



## **COMMISSIONING PARTNERSHIP BOARD**

Date Thursday 30 August 2018

Time 12.30 pm

Venue Crompton Suite, Civic Centre, Oldham, West Street, Oldham, OL1 1NL

- Notes
1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or in advance of the meeting.
  2. CONTACT OFFICER for this Agenda is Tel. 0161 770 5151 or email
  3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Date Not Specified.
  4. FILMING - The Council, members of the public and the press may record / film / photograph or broadcast this meeting when the public and the press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Constitutional Services Officer who will instruct that they are not included in the filming.

Please note that anyone using recording equipment both audio and visual will not be permitted to leave the equipment in the room where a private meeting is held.

Recording and reporting the Council's meetings is subject to the law including the law of defamation, the Human Rights Act, the Data Protection Act and the law on public order offences.

MEMBERSHIP OF THE COMMISSIONING PARTNERSHIP BOARD IS AS FOLLOWS:

Item No

7 S.75 Agreement (Pages 1 - 60)





## Commissioning Partnership Board Report

<b>Decision Maker:</b>	Executive Member Councillor Z Chauhan, Cabinet Member for Health and Social Care
<b>Date of Decision:</b>	30 August 2018
<b>Subject:</b>	Approval of S75 Partnership Agreement
<b>Report Author:</b>	Gioia Morrison – Finance Manager Ext 4491
<b>Officer Contact:</b>	Anne Ryans, Director of Finance

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**Reason for the decision:** To approve the signing a S.75 notice between the Council and the CCG that will enable and encourage closer working and a more integrated approach.

**Summary:** The partners have carried out consultations on the proposals for Pooled Funds and commissioning arrangements under the Section 75 Agreement with those persons likely to be affected by the arrangements.

***What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):*** Approve the signing of the S.75 Partnership Agreement to enable closer working between Oldham MBC and Oldham CCG.

Continue with the current agreement and update the schedules in line with inflation and budget adjustments. This would enable us continue to pool the BCF, iBCF and Community Equipment Fund but would not reflect our ambition as a health economy.

Do nothing. This would mean that we would be operating with an out of date S.75 in respect of the BCF, iBCF and Community Equipment Fund.

**Recommendation(s):** To approve the signing of an updated S.75 Partnership Agreement.

**Implications:**

*What are the **financial** implications?*

The financial implications of the preferred option are significant for both organisations because each partner would be committing significant funds to the various pools. The precise figures for each partner's contribution are included in the Schedule to the Section 75 Agreement to be presented at the CPB meeting.

However, the majority of the fund will be held within the pooled aligned budget. Each partner will maintain control of its contribution to the pooled aligned budget but this has to be done in liaison with the other partner.

The amounts to be pooled by each partner will amount to a total of circa £148m.

*What are the **procurement** implications?*

None.

*What are the **legal** implications?*

Oldham Council and Oldham CCG have both sought separate external legal advice in relation to the preparation of the section 75 Agreement to be presented to the board for approval. Senior representatives from both partner organisations have participated in the negotiations to ensure that each party has agreed the content of the pooled budgets and the pooled aligned budgets, the decision making processes for each organisation and the risk sharing profile for each area of spend. (Elizabeth Cunningham Doyle. )

*What are the **Human Resources** implications?*

None

**Equality and Diversity Impact Assessment** attached or not required because (please give reason)

The commissioning decisions to be taken under the auspices of the Section 75 Agreement will be subject to Equality Impact Assessments to address the impact upon individuals with protected characteristics.

*What are the **property** implications*

None

**Risks:**

The Section 75 Agreement sets out the framework and the arrangements for risk sharing, liabilities and insurance and indemnities and the governance arrangements. Subject to Legal colleagues being satisfied that the appropriate process has been undertaken, it is understood that failure to approve the agreement, may hinder the delivery of benefits arising from closer working between Oldham MBC and Oldham CCG.

(Jane Whyatt)

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Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution/CCG's Standing Orders?	Yes
Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the S.75 budget?	Yes
Are any of the recommendations within this report contrary to the Policy Framework of the Council/CCG?	No

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**Reason why this Is a Key Decision** (1) to result in the local authority incurring expenditure or the making of savings which are, significant (over £250k) having regard to the local authority's budget for the service or function to which the decision relates; or

The Key Decision made as a result of this report will be published within **48 hours** and cannot be actioned until **five working days** have elapsed from the publication date of the decision.

This item has been included on the Forward Plan under reference CPB-01-1819.

**List of Background Papers under Section 100D of the Local Government Act 1972:**

<b>Title</b>	<b>Available from</b>
Section 75 Partnership Agreement and Schedules	

<b>Report Author Sign-off:</b>	
<b>Date:</b>	

Please list any appendices:-

<b>Appendix number or letter</b>	<b>Description</b>
	2018/19 S75 Agreement

**1. Background**

- 1.1 Oldham Council and Oldham CCG have been working towards an integrated health and social care system for a number of years. This has been limited in scope financially to pooling budgets around the Better Care Fund (BCF)/improved Better Care Fund (iBCF). In the autumn of 2017 at a meeting of the Integrated Commissioning Partnership Board, Oldham Council and Oldham CCG both agreed to pool the commissioning elements of budgets to increase the scope of the integrated delivery of services, to reduce duplication and get the best value for money from the Oldham pound. The elements of the budgets which were agreed to be included in the pooled budgets were the commissioning of individual placements for service users, domiciliary care, mental health, learning disability and older people services.
- 1.2 In addition as a borough, Oldham has successfully bid for £21.3m Transformation Funding from Greater Manchester Health and Social Care Partnership. Although this funding has to be paid directly to the CCG the money relates to spend for both OMBC and the CCG. As a consequence the Transformation Fund is being incorporated into the S75 Partnership Agreement.
- 1.3 A S.75 Partnership Agreement is made under the provisions of Section 75 of the National Health Service Act 2006 and enables funds to be pooled between the CCG and the Local Authority. However, there are two distinct types of pools within this agreement.
- 1.4 Pooled Budget – This is a fund where both partners pay in to the pooled fund and the money is hosted by one of the partners and the decision on how to spend is delegated to that partner. The Community Equipment budget and the Transformation Fund are both Pooled Budgets hosted by the Council and the CCG respectively.

- 1.5 Pooled Aligned Budget – This is a fund where each respective partner keeps control of its own contributions and spend. Instead decisions are taken in collaboration with the partner to maximize impact and reduce duplication. Currently the BCF, iBCF budgets are all pooled aligned budgets. The intention is for the commissioning budgets referred to in paragraph 1.1 above to be pooled aligned budgets.

## 2 **Current Position**

- 2.1 As stated a S.75 Agreement is currently in place that incorporates the Better Care Fund (BCF) and the Community Equipment Store. This was updated to reflect the introduction of the improved Better Care Fund (iBCF) in 2017 but does not reflect the figures for the current financial year or the increased ambition to jointly commission individual placements, mental health services, packages of domiciliary care and learning disability services. However, it does not align to the new governance structures of Oldham Cares. Therefore a new s.75 Partnership Agreement has been drawn up to address these issues.

## 3 **Proposals:**

- 3.1 Approve the signing of the S.75 Partnership Agreement to enable closer working between Oldham MBC and Oldham CCG.
- 3.2 Continue with the current agreement and update the schedules in line with inflation and budget adjustments. This would enable us continue to pool the BCF, iBCF and Community Equipment Fund but would not reflect our ambition as a health economy.
- 3.3 Do nothing. This would mean that we would be operating with an out of date S.75 in respect of the BCF, iBCF and Community Equipment Fund.

## 4 **Conclusions:**

- 4.1 Option 3.1 is the preferred option as this allows us to align our work more closely and reflects both organisations' current risk appetite. It would also make it relatively simple to increase the areas the two parties want to pool in the future.
- 4.2 The signing of the Section 75 Partnership Agreement by Oldham Council and Oldham CCG demonstrates the commitment of the partners to the co-operative agenda within the borough.

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**Dated:** 2018

**OLDHAM METROPOLITAN BOROUGH COUNCIL**  
**and**  
**NHS OLDHAM CLINICAL COMMISSIONING GROUP**

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

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**THIS AGREEMENT** is made on                    day of

2018

## **PARTIES**

- (1) **OLDHAM METROPOLITAN BOROUGH COUNCIL** whose principal place of business is at Civic Centre, West Street, Oldham, OL1 1UT (the "**Council**")
- (2) **NHS OLDHAM CLINICAL COMMISSIONING GROUP** whose principal place of business is at Ellen House, Waddington Street, Oldham OL9 6EE (the "**CCG**")

## **BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Oldham.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the borough of Oldham. The geographical area covered by NHS Oldham CCG is co-terminus with Oldham Council with the exception of one GP practice that is located in Tameside borough.
- (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. Building on the Better Care Fund, the Partners intend to include a wide range of services within the Pooled Funds established under this Agreement and to use such Pooled Funds to develop an integrated commissioning service and to continue commissioning a community equipment service.
- (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 the means through which the Partners will establish such Pooled Funds as agreed between the Partners.
- (F) The aims and benefits of the Partners in entering in to this Agreement are to:
  - a) improve the quality and efficiency of the Services;
  - b) meet the National Conditions and Local Objectives; and
  - c) make more effective use of resources through the establishment and maintenance of a Pooled Aligned Budget for revenue expenditure on the Services and
  - d) Ensure that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, we will develop an integrated health and care system that enables people to proactively manage their own care with the support of their family, community and the right professionals at the right time in a properly joined up system. In a crisis, people in Oldham will know exactly what to do, who to contact, receive a rapid response and have their needs met in a completely organised, systematic and careful way.
- (G) The Partners have carried out consultations on the proposals for Pooled Funds and commissioning arrangements under this Agreement with 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:

**2000 Act** means the Freedom of Information Act 2000.

**2004 Regulations** means the Environmental Information Regulations 2004.

**2006 Act** means the National Health Service Act 2006.

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

**Agreement** means this agreement including its Schedules and Appendices.

**Approved Expenditure** means any additional expenditure approved by the Partners in accordance with the Delegation Arrangements in Schedule 3, 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.

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

**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.

**Commissioning Partnership Board (CPB)** means the Commissioning Partnership Board responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

**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<sup>st</sup> April 2018.

**Community Equipment Scheme** means the Individual Scheme described in Schedule 1, Scheme A.

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

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

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

**Data** has the meaning set out in the Data Protection Legislation.

**Data Protection Legislation** means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Data Protection Act 2018, the GDPR and all applicable Laws relating to the processing of personal data and privacy and all regulations and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time.

**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.

**Delegation Arrangements** means the arrangements for decision making as set out in Schedule 3.

**Expenditure Plan** means the financial plan for expenditure by service as agreed by the Commissioning Partnership Board prior to the start of each financial year. The plan for the first Financial Year is as attached at Schedule 8.

**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.

**GDPR** means (a) the General Data Protection Regulation (Regulation (EU) 2016/679) which came into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulation (Regulation (EU) 2016/679).

**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 Budget the Partner that will host such Pooled Budget and for each Pooled Aligned Budget the Partner that will host such Pooled Aligned Budget.

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

**Health and Social Care Scheme** means the Individual Scheme described in Schedule 1, Scheme B.

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

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

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

**Intellectual Property Rights (IPR)** means without limitation all intellectual property rights including patents, business service and trade marks and names, designs, registered designs and design rights whether or not registered or capable of registration and the right to apply for and any applications for any of the foregoing, copyrights, database rights, domain names, together with the rights in inventions, methods, processes, drawings, documents, methodologies, utility models semi-conductor chip topography, software, databases, know-how, trade or business secrets and other industrial property, and in each case whether protectable or not and, if protectable, whether an application has been made for protection or not, and all similar industrial, commercial, monopoly or other similar right or asset capable of protection whether present or future, vested or contingent, and wherever protected.

**Improved Better Care Fund** means a grant made directly to a local authority under the grant determination issued by the Department for Communities and Local Government dated 24 April 2017.

**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 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-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 10.4.

**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.

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

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

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

**Permitted Expenditure** has the meaning given in Clause 7.3.

**Personal Data** has the meaning set out in the Data Protection Legislation which forms part of the Data.

**Pooled Aligned Budget** means a pooled fund but the Partners' respective Financial Contributions to such fund are held in their own bank accounts.

**Pooled Budget** means a pooled fund comprising Financial Contributions from both of the Partners hosted by one of the Partners in its bank account.

**Pooled Fund** means a Pooled Budget or a Pooled Aligned Budget.

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

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

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

**Special Categories of Personal Data** shall mean Sensitive Personal Data or Special Categories of Personal Data, as defined in the Data Protection Legislation.

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

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

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

**SOSH** means the Secretary of State for Health and Social Care.

**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 Commissioning Partnership Board.

**Underspend** means expenditure from any Pooled Fund in any Financial Year that is less than the aggregate value of the Financial Contributions made 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.
- 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 establish one or more of the following:

- 4.1.1 Lead Commissioning Arrangements;
- 4.1.2 Integrated Commissioning; and
- 4.1.3 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities").

- 4.2 From the Commencement Date the Partners agree that for the Community Equipment Scheme described in Schedule 1, Scheme A, will operate as a Pooled Budget the CCG and the Council will operate under Lead Commissioning Arrangements. The Council will be the Lead Commissioner.
- 4.3 From the Commencement Date the Partners agree that for the Health and Social Care Scheme described in Schedule 1, Scheme B, the CCG and the Council will both operate under the Integrated Commissioning arrangements with Pooled Aligned Budgets.
- 4.4 The Partners agree that decisions about the use of the different commissioning models shall be delegated for operational purposes to the Commissioning Partnership Board.
- 4.5 Where there are Lead Commissioning Arrangements, the Council agrees that the CCG will exercise on its behalf, 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.
- 4.6 Where there are Lead Commissioning Arrangements, the CCG agrees that the Council will exercise on its behalf, 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.
- 4.7 Where the powers of a Partner to make arrangements for the exercise of 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 for the exercise of their functions that are designed to achieve to the greatest degree possible the Partners' aims in entering into this Agreement whilst also being consistent with the statutory constraints.
- 4.8 Where there is Integrated Commissioning, the Partners agree that they shall exercise their respective Functions only through the Commissioning Partnership Board and/or in accordance with Schedule 3.
- 4.9 Where there is Integrated Commissioning, the Partners may rely on Clauses 4.5 and 4.6 above.

## **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.
- 5.4 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme in the form of the Scheme Specifications set out in Schedule 1 shall be completed and agreed between the Partners. The Scheme Specifications are set out in Schedule 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 Commissioning Partnership Board.

## **5A STAFFING**

5A.1 The Partners agree to establish an integrated commissioning team with appropriate support from each Partner's back office function.

5A.2 At the commencement of this Agreement all staff employed in the integrated commissioning team by either Partner will remain employed by that Partner unless and until their employment contract comes to an end. Each Partner will be responsible for their staff, but day to day management shall be as per the Delegation Arrangements set out in Schedule 3, as may be varied from time to time by agreement between the Partners.

5A.3 The integrated commissioning structure, as at the date of this Agreement, is as set out in Schedule 5 but is subject to variations as may be agreed between the Partners from time to time.

5A.4 During the period when this Agreement is in place, the Partners agree to exercise their relevant commissioning functions through the integrated commissioning structure (as set out in Schedule 5).

5A.5 In order to facilitate the Integrated Commissioning, the Council may exercise the CCG's functions when acting as Lead Commissioner and the CCG may exercise the Council's functions when acting as Lead Commissioner pursuant to S75 of the 2006 Act.

5A.6 The Partners will ensure that decisions relating to Integrated Commissioning are made through the Commissioning Partnership Board and/or in accordance with Schedule 3. The Pooled Fund Manager for each Individual Scheme must authorise all expenditure against the Pooled Fund.

5A.7 Each Partner is accountable to the other through the Commissioning Partnership Board when exercising the other Partner's functions.

## **6 COMMISSIONING ARRANGEMENTS**

### **Integrated Commissioning**

6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, both Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.

6.2 Each Partner shall be responsible for compliance with and making payments of all sums due to a Provider in respect of those Services which it receives pursuant to the terms of each Service Contract.

6.3 Both Partners shall work in cooperation to ensure that, where there is Integrated Commissioning, the relevant Services as set out in each Scheme Specification are commissioned within each Partner's Financial Contribution in respect of that particular Service in each Financial Year.

6.4 Each Partner shall keep the other Partners and the Commissioning Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and the Improved Better Care Fund and in particular on any forecast or actual Overspend or Underspend in a Pooled Fund, including proposals for managing any Overspend or Underspend.

6.5 The Commissioning 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 Individual 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 in line with their normal contract management procedures. Contract management reporting to be provided to the Commissioning Partnership Board in the manner and form that it specifies;
  - 6.6.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
  - 6.6.9 keep the other Partner and the Commissioning Partnership Board regularly informed of the effectiveness of the arrangements including (where relevant) 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 and such other powers as may be relevant, the Partners have agreed to establish and maintain such Pooled Funds for revenue and capital expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to Clauses 7.4 and 7.5, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 7.3.1 the Contract Price including any contractually required performance payments;
  - 7.3.2 where the Council is to be the Provider, up to the Permitted Budget;
  - 7.3.3 Approved Expenditure
- ("Permitted Expenditure")*

- 7.4 Third Party Costs and internal management costs of overseeing any contracts are excluded from Permitted Expenditure.
- 7.5 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.
- 7.6 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.
- 7.7 The Commissioning Partnership Board (acting in accordance with their Terms of Reference) may agree on behalf of the Partners to create additional Pooled Funds if required.
- 7.8 The Pooled Fund for each Individual Scheme may comprise of separate budgets which can be amended as agreed by the Partners.
- 7.9 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Budgets set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
  - 7.9.1 holding all monies contributed to the Pooled Budget on behalf of itself and the other Partner;
  - 7.9.2 providing the financial administrative systems for the Pooled Budget;
  - 7.9.3 appointing the Pooled Budget Manager; and
  - 7.9.4 ensuring that the Pooled Budget Manager complies with its obligations under this Agreement.

## **8 POOLED BUDGET MANAGEMENT**

- 8.1 When introducing a Pooled Budget in respect of an Individual Scheme, the Partners shall agree:
  - 8.1.1 which of the Partners shall act as Host Partner and shall provide the financial administrative systems for the Pooled Budget;
  - 8.1.2 which officer of the Host Partner shall act as the Pooled Budget Manager.
- 8.2 The Pooled Budget Manager in respect of each Individual Scheme where there is a Pooled Budget shall have the following duties and responsibilities:
  - 8.2.1 the day to day operation and management of the Pooled Budget;
  - 8.2.2 ensuring that all expenditure from the Pooled Budget 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 Budget;
  - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Budget;
  - 8.2.5 reporting to the Commissioning Partnership Board as required by the Partnership Board and the relevant Scheme Specification;
  - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Budget in accordance with this Agreement;
  - 8.2.7 preparing and submitting to the Commissioning Partnership Board Monthly reports (or with such different frequency as required by the Commissioning Partnership Board but no

less than quarterly) and an annual return about the income and expenditure from the Pooled Budget together with such other information as may be required by the Partners and the Commissioning Partnership Board to monitor the effectiveness of the Pooled Budget and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Budget Manager in time for the reporting requirements to be met; and

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

8.3 In carrying out their responsibilities as provided under Clause 8.2 the Pooled Budget Manager shall have regard to the recommendations of the Commissioning Partnership Board and shall be accountable to the Partners for delivery of those responsibilities.

8.4 The Pooled Budget Manager may delegate functions in accordance with the Delegation Arrangements in Schedule 3.

8.5 Within any Pooled Budget, the Commissioning Partnership Board may authorise or require there to be separate budgets for the purposes of individual service lines funded by such budgets. Any such budgets shall be set out in the Expenditure Plan

8.6 The Pooled Budget Manager must obtain authority from the Council's S151 Officer and Director of Adult Social Services and the CCGs Chief Financial Officer and Director of Commissioning before viring funds between Pooled Budgets.

## **9 POOLED ALIGNED BUDGET MANAGEMENT**

9.1 The Commissioning Partnership Board is responsible for making commissioning decisions in accordance with its Terms of Reference. The decisions are implemented through the Integrated Commissioning arrangements.

9.2 Each Partner, in consultation with the other Partner and in accordance with the Delegation Arrangements set out in Schedule 3, will be responsible for making its own financial arrangements for each Pooled Aligned Budget it holds. The relevant Partner will report regularly to the Commissioning Partnership Board in relation to each Pooled Aligned Budget,

9.3 Within any Pooled Aligned Budget, the Commissioning Partnership Board may authorise or require there to be separate budgets for the purposes of individual service lines funded by such budgets. Any such budgets shall be set out in the Expenditure Plan

9.4 Authority must be sought from the Council's S151 Officer and Director of Adult Social Services before viring funds between Pooled Aligned Budgets for which it is the Host Partner.

9.5 Authority must be sought from the CCG's Chief Finance Officer and Director of Commissioning before viring funds between Pooled Aligned Budgets for which it is the Host Partner.

9.6 Where the Partners maintain a joint leadership team, the Partners shall procure that monthly reports are provided to this of the viring of funds following an authorisation under Clause 9.4 or Clause 9.5 of 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 of each Individual Scheme shall be as set out in the relevant Scheme Specification.

10.2 The Financial contribution of the CCG and the Council for years after the first Financial Year of operation will use the first Financial Year as a baseline and be varied by mutual agreement dependent on the schemes being considered. These will be approved by the internal governance of the CCG and Council and notified to the Commissioning Partnership Board in advance of the start of each Financial Year.

- 10.3 Financial Contributions will be paid as set out in each Scheme Specification.
- 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 any Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Commissioning Partnership Board minutes and recorded in the budget statement as a separate item.

## **11 NON FINANCIAL CONTRIBUTIONS**

- 11.1 The Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of service contracts and the Pooled Fund).
- 11.2 Where such non-financial contributions are not specified then it is expected that these will be provided by the Lead Commissioner for that particular Scheme.
- 11.3 Responsibility for the provider's costs of providing services, including premises costs, will be addressed in the commissioning contract for each service.

## **12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS**

### **Risk share arrangements**

- 12.1 The Partners shall agree risk share arrangements as set out in any Individual Scheme Specification which provide for financial risks arising within the commissioning of Services from the Pooled Funds.

### **Overspends in Pooled Fund**

- 12.2 Subject to Clause 12.3, 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.
- 12.3 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 Commissioning Partnership 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 Commissioning Partnership Board is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification shall apply.

### **Underspend**

- 12.7 In the event that expenditure from any Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent in accordance with the Delegation Arrangements set out in Schedule 3, carried forward and/or (where applicable) returned to the Partners and such agreement shall be approved and minuted by the Commissioning Partnership Board. 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. For the avoidance of doubt, any such agreement should be approved by the Councils S151 Officer and Director of Adult Social Services where it is the Host Partner and the CCGs Chief Finance Officer and Director of Commissioning where it is the Host Partner, prior to final approval by the Commissioning Partnership Board.

## **13 CAPITAL EXPENDITURE**

13.1 Subject to Clause 13.2 below, Pooled Funds shall not normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.

13.2 Disabled Facilities Grant funding may be applied to capital expenditure by the Partner hosting it.

#### **14 VAT**

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

#### **15 AUDIT AND RIGHT OF ACCESS**

15.1 All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund by a local auditor appointed pursuant to Section 7 of the Local Audit and Accountability Act 2014 (as amended) to carry out the duties set out in Section 20 or 21 of that Act, as applicable.

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 Local Authority and 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 or the Services Contract as a consequence of any act or omission of another Partner ("Other Partner") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.

16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Commissioning Partnership 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 put in place and maintain in force appropriate policies of insurance (or equivalent arrangements through schemes operated by NHS Resolution) in respect of 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.

## **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) and Officer and Member Codes of Conduct for the Council.

17.2 The Council is subject to the duty of Best Value under Section 3 the Local Government Act 1999. This Agreement and the operation of the Pooled Funds 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 Each Partner shall comply with its own internal governance procedures as regards the reporting of any conflict of interest by its members or employees, servants and agents. In the event of any disagreement between the Partners as regards the effect, or potential effect of any perceived conflict of interest, any dispute will be dealt with under the dispute resolution procedure set out in Clause 23.

18.2 If, during any arrangements where staff are exercising the other Partner's functions, there is a difference in standards for reporting of conflict of interests, the higher standard will apply.

## **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 an established Commissioning Partnership Board to further facilitate integration and joint commissioning across all areas of health, wellbeing and social care for both adults and children in Oldham.

19.3 The Commissioning Partnership Board is a joint committee of the Partners established pursuant to Regulation 10(2) of the Regulations. The Commissioning Partnership Board shall exercise those duties and functions as set out in this Clause 19 and Schedule 2.

19.4 The terms of reference of the Commissioning Partnership Board as at the date of this Agreement are set out in Schedule 2. The Partners may agree, in writing, to vary those terms of reference from time to time.

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

- 19.6 The Commissioning Partnership Board shall be responsible for the overall approval of the Individual Schemes, ensuring compliance with the Expenditure Plan and the strategic direction of the Better Care Fund and Improved Better Care Fund.
- 19.7 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Commissioning Partnership Board and Health and Wellbeing Board.

## **20 REVIEW**

- 20.1 Save where the Commissioning Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement, any Pooled Fund and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.2 Subject to any variations to this process required by the Commissioning Partnership Board, Annual Reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.3 The Partners shall within 20 Working Days of the Annual Review prepare a joint annual report documenting the matters referred to in this Clause 20. A copy of this report shall be provided to the Commissioning Partnership Board and Health and Wellbeing Board.
- 20.4 In the event that the Partners fail to meet the requirements of the Better Care Fund and the Improved Better Care Fund including funding requirements regarding the Better Care Fund and the Improved Better Care Fund, the Partners shall provide full co-operation with overseeing authorities 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. The default process shall be that complaints relating to particular services are handled by the commissioner or the Lead Commissioner for that service under their normal operating procedures.

## **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 and Improved Better Care Fund requirements continue to be met.
- 22.3 If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partner(s) (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 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.
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:

- 22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of 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;
  - 22.6.2 where either Partner has entered into a Service Contract which continues after the termination of this Agreement then the contract shall be novated to the commissioner or Lead Commissioner and will enter into all appropriate legal documentation required in respect of this;
  - 22.6.3 the commissioner or 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.
  - 22.6.4 where a Service Contract held by a commissioner or 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 commissioner or Lead Commissioner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
  - 22.6.5 the Commissioning Partnership 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
  - 22.6.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.
- 22.7 In the event of termination in relation to an Individual Scheme 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 Officers shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, a nominated deputy of the CCG Accountable Officer and the Council Chief Executive shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model

Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.

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

## **24 FORCE MAJEURE**

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

24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.

24.3 As soon as practicable, following notification as detailed in Clause 24.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 24.4, facilitate the continued performance of the Agreement.

24.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

## **25 CONFIDENTIALITY**

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

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

25.1.2 the provisions of this Clause 25 shall not apply to any Confidential Information which:

(a) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or

(b) is obtained by a third party who is lawfully authorised to disclose such information.

25.2 Nothing in this Clause 25 shall prevent the Recipient from disclosing Confidential Information where it is required to do so in fulfilment of statutory obligations or by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law.

25.3 Each Partner:

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

25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;

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

## **26 FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS**

26.1 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request for information under the 2000 Act or the 2004 Act to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.

26.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 26 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

## **27 OMBUDSMEN**

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

## **28 INFORMATION SHARING**

The Partners will follow the Information Governance Protocol set out in Schedule 7, and in so doing will ensure that the operation of this Agreement complies with Law, in particular the Data Protection Legislation.

## **29 NOTICES**

29.1 Any notice to be given under this Agreement shall either be delivered personally 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 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

29.1.3 if sent by electronic mail, at the time of transmission 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 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 Legal Services, Civic Centre, West Street, Oldham, OL1 1UG;

Tel: 0161 770 4208  
E.Mail: Paul.Entwistle@oldham.gov.uk

and

29.3.2 if to the CCG, addressed to [Chief Finance Officer], NHS Oldham CCG, Ellen House, Waddington Street, Oldham, Greater Manchester OL9 6EE;

Tel: 0161 622 6519  
E.Mail: [ben.galbraith@nhs.net](mailto:ben.galbraith@nhs.net)

### **30 VARIATION**

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

### **31 CHANGE IN LAW**

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

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

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

### **32 WAIVER**

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

### **33 SEVERANCE**

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

### **34 ASSIGNMENT AND SUB CONTRACTING**

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

### **35 EXCLUSION OF PARTNERSHIP AND AGENCY**

35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and

employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

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

35.2.1 act as an agent of the other;

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

35.2.3 bind the other in any way.

## **36 THIRD PARTY RIGHTS**

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

## **37 ENTIRE AGREEMENT**

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

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

## **38 COUNTERPARTS**

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

## **39 GOVERNING LAW AND JURISDICTION**

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

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

## **40. INTELLECTUAL PROPERTY RIGHTS**

40.1 All intellectual property rights in any information or material existing prior to the date of this Agreement ("the Background Rights") shall remain the property of the Partner introducing such information or its third party licensors. Insofar as it is able to do so each Partner shall grant the other a non-exclusive non-transferable, royalty free licence to use all such pre-existing information and materials, including any intellectual property rights in the same for the purposes of delivering the Individual Schemes during the term of the Agreement, and in perpetuity insofar as such licence is necessary for the Partners to use the resulting IPR for the purposes permitted in this Agreement

40.2 All Intellectual Property Rights created in or resulting from the Individual Scheme ("Foreground Rights") shall be the property of the Partner by whom the particular Foreground Rights were created.

- 40.3 The Partners hereby grant to each other a royalty free, non-exclusive, irrevocable, perpetual licence to use and exploit any Foreground Rights and any intellectual property in any interim results (including any patents or other registered intellectual property rights registered , together with the right to grant sub-licences to third parties to use and exploit the same) provided always that the granting Partner makes no representation or warranty that any Foreground Rights will be fit for any particular purpose, and accepts no responsibility for any use which may be made of any Foreground Rights, materials, information, apparatus, method or process arising from its work or otherwise supplied to or to which a Partner gains access.
- 40.4 Any Partner supplying information, including but not limited to existing intellectual property, shall be under no obligation in respect of the accuracy of such information and no warranty, condition or representation of any kind is made, given or to be implied in any case as to the sufficiency, accuracy and rights of third parties by the use of such information. The Partner receiving that information shall in any case be solely responsible for the use it puts that information to.
- 40.5 Each Partner will use reasonable endeavours to procure that any third party owner of the Intellectual Property Rights referred to in Clause 40.1 above grants to the other Partner an authorised sub-licence to use the material on the same terms as the licence granted in Clause 40.1.

IN WITNESS WHEREOF this Agreement has been executed by the Partners on the date of this Agreement<sup>1</sup>

THE CORPORATE SEAL of OLDHAM )  
METROPOLITAN BOROUGH )  
**COUNCIL** )  
was hereunto affixed in the presence of: )

Signature.....

Name (print).....

Position.....

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

\_\_\_\_\_

Authorised Signatory

\_\_\_\_\_

## **SCHEDULE 1– SCHEME SPECIFICATION**

### **Agreed Service Specifications**

#### **Scheme A: Community Equipment Services Schedule**

##### **1 OVERVIEW OF INDIVIDUAL SERVICE**

The Community Equipment Scheme aims to provide personalised equipment that supports patients and their carers to live safely at home. This is an essential service for supporting hospital discharge.

The whole of the funds for this Scheme are a Pooled Budget which will be hosted and managed through the Council acting as Lead Commissioner (as set out in Clause 6) with the uses and reporting of completed as agreed by the Commissioning Partnership Board. The Council's S.151 Officer (Director of Finance) or such other officer as they nominate will act as the Pooled Budget Manager.

##### **2 AIMS AND OUTCOMES**

Our aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, we will commission or design integrated health and care services that enable people to proactively manage their own care as far as they are able, with the support of their family, community and the right professionals at the right time in a properly joined up system.

All commissioning activity will reflect the high level outcomes of the Integrated Care Organisation (ICO) and translate these into meaningful, relevant and measurable personal or population level outcomes.

##### **3 THE ARRANGEMENTS**

This Scheme will be treated as a Pooled Budget with the Council acting as Lead Commissioner.

##### **4 FUNCTIONS**

Community equipment provision is increasingly important to keep vulnerable people safe and independent in the community. Providing people with the equipment they need to live safely and independently mitigates the risk of falls, so preventing hospital admissions/readmissions and also contributes to timely discharge from hospital.

A range of Community equipment is supplied to Oldham residents by authorised prescribers. These are mainly health practitioners employed by the Royal Oldham Hospital, Pennine Care NHS Foundation Trust, and some social care staff. Individuals must be resident in Oldham, or be registered with an Oldham based GP to be eligible for community equipment.

The council as Lead Commissioner contracts (currently with Rosscare) to source and provide the equipment: this includes delivery, fitting and/or collection of equipment to a service user's address or to a peripheral store, plus repair and servicing of the equipment.

Circa 80% of equipment (defined as 'standard' products) is supplied this way. For non-standard items, which may be bespoke to an individual each application is considered by a panel.

The most commonly prescribed products are alternating pressure mattresses and electric beds, as much of the provision is required for palliative care, facilitating hospital discharge and preventing hospital admission.

The Fully Pooled Fund for Community Equipment fund will also meet the cost of employing a Community Equipment Coordinator.. The post holder will coordinate activity: oversee performance

against the contract, offering support and challenge to the community equipment prescribers and maximising best value from our arrangements.

## **5 SERVICES**

The services are those set out in the Expenditure Plan as approved by the Oldham HWBB. The set of services included within that plan as at 1<sup>st</sup> April 2018 is shown in the Expenditure Plan as attached at Schedule 8 which includes a reference to the areas of spend.

The aim of the service is to provide equipment to users which will enhance their independence and aid their health.

The service will be provided for adults and children who are regarded as being permanently and substantially disabled.

Access to the service will be via assessment following identification of a clinical need.

The service sources and provides the equipment: this includes delivery, fitting and/or collection of equipment to a service user's address or to a peripheral store, plus repair and servicing of the equipment.

Changes to services will be through the governance processes set out in Schedule 2.

## **6 COMMISSIONING, CONTRACTING, ACCESS**

### ***Commissioning Arrangements***

This Scheme shall operate under Lead Commissioning arrangements with the Council operating as Lead Commissioner.

### **Contracting Arrangements**

The list of relevant contracts or parts thereof will be recorded in the Expenditure Plan. Each Partner organisation shall ensure that copies of the signed contracts are maintained and available for inspection by the other Partner to this Agreement upon request.

The financial and operational risks of each contract shall be managed by the Partner acting as Lead Commissioner. These risks shall be reported on as part of the regular financial reporting to the Commissioning Partnership Board or the Health and Well Being Board as determined by those groups.

The Lead Commissioner shall have the authority to agree the form and details of each contract for commissioned services using reasonable terms within their normal operating procedures with the aim of managing risk to all parties to this agreement.

Contract variations, extensions, renewals and terminations in full or in part shall be subject to approval by the Commissioning Partnership Board. The Lead Commissioner shall ensure that appropriate notice is given to the Commissioning Partnership Board and the other Partner prior to such extensions, renewals or terminations being undertaken.

At the termination of this agreement, contracts will remain with the Lead Commissioner of the scheme as set out in the Expenditure Plan.

Contracts shall only be assigned to the other party on the agreement of both parties.

### **Access**

Eligibility of individuals for access to particular services shall be set out in the service specification in the contract for that service. Material changes to eligibility shall not be made without consultation with the other party.

## 7 FINANCIAL CONTRIBUTIONS

### Financial Year 2018/19

	CCG contribution	Council Contribution
Pooled Budget	See Expenditure Plan in Schedule 8	

The Financial contribution of the CCG and the Council for years after the first Financial Year of operation will use the first Financial Year's contribution as a baseline. Each Partner's Financial Contribution may subsequently be varied by mutual agreement dependent on the schemes being considered. These will be approved by the internal governance of the CCG and Council and notified to the Commissioning Partnership Board in advance of the start of each Financial Year.

## 8 FINANCIAL GOVERNANCE ARRANGEMENTS

Are any amendments required to the Agreement in relation to the management of Pooled Fund	The Partners have agreed that funds for this Scheme shall be treated as a Pooled Budget.
Have the levels of contributions been agreed?	Yes for 2018/19 as set out section 7 above. Future years funds to be as per 2018/19 baseline as a minimum with any changes agreed by each Partner and the Commissioning Partnership Board.
How will changes to the levels of contributions be implemented?	Contributions to the Scheme will be approved through each Partner's individual processes using the 2018/2019 Baseline as minimum contributions. If changes cannot be agreed, the 2018/2019 Baseline will be adopted plus inflation, calculated in accordance with the CCG Minimum Mandated Uplift % (based on inflation) to Social Care.
Have eligibility criteria been established?	Yes – These are included in the individual service specifications which are attached at Schedule 1.
What are the rules about access to the Pooled Fund?	Authorised through the Lead Commissioner's normal budget delegation process.
Does the pooled fund manager require training?	No.
Have the pooled fund manager's delegated powers been determined?	To operate within the normal delegated limits within their organisation but with reference to the need to highlight any forecast over or underspends to the Commissioning Partnership Board at the earliest opportunity.
Is there a protocol for disputes?	Yes – prescribed protocol as set out in Clause 23.
Audit Arrangements	Oldham Council's external auditors and the internal audit functions of Oldham Council and the Clinical Commissioning Group will be responsible for auditing the Pooled Fund. The frequency and scope of audits will be agreed in advance by both Partners.
What Audit arrangements are needed?	Oldham Council and the Clinical Commissioning Group's internal audit of finance and services and review by Oldham Council's external auditors at agreed frequencies.
Has an internal auditor been appointed?	The Council and CCG established Internal Auditors will apply diligence to systems, processes and transactions within their respective financial ledgers.
Who will liaise with/manage the auditors?	The Council DoF/S151 Officer and CCG CFO will nominate officers to liaise with auditors as required.
Whose external audit regime will apply?	Oldham Council.
Financial Management	Oldham Council.

Which financial systems will be used?	Oldham Council.
What monitoring arrangements are in place?	<p>Quarterly report produced by the Host Partner incorporating relevant information from both organisations. The report will be provided to the Commissioning Partnership Board and Health and Well Being Board each month (with the exception of the first month of the financial year).</p> <p>The quarterly report for quarters 1 to 3 will include budget and full year financial forecast information.</p>
Who will produce monitoring reports?	Oldham Council.
Has the scale of contributions to the Pooled Fund been agreed?	The Financial contribution of the CCG and the Council for years after the first Financial Year of operation will use the first Financial Year as a baseline and be varied by mutual agreement dependent on the schemes being considered. These will be approved by the internal governance of the CCG and Council and notified to the Commissioning Partnership Board in advance of the start of each Financial Year.
What is the frequency of monitoring reports?	Quarterly
What are the rules for managing over/underspends?	<p>Budget variances up or down are reported as soon as practicable. Joint robust action plan will be put in place to recover overspends in year for individual areas of expenditure. The default treatment of any net variance on the Community Equipment Pooled Budget at year end will be split 50:50 for the overall fund.</p> <p>Any underspends or overspends will not be carried forward and will be met in year 50:50 between the Partners.</p>
Do budget managers have delegated powers to overspend?	No.
Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?	Approval required by each Partner and the Commissioning Partnership Board.
Will there be a facility to carry forward funds?	Oldham Council will make arrangements as required to carry forward funds where agreed by both parties and the Commissioning Partnership Board.
How do we financially deal with non performance against the BCF deflections KPIs?	See Section 16
How will pay and non pay inflation be financed?	Joint agreement on additional Partner contributions which could be zero uplift.
Will a contingency reserve be maintained, and if so by whom?	There is no contingency held by either Partner in relation to this Community Equipment Scheme. Any overspends will need to be managed as described above and funded from normal Partner budgets.
How will efficiency savings be managed?	<p><u>Reductions in funding level</u> Targets set and funding reduced at the start of the year through planned commissioning actions. Contributions agreed by each Partner's management team, the Commissioning Partnership Board. Monitoring through monthly reporting mechanism to the Commissioning Partnership Board.</p> <p><u>Efficiencies within existing areas of spend</u> Any efficiencies will be deployed following mutual agreement by both Partners and ratification by the Commissioning Partnership Board</p> <p>Usage of any savings on hospital deflections from exceeding targeted level of performance will be determined by the CCG.</p>

How will revenue and capital investment be managed?	There are no capital budgets for the Community Equipment Scheme.  Spend on the Community Equipment Scheme will be managed in accordance with the Pooled Budget Manager's normal authority within their organisation.  Additional investment outside of this contract or above the agreed level of funding will be approved by each Partner and the Commissioning Partnership Board.
Who is responsible for means testing?	Oldham Council.
Who will own capital assets?	The Council will hold the capital assets if any arise.
How will capital investments be financed?	There is no capital budget in this Scheme.
What management costs can legitimately be charged to pool?	None.
What are the arrangement for overheads?	Host Partner (Oldham Council) will meet the cost of overheads.
What will happen to the existing capital programme?	There is no capital budget in this Scheme.
What will happen on transfer where current liabilities exceed resources (i.e. commitments exceed budget) immediate overspend secure?	(i) The Partners will work together to develop and implement plans to recover projected overspends within the financial year.  Subject to the approval of the Partners and the Commissioning Partnership Board resources may be realigned across Schemes within the overall Agreement.
What closure of accounts arrangement need to be applied?	Adherence to the CCG and Council's timetable and note/working paper standards and procedures

## Cash Management

At the start of each Financial Year, both Partners shall agree an estimated cash flow (payment schedule) for the services that they will be paying for as Commissioner based on the agreed Expenditure Plan in force at that point in time. This will be used to agree a schedule of monthly or quarterly invoices between Partners for the estimated funds required. Any difference shall be settled through agreed year end invoices or, if material through quarterly adjustment invoices between Partners, based on the latest financial information submitted to the Commissioning Partnership Board.

It is expected that any year end over or under spends on the fund will be invoiced and settled in cash, but may be held as memorandum balances by agreement of the Commissioning Partnership Board.

## 9 VAT

Which Partner's VAT regime will apply?	Host (Oldham Council)
Is one Partner acting as 'agent' for another?	No
Have Partners confirmed the format of documentation, reporting and accounting to be used?	Not yet. This will be proposed by the Host using the Expenditure Plan as the template and approved by the Commissioning Partnership Board.

## 10 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements for the Partnership are included at Schedule 2.

## 11 NON FINANCIAL RESOURCES

Non-financial contributions are provided by the Lead Commissioner or service Provider.

## 12 STAFF

The provisions set out in Clause 5A will apply.

## 13 ASSURANCE AND MONITORING

The arrangements covered by this schedule shall be monitored and assured by the Lead Commissioner, in accordance with the individual monitoring requirements of each area of commissioning activity. Monitoring and assurance will take the form of quantitative and qualitative assessment, provider reporting, formal contract meetings, and proactive and reactive activity.

Commissioners will ensure that service outcomes are in line with the broader strategic outcomes of Oldham Cares, and that monitoring and assurance activity demonstrates the extent to which the outcomes are being achieved.

Reporting of performance and the achievement of outcomes will be to the Commissioning Partnership Board, in a form and frequency determined by the Commissioning Partnership Board. Reporting may also be to any other appropriate forum.

## 14 LEAD OFFICERS

Position	Partner	Name of Lead Officer (as at Commencement Date)	Address	Telephone Number	Email Address
Acting Director of Performance and Delivery	CCG	Nadia Baig	Ellen House, Waddington Street	0161 622 6505	<a href="mailto:nadiabaig@nhs.net">nadiabaig@nhs.net</a>
Chief Financial Officer	CCG	Ben Galbraith	Ellen House, Waddington Street	0161 622 6590	<a href="mailto:Ben.galbraith@nhs.net">Ben.galbraith@nhs.net</a>
Director of Adult Social Services	OMBC	Mark Warren	Ellen House, Waddington Street	0161 770 4215	<a href="mailto:mark.warren@oldham.gov.uk">mark.warren@oldham.gov.uk</a>
S.151 Officer/ Director of Finance	OMBC	Anne Ryans	Civic Centre, West Street, Oldham	0161 770 4902	<a href="mailto:Anne.Ryans@oldham.gov.uk">Anne.Ryans@oldham.gov.uk</a>

## 15 INTERNAL APPROVALS

In accordance with the Commissioning Partnership Board Terms of Reference and the constitutions and Schemes of Delegation of Oldham MBC and NHS Oldham CCG.

## 16 RISK AND BENEFIT SHARE ARRANGEMENTS

The risk of financial underspend and overspend shall be shared 50/50 in line with each respective Partner's financial contribution.

## 17 REGULATORY REQUIREMENTS

Lead commissioner to ensure regulatory and registration requirements met for individual services.

**18 INFORMATION SHARING AND COMMUNICATION**

As set out in Schedule 7.

**19 DURATION AND EXIT STRATEGY**

General provisions for the termination of the Agreement are set out in Clause 22 of the Agreement. Those termination provisions will also apply to Individual Schemes within the Agreement where both parties agree to such a partial termination. However, where either party does not agree to the partial termination then the Individual Scheme will either need to be terminated in its entirety or continued in its entirety.

**20 OTHER PROVISIONS**

None.

## **SCHEDULE 1 – SCHEME SPECIFICATION**

### **Agreed Service Specifications**

#### **Scheme B – Health and Social Care Services Schedule**

##### **1. AIMS AND OUTCOMES OVERVIEW OF INDIVIDUAL SERVICE**

The Integrated Health and Social Care Scheme will include those budgets and contracts jointly agreed between the CCG and the Council as attached at Schedule 8. The manner in which the funds are used will be varied from time to time as agreed through the agreed governance structures described at Schedule 2.

##### **2. AIMS AND OUTCOMES**

Our aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, we will commission or design integrated health and care services that enable people to proactively manage their own care as far as they are able, with the support of their family, community and the right professionals at the right time in a properly joined up system.

All commissioning activity will reflect the high level outcomes of the Integrated Care Organisation (ICO) and translate these into meaningful, relevant and measurable personal or population level outcomes.

##### **3. THE ARRANGEMENTS**

The Integrated Health & Social Care Scheme will be treated as a Pooled Aligned Budget with joint reporting with Integrated Commissioning arrangements as set out in Clause 6. References in this Scheme Specification to “joint commissioning” are references to the Partners commissioning the services together using Integrated Commissioning.

##### **4. FUNCTIONS**

The functions which may be exercised under this agreement are:

- The prescribed NHS functions of the CCG under regulation 5 (a), (b), (ba), (bb), (bc) and (c) of the NHS Bodies and Local Authorities (partnership arrangements regulations 2000 ( SI no 617 of 2000)

The Health related functions of the Council prescribed under regulations 6 (a), (aa), (b), (k) (l) and (m) of the aforementioned regulations

##### **5. SERVICES**

###### **Learning Disabilities, Mental Health and Dementia**

Under this section 75 Agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor services for adults, currently funded separately through the CCG’s Mental Health, Learning Disability and Dementia budget and the Council’s community care budget. These services include:

- Supported living services
- Residential services for people with learning disabilities and mental health conditions
- Learning disabilities, mental health and dementia services commissioned with Pennine Care Foundation Trust (PCFT)

Joint commissioning activity will also extend to services for children, where these are provided in a similar form to adults, for example, CAMHS (Child and Adolescent Mental Health Services), supported living or residential services.

NHS Oldham CCG and Oldham Council will also work to align processes for personal budgets and personal health care budgets as part of this work stream.

The joint commissioning of these arrangements will also include the development of effective links to acute, community and primary care services, to ensure that individual and service level outcomes are achieved.

### **Care Homes and Care Packages**

Under this section 75 agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor services for adults, currently funded separately through the CCG's Continuing Health Care budget and the Council's community care budget. These services include:

- Residential and nursing care in care homes
- Home care services
- Supported living services
- Extra care housing

Joint commissioning activity will also extend to services for children, where these are provided in a similar form to adults, for example home care services.

NHS Oldham CCG and Oldham Council will also work to align processes for personal budgets and personal health care budgets as part of this work stream.

The joint commissioning of these arrangements will also include the development of effective links to acute, community and primary care services, to ensure that individual and service level outcomes are achieved.

## **6. COMMISSIONING, CONTRACTING, ACCESS**

### **Commissioning Arrangements**

This individual scheme shall be operated under Integrated Commissioning responsibilities.

The current version of the Expenditure Plan as per Schedule 8 shall set out who is acting as Lead Commissioner for each element of spend approved by the Commissioning Partnership Board. The Lead Commissioner for each element of spend shall be determined by the Commissioning Partnership Board. Once determined the Lead Commissioner will undertake the work in accordance with normal operating procedures of their own organisation.

The joint commissioning of these services will include all elements of the commissioning cycle, from the identification of need at a population level through to the monitoring, review and quality assurance of provision. Joint commissioning will also include market shaping and market management, the development of fee structures and provider negotiations, tendering, contract and relationship management and proactive quality improvement activity.

### **Contracting Arrangements**

The list of relevant contracts or parts thereof will be recorded in the Expenditure Plan as attached at Schedule 8. Each Partner shall ensure that copies of the signed contracts are maintained and available for inspection by the other parties to this Agreement upon request.

The financial and operational risks of each contract shall be managed by the Partner acting as Lead Commissioner. These risks shall be reported on as part of the regular financial reporting to the Commissioning Partnership Board as determined by those groups.

The Lead Commissioner shall have the authority to agree the form and details of each contract for commissioned services using reasonable terms within their normal operating procedures with the aim of managing risk to all parties to this agreement.

Contract variations, extensions, renewals and terminations in full or in part shall be subject to approval by the Commissioning Partnership Board. The Lead Commissioner shall ensure that appropriate notice is given to the Commissioning Partnership Board and the other Partner prior to such variations, extensions, renewals or terminations being undertaken.

At the termination of this agreement, contracts will remain with the Lead Commissioner of the scheme as set out in the Expenditure Plan.

Contracts shall only be assigned to the other party on the agreement of both parties.

### **Access**

Eligibility of individuals for access to particular services shall be set out in the service specification in the contract for that service. Material changes to eligibility shall not be made without consultation with the other party.

## **7. FINANCIAL CONTRIBUTIONS**

In accordance with each Partner's financial contribution, the Pooled Aligned are divided into budgets in accordance with Schedule 8.

In accordance with Clause 8.5 in this Agreement, the budgets within the Pooled Funds have been agreed as set out in the Expenditure Plan in Schedule 8.

## **8. FINANCIAL GOVERNANCE ARRANGEMENTS**

I.	Are any amendments required to the Agreement in relation to the management of Pooled Fund.	The Partners have agreed that funds shall be treated as a Pooled Aligned Budget.
II.	Have the levels of contributions been agreed?	Yes as set out in the Expenditure Plan attached at Schedule 8 to be varied by joint agreement of OMBC and Oldham CCG.
III.	How will changes to the levels of contributions be implemented?	Contributions approved through each Partner's internal governance process, with the use of these funds agreed by the Commissioning Partnership Board.
IV.	Have eligibility criteria been established?	Yes – These are included in the individual service specifications which are within the contracts listed within schedule 8.
V.	What are the rules about access to the Pooled Fund?	Authorised through Commissioning Partnership Board.
VI.	Do the pooled fund managers require training?	No.
VII.	Have the pooled fund manager's delegated powers been determined?	There are no delegated powers as the funds are held as a Pooled Aligned Budget.
VIII.	Is there a protocol for disputes?	Yes – prescribed protocol as set out in Clause 23.
IX.	Audit Arrangements.	Council and CCG external and internal Audit.
X.	What Audit arrangements are needed?	Council and CCG established Internal Auditors will apply diligence to systems, processes and transactions within their respective financial ledgers.
XI.	Has an internal auditor been appointed?	Council and CCG established Internal Auditors will apply diligence to systems, processes and transactions within their respective financial ledgers.
XII.	Who will liaise with/manage the auditors?	Council's Section 151 Officer/DoF and CCG's CFO will nominate officers to liaise with auditors

		as required.
XIII.	Whose external audit regime will apply?	Each Partner shall comply with its own external audit requirements (as applicable).
XIV.	Financial Management	Administered by each Partner as the funds are held as a Pooled Aligned Budget.
XV.	Which financial systems will be used?	Both Council and CCG financial systems will be used as each Partner is managing its own Financial Contributions.
XVI.	What monitoring arrangements are in place?	<p>Monthly report produced by each Partner using their financial management arrangements. This will be brought together as a joint report with management overview exercised by the Council's S151 Officer/DoF and CCG's CFO.</p> <p>Reports to the Commissioning Partnership Board.</p> <p>No month 1 or 2 report each year.</p> <p>Reporting to CCG Commissioning Committee and Quarterly plus Month 8 to Council Cabinet (either stand alone or as part of standard financial reporting)</p> <p>To include budget and full year financial forecast information.</p>
XVII.	Who will produce monitoring reports?	Each Partner will produce its own financial monitoring information. This will be brought together as a joint report with management overview exercised by the Councils S151 Officer/DoF and CCG CFO.
XVIII.	Has the scale of contributions to the Pooled Fund been agreed?	The Financial contribution of the CCG and the Council for years after the first Financial Year of operation will use the first Financial Year as a baseline and be varied by mutual agreement dependent on the schemes being considered. These will be approved by the internal governance of the CCG and Council and notified to the Commissioning Partnership Board in advance of the start of each Financial Year.
XIX.	What is the frequency of monitoring reports?	Monthly unless otherwise agreed.
XX.	What are the rules for managing over/underspends?	Budget variances up or down are reported as soon as practicable. Joint robust action plan put in place to recover overspends in year for individual areas of expenditure. The default treatment of any underspend or overspend shall be as per Section 16 of this agreement.
XXI.	Do budget managers have delegated powers to overspend?	No
XXII.	Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?	Approval required by Commissioning Partnership Board.
XXIII.	How will overspends and underspends be treated at year end?	<p>Each Partner is carrying its own risk with regard to overspends and will therefore absorb these at the year end in relation to those budgets where it is designated as the lead body in paragraph 7.2 of this Scheme B and/or Schedule 8.</p> <p>The position with regard to under spends will</p>

		need to be considered in the context of the financial position and regulations of each individual Partner. There will be no presumption of carry forward although this will be accommodated if possible.
XXIV.	Will there be a facility to carry forward funds?	Yes, the Council will be in a position to carry forward funds but subject to the position outlined in XXIII.
XXV.	How do we financially deal with non-performance against the BCF deflections KPIs?	As described in section 16 below.
XXVI.	How will pay and non-pay inflation be financed?	Joint agreement on additional Partner contributions which could be zero uplift.
XXVII.	Will a contingency reserve be maintained, and if so by whom?	There are no contingencies held, so any overspends will need to be managed as described above.
XXVIII.	How will efficiency savings be managed?	<p><u>Reductions in funding level</u> Targets set and funding reduced at the start of the year through planned commissioning actions. Contributions agreed by each Partner's management team and ratified by the Commissioning Partnership Board. Monitoring through monthly reporting mechanism.</p> <p><u>Efficiencies with existing areas of spend</u> Any efficiencies will be deployed following ratification by the Commissioning Partnership Board.</p> <p>Usage of any savings on hospital deflections from exceeding targeted level of performance will be determined by the CCG.</p>
XXIX.	How will revenue and capital investment be managed?	Managed by each Partner's management team and ratified by the Commissioning Partnership Board. Monitoring through monthly reporting mechanism.
XXX.	Who is responsible for means testing?	Council for client contributions.
XXXI.	Who will own capital assets?	The only capital expenditure incurred under this Agreement is via Disabled Facilities Grant relating to assets that neither Partner owns.
XXXII.	How will capital investments be financed?	Utilising the most appropriate forms of financing for both the commissioning Partner and the wider economy, including the maximisation of grant funding opportunities
XXXIII.	What management costs can legitimately be charged to the Pooled Fund?	None.
XXIV.	What are the arrangements for overheads?	Each Partner funds its own overheads.
XXXV.	What will happen to the existing capital programme?	Capital investment is included within the Council's or CCG's capital programme and will continue to completion.
XXVI.	What will happen on transfer where current liabilities exceed resources (i.e. commitments exceed budget) immediate overspend secure?	Resources realigned with the fund with under and overspends to be managed by the Lead Commissioner for each service.
XXVII.	What closure of accounts arrangement need to be applied?	Adherence to the CCG and Council's timetable and note/working paper standards and procedures.

## Cash Management

At the start of each Financial Year, both Partners shall agree an estimated cash flow (payment schedule) for the services that they will be paying for as commissioner based on the agreed Expenditure Plan in force at that point in time. This will be used to agree a schedule of monthly or quarterly invoices between Partners for the estimated funds required. Any difference shall be settled through agreed year end invoices or, if material through quarterly adjustment invoices between Partners, based on the latest financial information submitted to the Commissioning Partnership Board.

It is expected that any formally approved year end over or under spends on the fund will be invoiced and settled in cash, but may be held as memorandum balances by agreement of the Commissioning Partnership Board.

### 9. VAT

The VAT regime of the relevant Lead Commissioner will apply.

### 10. GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements for the Partnership are included at Schedule 2.

### 11. NON FINANCIAL RESOURCES

Non-financial contributions will be provided by the Lead Commissioner or service Provider for that particular scheme.

### 12. STAFF

The provisions set out in Clause 5A will apply.

### 13. ASSURANCE AND MONITORING

The arrangements covered by this schedule shall be monitored and assured by the Lead Commissioner, in accordance with the individual monitoring requirements of each area of commissioning activity. Monitoring and assurance will take the form of quantitative and qualitative assessment, provider reporting, formal contract meetings, and proactive and reactive activity.

Commissioners will ensure that service outcomes are in line with the broader strategic outcomes of Oldham Cares, and that monitoring and assurance activity demonstrates the extent to which the outcomes are being achieved.

Reporting of performance and the achievement of outcomes will be to the Commissioning Partnership Board, in a form and frequency determined by the Commissioning Partnership Board. Reporting may also be to and any other appropriate fora, such as the Oldham Safeguarding Adults Board and the Local Safeguarding Children's Board.

### 14. LEAD OFFICERS

Position	Partner	Name of Lead Officer (as at the Commencement Date)	Address	Telephone Number	Email Address
Acting Director of Performance and Delivery	CCG	Nadia Baig	Ellen House, Waddington Street	0161 622 6505	<a href="mailto:nadiabaig@nhs.net">nadiabaig@nhs.net</a>

Chief Financial Officer	CCG	Ben Galbraith	Ellen House, Waddington Street	0161 622 6590	<a href="mailto:Ben.galbraith@nhs.net">Ben.galbraith@nhs.net</a>
Director of Adult Social Services	OMBC	Mark Warren	Ellen House, Waddington Street	0161 770 4215	<a href="mailto:mark.warren@oldham.gov.uk">mark.warren@oldham.gov.uk</a>
S.151 Officer/ Director of Finance	OMBC	Anne Ryans	Civic Centre, West Street, Oldham	0161 770 4902	<a href="mailto:Anne.Ryans@oldham.gov.uk">Anne.Ryans@oldham.gov.uk</a>

**15. INTERNAL APPROVALS**

In accordance with the Commissioning Partnership Board Terms of Reference and the constitutions and Schemes of Delegation of Oldham MBC and NHS Oldham CCG.

**16. RISK AND BENEFIT SHARE ARRANGEMENTS**

The risk of financial underspend and overspend shall be borne by the Host Partner for each relevant Pooled Aligned Budget.

**17. REGULATORY REQUIREMENTS**

Commissioner to ensure regulatory and registration requirements met for individual services.

**18. INFORMATION SHARING AND COMMUNICATION**

As set out in Schedule 7.

**19. DURATION AND EXIT STRATEGY**

General provisions for the termination of the Agreement are set out in Clause 22 of the Agreement. Those termination provisions will also apply to Individual Schemes within this Agreement where both parties agree to such a partial termination. However where either party does not agree to the partial termination then the Individual Scheme will either need to be terminated in its entirety or continued in its entirety.

**20. OTHER PROVISIONS**

None.

## **SCHEDULE 1– SCHEME SPECIFICATION**

### **Agreed Service Specifications**

#### **Scheme C: GM Transformation Funds**

##### **1 OVERVIEW OF INDIVIDUAL SERVICE**

The GM Transformation Fund is a £450m fund covering all of Health and Social Care across Greater Manchester. Oldham locality has been awarded a share of these funds through a number of bids which have been approved by the Greater Manchester Strategic Partnership Board.

The whole of the funds for this Scheme are a Pooled Budget which will be hosted and managed with the CCG acting as Lead Commissioner (as set out in Clause 6) with the uses and reporting of completed as agreed by the Commissioning Partnership Board. The CCG's Chief Finance Officer or such other officer as they nominate will act as the Pooled Budget Manager.

##### **2 AIMS AND OUTCOMES**

The purpose of Transformation Fund monies is to provide incremental non-recurrent monies to enable systems to transform the care provided to residents and patients of Oldham.

Our aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, we will commission or design integrated health and care services that enable people to proactively manage their own care as far as they are able, with the support of their family, community and the right professionals at the right time in a properly joined up system.

All commissioning activity will reflect the high level outcomes of the Integrated Care Organisation (ICO) and translate these into meaningful, relevant and measurable personal or population level outcomes.

##### **3 THE ARRANGEMENTS**

This Scheme will be treated as a Pooled Budget with the CCG acting as Lead Commissioner.

##### **4 FUNCTIONS**

The Transformation Fund will be used to fund a variety of resources both to enable the design and delivery of changes as well as of front line service changes. However, as this is a one-off fund it can only be used for one-off costs or for pilots of new services.

The high level intention of this work was set out in the Transformation Fund bid approved by the Integrated Commissioning Partnership in March 2017. The detail of each bid will be developed for approval by the Commissioning Partnership Board.

##### **5 SERVICES**

All services will be impacted either directly or indirectly through the transformational service changes developed with these funds. The intended impact will be as set out in each business case.

Changes to services will be through the governance processes set out in Schedule 2.

##### **6 COMMISSIONING, CONTRACTING, ACCESS**

###### ***Commissioning Arrangements***

This Scheme shall operate under Lead Commissioning arrangements with the CCG operating as Lead Commissioner.

## Contracting Arrangements

The contracting arrangements will be developed to pragmatically meet the needs of the transformation programme. In some cases this will build on existing contracts whilst in other situations it will be more appropriate to contract for the services.

Whilst the CCG will act as a Lead Commissioner this may be directly or through the Council depending on the nature of the expenditure.

The approved, committed and actual expenditure will be reported to the Commissioning Partnership Board as part of the routine financial monitoring.

The Lead Commissioner shall have the authority to agree the form and details of each contract for commissioned services using reasonable terms within their normal operating procedures with the aim of managing risk to all parties to this agreement.

At the termination of this agreement, contracts will remain with the Lead Commissioner of the scheme as set out in the Expenditure Plan.

Contracts shall only be assigned to the other party on the agreement of both parties.

### Access

Eligibility of individuals for access to particular services shall be set out in the service specification in the contract for that service. Material changes to eligibility shall not be made without consultation with the other party.

## 7 FINANCIAL CONTRIBUTIONS

### Financial Year 2018/19

	CCG contribution	Council Contribution
Pooled Budget	See Expenditure Plan in Schedule 8	

## 8 FINANCIAL GOVERNANCE ARRANGEMENTS

Are any amendments required to the Agreement in relation to the management of Pooled Fund	The Partners have agreed that funds for this Scheme shall be treated as a Pooled Budget.
Have the levels of contributions been agreed?	Yes for 2018/19 as set out section 7 above.
How will changes to the levels of contributions be implemented?	Yes for 2018/19. In future years this will be informed by Transformation Fund Allocation received from GMHSCP
Have eligibility criteria been established?	No – these will be developed by the individual services at the time of developing the business case to gain approval for the expenditure.
What are the rules about access to the Pooled Fund?	Authorised through the Lead Commissioner's normal budget delegation process.
Does the pooled fund manager require training?	No.
Have the pooled fund manager's delegated powers been determined?	To operate within the normal delegated limits within their organisation but with reference to the need to highlight any forecast over or underspends to the Commissioning Partnership Board at the earliest opportunity.
Is there a protocol for disputes?	Yes – prescribed protocol as set out in Clause 23.
Audit Arrangements	Oldham CCG's external auditors and the internal audit functions

	of Oldham Council and the Clinical Commissioning Group will be responsible for auditing the Pooled Fund. The frequency and scope of audits will be agreed in advance by both Partners.
What Audit arrangements are needed?	Oldham Council and the Clinical Commissioning Group's internal audit of finance and services and review by Oldham Council's external auditors at agreed frequencies.
Has an internal auditor been appointed?	The Council and CCG established Internal Auditors will apply diligence to systems, processes and transactions within their respective financial ledgers.
Who will liaise with/manage the auditors?	The Council Section 151 Officer/DoF and CCG CFO will nominate officers to liaise with auditors as required.
Whose external audit regime will apply?	Oldham CCG.
Financial Management	Oldham CCG
Which financial systems will be used?	Oldham CCG
What monitoring arrangements are in place?	Quarterly report produced by the Host Partner incorporating relevant information from both organisations. The report will be provided to the Commissioning Partnership Board and Health and Well Being Board.  The quarterly report for quarters 1 to 3 will include budget and full year financial forecast information.
Who will produce monitoring reports?	Oldham CCG.
Has the scale of contributions to the Pooled Fund been agreed?	All Transformation Fund monies provided to Oldham Locality by GM HSCP
What is the frequency of monitoring reports?	Quarterly
What are the rules for managing over/underspends?	Budget variances up or down are reported as soon as practicable. Joint robust action plan will be put in place to recover overspends in year for individual areas of expenditure. The default treatment of any net variance on the Pooled Budget at year end will be for the Provider of services to fund the overspend.
Do budget managers have delegated powers to overspend?	No.
Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?	Approval required by each Partner and the Commissioning Partnership Board.
Will there be a facility to carry forward funds?	Oldham Council will make arrangements as required to carry forward funds where agreed by both parties and the Commissioning Partnership Board.
How do we financially deal with non performance against the BCF deflections KPIs?	See Section 16
How will pay and non pay inflation be financed?	Joint agreement on additional Partner contributions which could be zero uplift.
Will a contingency reserve be maintained, and if so by whom?	There is no contingency held by either Partner in relation to this Transformation Fund. Any overspends will need to be managed as described above
How will efficiency savings be managed?	<u>These are non-recurrent funds so no efficiency targets are expected</u>
Who is responsible for means testing?	N/a
Who will own capital assets?	The CCG will hold the capital assets if any arise unless specifically agreed otherwise.
How will capital investments be	There is no capital budget at the outset of this Scheme.

financed?	
What management costs can legitimately be charged to pool?	None  (Note that PMO and similar costs may be separately and explicitly approved by Joint Leadership Team)
What are the arrangement for overheads?	Host Partner (Oldham CCG) will meet the cost of overheads.
What will happen to the existing capital programme?	There is no capital budget in this Scheme.
What will happen on transfer where current liabilities exceed resources (i.e. commitments exceed budget) immediate overspend secure?	Subject to the approval of the Partners and the Commissioning Partnership Board resources may be realigned across Schemes within the overall Agreement.
What closure of accounts arrangement need to be applied?	Adherence to the CCG and Council's timetable and note/working paper standards and procedures

## Cash Management

At the start of each Financial Year, both Partners shall agree an estimated cash flow (payment schedule) for the services that they will be paying for as Commissioner based on the agreed Expenditure Plan in force at that point in time. This will be used to agree a schedule of monthly or quarterly invoices between Partners for the estimated funds required. Any difference shall be settled through agreed year end invoices or, if material through quarterly adjustment invoices between Partners, based on the latest financial information submitted to the Commissioning Partnership Board.

It is expected that any year end over or under spends on the fund will be invoiced and settled in cash, but may be held as memorandum balances by agreement of the Commissioning Partnership Board.

## 9 VAT

Which Partner's VAT regime will apply?	Host (Oldham CCG)
Is one Partner acting as 'agent' for another?	No
Have Partners confirmed the format of documentation, reporting and accounting to be used?	Not yet. This will be proposed by the Host using the Expenditure Plan as the template and approved by the Commissioning Partnership Board.

## 10 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements for the Partnership are included at Schedule 2.

The governance arrangements for the Partnership are included at Schedule 2.

## 11 NON FINANCIAL RESOURCES

Non-financial contributions are provided by the Lead Commissioner or service Provider.

## 12 STAFF

The provisions set out in Clause 5A will apply.

## 13 ASSURANCE AND MONITORING

The arrangements covered by this schedule shall be monitored and assured by the Lead Commissioner, in accordance with the individual monitoring requirements of each area of commissioning activity. Monitoring and assurance will take the form of quantitative and qualitative assessment, provider reporting, formal contract meetings, and proactive and reactive activity.

Commissioners will ensure that service outcomes are in line with the broader strategic outcomes of Oldham Cares, and that monitoring and assurance activity demonstrates the extent to which the outcomes are being achieved.

Reporting of performance and the achievement of outcomes will be to the Commissioning Partnership Board, in a form and frequency determined by the Commissioning Partnership Board. Reporting may also be to any other appropriate forum,

#### 14 LEAD OFFICERS

Position	Partner	Name of Lead Officer (as at Commencement Date)	Address	Telephone Number	Email Address
Acting Director of Performance and Delivery	CCG	Nadia Baig	Ellen House, Waddington Street	0161 622 6505	<a href="mailto:nadiabaig@nhs.net">nadiabaig@nhs.net</a>
Chief Financial Officer	CCG	Ben Galbraith	Ellen House, Waddington Street	0161 622 6590	<a href="mailto:Ben.galbraith@nhs.net">Ben.galbraith@nhs.net</a>
Director of Adult Social Services	OMBC	Mark Warren	Ellen House, Waddington Street	0161 770 4215	<a href="mailto:mark.warren@oldham.gov.uk">mark.warren@oldham.gov.uk</a>
S.151 Officer/ Director of Finance	OMBC	Anne Ryans	Civic Centre, West Street, Oldham	0161 770 4902	<a href="mailto:Anne.Ryans@oldham.gov.uk">Anne.Ryans@oldham.gov.uk</a>

#### 15 INTERNAL APPROVALS

In accordance with the Commissioning Partnership Board Terms of Reference and the constitutions and Schemes of Delegation of Oldham MBC and NHS Oldham CCG.

#### 16 RISK AND BENEFIT SHARE ARRANGEMENTS

Any overspends shall be funded by the service providers.

#### 17 REGULATORY REQUIREMENTS

Lead commissioner to ensure regulatory and registration requirements met for individual services.

#### 18 INFORMATION SHARING AND COMMUNICATION

As set out in Schedule 7.

#### 19 DURATION AND EXIT STRATEGY

General provisions for the termination of the Agreement are set out in Clause 22 of the Agreement. Those termination provisions will also apply to Individual Schemes within the Agreement where both parties agree to such a partial termination. However, where either party does not agree to the partial termination then the Individual Scheme will either need to be terminated in its entirety or continued in its entirety.

#### 20 OTHER PROVISIONS

None.

## SCHEDULE 2 – GOVERNANCE

### 1 Commissioning Partnership Board

- 1.1 The Commissioning Partnership Board is a joint committee of the Partners established pursuant to Regulation 10(2) of the Regulations. Its overarching focus is to develop and support integration and collaboration on all aspects of health and social care services. It has been established as a joint committee of OMBC and Oldham CCG. The Terms of Reference for the Commissioning Partnership Board, as at the date of this Agreement, are as set out in Appendix 1 to this Schedule.



- 1.2 The Financial, Risk Sharing and Information Sharing rules are as set out in the Individual Scheme Specifications which in the event of, and to the extent of, any inconsistency, supersede those arrangements described elsewhere in the Agreement.

### 2 Post-termination

The Commissioning Partnership 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.

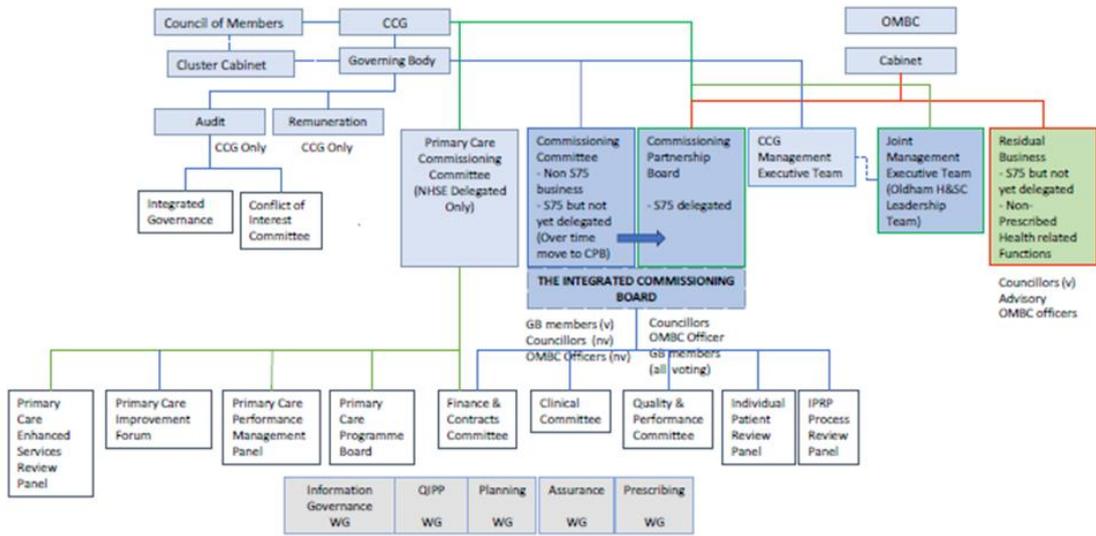
### 3 Health and Well Being Board

- 3.1 The Health and Wellbeing Board in Oldham provides the overall ownership of the plan and the associated progress and outcomes. The Terms of Reference for the Health and Well Being Board, as at the date of this Agreement, are as set out in Appendix 2 to this Schedule.

### 4. Overarching Governance

The context in which the Commissioning Partnership Board sits is set out below Please could we call the chart Oldham Cares Structure Chart.

### CCG Committee Structure



## SCHEDULE 3 – DECISION MAKING

### 1 Decision Making

- 1.1 Detailed processes for decision making are set out in each Partners Constitution, Standing Orders and Schemes of Delegation, and are set out below in paragraphs 2 and 3 of this Schedule 3.
- 1.2 The Commissioning Partnership Board has the power to delegate tasks in accordance with its Terms of Reference.

### 2. Delegation Arrangements- Council Authority

- 2.1 All financial expenditure with a value below £250,000 will be required to be approved by the Council's S151 Officer and Statutory Director of Adult Social Services (designated DASS) in advance.
- 2.2 All proposals with a value of over £250,000 will require approval from Council's S151 Officer and Statutory Director of Adult Social Services (designated DASS) prior to being presented to the Commissioning Partnership Board.
- 2.3 The Council's S151 Officer and Statutory Director of Adult Social Services (designated DASS) may delegate such authorisation in accordance with the Council's Scheme of Delegation.

### 3. Delegation Arrangements- CCG Authority

- 3.1 All financial expenditure with a value below £250,000 will be required to be approved by the in advance by the CCGs Chief Financial Officer and Director of Commissioning.
- 3.2 All proposals with a value of over £250,000 will require approval from the CCGs [Management Executive Team] prior to being presented to the Commissioning Partnership Board.
- 2.3 The CCGs Chief Financial Officer and Director of Commissioning and/or Management Executive Team may delegate such authorisation in accordance with the CCG's Scheme of Reservation and Delegation.

### 4. Scheme of Delegation

- 4.1 The Partners will work together to develop a Scheme of Delegation specifically relating to decision making when the CCG and the Council are exercising each other's Functions when acting as Lead Commissioner.

## **SCHEDULE 4– JOINT WORKING OBLIGATIONS**

### **Part 1 – LEAD COMMISSIONER OBLIGATIONS**

Terminology used in this Schedule shall have the meaning attributed to it in the NHS Standard Form Contract save where this Agreement or the context requires otherwise. Where any services are contracted on Council terms this schedule will apply mutatis mutandis.

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

- 4.6 suspend all or part of the Services;
- 4.7 serve any notice to terminate the Service Contract (in whole or in part);
- 4.8 serve any notice;
- 4.9 agree (or vary) the terms of a Succession Plan;

without the prior approval of the other Partners (acting through the Commissioning Partnership Board) such approval not to be unreasonably withheld or delayed.

- 5 The Lead Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
- 6 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
- 7 The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

#### **Part 2– OBLIGATIONS OF THE OTHER PARTNER**

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

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

## SCHEDULE 5 – ORGANISATIONAL STRUCTURE

The interim joint structure that brings together the Adult Social Care Commissioning service with the Performance and Delivery Team within the CCG is set out below. The structure is subject to change as the service develops.



Interim joint  
structure v3.pdf

The Adult Social Care Commissioning and Quality Assurance Structure which sits within the interim joint structure is as set out below. The structure is subject to change as the service develops.



Commissioning and  
QA structure final 28:

## **SCHEDULE 6 – DOCUMENTS RELIED UPON**

The following documents are relied upon by the Partners (as may be varied from time to time):

1. Managing conflicts of interest: Revised statutory guidance for CCGs 2017
2. Managing Conflicts of Interest in the NHS: Guidance for staff and organisations
3. NHS Code of Conduct
4. Council Code of Conduct for Members
5. Council Code of Conduct for Officers
6. Commissioning Partnership Board Terms of Reference (as per Schedule 2)
7. Health and Well Being Board Terms of Reference (as per Schedule 2)
8. Organisational structure documents (as per schedule 5)
9. Oldham Cares Memorandum of Understanding (as per Schedule 7)
10. Oldham Cares Information Governance Framework (as per Schedule 7)
11. Expenditure Plan (as per Schedule 8)

## SCHEDULE 7 – INFORMATION GOVERNANCE PROTOCOL

### Principles of Information sharing

- 1.1 As a principle each Partner will take a proactive approach to sharing information in order to help the Partners work more effectively with service users and communities, where this is appropriate and safe to do so.
- 1.2 When accessing Personal Data (as defined in the Data Protection Legislation and any applicable code of professional confidentiality) obtained by or in the possession of the other Partner, the organisation and its employees will duly observe all their obligations under the Data Protection Legislation and any applicable code of professional confidentiality which arise in connection with this Agreement.
- 1.3 Except as required by the law the Partners agree at all times during the continuance of this Agreement and after its termination to keep confidential all documents or papers which one Partner receives or otherwise acquired in connection with the other and which are marked “Commercial - in confidence” or such other similar words signifying that they should not be disclosed.
- 1.4 The Partners acknowledge their respective obligations under the Freedom of Information (FOI) Act and each will assist the other in responding appropriately to FOI requests within the statutory timescales.
- 1.5 If either Partner identifies an issue of media interest within jointly commissioned services, that Partner will liaise with the other before an agreed joint statement is made to the media.
- 1.6 It is assumed that charges will not be made by any Partner to this Agreement for data which they would hold in the normal course of their operations, unless all Partners agree otherwise.
- 1.7 Where there are charges for third party licenses or access rights then it is expected that each organisation will bear their own costs.
- 1.8 Each Partner will continue to use their own data systems until such time as there is common agreement amongst Partners as to a common system.
- 1.9 Detailed processes will be set out in the Oldham Cares Memorandum of Understanding and Oldham Cares Information Governance Framework of which the current versions are attached below.



Oldham Cares



Visio-LCO IG

memorandum of understanding Framework v0.3.pdf

**SCHEDULE 8: EXPENDITURE PLAN**

*[ BG to attach once updated ]*