

Dated

2016

**EAST SUSSEX COUNTY COUNCIL
and
NHS EASTBOURNE, HAILSHAM AND SEAFORD
CLINICAL COMMISSIONING GROUP
and
NHS HASTINGS AND ROTHER CLINICAL
COMMISSIONING GROUP**

**FRAMEWORK SECTION 75 PARTNERSHIP AGREEMENT
RELATING THE BETTER CARE FUND AND THE
COMMISSIONING OF HEALTH AND SOCIAL CARE
SERVICES**

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THIS AGREEMENT is made on day of

2016

PARTIES

- (1) **EAST SUSSEX COUNTY COUNCIL** (the "**Council**")
- (2) **NHS EASTBOURNE, HAILSHAM AND SEAFORD CLINICAL COMMISSIONING GROUP**
- (3) **NHS HASTINGS AND ROTHER CLINICAL COMMISSIONING GROUP**
- (4) The two Clinical Commissioning Groups, reference in (2) and (3) above, are collectively referenced to as the "CCG".

BACKGROUND

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the county of East Sussex.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the county of East Sussex, within the geographic areas covered by the Eastbourne, Hailsham and Seaford CCG and Hastings and Rother CCG
- (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.
- (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;[and]
 - 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 have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (H) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

Affected Partner means, in the context of Clause 22, the Partner whose obligations under the Agreement have been affected by the occurrence of a Force Majeure Event

Agreement means this agreement including its Schedules and Appendices.

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

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

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

Better Care Fund Plan means the plan attached at Schedule 3 setting out the Partners plan for the use of the Better Care Fund.

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

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

Commencement Date means 00:01 hrs on 1 April 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 to a Provider under a Service Contract as consideration for the provision of Services and which, for the avoidance of doubt, does not include any Default Liability or Performance Payment.

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

Financial Contributions means the financial contributions made by each Partner to 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 Investments Descriptions (Schedule 3).

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

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

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

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

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

Law means:

- (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 Council Functions.

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

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

Overspend means any expenditure from the 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.

Programme Board means the East Sussex Better Together Programme Board responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

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 9.

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

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

Scheme Description 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 Description.

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

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

SOSH means the Secretary of State for Health.

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

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 and Working Days shall be interpreted accordingly.

- 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 20.
- 2.3 The duration of the arrangements for each individual scheme shall be as set out in the relevant Scheme Specification.

3 GENERAL PRINCIPLES

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

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:
- 4.1.1 East Sussex Better Together (ESBT): The Better Care Fund Pooled Budget operates within the governance of the East Sussex Better Together Programme Board. Oversight and reporting of the pooled budget will be within the ESBT structure.
 - 4.1.2 Joint Commissioning Arrangements: The East Sussex Health and Wellbeing Board and the governing bodies of the two CCGs are ultimately responsible for the delivery and management of risk of the ESBT Programme and the Better Care Fund. In practice, the development of all joint strategic planning activity and the management of existing contracts will be overseen by the ESBT Programme Board Supported by a programme management operating structure.
 - 4.1.3 The ESBT Programme Board will receive monthly highlight reports from the operational commissioning groups and all programmes of work will be the subject of escalation

procedures including those funded through the Better Care Fund, if they are not performing as intended.

4.1.4 The Better Care Fund pooled budget maybe subject to amendment as services, external to the original pooled budget, are recommissioned and, potentially brought within the Pooled Budget arrangements.

4.2 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.

4.3 Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

5 FUNCTIONS

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

5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.

5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 shall be completed and agreed between the Partners. The initial scheme specification is set out in schedule 1 part 2.

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

5.5 The introduction of any Individual Scheme will be subject to business case approval by and the East Sussex Better Together Programme Board.

6 COMMISSIONING ARRANGEMENTS

Joint Commissioning Arrangements

6.1 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.

6.2 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.

6.3 The Partners shall comply with the arrangements in respect of the Joint Commissioning as set out in the relevant Scheme Specification.

6.4 Each Partner shall keep the other Partners 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 The Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.

Appointment of a Lead Commissioner

- 6.6 Where there are Lead Commissioning Arrangements in respect of an Service Scheme the Lead Commissioner shall:
- 6.6.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
 - 6.6.2 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.
 - 6.6.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.6.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
 - 6.6.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 6.6.6 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;
 - 6.6.7 undertake performance management and contract monitoring of all Service Contracts;
 - 6.6.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
 - 6.6.9 keep the other Partner and the relevant joint commissioning governance boards regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a 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 set out in Schedule 3 Scheme Investments.
- 7.2 The Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 It is agreed that the monies held in a Pooled Fund may only be expended on permitted expenditure, as agreed annually by the East Sussex Better Together Programme Board; being the following:
- 7.3.1 Service contracts
 - 7.3.2 Transfer of funding to District and Borough Councils, for Disabled Facilities Grants
 - 7.3.3 Capital Grants
 - 7.3.4 Specific funding allocations, as determined within Better Care Fund Guidance.
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners.

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

8 POOLED FUND MANAGEMENT

- 8.1 The Pooled Fund Manager for the Better Care Fund Pooled Budget shall have the following duties and responsibilities:
- 8.1.1 the day to day operation and management of the Pooled Fund;
 - 8.1.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 8.1.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 8.1.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 8.1.5 reporting to the East Sussex Better Together Programme Board as required by the East Sussex Better Together Programme Board and the relevant Scheme Specification;
 - 8.1.6 ensuring action is taken to manage any projected Underspend or Overspend relating to the Pooled Fund in accordance with this Agreement;
 - 8.1.7 preparing and submitting to the East Sussex Better Together Programme Board quarterly reports (or more frequent reports if required by the East Sussex Better Together Programme 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 East Sussex Better Together Programme 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.
 - 8.1.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 8.2 In carrying out their responsibilities as provided under Clause 8.1 the Pooled Fund Manager shall have regard to the recommendations of the East Sussex Better Together Programme Board and shall be accountable to the Partners.

9 FINANCIAL CONTRIBUTIONS

- 9.1 The Financial Contribution of the CCG and the Council to the Better Care Pooled Budget for the 2016/17 Financial Year is as set out in Schedule 3 - Scheme Descriptions.
- 9.2 Future financial contributions will be determined annually by the ESBT Programme Board.

9.3 Financial Contributions to the Better Care Fund Pooled Budget will be made on 15 April, 15 June, 15 September and 15 December for each financial year.

9.4 With the exception of Clause 12, 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 the East Sussex Better Together Programme Board minutes and recorded in the budget statement as a separate item.

10 NON FINANCIAL CONTRIBUTIONS

10.1 The Better Care Fund pooled budget will operate under the governance arrangements of East Sussex Better Together.

11 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

11.1 The partners have agreed risk share arrangements as set out in Schedule 1, which provide for financial risks arising within the commissioning of services from the Better Care Fund pooled budget and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.

Overspends on Better Care Fund pooled budget

11.2 Subject to Clause [11.1], the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.

11.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 11.4.

11.4 In the event that the Pooled Fund Manager identifies an actual or projected overspend the Pooled Fund Manager must ensure that the East Sussex Better Together Programme Board is informed of the actual or projected Overspend as soon as reasonably possible.

Underspend on Better Care Fund pooled budget

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

12 VAT

12.1 The Partners shall agree the treatment of the Better Care Fund pooled budget for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.

13 AUDIT AND RIGHT OF ACCESS

13.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled Budget and the certification of the annual return of those accounts.

13.2 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.

14 LIABILITIES AND INSURANCE AND INDEMNITY

- 14.1 Subject to Clause 14.2, and 14.3, if a Partner (“First Partner”) incurs a loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner (“Other Partner”) which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 14.2 Clause 14.1 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 Partnership Board.
- 14.3 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 14. the Partner that may claim against the other indemnifying Partner will:
- 14.3.1 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;
 - 14.3.2 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);
 - 14.3.3 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.
- 14.4 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.
- 14.5 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.

15 STANDARDS OF CONDUCT AND SERVICE

- 15.1 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).
- 15.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Budget 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.
- 15.3 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.

15.4 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.

16 CONFLICTS OF INTEREST

16.1 The Partners shall comply with the agreed policy for identifying and managing conflicts of interest. A Register of Interests will be maintained by each organisation and relevant interests notified to the East Sussex Better Together Programme Board.

17 GOVERNANCE

17.1 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.

17.2 The Partners have established the East Sussex Better Together Programme Board to lead the development of integrated health and social care service within East Sussex. The Better Care Fund pooled budget will operate within the East Sussex Better Together Programme.

17.3 The terms of reference of the East Sussex Better Together Programme Board shall be as set out in Schedule 2 (Governance Arrangements).

17.4 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.

17.5 The East Sussex Better Together Programme Board shall be responsible for the overall approval of commissioned services, ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.

18 REVIEW

18.1 Save where the East Sussex Better Together Programme 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 three (3) months of the end of each Financial Year.

18.2 Subject to any variations to this process required by the East Sussex Better Together Programme Board, annual reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in this agreement.

18.3 The Partners shall within twenty (20) Working Days of the annual review prepare a joint annual report documenting the matters referred to in this Clause 18. A copy of this report shall be provided to the East Sussex Better Together Programme Board.

18.4 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England, the Partners shall provide full co-operation with NHS England to agree a recovery plan.

19 COMPLAINTS

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

20 TERMINATION & DEFAULT

20.1 This Agreement may be terminated by any Partner giving not less than twelve (12) months' notice in writing to terminate this Agreement.

- 20.2 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 21.
- 20.3 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners’ rights in respect of any antecedent breach.
- 20.4 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 20.4.1 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;
- 20.4.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 20.4.3 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.
- 20.4.4 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.
- 20.4.5 The East Sussex Better Together Programme Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any Service Contracts and commitments relating to this Agreement; and
- 20.4.6 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.

21 DISPUTE RESOLUTION

- 21.1 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.
- 21.2 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 21.1, at a meeting convened for the purpose of resolving the dispute.
- 21.3 If the dispute remains after the meeting detailed in Clause 21.2 has taken place, the Partners’ respective Chief Operating Officer(s) and/or Director(s) 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.
- 21.4 If the dispute remains after the meeting detailed in Clause 21.3 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.

21.5 Nothing in the procedure set out in this Clause 21 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.

22 FORCE MAJEURE

22.1 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.

22.2 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.

22.3 As soon as practicable, following notification as detailed in Clause 22.2, the Partners shall consult with each other in good faith and use best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 22.4, facilitate the continued performance of the Agreement.

22.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate this 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 22.

23 CONFIDENTIALITY

23.1 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:

23.1.1 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

23.1.2 the provisions of this Clause 23 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.

23.2 Nothing in this Clause 23 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.

23.3 Each Partner:

- 23.3.1 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
- 23.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 23.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 23;
- 23.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

24 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS

- 24.1 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.
- 24.2 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 24 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Regulations.

25 OMBUDSMEN

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

26 INFORMATION SHARING

- 26.1 The Partners will follow the Information Governance Protocol set out in Schedule 4, and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

27 NOTICES

- 27.1 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 27.3 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:
 - 27.1.1 personally delivered, at the time of delivery;
 - 27.1.2 sent by facsimile, at the time of transmission;
 - 27.1.3 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
 - 27.1.4 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.
- 27.2 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).

27.3 The address for service of notices as referred to in Clause 27.1 shall be as follows unless otherwise notified to the other Partner in writing:

27.3.1 if to the Council, addressed to the Director of Adult Social Care and Health for
East Sussex County Council, County Hall, St Anne's Crescent, Lewes, East Sussex, BN7 1UE

27.3.2 if to the CCG, addressed to Chief Officer for:

(a) NHS Eastbourne, Hailsham and Seaford Clinical Commissioning Group

36-38 Friars Walk, Lewes, east Sussex, BN7 2PB

(b) NHS Hastings and Rother Clinical Commissioning Group

Bexhill Hospital, Holliers Hill, Bexhill on Sea, TN40 2DZ

28 VARIATION

28.1 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.

29 CHANGE IN LAW

29.1 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.

29.2 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.

29.3 In the event of failure by the Partners to agree the relevant amendments to this Agreement (as appropriate), Clause 21 (Dispute Resolution) shall apply.

30 WAIVER

30.1 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.

31 SEVERANCE

31.1 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.

32 ASSIGNMENT AND SUB CONTRACTING

32.1 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.

33 EXCLUSION OF PARTNERSHIP AND AGENCY

- 33.1 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.
- 33.2 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:
- 33.2.1 act as an agent of the other;
 - 33.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 33.2.3 bind the other in any way.

34 THIRD PARTY RIGHTS

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

35 ENTIRE AGREEMENT

- 35.1 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.
- 35.2 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 Partners.

36 COUNTERPARTS

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

37 GOVERNING LAW AND JURISDICTION

- 37.1 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.
- 37.2 Subject to Clause 21 (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).

SCHEDULE 1

RISK SHARE PRINCIPLES IN RESPECT OF THE EAST SUSSEX BETTER CARE FUND

Background

This agreement describes the key principles underpinning the risk share arrangements between Commissioners in East Sussex in respect of the Better Care Fund (BCF). These commissioners comprise High Weald Lewes Havens (HWLH) CCG Eastbourne, Hailsham and Seaford (EHS) CCG, Hastings and Rother (HR) CCG and East Sussex County Council (ESCC). These principles should be applied consistently to each East Sussex Health and Wellbeing Board Framework Section 75 agreement relating to the Better Care Fund and the Commissioning of Health and Social Care Services within East Sussex.

The governance of the risk share principles on behalf of HWLH and ESCC will be the Connecting 4 You Programme Board who will review this schedule annually.

For 2016/17 the contributions to the East Sussex BCF totals £43.499m. The following table details these contributions by organisation:

| | Total East Sussex HWB £m | Total HR /EHS/ ESCC s75 £m | Total HWLH / ESCC s75 £m |
|----------|--------------------------|----------------------------|--------------------------|
| HWLH CCG | 10.583 | 0 | 10.583 |
| EHS CCG | 12.955 | 12.955 | 0 |
| HR CCG | 13.263 | 13.263 | 0 |
| ESCC | 6.698 | 5.016 | 1.682 |
| Total | 43.499 | 31.234 | 12.265 |

The BCF is intended to provide a framework for investment in schemes that promote better integration between social and health care services, to improve people's health and social care experience while also delivering the benefits identified in the Connecting 4 You and ESBT programmes.

Individual organisations are jointly responsible for risk managing the BCF s75 pooled budget arrangements and shall reflect and report identified organisational risk in their own corporate risk registers.

Where there is any inconsistency between the risk share principles set out in this schedule and a s75 agreement, the relevant Programme Board will determine the appropriate action.

Principle 1

The risk share fund and contingency arrangement are intended to address financial risks associated with the delivery of the 2016/17 BCF plan and ensures BCF investment does not cause a CCG partner to over extend in financial terms and put the achievement of its financial balance at risk.

Principle 2

That a risk share fund is established for each CCG which as a minimum is equal to the difference between the value of planned BCF healthcare activity reductions and the reductions realised within 2016/17 healthcare contracts. The full value of the risk share fund is retained by each CCG from their BCF allocation which is paid into the pooled budget at the beginning of the year.

Principle 3

A contingency fund is established at the beginning of each year within the Pooled Fund equal to the difference between total BCF investment (excluding Risk Share Funds) and forecast expenditure in total of the individual approved BCF schemes.

Principle 4

New business cases for BCF will be approved by the relevant Programme Board or delegated sub-committee. Investment shall include a clear appraisal of financial risks associated with delivery and provide clarity on whether financial risk crystalizing is an appropriate call on risk share fund or contingency arrangements. The relevant Programme Board shall agree all investment decisions and risk handling mechanisms.

Principle 5

The lead commissioner as identified within the s75 agreements will be responsible for reporting to the Programme Boards the achievement of the BCF plans and for ensuring commissioning contracts reflect BCF savings and investment plans.

Principle 6

Each organisation will annually and following a properly conducted risk assessment of each BCF saving and investment scheme provide the relevant Programme Board with a detailed plan of how the total quantum of risk is mitigated. The assessment shall include the likelihood and impact of each scheme delivering the expected outcomes at an organisational level in terms of activity reduction, cost reduction and operational and quality indicators.

Principle 7

The East Sussex Finance Sub Group will be responsible for co-ordinating the performance management of BCF schemes and will report to the relevant Programme Board quarterly. The East Sussex Finance Sub Group will make recommendations to the relevant Programme Board regarding mitigating actions, the application of risk share funds, contingency and underspends on schemes and the source of any additional pool funding required.

SCHEDULE 2

Governance Arrangements

Terms of reference

East Sussex Better Together Programme Board

TO BE UPDATED AND ADDED

East Sussex Finance Sub Group

TOR to be added

SCHEDULE 3: SCHEME INVESTMENTS

| Ref no. | Scheme 2015/16 | £000 |
|---------|--|------------------|
| 1 | Protecting Adult Social Care: a range of social care services that support health care, with a focus on discharge support. | 6,908 |
| 2 | Re-ablement: Community bed based intermediate care Re-ablement: JCR services to be reviewed and further developed to support discharge, admissions avoidance and enhanced rapid response | 1,450 492 |
| 3 | IT systems: shared access to client records and enhancing risk stratification methodology | 73 |
| 4 | Carers: investment to support implementing the agreed joint multiagency approach to help people continue in their caring roles. | 3,369 |
| 5 | Care Act Implementation: amount of BCF identified by government as contributing to implementation of Care Bill, including additional assessments, safeguarding and Care Accounts for the care cost cap system. | 1,059 |
| 6 | Disabled Facilities Grant: existing grant for residents not in social housing, enabling disabled people to remain at home. | 4,221 |
| 7 | NHS Commissioned Out of Hospital Services | 8,329 |
| 8 | East Sussex Mobile App | 6 |
| 9 | Community Therapy and Falls | 1,053 |
| 10 | Health and Social Care Connect | 589 |
| 11 | Telecare | 215 |

| | | |
|----|------------------------------------|---------------|
| 12 | TECS | 145 |
| 13 | Expert Benefits Advice Service | 150 |
| 14 | Commissioning Support for Services | 358 |
| 15 | ESBT Programme | 423 |
| | | |
| 16 | Contingency | 2,394 |
| | | |
| | Total | 31,234 |

SCHEDULE 4: INFORMATION GOVERNANCE

TO BE ADDED

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

THE COMMON SEAL of **EAST SUSSEX**)
COUNTY COUNCIL [])
was hereunto affixed in the presence of:)

.....
Authorised Signatory

Signed for on behalf of **NHS**
EASTBOURNE, HAILSHAM AND
SEAFORD CLINICAL COMMISSIONING
GROUP

Authorised Signatory

Signed for on behalf of **NHS HASTINGS**
AND ROTHER CLINICAL
COMMISSIONING GROUP

Authorised Signatory