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The authorship of this document by Bevan Brittan LLP is acknowledged by the Parties. Amendments have been agreed by the Parties

CITY OF YORK COUNCIL

and

NHS VALE OF YORK CLINICAL COMMISSIONING GROUP

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

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Toronto Square – 7th Floor | Toronto Street | Leeds LS1 2HJ
T 0370 194 1000 F 0370 194 5465

Fleet Place House | 2 Fleet Place | Holborn Viaduct | London EC4M 7RF
T 0870 194 1000 F 0870 194 7800

Kings Orchard | 1 Queen Street | Bristol BS2 0HQ
T 0870 194 1000 F 0870 194 1001

Interchange Place | Edmund Street | Birmingham B3 2TA
T 0870 194 1000 F 0870 194 5001

www.bevanbrittan.com

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THIS AGREEMENT BY DEED is made on 12 October 2016

PARTIES

- (1) **CITY OF YORK COUNCIL** (the "**Council**")
- (2) **NHS VALE OF YORK CLINICAL COMMISSIONING GROUP** (the "**CCG**")

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the City of York.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the City of York.
- (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 means through which the Partners will to 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 Metrics;
 - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services;
 - d) reduce hospital admissions and delayed transfers of care; and
 - e) maintain social care 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

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

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

Agreement means this agreement including its Schedules and Appendices.

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

Approved Expenditure means any expenditure approved by the Partners in writing or as set out in the Scheme Specification in relation to an Individual Service above any Contract Price, Permitted Expenditure or agreed Third Party Costs.

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

BCF Performance and Delivery Group means a group established to provide support in accordance with Schedule 4.

BCF Quarterly Report means the quarterly report produced by the Partners and provided to the Health and Wellbeing Board

BCF 2015 Agreement means the agreement between the Parties in respect of the Better Care Fund for the period commencing 1 April 2016.

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

Better Care Fund Plan means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund as attached as Appendix 1.

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.

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

Commencement Date means 00:01 hrs on 1 April 2016.

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

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

Contract Price means any sum payable under a Services Contract as consideration for the provision of goods, equipment or services as required as part of the Services and which, for the avoidance of doubt, does not include any Default Liability.

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) as a consequence of (i) breach by any or all of the Partners of an obligation(s) in whole or in part) under a 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.

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

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

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;
- (c) acts of God;
- (d) fire or flood;
- (e) industrial action;
- (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
- (g) any form of contamination or virus outbreak; and
- (h) any other event, in each case where such event is beyond the reasonable control of the Partner claiming relief

Functions means the NHS Functions and the Health Related Functions

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

Host Partner means for each Pooled Fund the Partner that will host the Pooled Fund and for any Non Pooled Fund the Partner that will host the Non Pooled Fund

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

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

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

Integrated Commissioning means arrangements by which both Partners commission Services in relation to an individual Scheme on behalf of each other in exercise of both the NHS Functions and Council Functions through integrated structures.

Joint (Aligned) Commissioning means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75.

Law means:

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

Lead Commissioning Arrangements means the arrangements by which one Partner commissions Services in relation to an Individual Scheme on behalf of the other Partner in exercise of both the NHS Functions and the Health Related Functions.

Lead Partner means the Partner responsible for commissioning an Individual Service under a Scheme Specification.

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 Commissioning Board means the body that is statutorily responsible, at a national level for NHS commissioning as set out in the Health and Social Care Act 2006.

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

National Guidance means any and all guidance in relation to the Better Care Fund as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, the Local Government Association either collectively or separately.

NHS 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 the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification.

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 8.4.

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

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

Partnership Board means the Integration and Transformation Board, which is responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 2 or such other arrangements for governance as the Partners agree.

Partnership Board Quarterly Reports means the reports that the Pooled Fund Manager shall produce and provide to the Integration and Transformation Board on a Quarterly basis.

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

Permitted Expenditure has the meaning given in Clause 7.3.

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

Pooled Fund means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations

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 10.

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

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

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

Services Contract means an agreement entered into by one or more of the Partners in exercise of its obligations under this Agreement to secure the provision of the Services in accordance with the relevant Individual Scheme.

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

SOSH means the Secretary of State for Health.

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

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

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

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

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date.

- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 22.
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners.
- 2.4 This Agreement supersedes the BCF 2015 Agreement without prejudice to the rights and liabilities of the Partners under the BCF 2015 Agreement.

3 GENERAL PRINCIPLES

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

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:
 - 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 Fundsin relation to Individual Schemes (the "Flexibilities")
- 4.2 Where there are Lead Commissioning Arrangements and the CCG is Lead Partner the Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.3 Where there are Lead Commissioning Arrangements and the Council is Lead Partner, the CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.
- 4.4 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the

other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

4.5 At the Commencement Date the Partners agree that the following shall be in place:

4.5.1 The following Individual Schemes with Lead Commissioning with CCG as Lead Partner:

- (a) York Integrated Care Team
- (b) Urgent Care Practitioners
- (c) Hospice at Home
- (d) Street Triage
- (e) Acute activity
- (f) CCG Community services, reablement and carers break

4.5.2 The following Individual Schemes with Lead Commissioning with Council as Lead Partner:

- (a) Community support packages
- (b) Reablement social work provision
- (c) Carers support
- (d) Community facilitators
- (e) Step up/down beds
- (f) Telecare falls and lifting
- (g) Community equipment
- (h) Home adaptations
- (i) Disabled Facilities Grant

5 FUNCTIONS

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

5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.

5.3 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.

5.4 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by each Partner in accordance with the variation procedure set out in Clause 30 (Variations). Each new Scheme Specification shall be substantially in the form set out in Schedule 1 Part 1.

5.5 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.

5.6 The introduction of any Individual Scheme will be subject to business case approval by the Integration Transformation Board in accordance with the variation procedure set out in Clause 30 (Variations).

6 COMMISSIONING ARRANGEMENTS

General

6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification

- 6.2 The Integration and Transformation Board will report back to the Health and Wellbeing Board as required by its terms of reference.
- 6.3 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 6.4 Each Partner shall keep the other Partner and the Integration and Transformation Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.5 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
 - 6.5.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
 - 6.5.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.)
- 6.6 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts.

Integrated Commissioning

- 6.7 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme:
 - 6.7.1 the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
 - 6.7.2 Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

Appointment of a Lead Partner

- 6.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
 - 6.8.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.8.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
 - 6.8.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;

- 6.8.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
- 6.8.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 6.8.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
- 6.8.7 undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;
- 6.8.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 6.8.9 keep the other Partner and Integration Transformation Board 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.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners. At the Commencement Date there shall be a single Pooled Fund in respect of this Agreement.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to Clause 0, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
 - 7.3.1 the Contract Price;
 - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
 - 7.3.3 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Integration Transformation Board
 - 7.3.4 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Integration and Transformation Board
 ("Permitted Expenditure")
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with Clause 0.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
 - 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 7.6.2 providing the financial administrative systems for the Pooled Fund; and

- 7.6.3 appointing the Pooled Fund Manager;
- 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund, the Partners shall agree:
 - 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:
 - 8.2.1 the day to day operation and management of the Pooled Fund;
 - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.2.5 reporting to the Integration and Transformation Board as required by this Agreement and by the Integration and Transformation Board;
 - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 8.2.7 preparing and submitting to the Integration Transformation Board Quarterly Reports (or more frequent reports if required by the Integration Transformation Board) 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 Integration Transformation Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance;
 - 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.
 - 8.2.9 preparing and submitting reports to NHS England as required.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:
 - 8.3.1 have regard to National Guidance and the recommendations of the Integration and Transformation Board; and
 - 8.3.2 be accountable to the Partners for delivery of those responsibilities.
- 8.4 The Integration and Transformation Board may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

9 NON POOLED FUNDS

9.1 There are no non-pooled funds in this agreement

10 FINANCIAL CONTRIBUTIONS

10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 3.

10.2 The Financial Contribution of the CCG and the Council to any Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners on an annual basis

10.3 Financial Contributions will be paid as set out in Schedule 3.

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

11 NON FINANCIAL CONTRIBUTIONS

11.1 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 Partner 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.

11.2 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 Services Contracts and the Pooled Fund).

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

12.1 The Partners have agreed a set of principles that describe the risk sharing arrangements pertinent to the Fund as set out in Schedule 3.

Overspends in Pooled Fund

12.2 The Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.

12.3 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 Integration Transformation Board in accordance with Clause 12.4.

12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Integration and Transformation Board is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule 3 shall apply.

Overspends in Non Pooled Funds

- 12.5 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 Integration Transformation Board.
- 12.6 Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partner and the Integration Transformation Board.

Underspend

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

13 CAPITAL EXPENDITURE

- 13.1 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.
- 13.2 The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.

14 VAT

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

15 AUDIT AND RIGHT OF ACCESS

- 15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the 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.
- 15.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.
- 15.3 The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 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 (including a Loss arising under an Individual Scheme) 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 any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Integration and Transformation Board.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;
 - 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement)
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

Conduct of Claims

- 16.6 In respect of the indemnities given in this Clause 16:
- 16.6.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
 - 16.6.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters.
 - 16.6.3 the indemnifying and indemnified Partners shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

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

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

18 CONFLICTS OF INTEREST

18.1 The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in schedule 6.

19 GOVERNANCE

19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.

19.2 The Partners have established an Integration and Transformation Board to progress development of integrated services for the local population (as defined by the Health and Wellbeing Board population).

19.3 The Integration and Transformation Board is based on a joint working group structure. Each member of the Integration and Transformation Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Integration and Transformation Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 3.

19.4 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.5 The BCF Performance and Delivery Group will provide operational oversight and monitoring of the individual schemes and overall performance of Providers. It will meet monthly and act in accordance with the risk share principles as set out in Schedule 3.

19.6 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.

19.7 The Integration and Transformation Board shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 3.

19.8 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.

19.9 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Integration Transformation Board and Health and Wellbeing Board.

20 REVIEW

20.1 The Partners shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Commissioning Board.

- 20.2 Save where the Integration and Transformation Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement, and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.3 Subject to any variations to this process required by the Integration and Transformation Board, Annual Reviews shall be conducted in good faith.
- 20.4 The Partners shall within 30 Working Days of the annual review prepare an Annual Report including the information as required by National Guidance and any other information required by the Health and Wellbeing Board. A copy of this report shall be provided to the Health and Wellbeing Board and Integration and Transformation Board.
- 20.5 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

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

22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Partner giving not less than 6 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund Requirements continue to be met.
- 22.3 If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.4 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.5 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.5.1 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;
- 22.5.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 22.5.3 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing Provided that the Lead Partner shall not be required to make

any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.

22.5.4 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.

22.5.5 the Integration and Transformation Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and

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

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

23 DISPUTE RESOLUTION

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

23.2 The Authorised 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.

23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective Chief Executive (the Council) and Accountable Officer (the CCG) 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.

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

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

24 FORCE MAJEURE

24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.

24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including

evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.

- 24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.
- 24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

25 CONFIDENTIALITY

- 25.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 25, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 25.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date; and
- 25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:
- (a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- (b) is obtained by a third party who is lawfully authorised to disclose such information.
- 25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.
- 25.3 Each Partner:
- 25.3.1 may only disclose Confidential Information to its employees and professional advisors to the extent strictly necessary for such employees to carry out their duties under the Agreement; and
- 25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
- 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

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

27 OMBUDSMEN

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

28 INFORMATION SHARING

The Partners will follow the information governance protocol set out in Schedule 8, and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

29 NOTICES

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

29.1.1 personally delivered, at the time of delivery;

29.1.2 sent by facsimile, at the time of transmission;

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

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

29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

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

29.3.1 if to the Council, addressed to the Director of Adult Social Care (Martin Farran); Tel: 01904 554045; E.Mail: martin.farran@york.gov.uk;

29.3.2 if to the CCG, addressed to the Chief Operating Officer (Rachel Potts); Tel: 01904 0555787; E.Mail: Rachel.potts@nhs.net

30 VARIATION

30.1 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.

31 CHANGE IN LAW

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

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

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

32 WAIVER

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

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

35 EXCLUSION OF PARTNERSHIP AND AGENCY

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

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

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

37 ENTIRE AGREEMENT

37.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.

37.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

38 COUNTERPARTS

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

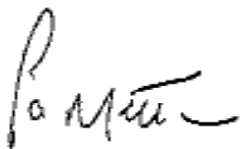
39 GOVERNING LAW AND JURISDICTION

39.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

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

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

Signed as a deed on behalf of **VALE OF YORK CLINICAL COMMISSIONING GROUP**



Phil Mettam
Accountable Officer

The Common Seal of the **COUNCIL OF THE CITY OF YORK** was hereto affixed in the presence of:



Martin Farran
Director of Adult Social Care

SCHEDULE 1 – SCHEME SPECIFICATION**Part 1 – Template Services Schedule****TEMPLATE SERVICE SCHEDULE**

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

1 OVERVIEW OF INDIVIDUAL SERVICE

The list of Individual Schemes is detailed in Part 2 of this schedule. The detail of the Individual Schemes is in Annex 1 – Better Care Fund submission dated 28 July 2016 attached as Appendix 1 to Schedule 5 of this agreement.

2 AIMS AND OUTCOMES

All schemes contribute to the vision as specified in the BCF submission.

3 THE ARRANGEMENTS

The Lead Partner for each scheme is detailed in Schedule 1 Part 2.

4 FUNCTIONS

The functions of the schemes are described in Annex 1 – the Better Care Fund submission dated 28 July 2016 attached as Appendix 1 to Schedule 5 of this agreement.

5 SERVICES

The services of the schemes provided are described in Annex 1 – the Better Care Fund submission dated 28 July 2016 attached as Appendix 1 to Schedule 5 of this agreement.

6 COMMISSIONING, CONTRACTING, ACCESS

The Lead Partner's commissioning, contracting and eligibility thresholds will be followed for each scheme. These are detailed in Part 2 of this Schedule.

7 FINANCIAL CONTRIBUTIONS

Financial Year 2016/2017:

	CCG contribution	Council Contribution
The Better Care Pooled Fund (Total = £12.203M)	£11.200M	£1.003M

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

8 FINANCIAL GOVERNANCE ARRANGEMENTS

The overall governance is detailed in Clause 19 and Schedule 3.

9 NON FINANCIAL RESOURCES

The Lead Partner will ensure adequate non-financial resources are deployed to support the Individual Schemes.

10 STAFF

No staff are transferring under TUPE as part of this arrangement. The Lead Partner will ensure adequate staffing resource is deployed to support the schemes.

11 ASSURANCE AND MONITORING

The Lead Partner will be responsible for providing the individual scheme assurance and for managing performance. Each scheme will report to the Integration Transformation Board using a format to be agreed by the Better Care Fund Programme and Delivery Group.

12 LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address	Fax Number
Council	Martin Farran Director of Adult Social Care	West Offices, Station Rise, York, YO1 6GA	01904 554045	Martin.farran@york.gov.uk	N/A
CCG	Rachel Potts Chief Operating Officer	West Offices, Station Rise, York, YO1 6GA	01904 555787	Rachel.potts@nhs.net	N/A

13 INTERNAL APPROVALS

The Lead Partner's internal approval mechanism will operate for each Individual Scheme.

14 RISK AND BENEFIT SHARE ARRANGEMENTS

As per Clause 12 of this Agreement and Schedule 3.

15 REGULATORY REQUIREMENTS

Each Lead Partner will comply with their respective regulatory regime.

16 INFORMATION SHARING AND COMMUNICATION

Information can be shared in line with the Information Governance protocol in Schedule 8.

17 DURATION AND EXIT STRATEGY

The duration of this agreement is 12 months and termination is in line with the provision in Clause 22 of the main agreement.

18 OTHER PROVISIONS

There are no other provisions to consider.

PART 2 – AGREED SCHEME SPECIFICATIONS

Scheme	2016/17 current £'000s	Lead Partner
York Integrated Care Hub	625	CCG
Urgent Care Practitioners (part fund with NYCC & East Riding of Yorkshire Council)	569	CCG
Hospice at Home (part fund with NYCC)	170	CCG
Street Triage (part fund with NYCC)	150	CCG
Remaining acute activity from 15/16 savings target	2,696	CCG
Community Support packages	2,174	CYC
Reablement Social Work provision	137	CYC
Carers Support	655	CYC
Community Facilitators	40	CYC
CCG Community Services Reablement and Carers Breaks	1,684	CCG
Reablement	1,099	CYC
Step Up/Down Beds	300	CYC
Telecare Falls and Lifting	192	CYC
Community equipment	180	CYC
Home adaptations	75	CYC
Carers assessments and Support, Independent Mental Health Advocacy etc	454	CYC
Disabled Facilities Grant	1,003	CYC
Total	12,203	

SCHEDULE 2 – GOVERNANCE

Strategic oversight of the BCF is provided by the York Health and Wellbeing Board supported by the Integration and Transformation Board as set out below. Operational oversight and co-ordination of performance data and reporting is met through the BCF Performance and Delivery Group as set out in Schedule 3.

Additional ad hoc reporting to other groups may be required at the request of the Health and Wellbeing Board or partner organisations.

1 Integration and Transformation Board

1.1 The membership of the Integration and Transformation Board will be as follows:

Vale of York CCG; City of York Council; Healthwatch; Tees, Esk & Wear Valley NHS Foundation Trust; York NHS Foundation Trust; North Yorkshire County Council; Vale of York Clinical Network; Voluntary Sector Network.

2 Role of Integration and Transformation Board

2.1 The role of the Integration and Transformation Board shall be to:

- 2.1.1 provide strategic direction on the Individual Schemes;
- 2.1.2 receive the financial and activity information;
- 2.1.3. review the operation of this Agreement and performance manage the Individual Services;
- 2.1.4 agree such variations to this Agreement from time to time as it thinks fit;
- 2.1.5 review and agree annually a risk assessment;
- 2.1.6 review and agree annually revised Schedules as necessary;
- 2.1.7 request such protocols and guidance as it may consider necessary in order to enable the Pooled Fund Manager to approve expenditure from a Pooled Fund;
- 2.1.8 co-operate with the Pooled Fund Manager in meeting reporting requirements in accordance with relevant National Guidance; and
- 2.1.9 report directly to the H&WB on a Quarterly basis in accordance with relevant National Guidance

3 Integration and Transformation Board Support

3.1 The Integration and Transformation Board will be supported by officers from the Partners from time to time.

4 Meetings

4.1 The Integration and Transformation Board will meet monthly at a time to be agreed.

4.2 The quorum for meetings of the Integration and Transformation Board shall be a minimum of one representative from each of the Partner organisations.

- 4.2.1 Decisions of the Integration and Transformation Board shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Integration and Transformation Board. If no unanimity

is reached on the second occasion it is discussed then the matter shall be dealt with in accordance with the dispute resolution procedure set out in the Agreement.

4.2.2 Where a Partner is not present and has not given prior written notification of its intended position on a matter to be discussed, then those present may not make or record commitments on behalf of that Partner in any way.

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

5 Delegated Authority

5.1 The Integration and Transformation Board is authorised within the limited delegated authority for its members (which is received through their respective organisation's own financial scheme of delegation) to:

5.1.1 authorise commitments which exceed or are reasonably likely to lead to exceed the contributions of the Partners to the aggregate contributions of the Partners to any Pooled Fund; and

5.1.2 authorise a Lead Partner to enter into any contract for services necessary for the provision of Services under an Individual Scheme

6 Information and Reports

6.1 Each Individual Scheme Manager shall supply to the Integration and Transformation Board, via the BCF Performance and Delivery Group on a regular basis, (monthly except where otherwise specified) the financial and activity information as required under the Agreement.

7 Post-termination

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

SCHEDULE 3 - FINANCIAL ARRANGEMENTS, RISK SHARE AND OVERSPENDS**Risk Share Principles (as set out in the BCF Plan)**

- Lead Partners should look to share gains as well as losses to incentivise good performance.
- All efficiencies/underspends generated from activities within the scope of the programme are attributed to the programme until the programme is in financial balance.
- When the programme is in balance, ideally any over achievement should be used to fund additional transformation activities and adding to the size of the BCF.
- As the Partnership Board reporting to the Health & Wellbeing Board, the Integration and Transformation Board should support recommendations on where to invest financial gains relating to the BCF plan.
- Lead Partners should spread risks and gains around the system to recognise the responsibilities/contributions of different partners.
- Providers should bear their share of risk and it is the responsibility of the commissioners, lead or joint, to agree a risk management plan with the provider.
- Where services are commissioned then the costs of failure should be recovered through the contract from the provider.
- Lead Partners should make a decision on financial risk share on a scheme by scheme basis.
- When services are jointly commissioned then losses and gains will be split 50/50 between commissioners.
- In a situation where there is a lead commissioner then losses and gains will be managed through discussion between CYC and CCG.

1 Financial Contributions

- 1.1 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 Agreement.
- 1.2 Subject to any contrary provision in the relevant Scheme Specification, the Parties agree that Overspends or Underspends shall be managed in accordance with this Schedule 3.
- 1.3 The following financial contributions shall make up the fund:

		£'s
Disabled Facilities Grant	Pass through grant to the Council	1,003,471
City of York Council contribution		1,003,471
Social care protection	Minimum contribution from CCG	3,412,020
Care Act	Indicative commitment – contribution in addition to minimum from CCG	454,000
Social care protection	Additional contribution from CCG	7,333,488
NHS Vale of York CCG contribution		11,199,508
	Total	12,202,979

The expenditure against the fund of £12.203M is net of £1.2M of additional efficiencies the Partners have jointly agreed proposals for. These are a combination of BCF and non-BCF schemes and are broken down as follows:

- Mental health interventions (£200K)
- Falls project funded by DFG monies (£250K)
- Roll-out of the York Integrated Care Team (£517K)
- Joint commissioning of continuing healthcare (£233K)

1.5 These benefits should play out across core Partner budgets and therefore allow the BCF expenditure plan as described in Schedule 1. Should the sum of £1.2M not be achieved each Lead Partner shall contribute equal amounts up to 50% of £1.2M in order to ensure the Fund is in balance at 31 March 2017. This will be monitored and evaluated as part of the monthly BCF Performance and Delivery Group meeting.

1.6 The following payment schedule shall be applied to the fund:

Date	Method of payment	Payee	Amount
May	Invoice	City of York Council	£3,412,020
June – Q1 payment	Invoice	City of York Council	£473,500
September – Q2 payment	Invoice	City of York Council	£473,500
December – Q3 payment	Invoice	City of York Council	£473,500
March – Q4 payment	Invoice	City of York Council	£473,500
		Total	£5,306,020

2. Overspends/Underspends

2.1 The Integration and Transformation Board shall consider what action to take in respect of any actual or potential Overspends.

2.2 The Integration and Transformation Board shall, acting reasonably, having taken into consideration all relevant factors including, where appropriate the Better Care Fund Plan and any agreed outcomes and any other budgetary constraints agree appropriate action in relation to Overspends which may include the following:

- 2.1 whether there is any action that can be taken in order to contain expenditure;
- 2.2 whether there are any underspends that can be vired from any other fund maintained under this Agreement;
- 2.3 how any Overspend shall be apportioned between the Partners, such apportionment to be just and equitable taking into consideration all relevant factors.
- 2.4 The Partners agree to co-operate fully in order to establish an agreed position in relation to any Overspends.

2.3 Subject to any continuing obligations under any Service Contract entered into by either Partner, either Partner may give notice to terminate a Service of Individual Scheme where the Scheme Specification provides and where the Service does not form part of the Better Care Fund Plan.

2.4 Underspends on individual schemes will first be used by each responsible body to offset overspends on schemes within their overall responsibility. If an overall net underspend by a responsible body occurs this will be returned to the pooled budget for use by agreement of all partners in year.

2.5 Each party to the BCF remains responsible for their contracted expenditure and contribution to the pooled budget.

2.6 There will be flexibility to increase the Pooled Fund subject to agreement by all parties, and by approval of the Health and Wellbeing Board, subject to organisational governance.

3. Financial Governance

- 3.1 Responsibility for the management of the BCF schemes and activity sits with the BCF Performance and Delivery Group accountable to the Integration and Transformation Board where issues and disputes will be resolved. The Health & Wellbeing Board is the local strategic accountable body for all aspects of the BCF Plan.
- 3.2 Overall financial management continues to be the responsibility of the individual organisations (the statutory body) and cannot be abdicated to the BCF. Parties to the BCF remain responsible and accountable for delivery of their own financial performance.
- 3.4 Accounting arrangements will follow those incumbent on the host and appropriate accounting standards will apply.

SCHEDULE 4 – PERFORMANCE ARRANGEMENTS

1. A BCF Performance and Delivery Group has been established to support delivery of the BCF Plan (see Annex 1) for 2016/17.
2. The BCF Performance and Delivery Group will feed into the Integration and Transformation Board to report on operational issues and performance against the key metrics set within the plan.
3. The BCF Performance and Delivery Group will co-ordinate activities to ensure completion of the NHS England quarterly monitoring report as per the milestones set out below (subject to final confirmation of dates each quarter):

Period April 16 – June 16	Quarter 1	return due September 2016
Period July 16 – September 16	Quarter 2	return due November 2016
Period October 16 – December 16	Quarter 3	return due February 2017
Period January 17 – March 17	Quarter 4	return due May 2017
4. The BCF Performance and Delivery Group will be chaired by one of the Lead Partners.
5. Action notes will be maintained by one of the Lead Partners.
6. Freedom of Information – notes will be made available in line with legislative requirements but will not be routinely published.
7. The BCF Performance and Delivery Group will meet regularly, usually on a monthly basis and will include representation from partners of the Integration and Transformation Board (self-selecting).
8. A local performance monitoring dashboard will be produced by the BCF Performance and Delivery Group to monitor performance and inform any reports e.g. local Health and Wellbeing Board, national quarterly returns. This will be shared with partners as required.

SCHEDULE 5 – BETTER CARE FUND PLAN

1. The BCF plan is appended as Appendix 1:

Y:\VOYCCG\Innovation and Improvement\Better Care Fund\BCF Submissions\1617 Submission\York\16-17 Narrative Document\YORK narrative submission HWBB 20072016_FINAL 280716 submitted.pdf.

SCHEDULE 6 – POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

1. If a Partner becomes aware of any actual or potential conflict of interest which is likely to affect this Agreement, the Partner who is aware of the conflict must immediately declare it to the other. The other Partner may then, without affecting any other right it may have under Law, take whatever action under this Contract as it deems necessary.
2. Providers delivering Individual Schemes must ensure that, in delivering the Services, all Staff comply with Law, Guidance and Good Practice in relation to gifts, hospitality and other inducements and actual or potential conflicts of interest. Compliance will be managed in line with the relevant lead Partner's policy and/or contract for the Individual Scheme.

SCHEDULE 7 – INFORMATION GOVERNANCE PROTOCOL

1. As per Multi-Agency Overarching Information Sharing Protocol.