECONDMENT AND PENSIONS) – Not Used

34. VARIATION

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

2. Where the Partners agree that there will be:

34.2.1 a new Pooled Fund;

34.2.2 a new Individual Scheme; or

34.2.3 an amendment to a current Individual Scheme,

the JCG 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 34.3. 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.

3. The following approach shall, unless otherwise agreed, be followed by the JCG:

34.3.1 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 JCG will first undertake an impact assessment and identify those Service Contracts likely to be affected;

34.3.2 the JCG 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;

34.4.3 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

34.4.4 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 equally between the Partners.

35 CHANGE IN LAW

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

36 WAIVER

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

37 SEVERANCE

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

38 ASSIGNMENT AND SUB CONTRACTING

The Partners shall not sub contract, assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partners, which shall not be unreasonably withheld or delayed PROVIDED that this shall not apply to any assignment to a statutory successor of all or part of a Partner's statutory functions or where the Council wishes to assign any of its rights under this Agreement; or transfer all of its rights or obligations by novation to another person where such assignment, transfer or novation is to an Associated Person of the Council.

39 EXCLUSION OF PARTNERSHIP AND AGENCY

- 1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- 2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:
 - 39.2.1 act as an agent of the other;
 - 39.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 39.2.3 bind the other in any way.

40 THIRD PARTY RIGHTS

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

41 ENTIRE AGREEMENT

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

42 COUNTERPARTS

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

43 GOVERNING LAW AND JURISDICTION

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

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

Signed on behalf of **SHROPSHIRE COUNCIL**



Authorised Signatory
Andy Begley
Director, Adult Services

Signed on behalf of **SHROPSHIRE CLINICAL COMMISSIONING GROUP**





Authorised Signatory
Simon Freeman,
Accountable Officer, Shropshire CCG

SCHEDULE 1 – SCHEME SPECIFICATION

1. The Scheme Specification for the Individual Schemes which make up the Better Care Fund plan are found here in two parts; the first is narrative, as found in the Better Care Fund plan. The narrative describes:
 - The Aims and Outcomes of the Individual Schemes,
 - The Service that the Individual Scheme delivers,
 - The governance arrangements,
 - The outcome measures,
 - The schedule for performance monitoring.
 - Action plan for BCF Development

2. The second part is the BCF planning template which identifies:
 - BCF budget lines and amounts
 - Funding sources
 - Performance metrics
 - National conditions
 - Guidance

Please find Part 1 & 2 attached here

Part 1	<p style="text-align: center;">Link to 2017-19 BCF Plan</p> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  Better Care Fund Annex v2 28 08 18.do </div> <div style="text-align: center;">  2017-19 Planning Template v14.6b - Au </div> </div>
Part 2	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">  BCF Pooled Fund Schemes 2018-19.xls </div> <div style="text-align: center;">  ASC BCF Targets 2018-19.docx </div> </div>

3. The Partners agree that they shall commence negotiations regarding the Individual Schemes and Scheme Specifications to be included in the BCF Plan for each Financial Year following 31st March 2019 by no later than 6 months prior to that date and that they shall use their best endeavours to reach agreement on those Individual Schemes and Scheme Specifications no later than 3 months prior to that date. The provisions of this clause shall apply mutatis mutandis in respect of subsequent Financial Years.

SCHEDULE 2 – GOVERNANCE

Further to clause 19 of the main terms of this Agreement, the governance of the Better Care Fund is as set out in this Schedule 2.

1. HEALTH AND WELLBEING BOARD:

The HWBB is a partnership board and legislated committee of the Council.

1.1 Health and Wellbeing Board Aim and Vision (from the Joint HWB Strategy):

1.1.1 Our Aim:

To improve the population's health and wellbeing; to reduce health inequalities that can cause unfair and avoidable differences in people's health; to help as many people as possible live long, happy and productive lives by promoting health and wellbeing at all stages of life.

1.1.2 Our Vision:

For Shropshire people to be the healthiest and most fulfilled in England

The HWBB believes we need a new approach to health and care that nurtures wellness and encourages positive health behaviour at all stages of people's lives and across all communities. We need to:

Start Well – parents make good choices for their bumps and babes; early years and schools support good mental and physical health and wellbeing; services are available when and if they are needed;

Live Well – we make good choices for ourselves as we become adults to keep well and healthy, both physically and mentally; accessing support from services when and if they are needed;

Age Well – making good choices as an adult means that as Shropshire people age they are as fit and well as they can be; people continuing to make good lifestyle choices throughout their lives can prevent many long term conditions such as dementia and heart disease.

1.2 TERMS OF REFERENCE:

1.2.1 Purpose

The purpose of the HWBB is to bring together key leaders from local health and care organisations to work together to improve the health and wellbeing of local people and to reduce inequalities that are the cause of ill health. HWBB members work together to understand their local community's needs, agree priorities, and make decisions to improve the health and wellbeing of local people in Shropshire.

1.2.2 Responsibilities

The HWBB will develop and implement a five year Health & Wellbeing Strategy



(HWBS); it will also develop, implement and annually refresh the HWB Action Plan. It will carry out this role through:

The HWBB will develop and implement a five year Health & Wellbeing Strategy (HWBS); it will also develop, implement and annually refresh the HWB Action Plan. It will carry out this role through:

- Taking a system leadership approach and working with partners across the health and wellbeing system to implement the vision and priorities as set out in the HWBS;
- Working with and influencing partners across Shropshire, and along Shropshire's boundaries, who make decisions that impact the wider determinants of health and wellbeing; these include but are not limited to planning, housing, transport, business and other partnership groups. The HWBB will do this in order to implement and deliver the vision and priorities as set out in the HWBS;
- Working with the people of Shropshire to support and promote healthy lifestyles at all stages, to improve the health and wellbeing of all people, but especially with those who need it most;
- Working with the people of Shropshire and service users to design and develop sustainable services;
- Convening the Health and Wellbeing Delivery Group and its subgroups, which is tasked with delivering key elements of the strategy; this may involve convening any necessary task and finish groups;
- Deliver the Better Care Fund programme in accordance with national guidelines and hold accountability for delivery of the Better Care Fund Plan, its associated metrics and budget in accordance with the local Partnership Agreement.
- Supporting integration and the joint commissioning of health and social care services for children, families and adults in Shropshire, through the Better Care Fund pooled budget arrangements.
- Being innovative in its approach to deliver integration and the joint commissioning of health and social care services for children, families and adults in Shropshire.
- Keeping under review, the financial and organisational implications of joint and integrated working across health and social care services, ensuring that performance and quality standards for health and social care services to children, families and adults are met and represent value for money across the whole system.
- Delivering its statutory obligations including oversight of the Care Act, Children and Adults Safeguarding Boards, joint commissioning arrangements of the SEND reforms; input into the CCG planning processes and its 5 Year Plan; and the Pharmaceutical Needs Assessment.
- Responding to any further legislative requirements as described through national policy and legislative changes.
- Developing a shared understanding of the needs of the local community through the development of an agreed Joint Strategic Needs Assessment (JSNA); the JSNA will analyse local need through locally collected quantitative and qualitative information.

- Working with Healthwatch Shropshire and through the HWBB's Communication and Engagement Group ensuring that appropriate communication, engagement and involvement takes place and contributes to the JSNA and decision making processes.
- Working with the Council's statutory boards including the Children's Trust, the Safer Stronger Communities Board, the Safeguarding Adults Board, and the Safeguarding Children's Board.
- The HWBB will act as a key forum for local democratic and public accountability of health, care and wellbeing promotion and services within Shropshire, prime financial policies and standing orders.
- Ensure that equality and diversity is proactively considered and promoted as part of the committee's business and its decision making.

1.2.3. Membership

Voting Members

Cabinet Member – Portfolio Holder Health

Cabinet Member – Portfolio Holder Adult Social Care

Cabinet Member – Portfolio Holder Children's Services

Clinical Commissioning Group – Accountable Officer

Clinical Commissioning Group – Chair

Clinical Commissioning Group – Director of Contracting and Planning

Clinical Commissioning Group – Director of Performance and Delivery

Director of Children's Services

Director of Adult Services

Director of Public Health

Representative from Healthwatch

Voluntary and Community Sector Assembly – Chair

NHS England

System Leaders/ Non-Voting Members

Shrewsbury and Telford Hospital NHS Trust – Chief Executive

Shropshire Community Health NHS Trust – Chief Executive

South Staffordshire & Shropshire Foundation NHS Trust – Chief Executive

Shropshire Partners in Care – Chief Officer

GP Federation – Chair

Business Board – Chair

System leaders (from all sectors) will be invited to discuss relevant issues as needed

- 1 Membership will be reviewed regularly to adjust for changes as required by the purpose of the HWBB.
- 2 Members who cannot attend should only send a named deputy if approved by the Chair or Vice Chair of the HWBB. Deputies will have the decision-making and voting rights of the person he/she is representing.

1.2.4. Meeting Arrangements

Co- Chair – the HWBB will operate a co-chair arrangement selected and agreed by the HWBB; one Portfolio Holder HWBB Member and one CCG HWBB member.

Notice of Meetings – meetings of the HWBB will be arranged 5 full working days in advance by Shropshire Council, who will also provide the clerking and recording of the meeting.

Quorum – Quorum for all meetings of the HWBB is 50% of voting members with at least two representatives from Shropshire Council, at least two from the CCG, and at least one other.

Substitutes – Nominating groups may appoint a substitute member for each position; notification of the named substitute member must be made prior to the meeting start. Substitute members will have full voting rights.

Meeting Frequency – The HWBB will meet at least quarterly.

Status – Meetings of the HWBB will be open to the press and public and the agenda reports and minutes will be available on the Council's website at least five working days in advance of each meeting. There will be an opportunity for members of the public to ask questions. A response to the question will be tabled and a brief opportunity will be provided to the member of the public to ask a follow-up question. Guidance for this process is available on the Shropshire Council website.

Election – The Co-Chairs of the HWBB are elected from the group of Portfolio Holder HWBB Members and the HWBB Members annually.

Decision making – it is expected that decisions will be reached by consensus; however, if a vote is required it will be determined by a simple majority of members present and voting. If there are equal members for or against, the Chair will have a casting vote

Member Responsibilities

Represent views of the HWBB as required; adhere to the principles of the HWBB and behave in a manner conducive to partnership working and collaboration

Confidential Items – Members of the public and press may only be excluded either in accordance with the Access to Information Rules as set out in Part 4 of Shropshire Council's Constitution or Rule 26 (Disturbance by the Public).

1.2.5. Principles

To drive a genuinely collaborative approach to the commissioning and delivery of services which improve the health and wellbeing of local people, the HWBB will abide by the following principles:-

- The HWBB will work primarily to improve the health and wellbeing of the citizens of Shropshire;
- The HWBB will work collaboratively and consensually;
- The HWBB will add value over and above our current arrangements to really tackle key priorities and delivery outcomes for our communities;
- Members of the HWBB will have genuine levels of trust and an open and honest willingness to work collaboratively;
- Will develop creative and constructive challenge to ensure that the HWBB is always working to maximise its potential as partners;
- Will be pro-active by developing collaborative working to deliver the HWBB strategy, whilst maintaining appropriate flexibility to respond to issues as they arise

1.2.6. Governance

Under section 194 of the Health and Social Care Act 2012, the HWBB is a committee of the Local Authority (as part of section 102 of the Local Government Act 1972). However, it is a committee where modifications to the strict rules of section 102 don't always apply and can disapply.

The HWBB does not have delegated financial authority but makes recommendations to the governing bodies on strategic matters.

The HWBB has a number of sub-groups and will convene task and finish groups as needed to develop and deliver the HWB Strategy. The HWB Delivery Group reports to the HWBB and has a number of partnership groups that report through the Delivery Group to the HWBB. These include:

- The Communication and Engagement Group
- The JCG
- The Children's Trust
- Mental Health Partnership
- Carers Partnership Board
- Healthy Lives

Subgroups may be added or changed from time to time and reflected in an annual update of the HWBB.

The HWBB also works with our Partnership Boards to deliver the HWB Strategy, this includes, the Safeguarding Children's Board, the Safeguarding Adults Board, and the Safer Stronger Communities Board.

1.2.7. Accountability

The HWBB, as a committee of the Council, will report to Full Council as required.

The actions of the HWBB will be subject to independent scrutiny by the relevant members of the Overview and Scrutiny Committee of the Council.

The terms of reference will be reviewed annually to ensure that the HWBB is fit for purpose and able to respond to the changes in the way we work.

1.2.8 Conduct of the HWBB Committee

- The HWBB shall conduct itself in accordance with the HWBB principles.
- The HWBB shall conduct its business in accordance with national guidance, relevant codes of practice including the Nolan Principles and the Conflict of Interest policy.

1.2.9 Equality Statement

- The HWBB, the CCG and the Council are committed to reducing health inequalities, and promoting equality in all responsibilities – as commissioners and providers of services, as a partner in the local economy and as an employer.
- All sub-committees of the CCG and the Council have duties ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

2. JOINT COMMISSIONING GROUP:

As part of the HWBB, the CCG's Governing Body and the Council resolve to establish a joint committee of both statutory bodies; known as the JCG.

The JCG is established in accordance with the CCG's Constitution, Standing Orders and Scheme of Reservation & Delegation; and the Council's delegated authority under its Constitution

The JCG will report into the HWBB having oversight of the deployment of the Pooled Fund "Better Care Fund" (BCF) and is aligned to the delivery of the HWBB vision and aims set out above.

2.1. Purpose

The JCG is the committee responsible for developing, delivering and monitoring the Better Care Fund (BCF) schemes;

The JCG shall provide assurance to the HWBB Delivery Group and the HWBB (and governing bodies of the CCG and the Council's Cabinet as needed) on the BCF.

The JCG is established to ensure services commissioned using the pooled fund are in line with the delivery principles of the Shropshire BCF.

The JCG provides oversight for the development and delivery of the joint funded BCF; and shall ensure that commissioned services;

- are in line with the needs of the local population and the strategic objectives of the CCG and the Council;
- include services and service changes to ensure financial balance;
- are evidence based; inclusive of national and local requirements.

The JCG shall make recommendations to the HWBB and the governing bodies on the schemes, programmes of work, and funding to deliver the vision and aims of the Shropshire BCF.

The JCG will report to the HWBB Delivery Group which maintains strategic oversight of constituent organisational plans to ensure they deliver the vision and aims of a whole system approach to improving population health, overseen by the HWBB

2.2 Responsibilities

- Oversee and recommend to the HWBB the development of a joint commissioning arrangements and strategy for Shropshire.
- Lead on the development, delivery and implementation of the BCF Programme, ensuring financial and performance monitoring; reporting to the HWBB
- Oversee development of the annual BCF Plan and commissioning intentions for the BCF Pooled Fund, ensuring delivery of national and local requirements together with systems objectives for the commissioning and delivery of health and social care.
- Manage the Better Care Fund Assurance Framework, ensuring any areas of concern are reported to the CCG's Governing Body, the Council and the HWBB, along with mitigating actions.
- Oversee the contribution to the JSNA, making recommendations as appropriate to the respective statutory bodies, ensuring that the outcomes are reflected in the BCF priorities for its commissioning and decommissioning of health or social care services.
- Inform and make recommendations to the CCG Governing Body and the Council; on joint commissioning arrangements within the BCF, ensuring that these arrangements are effective
- Initiate service reviews where it is felt that services do not provide sufficient quality and value for money.
- Ensure continuous improvement to joint working, integration, the pooled budget and developing delegated authority and decision making.

- Manage and review the development of health and social care pathways that support the systems' vision promoting independence clinical quality and safety making recommendations as appropriate.
- Manage and review the development of new schemes, reviewing appropriate business cases to ensure all necessary evidence is provided to support effective decision making, and provide recommendations to the CCG Governing Body and the Council, as appropriate
- Manage and review investment and disinvestment prioritisation processes on behalf of the CCG and the Council, evaluate outcomes of pilot schemes as appropriate.
- Ensure robust arrangements exist for local patient and public involvement, demonstrating that patients and stakeholders have been engaged appropriately.
- Ensure that CCG and Council policies and procedures are followed, including governance arrangements as set out in any schemes of delegation, prime financial policies and standing orders.
- Ensure that equality and diversity is proactively considered and promoted as part of the committee's business and its decision making.

2.3. Membership of the Joint Commissioning Group:

The membership of the JCG will be as follows:

- Head of Adult Services, SC
 - Head of Service, Children's Services, SC
 - Director of Contracting and Performance, CCG
 - Director of Delivery and Performance, CCG
 - Director of Finance, CCG
 - Senior Finance Lead, SC
 - Better Care Fund Manager – Joint Post
 - Lead for Admissions Avoidance, CCG or SC
 - Lead for Delayed Transfers, CCG or SC
 - Lead for Prevention, SC
- 1 Membership will be reviewed regularly to adjust for changes as required by the purpose of the JCG.
 - 2 Members who cannot attend should only send a named deputy if approved by the Chair or Vice Chair of the JCG. Deputies will have the decision-making and voting rights of the person he/she is representing.
 - 3 A decision put to a vote at the meeting shall be determined by a majority of the votes of members and deputies present. In the case of an equal vote, the Chair of the JCG shall have a second and casting vote.

3. Meeting Arrangements:

Co-Chair – Meetings will be operated by a co-chair arrangement, one from the Council



and one from the CCG; to be elected annually.

Notice of Meetings – Shropshire Together will provide administration

Meeting Frequency – monthly

Agenda and Papers – Partners are encouraged to provide agenda items and papers for the JCG; and papers will be provided to the group at least 2 days in advance.

Review of the Terms of Reference – annually

Minutes – meeting shall be recorded

4. Quorum

A minimum of six members; 3 from CCG and 3 from the Council, will constitute a quorum, so long as this includes either the Chair or Vice Chair.

A decision put to a vote at the meeting shall be determined by a majority of the votes of members and deputies present. In the case of an equal vote, the Chair of the JCG shall have a second and casting vote.

5. Governance

Financial probity is through this Section 75 agreement and SFIs/SFOs of the CCG and the Council.

The JCG will report to the HWBB and the governing bodies as required.

The JCG will make recommendations to all partner groups as needed.

The JCG will have oversight of how and where services are contracted for/ provided

The CCG and the Council will be required to provide proof of commitment to joint working schemes, services and programme of work

The JCG will provide regular reports on key issues to the Healthy and Wellbeing Delivery Group, HWBB, CCG Governing Body and the Council for final decision making and to provide assurance in key areas.

6. Conduct of the JCG

- The JCG shall conduct itself in accordance with the HWBB principles.
- The JCG shall conduct its business in accordance with national guidance, relevant codes of practice including the Nolan Principles and the Conflict of Interest policy.

7. Equality Statement

- The CCG and the Council are committed to promoting equality in all responsibilities – as commissioners and providers of services, as a partner in the local economy and as an employer.
- All sub -committees of the CCG and the Council have duties ensuring that all users and potential users of services and employees are treated fairly and respectfully with regard to the protected characteristics of age, disability, gender, reassignment, marriage or civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.

SCHEDULE 3 – FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS

- 1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of this Agreement.
- 2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with section 4 (Risk Share) of this Schedule 3

Financial Contributions

3

BCF Total Budget 2018/19	£33,765,539
Total Pooled Fund Amount 2018/2019	£7,779,302
Total Non-Pooled Amounts 2018/2019	£25,986,237
Non Pooled Amounts as follows:	
CCG Revenue Schemes	£12,241,702
Shropshire Council Revenue Schemes (including iBCF Schemes)	£10,770,380
Disabled Facilities Grants	£2,974,155

CONTRIBUTING PARTNER ORGANISATION	POOLED FUND CONTRIBUTION AMOUNT 2018/19	CONTRIBUTIONS TO BE PAID TO THE HOST AUTHORITY:	NON-POOLED FUND CONTRIBUTION AMOUNT 2018/19 (TO BE HELD BY THE CONTRIBUTING PARTNER)	TOTAL BCF CONTRIBUTION 2018/19
SHROPSHIRE COUNCIL	-	-	£11,962,045	£11,962,045
SHROPSHIRE CCG	£7,779,302	MONTHLY FOLLOWING RECEIPT OF AN INVOICE FROM THE HOST ORGANISATION	£12,241,702	£20,021,004

4. Risk Share

The Partners have agreed that the responsibility for financial and operational risks associated with the delivery of a Service shall remain the responsibility of the Partner, who in accordance with its statutory functions, is responsible for commissioning or providing that Service. For the avoidance of doubt, Underspends shall be dealt with in accordance with clause 12.7 of this Agreement. This Risk Share arrangement will be reviewed within 12 months of the Commencement Date and any amendments shall be agreed in writing between the parties.

SCHEDULE 4 – JOINT WORKING OBLIGATIONS

Part 1 – LEAD COMMISSIONER OBLIGATIONS

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

1. The Lead Commissioner shall notify the other Partners if it receives or serves:
 - 1.1 A Change in Control Notice;
 - 1.2 a Notice of a Event of Force Majeure;
 - 1.3 a Contract Query;
 - 1.4 Exception Reports and provide copies of the same.
- 2 The Lead Commissioner shall provide the other Partners with copies of any and all:
 - 2.1 CQUIN Performance Reports;
 - 2.2 Monthly Activity Reports;
 - 2.3 Review Records; and
 - 2.4 Remedial Action Plans;
 - 2.5 JI Reports;
 - 2.6 Service Quality Performance Report;
3. The Lead Commissioner shall consult with the other Partners before attending:
 - 2.7 an Activity Management Meeting;
 - 2.8 Contract Management Meeting;
 - 2.9 Review Meeting and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings
- 3 The Lead Commissioner shall not:
 - 3.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
 - 3.2 vary any Provider Plans (excluding Remedial Action Plans);
 - 3.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
 - 3.4 give any approvals under the Service Contract;
 - 3.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
 - 3.6 suspend all or part of the Services;
 - 3.7 serve any notice to terminate the Service Contract (in whole or in part);
 - 3.8 serve any notice;
 - 3.9 agree (or vary) the terms of a Succession Plan;

without the prior approval of the other Partners (acting through the [JCB]) such approval not to be unreasonably withheld or delayed.
- 4 The Lead Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
- 5 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution

7. The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

Part 2 – OBLIGATIONS OF THE OTHER PARTNER

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

- 1 Each Partner shall (at its own cost) provide such cooperation, assistance and support to the Lead Commissioner (including the provision of data and other information) as is reasonably necessary to enable the Lead Commissioner to:
 - 1.1 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 No Partner shall unreasonably withhold or delay consent requested by the Lead Commissioner.
- 3 Each Partner (other than the Lead Commissioner) shall:
 - 3.1 Comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;
 - 3.2 Notify the Lead Commissioner of any matters that might prevent the Lead Commissioner from giving any of the warranties set out in a Services Contract or which might cause the Lead Commissioner to be in breach of warranty.

Schedule 5– PERFORMANCE ARRANGEMENTS

The Partners agree that they shall agree and implement Local Metrics to be met through the BCF Plan within 6 calendar months from the Commencement Date. A written record of the agreed Local Metrics shall be executed by the authorised signatories of the parties to this Agreement and shall be added to this Schedule 5.

Better Care Fund – Targets for 2018-19

Long-term support needs of older people (age 65 and over) met by admission to residential and nursing care homes, per 100,000 population.

2018/19	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Profile (target)	150	300	450	600.3

Proportion of older people (65 and over) who were still at home 91 days after discharge from hospital into reablement / rehabilitation services

2018/19	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Target	82%	82%	82%	82%

Delayed Transfers of Care (delayed days) from hospital per 100,000 population (aged 18+).

2018/19	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Target	1547	1564	1564	1530

DTOC target based on 17 delayed days per day across NHS, ASC and Joint multiplied by number of days per quarter.

Non-elective Admissions - TBC

2018/19	Q1 18/19	Q2 18/19	Q3 18/19	Q4 18/19
Target	8,509	8,259	8,920	8,661

Local measures have been in place for Redwoods – these were set and tracked by NHS

Data Source

NHS England

<https://www.england.nhs.uk/statistics/statistical-work-areas/hospital-activity/monthly-hospital-activity/mar-data/>

SCHEDULE 6 – BETTER CARE FUND PLAN



This section includes the Shropshire HWBB’s Better Care Fund submission. Template 1 of the submission includes the following sections:

- The Vision
- A case for change,
- Plan of Action
- Risks and Contingencies
- Alignment
- National Conditions
 - Protecting Social Care Services
 - 7 Day Services to Support Discharge
 - Data Sharing
 - Joint Assessment & Accountable Lead Professional
- Engagement
- Scheme Specifications

Template 2 includes:

- Outcome measures and targets
- Financial Contribution Matrix

Please find Template 1 & 2 attached here -

Template 1	Link to 2017-19 BCF Plan  Better Care Fund Annex v2 28 08 18.do
Template 2	 BCF Pooled Fund Schemes 2018-19.xlsx

SCHEDULE 7– POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

Both Shropshire Council and Shropshire CCG have established and practiced Conflicts of Interest policies in place. For the purpose of this Agreement the Partners agree to adopt the following principles in the governance and delivery of the Better Care Fund Plan.

Doing business appropriately. If Commissioners get their needs assessments, consultation mechanisms, commissioning strategies and procurement procedures right from the outset, then conflicts of interest become much easier to identify, avoid and/or manage, because the rationale for all decision-making will be clear and transparent and should withstand scrutiny;

Being proactive, not reactive. Commissioners should seek to identify and minimise the risk of conflicts of interest at the earliest possible opportunity, for instance by:

- considering potential conflicts of interest when electing or selecting individuals to join the governing body or other decision-making bodies;
- ensuring individuals receive proper induction and training so that they understand their obligations to declare conflicts of interest.
- They should establish and maintain registers of interests, and agree in advance how a range of possible situations and scenarios will be handled, rather than waiting until they arise;

Assuming that individuals will seek to act ethically and professionally, but may not always be sensitive to all conflicts of interest. Rules should assume people will volunteer information about conflicts and, where necessary, exclude themselves from decision-making, but there should also be prompts and checks to reinforce this;

Being balanced and proportionate. Rules should be clear and robust but not overly prescriptive or restrictive. They should ensure that decision-making is transparent and fair, but not constrain people by making it overly complex or cumbersome;

Openness. Ensuring early engagement with patients, the public, clinicians and other stakeholders, including local Healthwatch, in relation to proposed commissioning plans;

Responsiveness and best practice. Ensuring that commissioning intentions are based on local health needs and reflect evidence of best practice – securing ‘buy in’ from local stakeholders to the clinical case for change;

Transparency. Documenting clearly the approach taken at every stage in the commissioning cycle so that a clear audit trail is evident;

Securing expert advice. Ensuring that plans take into account advice from appropriate health and social care professionals, e.g. through clinical senates and networks, and draw on commissioning support, for instance around formal consultations and for procurement processes;

Engaging with Providers. Early engagement with both incumbent and potential new providers over potential changes to the services commissioned for a local population;

Creating clear and transparent commissioning specifications that reflect the depth of engagement and set out the basis on which any contract will be awarded;

Each Partner shall follow its own legal arrangements and procurement processes in accordance with their respective constitutional and governance arrangements, including even-handed approaches to providers;

Ensuring sound record-keeping, including up to date registers of interests; and

A clear, recognised and easily enacted system for dispute resolution.

SCHEDULE 8 – INFORMATION GOVERNANCE PROTOCOL

It is acknowledged that the Information Governance Protocol currently included within this Schedule 8 needs to be reviewed and updated in accordance with the General Data Protection Regulations and Data Protection Act 2018 and any other related or associated data protection legislation and guidance. The Partners shall agree a revised Information Governance Protocol within 6 calendar months of the Commencement Date, or such other timeframe as shall be agreed in writing. Once agreed, the revised Information Governance Protocol shall be executed by the authorised signatories of the parties to this Agreement and shall be inserted into this Schedule 8 in replacement of the existing Information Governance Protocol dated 2015. Until such time as the revised Information Governance Protocol is in place, it is agreed that the Partners shall adhere to the principles of the Information Governance Protocol currently included below.

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Part 1: Front Sheet

IG Reference	
Protocol Reference	

1. This Data Sharing Framework Protocol comprises this Part 1 (Front Sheet), Part 2 (Terms and Conditions) and the Schedules. It sets out the terms on which the Shropshire and Telford & Wrekin Partnership Signatories agrees to share Data with the Data Recipient.

2. The purpose of this Protocol is to:

- clarify the responsibilities of the parties in relation to the Data;
- outline the data security principles and requirements with which the Data recipient must comply;
- set out the audit rights of the Protocol signatories
- impose confidentiality requirements on the Data Recipient, and
- include arrangements for termination of this Protocol.

3. The term of this Protocol shall be:

Start Date	April 2015	Review Date	April 2018
Term:	3 Years		

4. No data will be shared directly under this Protocol. Each time a data recipient wishes to receive data, a Data Sharing Agreement (DSA) will be completed and signed by the parties concerned. In no circumstances will a DSA be agreed without the recipient parties receiving this overarching Protocol and complying with the terms.

5. Each DSA will include details of:

- the Data to be provided;
- the legal basis for sharing the Data;
- the purpose of the sharing and use of the Data;
- the method of transfer;
- any special terms and conditions for the use or reuse of the Data; and
- any charges payable for the provision of the Data where applicable.

6. If there is a conflict or inconsistency between any provision contained in Part 1, (Front sheet) Part 2 (Terms and Conditions) and the Schedules, the provisions of this Part 1 shall prevail, then Part 2, then the Schedules.

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	Healthwatch Shropshire
Name:	J RANDALL-SMITH
Signature:	Jane Randall-Smith
Role:	Chief Officer
Date:	10 th February 2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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Organisation	
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Role:	
Date:	

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Organisation	Healthwatch Telford & Wrekin
Name:	JANE CHAPMAN
Signature:	<i>Jane Chapman</i>
Role:	Joint Chair
Date:	11th February 2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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Organisation	
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Role:	
Date:	


2015 April v0 2 Draft STWP Data Sharing Agreement (DSA) Revised.doc

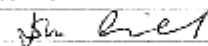
SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust
Name:	Jayne Downey
Signature:	
Role:	Caldicott Guardian
Date:	6 th May 2015

Organisation	The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust
Name:	John Grinnell
Signature:	
Role:	Senior Information Risk Owner (SIRO)
Date:	6 th May 2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
Date:	

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

Organisation	NHS TELFORD & WREKIN CCG
Name:	ALISON SMITH
Signature:	<i>Alison Smith</i>
Role:	CALDICOTT GUARDIAN
Date:	05/08/15

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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Organisation	
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SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	SHROPSHIRE CC9
Name:	DONNA MCGILVER
Signature:	<i>Donna</i>
Role:	CHIEF FINANCE OFFICER
Date:	11-02-2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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Role:	
Date:	

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SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	SHROPSHIRE
Name:	AILEE CLEMENTS
Signature:	<i>A. Clements</i>
Role:	MEDICAL DIRECTOR / CONDICOTT GUARDIAN
Date:	18.2.15

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
Date:	

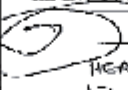
Organisation	
Name:	
Signature:	
Role:	
Date:	

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	SHROPSHIRE COUNCIL
Name:	CLAIRE PORTER
Signature:	
Role:	HEAD OF LEGAL, STRATEGY & DEMOCRACY (SIRLO)
Date:	17.3.2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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Role:	
Date:	

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Organisation	
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Date:	

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation: TELFORD + WREKIN COUNCIL
Name: KEN CLARKE
Signature: *[Handwritten Signature]*
Role: ASST. DIRECTOR: FINANCE, AUDIT + I.G. (C.F.O. + S.T.O.)
Date: 10/02/15.

Organisation: TELFORD + WREKIN COUNCIL
Name: PAUL TAYLOR
Signature: *[Handwritten Signature]*
Role: DIRECTOR HEALTH, WELLBEING CARE (DASS, CHIEF OF WARRIOR)
Date: 12.2.2015

Organisation:
Name:
Signature:
Role:
Date:

Organisation:
Name:
Signature:
Role:
Date:

Organisation:
Name:
Signature:
Role:
Date:

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	SHREWSBURY AND TELFORD HOSPITAL NHS
Name:	JORG EMMERICH BORMAN
Signature:	<i>Jorg Borman</i>
Role:	MEDICAL DIRECTOR / CALDICOTT E.
Date:	13TH FEBRUARY 2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Version: 1.1 April 2015

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	SOUTH STAFFORDSHIRE AND SHROPSHIRE HEALTHCARE NHS FT
Name:	DR CLAIRE BARKLEY
Signature:	<i>Claire Barkley</i>
Role:	CALDWELL GUARDIAN
Date:	19.03.2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

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**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

Version: 2.0

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	CWBT / WREKIN POLICE
Name:	DAVID MURPHY
Signature:	<i>[Signature]</i>
Role:	INDEPENDENT - POLICE Commander
Date:	13/2/15

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
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**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

**SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP
DATA SHARING FRAMEWORK
PROTOCOL**

Version: 1.1 April 2015

By signing this Part 1, the parties agree to be bound by the terms of this Protocol.

Organisation	Shropshire Community Health NHS Trust
Name:	Mr Steve Gregory
Signature:	
Role:	Caldicott Guardian
Date:	13 May 2015

Organisation	
Name:	
Signature:	
Role:	
Date:	

Organisation	
Name:	
Signature:	
Role:	
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SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Part 2: Terms and Conditions

1. Interpretation

Capitalised words and expressions used in this Protocol shall bear the meanings given to them in Schedule 1. The rules of interpretation set out in Schedule 1 shall apply to this Protocol.

2. Shropshire and Telford & Wrekin Partnership Participant Responsibilities

The Data Controller will transfer the Data to the Data recipient (or, if specified in the DSA the data processor authorised by the Data Controller) using the data transfer method set out in the relevant DSA.

The participants signed up to the Protocol are the individual Data Controllers, for the Data insofar as the Data constitutes Personal Data.

3. Licence and Intellectual Property

The participants of the ST&WP grants to the Data Recipient a non-exclusive, revocable licence to use the Data in the Territory for the duration of the term of the relevant DSA solely for the purpose and only in accordance with this Protocol and the relevant DSA.

The Data recipient shall not be entitled to sub-licence the Data unless:

The Data Controller has specifically authorised such sub-licensing in the DSA;

the Data Recipient complies at all times with the sub-licensing conditions set out in the DSA, which shall be in the form set out in Schedule 5; and

the Data Recipient has entered into an agreement with any sub-licensee for the sub-licensing of the Data which contains provisions which are, as a minimum, equivalent to those set out in this Protocol and the DSA.

The Intellectual Property Rights in the Data and any derivative works shall remain at all times the property of the Data Controller. All rights in the Data expressly granted under the relevant DSA are reserved to the Data Controller.

The Data recipient shall ensure that any publication derived from the Data by any party complies with the following guidance: Anonymisation Standard for Publishing Health and Social Care Data available at:

<http://www.isb.nhs.uk/library/standard/128> and

Anonymisation: managing data protection risk code of practice available at http://ico.org.uk/for_organisations/data_protection/topic_guides/anonymisation (please refer to the current web link)

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

4. Data Recipient responsibilities

Where the Data recipient obtains Data from the Data Controller:

If the Data constitutes Personal Data, the Data Recipient shall hold the Data as a Data Controller (either alone or in common or jointly with the original Data Controller, as specified in the DSA); or

if the Data constitutes Non-Identifiable Data, but then the Data becomes Personal Data in the hands of the Data Recipient, the Data Recipient shall become a Data Controller.

Where the Data Recipient obtains Data from the Data Controller that does not constitute Personal Data the Data is not subject to the requirements of the DPA. However, the Data Recipient shall be responsible for processing such Data in accordance with all Applicable Laws and all regulatory standards applicable to such Data.

The Data Recipient shall:

- use the Data in accordance with the Purpose
- process the Data only in accordance with the terms of this Protocol and the relevant DSA, including any Special Conditions contained in the DSA;
- not share the Data with any third party without the prior written consent of the Data Controller;
- ensure that staff processing the Data are suitably trained and made aware of their responsibilities in handling the Data;
- subject to Clause 13, on termination of this Protocol, the relevant DSA or earlier if use of the Data is completed, destroy the Data, together with all hard or soft copies of the same and certify such destruction to the Data Controller;
- notify any Data Breach to the Data Controller as soon as the Data Recipient discovers such Data Breach. The Data Controller to assess whether a Serious Incident Requiring Investigation (SIRI) report needs to be made, as mandated by the Information Governance Toolkit. Such assessment must include whether or not to report the Data Breach to the Information Commissioner;
- immediately notify the Data Controller if it no longer has a legal basis on which to process the Data.

Unless specified in the Purpose or otherwise authorised by the Data Controller, the Data Recipient must not combine the Data with any other Data held by the Data Recipient and must not seek to re-identify any individual from the Data.

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

If the Data Recipient is obliged to respond to requests under the Freedom of Information Act and a request is received regarding the Data, the Data Recipient must consult with the Data Controller prior to any release of Data.

The Data Recipient shall comply at all times with:

- the Data Security Requirements set out in Schedule 2; and
- the DPA (to the extent that the Data includes Personal Data or becomes Personal Data in the hands of the Data Recipient), the common law duty of confidentiality all other Applicable Law and Department of Health directives covering issues of data sharing, including but not limited to those listed in Schedule 3.

Before undertaking any Publishing activity using the Data or any derived information, the Data Recipient will undertake an organisational risk assessment exercise to ensure compliance with the terms of this Protocol and the relevant DSA. The Data Recipient shall conduct the risk assessment in accordance with the standards set out in the Anonymisation Standard for Publishing Health and Social Care Data.

5. Data Protection

To the extent that any of the Data constitutes Personal Data, the Data Recipient shall process such Data at all times in accordance with the DPA, as applicable.

The Data Recipient shall not transfer Personal Data to another territory outside the European Economic Area except with the express prior written consent of the Data Controller and only in circumstances when such transfer is permitted under the DPA.

Where the Data includes Personal Data, the Data Recipient shall:

- store and process the Data securely, and destroy it when it is no longer needed for the Purpose;
- not Publish the Data without the prior written consent of the Data Controller. In deciding whether to give its consent, the Data Controller shall consider whether the Data has been de-identified to a standard suitable for subsequent release in compliance with the Anonymisation Standard for Publishing Health and Social Care Data;
- maintain good information governance standards and practices, meeting or exceeding the Information Governance Toolkit standards required of its organisation type; as applicable.
- not disseminate the Data, or a subset of the Data, to other bodies without prior written consent from the Data Controller;

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

- take reasonable steps to ensure the reliability of each of its Personnel who have access to the Personal Data;
- inform the Data Controller immediately if it receives any communication from the Information Commissioner's Office which relates to the Personal Data;
- ensure access to the Data is managed, auditable and restricted to those needing to process the Data.

The Data Recipient must not contact any individual that could be identified from the information supplied, except with the prior written consent of the Data Controller. In determining whether to grant such consent, the Data Controller will consider the statutory authority and the public interest, having regard to guidance published by the Department of Health, NHS England or the HSCIC.

In the event of any change in data protection laws subsequent to the date of signature of this Protocol, the Data Recipient shall take such steps (including, agreeing to additional obligations and/or executing additional documents) as may be requested by the Data Controller to ensure that the transfer to the Data Recipient, and the processing by the Data Recipient, of the Personal Data complies with such data protection laws.

The Data Recipient may only appoint a data processor to process the Data on behalf of the Data Recipient with the prior consent of the Data Controller.

6. Confidentiality

The Data Recipient must:

- keep the Data separate from all other information and shall keep such information confidential and shall not disclose it to any third party or make any attempts to identify an individual from the Data save where expressly permitted to do so in accordance with the terms of the Protocol and the relevant DSA; and
- use the Data only in so far as is necessary to perform its obligations under this Protocol and the relevant DSA.

The restrictions on disclosure and use contained in this Clause 6 shall not apply to information to the extent that it is or was:

- already in the possession of or becomes available to the Data Recipient in either case free from any obligation of confidentiality;
- is required to be disclosed by the Data Recipient by law, regulation or pursuant to an order of a competent authority, or to a professional adviser; or
- at the time of receipt by the Data Recipient, is in the public domain or after

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

such receipt comes into the public domain other than as a result of breach by the Data Recipient of this Clause 6.

The Data Recipient shall be responsible for any unauthorised disclosure or use of the Data made by any of its Personnel and shall take all reasonable precautions to prevent such unauthorised disclosure or use.

The confidentiality obligations contained in this Clause 6 shall continue indefinitely following termination or expiry of this Protocol and any DSA to which the Data relates.

7. Audit and specific rights

The Data Controllers of this Shropshire and Telford & Wrekin Partnership Protocol shall be entitled at any time during the term of this Protocol to audit the Data Recipient's use of the Data. The Data Recipient shall, for the purpose of such audit, provide or procure the access to the Data Recipient's sites, systems, procedures, documents and staff as may be necessary or desirable in connection with the audit and shall permit the Data Controller to take copies of relevant documents and data pursuant to such audit. The Data Recipient shall provide such information as the Data Controller reasonably requests in order to verify its compliance with the terms of this Protocol and any DSA.

8. Warranties

The Data Recipient warrants that:

- it has the full right and authority to enter into this Protocol;
- it shall use the Data in accordance with all Applicable Laws.

The Data provided to the Data Recipient by the Data Controller on an 'as is' basis and the Data Controller does not warrant the accuracy and completeness of the Data, nor that the Data does not infringe the Intellectual Property Rights of any third party, nor does it undertake that the Data will meet the requirements of or be fit for purpose of the Data Recipient.

9. Liability

This Clause 9 sets out the entire liability of the Data Controller to the Data Recipient in respect of:

- any breach by the Data Controllers of this Protocol and/or any DSA;
- negligence for which the Data Controller is liable or any other tortious liability or breach of statutory duty in connection with the Protocol and/or any DSA;
- any representation or statement arising under or in connection with this Protocol and/or any DSA or by or on behalf of the Data Controller.

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

- 9.2 Subject to Clause 9.5 the Data Controllers shall in no circumstances be liable to the data recipients for:
- any loss of profits, revenue, opportunity, contracts, sales, turnover, anticipated savings, goodwill, reputation, business opportunity, production, or loss to or corruption of data (regardless of whether any of these losses or damages are direct, indirect or consequential); and
 - any Indirect Loss.
- 9.3 Other than any warranties expressly, set out in this Protocol, all warranties, conditions or other terms, whether express or implied by statute, common law, trade usage or otherwise are excluded except to the extent the exclusion is prohibited by law.
- 9.4 Nothing in this Protocol shall limit the Data Controllers liability to the Data Recipient for:
- death or personal injury resulting from the negligence of the Data Controller, its employees, agents or subcontractors;
 - fraud or fraudulent misrepresentation; or
 - any other liability that cannot be excluded or limited as a matter of law.

10. Indemnity

The Data Recipient shall indemnify the Data Controllers in full for any liabilities, losses, demands, claims, damages, amounts agreed in settlement, costs and expenses incurred which arise from or in connection with the Data recipient's loss of the Data, unauthorised or unlawful use of the Data or any breach of this Protocol whether arising in negligence, contract or otherwise and including any monetary penalty notice imposed on the Data Controller by the Information Commissioner under Section 55 of the DPA.

11. Term and termination

- 11.1 This Protocol shall, subject to prior termination in accordance with this Clause 11, continue for the period set out in Part 1.
- 11.2 Subject to prior termination under Clause 11.3, the Data Controller may terminate this Protocol and/or any DSA by giving to the Data Recipient not less than one month's prior written notice.
- 11.3 On or at any time after the occurrence of an event specified in Clause 11.4, the Data Controller shall be entitled to terminate this Protocol and/or any DSA, with immediate effect by written notice to the Data Recipient.
- 11.4 The events are:

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

- the Data Recipient is in material breach of this Protocol and/or any DSA and that breach cannot be remedied;
 - the Data Recipient is in material breach of this Protocol and/or any DSA which can be remedied but the Data Recipient fails to do so within 30 days starting on the day after receipt of written notice from the Data Controller;
 - in respect of Personal Data, the Data Recipient no longer has the legal basis to process the Data;
 - the Data Recipient is dissolved;
 - the Data Recipient becomes or is declared insolvent or a resolution is passed for the winding up of the Data Recipient or the Data Recipient convenes a meeting of the creditors or makes or proposes to make any arrangement or composition with its creditors or a liquidator, an administrative receiver, a receiver, manager, trustee or administrator or analogous officer is appointed in respect of all or any part of its property, undertaking or assets or the Data recipient becomes subject to any bankruptcy procedure or analogous insolvency procedure in any jurisdiction or any person files a notice of intention to appoint an administrator or a notice of appointment of an administrator or applies to the court for an administration order in respect of the Data Recipient;
 - it becomes unlawful for the Data Recipient to perform all or any of its obligations under this Protocol and/or any DSA;
 - there is a change in law which materially affects the Data Controller's powers to provide Data to the Data Recipient; or
 - the Data Recipient (being a natural person) shall die or become mentally incapacitated.
- 11.5 Without prejudice to the Data Controller's rights under Clause 11.3, where the Data Recipient either (I) commits any breach of this Protocol and/or any DSA, or (ii) and event specified in Clause 11.4 occurs, the Data Controller shall be entitled to suspend this Protocol and/or any DSA without incurring any liability to the Data Recipient, with immediate effect by written notice to the Data Recipient.
- 11.6 The Data Recipient may terminate the Protocol at any time by notifying the Data Controller in writing.
- 11.7 Termination of this Protocol will automatically terminate all DSAs that are entered into under this Protocol.

12. Consequences of termination

SHROPSHIRE and TELFORD & WREKIN PARTNERSHIP DATA SHARING FRAMEWORK PROTOCOL

Subject to Clause 12.2, on termination or expiry of this Protocol or any DSA for any reason, the Data Recipient must ensure that:

- all Data is securely destroyed promptly and in any event within 14 days of the date of termination or expiry of this Protocol or any DSA; and
- confirmation of the destruction is provided to the Data Controller in a form of a Certificate of Destruction.

12.2 The Data Recipient may request that it retains use of the Data following termination or expiry of the DSA. The Data Controller shall in its absolute discretion determine whether to grant such a request. The Data Controller will notify the Data Recipient in writing if it grants permission for the Data Recipient to retain use of the Data, and the terms on which the Data Recipient shall be entitled to continue to use the Data.

13. Assignment

The Data Recipient shall not, without the prior written consent of the Data Controller, assign, notate, transfer, charge, dispose of or deal in any other manner with this Protocol and/or any DSA, or any of its rights or beneficial interests under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Protocol. The Data Controller may assign, transfer, charge, dispose of or deal in any manner with its rights and obligations under this Protocol and/or any DSA. Where it does so, the Data Controller shall notify the Data Recipient of such change.

14. Notices

14.1 Except where any provision of this Protocol states otherwise, all notices and communications sent pursuant to this Protocol shall be in writing and shall be deemed to have been duly given:

- when delivered, if delivered by hand;
- if sent by email, when the sender receives a reply confirming delivery; or
- on the second working day after mailing, first class postage pre-paid.

14.2 Notices shall be addressed to the addresses provide in the DSA or to such other addresses as the parties may notify in writing from time to time. Each party shall notify the other party in accordance with Clause 14 if the address specified in the DSA is no longer an appropriate address for the service of notices and communications.

15. Miscellaneous

15.1 Nothing in this Protocol or any arrangement contemplated by it shall constitute either party a partner, agent, fiduciary or employee of the other party.

15.2 No amendment or variation of the terms of this Protocol shall be effective

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unless made or confirmed in writing and signed by the parties to this Protocol;

- 15.3 If any provision of this Protocol shall be found by any court or body or authority of competent jurisdiction to be invalid or unenforceable, such provision shall be severed from the remainder of this Protocol which shall remain in full force and effect to the extent permitted by law.
- 15.4 The rights and remedies provided by this Protocol are cumulative and (unless otherwise provided in this Protocol) are not exclusive of any rights or remedies provided by law.
- 15.5 This Protocol does not create, confer or purport to create or confer any benefit or right enforceable by any person not a party to it (except that a person who is a permitted successor to or assignee of the rights of a party to this Protocol shall be deemed to be a party to this Protocol).
- 15.6 The Data Controller shall not be liable to the Data Recipient for any delays in performance, non-performance or breach of any of its obligations under this Protocol and/or any DSA caused by matters beyond its reasonable control. Such matters shall include (without limitation) industrial disputes, acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts of government, or acts or omissions of third parties.

16. Governing law and jurisdiction

- 16.1 This Protocol and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 16.2 Each party irrevocably agrees that, subject to Clause 16.3, the courts of England and Wales shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes or claims (including non-contractual
- 16.3 Nothing in this Clause 16 shall limit the right of the Data Controllers to take proceedings against the Data Recipient in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

17. Entire agreement

- 17.1 This Protocol constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Protocol but without prejudice to the rights and liabilities of the parties accrued before the date of this Protocol.

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17.2 Nothing in this Clause 17 shall operate to limit or exclude any liability for fraud.

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SCHEDULE 1

INTERPRETATION

1. In this Protocol the following expressions have the following meanings:

Applicable Law	All laws, regulations, orders, guidance (including codes of practice and guidance issued by the Information Commissioner) directions or determinations that are applicable to the obligations of the Data Recipient under this Protocol and/or any DSA.
Certification of Destruction	A certificate by an authorised representative of the Data recipient which certifies that the Data and all hard and soft copies thereof have been securely destroyed by the Data recipient.
Data	Any data that is provided by the Data Controllers to the Data Recipient under a DSA.
Data Breach	A breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Data
Data Controller	A data controller as defined in Section 1 (1) of the DPA
DPA	The Data Protection Act 1998. In the event that the DPA is superseded by another data protection law, the term DPA shall be construed to mean the new data protection law, and terms used in this Protocol shall be given the corresponding meaning under the new data protection law.
Indirect Loss	Any indirect loss, damage, cost, or expenses arising out of or in connection with this Protocol or it's contemplated or lack of performance.
Intellectual Property Rights	All intellectual property rights including copyright, database rights, trade-marks and trade names, patents, topography rights, design rights, trade secrets, know-how and all rights of a similar nature or having similar effect which subsist anywhere in the world, whether or not any of them are registered and applications for registrations of any of them.
Non-Identifiable Data	Information that does not relate to people including information about organisations, companies, resources, projects or information about people that has been aggregated to a level that is not about individuals but that could become Personal Data when merged with other data sets held by the Data recipient.

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SCHEDULE 1 INTERPRETATION Continued

Personal Data	Personal data as defined in Section 1 (1) of the DPA
Personnel	All employees, agents and contractors of the Data recipient who may have access to the Data
Process and Processing	Have the meaning set out in Section 1 (1) of the DPA
Publish	To make available to third parties in any form, including the production of hard copy materials, soft and/or electronic copies, emails and posting on-line.
Purpose	The purpose(s) for which the Data Recipient is permitted to use the Data, as set out in the relevant DSA.
Special Conditions	the special conditions for processing the Data as set out in the DSAs; and
Territory	The territory specified in the relevant DSA

2. In this Protocol:

- 2.1 any gender includes any other gender and the singular includes the plural and vice versa;
- 2.2 references to persons include bodies corporate, unincorporated associations, governments, states, partnerships and trusts (in each case, whether or not having separate legal personality);
- 2.3 the Schedules form part of this Protocol and the expression "this Protocol" includes the Schedules; and
- 2.4 Any reference to a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it.

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SCHEDULE 2

DATA SECURITY REQUIREMENTS

Part 1

1. Without prejudice to the Data recipient's other obligations in respect of information security, the Data Recipient shall:
 - 1.1 having regard to the state of technological development, provide a level of security (including appropriate technical and organisational measures) appropriate to:
 - the harm that might result from unauthorised or unlawful processing of Data or accidental loss, destruction or damage of such Data; and
 - the nature of the Data;
 - 1.2 ensure that access to the Data is limited to those Personnel who need access to the Data to meet the Data Recipient's obligations under this Protocol;
 - 1.3 take reasonable steps to ensure the reliability of the Data Recipient's Personnel who have access to the Data which shall include;
 - ensuring all Personnel understand the confidential nature of the Data and the issues which arise if proper care is not taken in the processing of the Data;
 - ensuring all Personnel are properly trained in data protection and to ensure that all Personnel have completed such training prior to their use of the Data. Where requested to do so the Data Recipient shall provide examples of training materials used, together with methodologies used to demonstrate that Personnel have understood the training. Training shall be repeated at regular intervals to take account of developments in law on good data protection practice and in any event on an annual basis; and
 - ensuring all Personnel are properly vetted, both during the initial recruitment process and throughout their engagement in their processing of the Data, including through the use of procedures to identify changes in personal circumstances which may affect an individual's ability to process the Data in accordance with the terms of this Protocol.
 - 1.4 Provide the Data Controller with such information, assistance and co-operation as the Data Controller may require from time to time to establish the Data Controller's and/or the Data Recipient's compliance with the DPA;

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SCHEDULE 2

DATA SECURITY REQUIREMENTS

Part 1

- 1.5 Inform the Data Controller as soon as reasonably practicable of any particular risk to the security of the Data of which it becomes aware and of the categories of Data and individuals which may be affected;
2. The Data Recipient shall promptly, and in any event not later than reasonably required in order to enable the Data Controller to fulfil its duties under the DPA;
 - 2.1 pass on to the Data Controller any enquiries or communication (including subject access requests) relating to their Personal Data or its processing; and
 - 2.2 provide such information as may be required for the purpose of responding to any such data subjects or otherwise to comply with its or the Data Controller's duties under the DPA.
3. The Data Recipient shall implement and maintain security standards, facilities, controls and procedures appropriate to the nature of the Data held by it and the harm that would be caused by its loss or disclosure including a comprehensive and up-to-date data protection policy. The Data recipient shall ensure that all its Personnel shall comply with the obligations upon them contained in the data protection policy.
4. The Data recipient shall ensure:
 - 4.1 that it has properly configured access rights for its Personnel including a well-defined joiners and leavers process to ensure access rights to the Data are properly managed;
 - 4.2 that it has proper controls in place to make sure that complex alphanumeric passwords are required for access to the Data and that training is provided in relation to the need to keep such passwords secure;
 - 4.3 it has in place procedures to identify wrongful use of Data, including the monitoring of wrongful access to Data;
 - 4.4 suitable and effective authentication processes are established and used to protect the Data;

Data is backed up on a regular basis and that any back up data which are subject to such vigorous security procedures as are necessary in order to protect data integrity, such security measures being commensurate to the nature of the data. The Data recipient shall take particular care when transporting back-up data and other personal information is transported in a safe and secure manner;

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SCHEDULE 2

DATA SECURITY REQUIREMENTS

Part 1

- 4.6 Data transferred electronically is encrypted;
 - 4.7 information stored on laptops or other portable media is encrypted and that the Data recipient maintains an accurate up to date asset register, including all such portable media used to process the Data;
 - 4.8 that Personnel are not able to access Data from home or via their own electronic device other than through a secure electronic network and that Data may not be stored in such devices;
 - 4.9 that suitable physical security measures are established commensurate to the harm that could result from the unlawful disclosure of the Data. Such physical security measures shall be identified in the Data recipients data protection policy;
 - 4.10 without prejudice to the Data Recipient's obligations to the Data Controller in relation to the disposal of Data, all Data which is disposed of must be disposed of pursuant to the Data Recipient's policy for the disposal of Data identified in the data protection policy, including the disposal of assets containing personal data, a copy of which policy shall be provided, on request, to the Data Controller; and
 - 4.11 that the Data Recipient establishes and maintains adequate data security compliance policies and audits its use of personal data in compliance with its data security policies on a regular basis and in any event annually.
5. The Data Recipient shall nominate in writing an individual to take responsibility and be accountable for compliance with the DPA, and shall provide to the Data Controller the name of that individual.

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SCHEDULE 2

Part 2

1. It is the Department of Health policy for all bodies that process NHS patient information to provide security assurance through annual completion and publication of an Information Governance (IG) Toolkit. The Department now wishes to seek this assurance from bodies that obtain NHS patient information in circumstances approved under section 251 of the National Health Service Act 2006 and supporting Regulations. A requirement within the regulations is to ensure that appropriate technical and organisational measures are taken to prevent unauthorised processing of that information. Assurance over this aspect is now provided through satisfactory IG Toolkit submissions including applications requiring sensitive data items approved by Data Access Advisory Group (DAAG) and those covering access to registration data approved by the Office of National Statistics (ONS).
2. Security responsibilities of the Data Recipient
 - 2.1 The Data recipient understands and accepts that it becomes a Data Controller for Personal Data received from the original Data Controller. As such the Data Recipient is responsible for processing the Data in accordance with the DPA and maintaining good information governance standards and practices.
 - 2.2 The Data recipient understands and accepts that it shall be responsible for the security and protection of Non-Identifiable Data received from the Data Controller. The Data Recipient shall process such Non-Identifiable Data in accordance with all Applicable Laws.
3. To provide assurance that good information governance practices are being maintained, the Data Recipient must demonstrate, and will allow the Data Controller to audit, that it either:
 - Meets or exceeds the Information Governance Toolkit standards required for their organisation type
 - Is Certified against international security standard ISO 27002
 - Has other assurance in place

This requires completion in each Data Sharing Agreement developed.

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Part 2

4. In cases where these assurance standards are not appropriate, the Data Recipient must ensure that it meets the requirements set out in paragraph 5 of this part 2 of Schedule 2, which the Data Controller reserves the right to audit.
5. The Data recipient shall:
 - 5.1 process Personal Data for purposes described in this Protocol and the relevant DSA, and which are consistent with the purposes recorded in the Data Recipient's data protection registration with the Information Commissioner's Office.
 - 5.2 process the minimum Personal data necessary (e.g. using age range rather than age is sufficient).
 - 5.3 deploy secure processes, procedures, practice and technology for storage and access commensurate with the Personal Data being processed.
 - 5.4 ensure the rights of individuals are met, such as satisfying subject access requests received, ensuring data accuracy and correcting errors, and handling objections and complaints.
 - 5.5 destroy the Data once it is no longer required for the purpose for which it was collected and confirm destruction to the Data Controller
 - 5.6 ensures all personnel with access to Personal Data provide written undertaking that they understand and will act in accordance with the DPA, will not share passwords, and will protect the confidentiality of the Personal Data;
 - 5.7 report immediately to the Data Controller any security incidents relating to the Data, and in any instances of breach of any of the terms of this Protocol; and
 - 5.8 comply with any specific legislation in relation to the Data (such as the Statistics and registration Services Act 2007).

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SCHEDULE 3

List of relevant legislation and standards

- British (International) Standard ISO 27001
- The Caldicott Report 1997
- Information: To share or not to share? The Information Governance Review March 2013
- The Freedom of Information Act 2000
- Section 251 of the NHS Act 2006 (originally enacted under Section 60 of the Health and Social Care Act 2001)
- Confidentiality: NHS Code of Practice 2003
- NHS Records Management Code of Practice (Part 1, 2006 & Part 2, 2009)
- Health and Social Care Act 2012
- The NHS Information Security management Code of Practice 2007
- The Computer Misuse Act 1990
- The Electronics Communications Act 2000
- The Regulation of Investigatory Powers Act 2000
- The Copyright, designs and Patents Act 1988
- The Re-Use of Public sector Information Regulations 2005
- The Human Rights Act 1998
- The NHS Care records Guarantee 2011 V.5
- The Social Care Record Guarantee 2009
- Anonymisation Standards for Publishing Health and Social Care Data
- Section 29 - for discharging statutory functions e.g. (The Police)

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SCHEDULE 4

Sub-licensing conditions

1. Where the data Controller consents to the data recipient sub-licensing the Data to third parties, the Data Controller may impose conditions on such sub-licensing in the DSA. Conditions may include:
 - 1.1 the duration of the sub-license;
 - 1.2 specifications of the Data that may be sub-licensed;
 - 1.3 the identity of any third parties to whom the data may be sub-licensed;
 - 1.4 The conditions on which the Data Controller may revoke the Data Recipient's right to sub-license the Data; and
 - 1.5 any special conditions that must be met by the Data recipient and/or the sub- licensee prior to any sharing of Data, which may include:
 - 1.5.1 any requirements to anonymise or pseudonymise the Data prior to onward sharing;
 - 1.5.2 a requirement for the Data Recipient to comply with any instructions issued by the Data Controller in respect of the Data;
 - 1.5.3 any specific exclusions to the scope of the sub-license; and
 - 1.5.4 any audit rights that the Data Controller may require to ensure compliance with these sub-licence conditions.
- 2 Breach of any sub-licensing conditions by the Data recipient shall entitle the Data Controller to terminate the relevant DSA and/or this Protocol.