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COMMISSIONING PARTNERSHIP BOARD Agenda

- Date Thursday 27 January 2022
- Time 1.00 pm
- Venue Crompton Suite, Civic Centre, Oldham, West Street, Oldham, OL1 1NL
- Notes
1. DECLARATIONS OF INTEREST- If a Member requires 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 Elizabeth Drogan at least 24 hours in advance of the meeting.
 2. CONTACT OFFICER for this agenda is Tel. 0161 770 5151 or email elizabeth.drogan@oldham.gov.uk
 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 Monday, 24 January 2022
 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

Councillors Chauhan, Moores and Shah
CCG Mike Barker, Graham Foulkes, Ben Galbraith, Dr. Mudiyr Gopi, Dr. Shelley Grumbridge, Nicola Hepburn, Majid Hussain, Gerard Jones, Helen Lockwood, Dr. Ian Milnes, Dr. John Patterson, Kate Rigden, Claire Smith, Rebekah Sutcliffe, Dr. Andrew Vance and Mark Warren

- 1 Election of Chair
The Panel is asked to elect a Chair for the duration of the meeting.
- 2 Apologies For Absence
- 3 Urgent Business
Urgent business, if any, introduced by the Chair
- 4 Declarations of Interest
To Receive Declarations of Interest in any Contract or matter to be discussed at the meeting.
- 5 Public Question Time
To receive Questions from the Public, in accordance with the Council's Constitution.
- 6 Minutes of Previous Meeting (Pages 1 - 6)
The Minutes of the meeting of the Commissioning Partnership Board held on 21st October 2021 are attached for approval.
- 7 Approval of Section 75 (Pages 7 - 68)

Present: Councillor Chauhan (Chair)
Councillors Moores and Shah
Kate Ridgen, Chief Finance Officer CCG, Dr.Ian Milnes Deputy
Chief Clinical officer, Mike Barker, Accountable Officer

Also in Attendance:

Mark Warren- Managing Director
Community Health and Adult Social
Care
Rebekah Sutcliffe Strategic Director,
Communities and Reform
Anne Ryans - Director of Finance
OMBC

1 **ELECTION OF CHAIR**

RESOLVED – That Councillor Chauhan be elected Chair for the duration of the meeting.

2 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Majid Hussain, Gerard Jones, Claire Smith, Dr John Patterson, Dr Shelley Grumbridge and Councillor Chadderton.

Mike Barker attended as a substitute for Majid Hussain.

3 **URGENT BUSINESS**

There were no items of urgent business received.

4 **DECLARATIONS OF INTEREST**

There were no declarations of interest received.

5 **MINUTES OF PREVIOUS MEETING**

RESOLVED - That the minutes of the meeting of the Commissioning Partnership Board held on 29th April 2021 be approved as a correct record.

6 **PUBLIC QUESTION TIME**

There were no public questions received.

7 **NATIONAL & REGIONAL UPDATES**

The Board gave consideration to a report of the CCG Accountable Officer and Strategic Director of Commissioning, Oldham Council which contained summaries of local and national policies, strategies, and relevant news to ensure the Board remained up to date on the latest developments relevant to the Council.

An update was provided on the Greater Manchester Integrated Commissioning System (ICS), which would come into place on 1st April 2022. The ICS would include the creation of a statutory Integrated Care Partnership (ICP), which would be a joint Board,

and an Integrated Care Board (ICB) (previously referred to as the ICS NHS body/board).



Members were reminded that in Greater Manchester, under the Devolution Agreement, we had been working as 'more than an ICS' for the last five years, with strong working partnerships between health and social care and the voluntary sector. The creation of a statutory Integrated Care Partnership and Integrated Care Board would formalise those arrangements. The new statutory nature of an ICS would enable building on the ambitious and groundbreaking ways of working over the last five years and evolution to deliver even better health and care for the people of Greater Manchester.

The GM ICS would operate on three levels to deliver a new five-year vision and plan:

- Neighbourhood
- Locality
- Greater Manchester

The Board was informed that a GM Statutory ICS Transition Programme had been established, led by a Board meeting fortnightly, to oversee the transition to the new ICS arrangements. The Board was made up of representatives from all organisations which would become part of the new NHS body, as well as NHS providers and local authorities. The intention was for the GM ICS, including localities to operate with shadow arrangements ahead of the statutory change on 1 April 2022.

The Oldham transitional arrangements would be overseen by a Governing Body which would oversee the two core work areas that would work in tandem with the GM approach:

- HR and transfer of people
- CCG closedown and transfer of data and statutory duties

Locality system developments would focus on:

- Set-up of the new Oldham Health and Care System Board (including placebased responsibilities, shift of some commissioning oversight, and also oversight of strategic planning functions)
- Development of a new provider 'collaborative'
- System finances and use of resources

In relation to the National Employment Board, Members noted the majority of Oldham CCG would be covered by an employment commitment to continuity of terms and conditions. For those not covered by this commitment, guidance had set out the support that they would receive during the HR process to be followed. There was an expectation that all CCG employees would 'lift and shift' into the GM ICS on 1 April 2022, with any remaining work to determine exact roles and structures continuing after that date.

The Board noted the appointment of Amanda Doyle as the new Regional Director for the North West.



Oldham
Council

The Board noted the guidance and publications recently issued.

Options/alternatives

1. Note the updates.
2. Challenge the updates

RESOLVED - That the National and Regional Updates be noted.

8

SECTION 75 2020-21 YEAR END POSITION MONITORING REPORT

The Board gave consideration to a report of the Director of Finance, Oldham Council and the Chief Finance Officer, Oldham CCG which asked for consideration of the Oldham Cares Section 75 pooled budget year end position for 2020/21.

The Board was reminded that the agreement for 2020/21, including the CCG's increased contribution to the wider Oldham healthcare economy of £16.3m, had been considered and approved at the Commissioning Partnership Board on 25th March 2021.

Section 75 monitoring reports had been presented at months 6, and 8 and 9 during the 2020/21 financial year.

The report set out the Oldham Cares Section 75 (S.75) pooled budget monitoring position as at the end of the 2020/21 financial year. It showed expenditure of £176.63m, compared to a budget of £176.96m, resulting in an underspend of £0.33m. Adverse variances relating to Oldham Council services were substantially offset by favourable variances within Oldham CCG.

Options/alternatives

1. Note the contents of the report
2. Challenge the contents and recommendations in the report

RESOLVED - That the outturn position for the budgets within the S75 Agreement for 2020/21 be noted.

9

HEALTH & SOCIAL CARE INTEGRATION RESERVE

The Board gave consideration to a report of the Director of Finance, Oldham Council and the Chief Finance Officer, Oldham CCG which sought approval for the proposed use of funds held in reserves following increased flexibilities of S75 contributions within 2020/21.

The report provided the Board with an update on proposals to fund transformational activity, which would begin to address the c£90m recurrent system gap across the Oldham system.

During 2020/21 the Oldham Directors of Finance had worked together to set out the system-wide financial challenge being faced. Based on the financial issues developed by each

organisation at the start of 2020/21 the underlying gap was £87.8m for the Oldham system, before savings plans and use of reserves. Whilst there had been some movement in the elements and drivers of this position due to Covid, the year-end position still showed an underlying financial gap of approximately £90m at the end of 2020/21.

The CCG had significant scope to contribute additional funds into the pooled budget and, at its meeting on 25th March 2021, the Board agreed that these funds would be used to support the creation of a reserve totalling £10.3m in OMBC accounts, to support what would be an extremely challenging financial position in 2021/22 and subsequent years.

The report set out the following proposals for the use of reserves in 2021-2022:-

- Funding additional capacity for the next 12 months to speed up work on children's integration - £0.08m
- Contribution towards the Delivering a Sustainable Future programme of transformational change - £0.15m
- Additional contribution to the pool in response to the non-recurrent NHS system pressures as referenced in the paper of March 2021. - £5.0m with delegation, jointly, to the OMBC Director of Finance and the CCG Chief Finance Officer to finalise the technical requirements in order to utilise the funds and confirm phasing arrangements

It was proposed that a further £5.07m would remain available for future use as a Transformation Fund, to enable the requisite closing of the underlying gap within Oldham.

It was proposed that the use of the remaining £5.07m reserve be delegated to the new Oldham Health and Care System Board, with bids being reviewed and proposed by the Place Lead for Oldham, in consultation with the Chief Finance Officers of the CCG and the Council, to provide assurance as to the financial benefits and to ensure compliance with the Oldham System Financial Framework. The Board noted the use of the funds must align to the legislative and local financial frameworks applicable to Oldham Council, as the £5.07m was held in the accounts of the Council.

Options/alternatives

1. Approve the proposals in full.
2. Approve the proposals in part.
3. Do not approve the proposals

RESOLVED- That:

1. The strong history of joint working and funding arrangements in Health and Social Care in Oldham be noted.
2. The request for use of funds in 2021/22 totalling £5.23m as detailed in the report be approved.

3. Delegation jointly to the OMBC Director of Finance and the CCG Chief Finance Officer to finalise the technical requirements in order to utilise the £5m of the funds and confirm phasing arrangements be approved.
4. That approval would also be sought for changes arising from this paper through Council governance routes regarding the Use of Reserves Policy be noted.



The meeting started at 1.00 pm and finished at 1.30pm

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Commissioning Partnership Board Report

Decision Maker	Commissioning Partnership Board
Date of Decision:	27 January 2022
Subject:	Approval of Section 75
Report Author:	Anne Ryans (Director of Finance, Oldham Council) Kate Rigden (Chief Finance Officer, Oldham CCG)
Report Reference:	

Reason for the decision: To give approval for the final version of the 2021/22 Oldham Section 75 legal document, schemes included and financial contributions of the CCG and OMBC

Summary: To update the CPB on proposals for the final version of the Section 75 legal agreement.

What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):

Recommendation(s):

- a) Note the strong history of joint working and funding arrangements in Health and Social Care in Oldham
- b) Approve the continuation of a Scheme for Hospital Discharge Programme funding as described below and included as “Scheme D” in the Section 75 documentation;
- c) Approve the Section 75 Agreement at attached at Appendix 1, and specifically the intention to adopt a flexible approach to contributions to support delivery of the best services for Oldham residents.

d) Authorise the Director of Legal Services to sign the Section 75 Agreement on behalf of OMBC; and

e) Delegate approval jointly to OMBC Director of Finance and the CCG Chief Finance Officer to finalise the financial expenditure and contribution figures included at Schedule 8 of Appendix 1 as part of year-end processes.

Implications:

What are the **financial** implications? Financial implications are within the body of the report

What are the **procurement** implications? N/A

What are the **legal** implications? *The draft Section 75 Partnership Agreement has been subjected to a review by the external legal advisers acting for the CCG and the Council's in-house legal service. (Sarah Orrell)*

What are the **Human Resources** implications? N/A

Equality and Diversity Impact Assessment attached or not required because (please give reason) N/A

What are the **property** implications? N/A

Risks: N/A

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? N/A

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? N/A

Reason(s) for exemption from publication: N/A

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

Report Author Sign-off:	
	Anne Ryans & Kate Rigden
Date:	

Appendix number or letter	Description
Appendix 1	Section 75 Agreement for 2021/22

Background

- 1.1 Section 75 (S.75) agreements exist between Local Authorities and the NHS nationally for the pooling of budgets to facilitate closer working. Oldham Council and Oldham CCG have entered into such an agreement for a number of years. Originally the S.75 agreement covered expenditure funded by the Better Care Fund. The agreement initially expanded to include the Improved Better Care Fund and the Winter Resilience Grant. The Council and the CCG have chosen to further widen the scope of the agreement to incorporate a number of areas where services are being commissioned jointly. The main purpose is to facilitate a whole system approach to deliver care where and how it can be best delivered to the citizens of Oldham.
- 1.2 The Oldham system has a strong history of joint working and of organisations providing support where flexibility allows. Some examples of the financial system working include:
 - Oldham CCG providing additional funding to Adult Social Care through the Better Care Fund of over £6m between 2014/15 and 2016/17
 - OMBC providing investment funds of £5.9m in 2019/20
 - Oldham CCG and Pennine Acute Hospitals NHS Trust agreeing financial contracts that moved away from activity tariffs to move to a more constructive relationship focussed on joint working
 - Oldham CCG providing additional funding to Adult Social Care in 2020/21

Budget position 2021/22

- 1.3 Contributions for the Council and CCG have been updated based on 2021/22 budgets as reported and agreed by each organisation separately. The Council's contribution is based on the same principles and services incorporated in the 2020/21 agreement.
- 1.4 The CCG's contribution to the S.75 agreement has been enhanced for 2021/22 as part of an increase to the "Pooled Aligned" budget. This changes the scope of the agreement so the CCG's contribution is expanded from set items, to broadly include all items which can be legally included in the pooled fund. Note, this only represents the bringing of further items of expenditure into view of the Council. It does not create new expenditure (the contracts for which the CCG had already planned to incur) or create a new risk for the Council (as the expanded section of the S.75 does not pool risk in this area).

2 Current Position - Pooled Fund: Hospital Discharge Funding

- 2.1 From the 19th March 2020 funding has been available from NHS England to support the cost of discharging patients out of hospital as quickly as possible either following confirmation that they are medically fit, or to support costs involved in putting care plans in place which would otherwise necessitate a hospital admission.
- 2.2 For 2021/22 this support is time limited, up to six weeks support until 30th June 2021 and four weeks support until the end of the financial year. Costs incurred are claimed in arrears from NHS England during the year, with the year end position funded on the basis of the estimated outturn reported at February 2022.

- 2.3 Care packages have been directly commissioned by both the CCG and OMBC with a monthly claim being submitted by the CCG on behalf of both parties. There have been no claims rejected to date reflecting strong joint working to support the process.
- 2.4 This report asks for formal confirmation from the Commissioning Partnership Board on the continuation of this Pooled Fund.

Variation to Pooled Fund Contributions

- 2.5 As in previous years both parties potentially have the scope to vary their contributions over the course of the financial year.
- 2.6 Both OMBC and the CCG request approval to delegate jointly to the OMBC Director of Finance and the CCG Chief Financial Officer to agree the management of year end flexibilities.

3 Recommendations:

The Commissioning Partnership Board is requested to:

- a) Note the strong history of joint working and funding arrangements in Health and Social Care in Oldham
- b) Approve the continuation of the Scheme for Hospital Discharge Programme funding as described below and included as "Scheme D" in the Section 75 documentation;
- c) Note the significant challenges in OMBC's long term financial position and specifically the increases in funding it has provided to Adult Social Care over the past several years;
- e) Approve the Section 75 Agreement as attached at Appendix 1, and specifically the intention to adopt a flexible approach to contributions to support delivery of the best services for Oldham residents.
- f) Authorise the Director of Legal Services to sign the Section 75 Agreement on behalf of OMBC; and
- g) Delegate approval jointly to OMBC Director of Finance and the CCG Chief Finance Officer to finalise the financial expenditure and contribution figures included at Schedule 8 of Appendix 1 as part of year end processes.

Appendices

Appendix 1- Section 75 Partnership Agreement Relating to the Commissioning of Health and Social Care Services 2021/22

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Dated

2022

OLDHAM BOROUGH COUNCIL

And

NHS OLDHAM CLINICAL COMMISSIONING GROUP

**PARTNERSHIP AGREEMENT RELATING TO THE COMMISSIONING OF HEALTH AND SOCIAL CARE
SERVICES 2021/22**

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EXECUTION CLAUSE

SCHEDULE 1 – AGREED SCHEME SPECIFICATIONS

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B: HEALTH AND SOCIAL CARE SERVICES

C: GM TRANSFORMATION FUND

D: COVID-19 HOSPITAL DISCHARGE FUND

SCHEDULE 2 – GOVERNANCE STRUCTURE

SCHEDULE 3 – DECISION MAKING

SCHEDULE 4 – JOINT WORKING OBLIGATIONS

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SCHEDULE 5 – ORGANISATIONAL STRUCTURE

SCHEDULE 6 – DOCUMENTS RELIED UPON

SCHEDULE 7 - INFORMATION GOVERNANCE PROTOCOL

SCHEDULE 8 - EXPENDITURE PLAN

THIS AGREEMENT is made on day of 2022

PARTIES

- (1) **OLDHAM 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 Civic Centre, West Street, Oldham, OL1 1UT (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 wider 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 health related 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 into this Agreement are to:
 - (i) improve the quality and efficiency of the Services;
 - (ii) meet National Conditions and Local Objectives; and
 - (iii) make more effective use of resources through the establishment and maintenance of a Pooled Aligned Budget for revenue expenditure on the Services; and
 - (iv) ensure that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, the Partners 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 to exercise certain local authority functions and for local authorities to exercise various NHS functions under section 75 of the National Health Service Act 2006 and pursuant to the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617).

IT IS NOW AGREED as follows:

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 (as amended from time to time) and its Regulations;

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 Scheme 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 Partners 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;

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

CEDR means the Centre for Effective Dispute Resolution, which is a service provider specialising in conflict resolution

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 1st April 2021;

Commissioning Partnership Board (CPB) means the executive body known as the Commissioning Partnership Board, which is responsible for the review of and the performance and oversight of this Agreement and which shall operate in accordance with the Terms of Reference.

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

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

Controller, Processor, Data Subject, Data Protection Officer, Personal Data, Personal Data Breach, Process, Processing and Sub-Processor shall have the same meaning as set out in the Data Protection Legislation;

Council Health Related Functions means 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;

Data Loss Event means an event which results in the loss or destruction of, or damage to, Personal Data;

Data Processor Personnel means any employee or agent of the Processor;

Data Subject Access Request means a request **made** by a Data Subject under the Data Protection Legislation;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (**UK GDPR**); the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

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 for each Financial Year. The plan for the current 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 Council Health Related Functions;

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 Schemes 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 Health Related 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 guidance, direction or determination with which the Partner(s) or relevant third party (as applicable) are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Partner(s) or relevant third party (as applicable); and
- (c) any judgment of a relevant court of law which is a binding precedent in England.

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

Lead Commissioner means the Partner responsible for commissioning an Individual Scheme 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 functions 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 Scheme Specification;

Non-Recurrent Payments means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 11.5;

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

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

Partnership Agreement Relating to the Commissioning of Health and Social Care Services 2020/2021 means the s.75 agreement entered into between the CCG and the Council on 1st April 2020;

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

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

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 within the Expenditure Plan;

Permitted Expenditure has the meaning given in Clause 8.3;

Pooled Aligned Budget means a pooled fund for which 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 that Partner's 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 9;

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

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

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

- 1 April to 30 June;
- 1 July to 30 September;
- 1 October to 31 December;
- 1 January to 31 March;

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

Regulations means the 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;

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 individuals for whom the Partners have a responsibility to commission the Services.

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

Terms of Reference means the terms upon which the Commissioning Partnership Board shall operate as detailed within each Partner's Constitution

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 (including by electronic mail).
- 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 either superseded by a replacement agreement or 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 and the Partnership Agreement Relating to the Commissioning of Health and Social Care Services 2020/21.

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 (including the Council Health Related Functions).

- 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 and management 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 (Individual Scheme A), the CCG and the Council will operate under Lead Commissioning Arrangements with a Pooled Budget. 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 (Individual Scheme B), which the CCG and the Council will both operate under the Integrated Commissioning arrangements with Pooled Aligned Budgets.

- 4.4 From the Commencement Date the Partners agree that for the GM Transformation Funds described in Schedule 1 (Individual Scheme C), the CCG and the Council will both operate under the Integrated Commissioning arrangements with Pooled Aligned Budgets.
- 4.5 From the Commencement Date the Partners agree that for the Covid-19 Hospital Discharge Fund described in Schedule 1 (Individual Scheme D), the CCG and the Council will both operate under the Integrated Commissioning arrangements with Pooled Aligned Budgets.
- 4.6 The Partners agree that decisions about the use of the different commissioning models shall be delegated for operational purposes to the Commissioning Partnership Board.
- 4.7 Where there are Lead Commissioning Arrangements and the CCG is the Lead Commissioner, the Council agrees that the CCG will exercise on its behalf, and the CCG agrees to exercise, on the Council's behalf, the Council Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 4.8 Where there are Lead Commissioning Arrangements and the Council is the Lead Commissioner, 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 Council Health Related Functions.
- 4.9 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.
- 4.10 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.
- 4.11 Where there is Integrated Commissioning, the Partners may rely on Clauses 4.7 and 4.8 above.

5. FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a financial 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 incur expenditure 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 support services.
- 5A.2 At the Commencement Date all staff (including agency staff) deployed as part of 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 mutual written 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 in writing 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 CCGs Functions when acting as Lead Commissioner and the CCG may exercise the Council Health Related Functions when acting as Lead Commissioner pursuant to S75 of the 2006 Act.
- 5A.6 The Partners will endeavour to make arrangements to enable Integrated Commissioning decisions to be 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.
- 5A.8 Lead Officers under this Agreement are identified as below:

Position	Partner	Name of Lead Officer (as at Commencement Date)	Address	Telephone Number	Email Address
Accountable Officer	CCG	Mike Barker	Civic Centre, West Street, Oldham	0161 622 6610	mike.barker3@nhs.net
Chief Financial Officer	CCG	Kate Rigden	Civic Centre, West Street, Oldham	0161 622 6590	Kate.rigden@nhs.net
Director of Adult Social Services	Council	Mark Warren	Civic Centre, West Street, Oldham	0161 770 4215	mark.warren@oldham.gov.uk
S.151 Officer/ Director of Finance	Council	Anne Ryans	Civic Centre, West Street, Oldham	0161 770 4902	Anne.Ryans@oldham.gov.uk

6. COMMISSIONING ARRANGEMENTS

- 6.1 The joint commissioning of the 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.
- 6.2 Eligibility of individuals to access particular services shall be set out in the relevant Services Contract. Material changes to eligibility shall not be made without consultation with the other Partner.

INTEGRATED COMMISSIONING

- 6.3 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 Council Health Related Functions are commissioned with all due skill, care and attention.
- 6.4 Each Partner shall be responsible for compliance with and making payments of all sums due to a Provider in respect of those Services delivered under a Services Contract.

- 6.5 Both Partners shall work in cooperation to ensure that, where there is Integrated Commissioning, the cost of those Services, as set out in the relevant Scheme Specification, commissioned by a Partner under a Services Contract shall not exceed each Partner's Financial Contribution in each Financial Year.
- 6.6 Each Partner shall keep the other Partner 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.
- 6.7 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

- 6.8 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:
- 6.8.1 exercise the NHS Functions in conjunction with the Council Health Related Functions as identified in the relevant Scheme Specification;
 - 6.8.2 endeavour to ensure that the NHS Functions and the Council Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each Individual Scheme in each Financial Year;
 - 6.8.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
 - 6.8.4 enter into a Services Contract with a Provider for the provision of the Services under an Individual Scheme on terms agreed with the other Partner;
 - 6.8.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
 - 6.8.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the "Commissioner" and "Co-ordinating Commissioner" with all due skill, care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;
 - 6.8.7 undertake performance management and contract monitoring of all Services Contracts in line with their normal contract management procedures. Contract management reporting shall be provided to the Commissioning Partnership Board in the manner and form that it specifies;
 - 6.8.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
 - 6.8.9 keep the other Partner and 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. CONTRACTING ARRANGEMENTS

- 7.1 The list of relevant Services Contracts or parts thereof will be recorded in the Expenditure Plan. Each Partner shall ensure that copies of signed Services Contracts are maintained and available for inspection by the other Partner upon request.
- 7.2 The financial and operational risks of each Services 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 it determines.
- 7.3 The Lead Commissioner shall have the authority to agree the form and details of each Services Contract for commissioned Services using reasonable terms within their normal operating procedures with the aim of managing risk to both Partners to this Agreement.
- 7.4 In the event of the Partners deeming a joint Services Contract being the most appropriate contracting mechanism, the Partners shall jointly agree the form and details of each Services Contract for commissioned Services using reasonable terms with the aim of managing risk to both Partners to this Agreement.
- 7.5 The Partners will work together and operate Services Contracts in accordance with the obligations set out in Schedule 4 (Joint Working Obligations). Services 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.
- 7.6 On expiry or termination of this Agreement, Services Contracts will remain with the Lead Commissioner of the Individual Scheme as set out in the Expenditure Plan.
- 7.7 Services Contracts shall only be assigned or novated to the other Partner on the written agreement of both Partners.

8. ESTABLISHMENT OF A POOLED FUND

- 8.1 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 relevant Scheme Specification.
- 8.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 8.3 Subject to Clauses 8.4 and 8.5, it is agreed that the monies held in a Pooled Fund may only be expended on the following Permitted Expenditure:
- 8.3.1 the Contract Price including any contractually required performance payments;
 - 8.3.2 where the Council is to be the Provider, up to the Permitted Budget; and
 - 8.3.3 Approved Expenditure

- 8.4 Third Party Costs and internal management costs of overseeing any contracts are excluded from Permitted Expenditure.
- 8.5 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.
- 8.6 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on any Default Liability unless this is agreed by both Partners.
- 8.7 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.
- 8.8 The Pooled Fund for each Individual Scheme may comprise of separate budgets which can be amended as agreed in writing by the Partners.
- 8.9 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications, where relevant. The Host Partner shall be the Partner responsible for:
 - 8.9.1 holding all monies contributed to the Pooled Fund on behalf of itself and, in the case of Pooled Budgets, the other Partner;
 - 8.9.2 providing the financial administrative systems for the Pooled Fund, save where the Pooled Budget is a Pooled Aligned Budget and the Partners have agreed otherwise in the Scheme Specification;
 - 8.9.3 appointing the Pooled Fund Manager; and
 - 8.9.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.
- 8.10 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.

9. POOLED FUND MANAGEMENT

- 9.1 When introducing a Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
 - 9.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 9.1.2 which officer, including Section 113 Officers, of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 9.2 The Pooled Fund Manager in respect of each Individual Scheme where there is a Pooled Fund shall have the following duties and responsibilities:

- 9.2.1 the day to day operation and management of the Pooled Fund;
 - 9.2.2 ensuring that all expenditure from the Pooled Budget is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
 - 9.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
 - 9.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
 - 9.2.5 reporting to the Commissioning Partnership Board as required by the Commissioning Partnership Board;
 - 9.2.6 ensuring action is taken to manage any projected Underspend or Overspend relating to the Pooled Fund in accordance with this Agreement and as set out in the Scheme Specification;
 - 9.2.7 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 Fund together with such other information as may be required by the Partners and the Commissioning Partnership Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met; and
 - 9.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 9.3 In carrying out their responsibilities as provided under Clause 9.2 the Pooled Fund Manager shall have regard to the recommendations of the Commissioning Partnership Board and shall be accountable to the Partners for delivery of those responsibilities.
 - 9.4 The Pooled Fund Manager may delegate functions in accordance with the Delegation Arrangements in Schedule 3.
 - 9.5 Within any Pooled Fund, the Commissioning Partnership Board may authorise or require there to be separate budgets for the purposes of Individual Scheme lines funded by such budgets. Any such budgets shall be set out in the Expenditure Plan.
 - 9.6 The Pooled Budget Fund Manager must obtain authority from the Commissioning Partnership Board before viring funds between Pooled Funds and such viring shall be subject to the normal financial governance of the Host Partner.
 - 9.7 The arrangements in relation to Individual Schemes shall be monitored and assured by the Lead Commissioner, in accordance with the individual monitoring requirements of each area of commissioning activity, as detailed in the relevant Scheme Specification. Monitoring and assurance will take the form of quantitative and qualitative assessment, Provider reporting, formal contract meetings, and proactive and reactive activity.
 - 9.8 The Partners will ensure that Services outcomes, as detailed in the relevant Scheme Specification, 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.

- 9.9 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.
- 9.10 It is the Lead Commissioner's responsibility to ensure regulatory and registration requirements are met for an Individual Scheme.

10. POOLED ALIGNED BUDGET

- 10.1 In addition to clauses 8 and 9, the following provisions shall apply to Pooled Aligned Budgets:
- 10.1.1 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;
- 10.1.2 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.

11. FINANCIAL CONTRIBUTIONS AND NON FINANCIAL CONTRIBUTIONS

FINANCIAL CONTRIBUTIONS

- 11.1 The Financial Contribution of the Partners to any Pooled Fund for the 2021/2022 Financial Year for each Individual Scheme shall be as set out in Schedule 8 and may be varied at any time by mutual written agreement of the Partners.
- 11.2 The Financial Contributions for any future Financial Year governed by this Agreement shall be as agreed in writing between the Partners.
- 11.3 The Financial Contribution of the Partners will be varied by mutual written agreement dependent on the Individual Scheme being considered. If appropriate, these will be approved by the internal governance of each Partner and notified to the Commissioning Partnership Board in advance of the start of each Financial Year.
- 11.4 Financial Contributions will be paid as set out in Schedule 8.
- 11.5 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to 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.

CASH MANAGEMENT

- 11.6 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 Lead 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.
- 11.7 It is expected that any formally approved year end Overspend or Underspend on the fund will be invoiced and settled in cash, but may be held as memorandum balances by written agreement of the Commissioning Partnership Board.

NON FINANCIAL CONTRIBUTIONS

- 11.8 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 Services Contracts and the Pooled Fund).
- 11.9 Where such non-financial contributions are not specified then it is expected that these will be provided by the Lead Commissioner.
- 11.10 Responsibility for the Provider's costs of providing Services, including premises costs, will be addressed in the Services Contract.

12. RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

RISK SHARE ARRANGEMENTS

- 12.1 The risk share arrangements are as set out in the Scheme Specification for each Individual Scheme, which arrangements provide for financial risks arising within the commissioning of Services from the Pooled Funds.
- 12.2 The default position for a Pooled budget shall be that the risk of financial Underspend and Overspend shall be shared in line with each respective Partner's Financial Contributions, unless mutually agreed between the Partners.
- 12.3 The default position for a Pooled Aligned Budget shall be that the risk of financial Underspend and Overspend shall be that such Underspend or Overspend is borne by the Host Partner for each relevant budget within the Pooled Aligned Budget.
- 12.4 Treatment of resource fluctuations will be addressed within the Pooled Aligned Budget, usually on an annual rolling basis. Subject to the mutual agreement of both Partners, one or both Partners may vary their contributions to the Pooled Aligned Budget at any time in order to mitigate variable pressures in health and social care services.

OVERSPENDS IN POOLED FUNDS

- 12.5 Subject to Clause 12.6, 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.

- 12.6 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 12.7.
- 12.7 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

- 12.8 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 Council's S151 Officer and the Director of Adult Social Services where it is the Host Partner and the CCG's Chief Finance Officer and the Chief Operating Officer 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 Revenue and Customs.

15. AUDIT AND RIGHT OF ACCESS

- 15.1 Both 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 an external 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 a Services Contract as a consequence of any act or omission of the other Partner (“Other **Partner**”) which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the relevant 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 the National Health Service Litigation Authority (known as NHS Resolution)) in respect of potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Losses 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 Losses for which one Partner 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 Partner 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 it is 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 and apply them to the delivery of the Services, with each Services Contract being subject to the policies. The Partners shall aim to develop a joint strategy for all elements of the Services.

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 a Commissioning Partnership Board, which is a joint committee of the Partners established pursuant to Regulation 10(2) of the Regulations and to further facilitate integration and joint commissioning across all areas of health, wellbeing and social care for both adults and children in Oldham, which Board operates in accordance with the Terms of Reference.
- 19.3 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.
- 19.4 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.
- 19.5 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.

19.6 The Commissioning Partnership Board shall continue to operate in accordance with Schedule Two following any termination of this Agreement but shall endeavour to ensure that the benefits of any Services Contracts are received by the Partners in the same proportions as their respective contributions at that time.

19.7 The Governance Structure of the Commissioning Partnership Board is as detailed in Schedule 2.

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 The Terms of Reference.

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 a particular Services Contract are handled by the Lead Commissioner for that Services Contract under their normal operating procedures.

22. TERMINATION & DEFAULT

22.1 This Agreement may be terminated by either Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.

22.2 Each Individual Scheme may be terminated in whole or in part on 3 months' written notice in accordance with any 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 may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partner may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23 (Dispute Resolution).

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

26. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

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

27. OMBUDSMEN

The Partners will co-operate with any investigation undertaken by the Parliamentary and Health Service Ombudsman or the Local Government and Social Care Ombudsman (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 sent by electronic mail, at the time of transmission, or if that time falls outside working hours in the place of receipt, when working hours resume. If serving a notice by electronic mail, a telephone call must also be made to the recipient warning the recipient that an electronic mail message has been sent (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice must also be sent by first class recorded delivery post.

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 that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (and the other requirements of clause 29.1.3 were complied with) (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 Erin Portsmouth, Director of Corporate Affairs, NHS Oldham CCG, Civic Centre, West Street, Oldham, OL1 1UG;

Tel: 0161 622 6442

E.Mail: erin.portsmouth@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 Partner, which shall not be unreasonably withheld or delayed. This shall not apply to any assignment or novation 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 Partners.

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 both 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

EXECUTED AS A DEED by)
OLDHAM
BOROUGH COUNCIL by affixing)
hereto its
seal in the presence of:)

Signature

Name (print) Paul Entwistle

Position Director of Legal Services

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

Authorised Signatory

SCHEDULE 1– SCHEME SPECIFICATION

Agreed Scheme Specifications

Scheme A: Community Equipment Services Schedule

1 OVERVIEW OF INDIVIDUAL SCHEME

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 Individual 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 it nominates will act as the Pooled Fund Manager.

2 AIMS AND OUTCOMES

The Partners' aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, the Partners 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 Individual 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 Pennine Acute Hospitals NHS Trust, Salford Royal 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 Pooled Budget 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 Commissioning Partnership Board. The set of Services included as shown in the Expenditure Plan as attached at Schedule 8 includes a reference to the areas of spend.

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

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

Access to the Services 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 The Terms of Reference.

6 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements are as set out in Schedule 2- Governance Structure.

SCHEDULE 1 – SCHEME SPECIFICATION

Agreed Scheme Specifications

Scheme B – Health and Social Care Services Schedule

1. AIMS AND OUTCOMES OVERVIEW OF INDIVIDUAL SCHEME

The Integrated Health and Social Care Scheme will include those budgets and Services 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 in the Terms of Reference.

Both the CCG and Council will act as Host Partners of the Pooled Aligned Budget. The Host Partner for each budget within the Pooled Aligned Budget shall be whoever is acting as Lead Commissioner for that budget, as set out in the Expenditure Plan in Schedule 8.

When the Council is acting as Host Partner then the Council's S.151 Officer (Director of Finance) or such other officer as they nominate will act as the Pooled Fund Manager.

When the CCG is acting as Host Partner the CCG's Chief Finance Officer or such other officer as they nominate will act as the Pooled Fund Manager.

2. AIMS AND OUTCOMES

The Partners' aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, the Partners 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 and 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 Council Health Related Functions prescribed under regulations 6(a), (aa), (b), (k) (l) and (m) of the aforementioned regulations

5. SERVICES

Learning Disabilities, Mental Health and Dementia and Improvement to Services

Under this section 75 Agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor health and social care services for adults with learning disabilities, mental health and other assessed needs, including those with complex care needs, currently funded separately through the CCG's Mental Health, Learning Disability and Dementia budget and the Council's community care budget. There will be additional investment into services that will provide long term transformative integration and better outcomes for the citizens of Oldham. 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 community, primary care and acute 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.

Acute and Community contracts

Under this section 75 agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor the provision of acute and community healthcare contracts. Contracts for expenditure, which is not permitted to be included per legislation, have been excluded and do not form part of this agreement. Where a single contract includes eligible and ineligible elements, an apportionment of costs has been made based on best estimates at that point in time.

The joint commissioning of these arrangements will also include the development of effective links to other commissioned services, where relevant, to ensure that individual and service level outcomes are achieved.

Prescribing costs

Under this section 75 agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor the provision of prescribing drugs cost expenditure. Such drugs costs are to be provided by the NHS Business Services Authority on the basis of prescriptions issued by qualified prescribers registered with NHS Oldham CCG.

The joint commissioning of these arrangements will also include the development of effective links to other commissioned services, where relevant, to ensure that individual and service level outcomes are achieved.

Social work

Under this section 75 agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor the provision of social work for adults, currently funded separately through the Council's social work budget,

The joint commissioning of these arrangements will also include the development of effective links to other commissioned services, where relevant, to ensure that individual and service level outcomes are achieved.

Other services

Under this section 75 agreement, NHS Oldham CCG and Oldham Council will jointly commission, contract and monitor all other services currently commissioned by NHS Oldham CCG, which are currently permitted by legislation to be pooled by NHS Oldham CCG. These are detailed in the Expenditure Plan by category.

6. GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements are as set out in Schedule 2- Governance Structure.

SCHEDULE 1– SCHEME SPECIFICATION

Agreed Scheme Specifications

Scheme C: GM Transformation Funds

1 OVERVIEW OF INDIVIDUAL SCHEME

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 Individual Scheme are a Pooled Aligned 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 it nominates will act as the Pooled Fund 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.

The Partners' aim is that people in Oldham will be independent, resilient and self-caring so fewer people reach crisis point. For those that need it, the Partners 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 Aligned 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 frontline 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 the Terms of Reference.

6 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements are as set out in Schedule 2- Governance Structure.

SCHEDULE 1– SCHEME SPECIFICATION

Agreed Scheme Specifications

Scheme D: Covid-19 Hospital Discharge Fund

1 OVERVIEW OF INDIVIDUAL SCHEME

Covid-19 has put significant pressure on the Health economy of the entire world. The aim of this fund is for the NHS and the Council to work together, in accordance with the most up to date NHS England guidance, to facilitate discharges from hospital and the locality response to the pandemic. This will enable the acute hospital sector to cope with any increased demand as a result of the pandemic.

2 AIMS AND OUTCOMES

The Partners' aim is to free up capacity in the acute hospital sector in Oldham to prevent it from becoming overwhelmed by demand, as well as supporting health and social care services across the Borough.

3 THE ARRANGEMENTS

This Scheme will be treated as a Pooled Aligned Budget with the Partners each acting as Lead Commissioner for their respective commissioned Services.

4 FUNCTIONS

The Council will commission a range of support including residential care and home care to allow people to be discharged from hospital as quickly as possible. It will be provided through a discharge hub that will allocate care.

The Council will also provide support to keep people at home and prevent them from going into hospital.

The CCG will commission the Services deemed necessary by the Commissioning Partnership Board, in line with guidance from NHS England to support the population of the Borough as part of the pandemic response. In doing so, the CCG will have regard to the funding made available by NHS England, and the restrictions placed upon it.

5 SERVICES

The aim of the Service is to allow in-patients at the Royal Oldham Hospital to be discharged as quickly as possible, thus freeing up capacity on the wards.

The Service will be provided for adults who are regarded as being suitable for discharge in the period and for whatever condition they may have.

Access to the Service will be via assessment following identification as being suitable for discharge.

Changes to Services will be through the governance processes set out in the Terms of Reference.

6 GOVERNANCE ARRANGEMENTS FOR THE PARTNERSHIP

The governance arrangements are as set out in Schedule 2- Governance Structure.

7 RISK AND BENEFIT SHARE ARRANGEMENTS

The liability for any spend on the part of the CCG will be limited to what it is able to reclaim from NHSE. Any spend over and above this will be the responsibility of the Council.

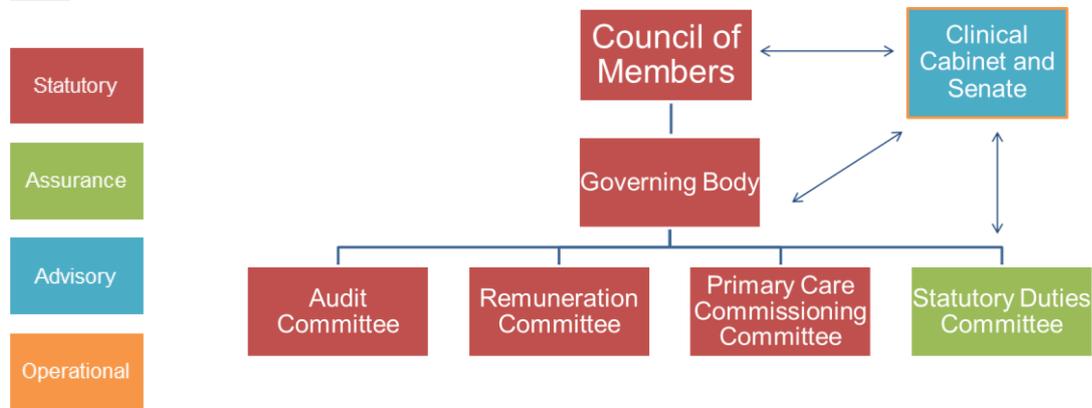
SCHEDULE 2 – GOVERNANCE STRUCTURE

The governance arrangements at the start of this Agreement are set out below with the current Terms of Reference for the Health and Wellbeing Board and Commissioning Partnership Board.

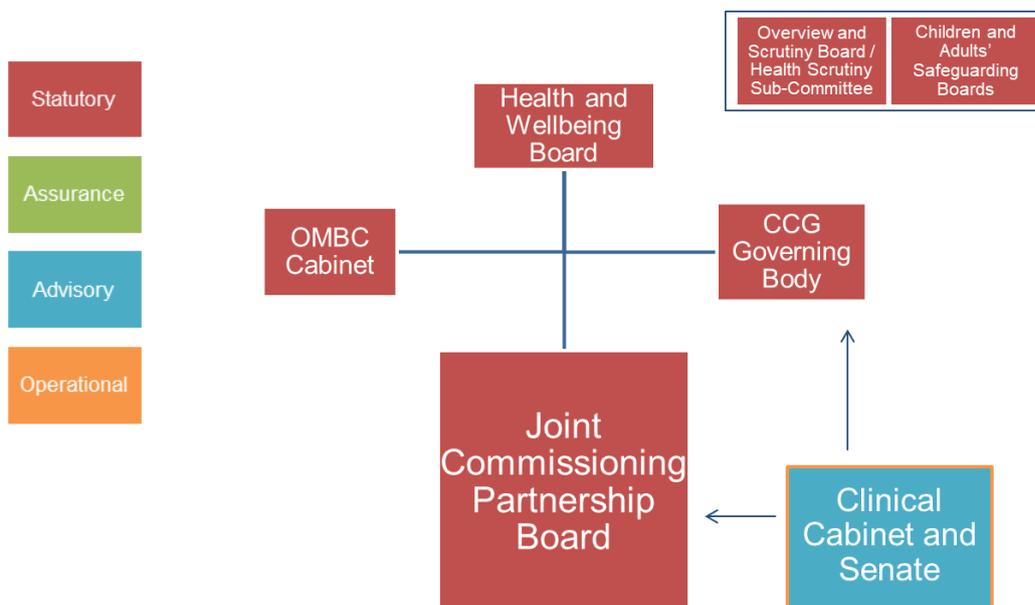
The Health and Wellbeing Board in Oldham provides the overall ownership of the plan and the associated progress and outcomes.

The Commissioning Partnership Board is a joint committee in Oldham of key health and social care commissioners in Oldham from Oldham MBC and Oldham CCG. 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.

CCG



CCG and the Council



SCHEDULE 3 – DECISION MAKING

1 Decision Making

- 1.1 Detailed processes for decision making are set out in each Partner's 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 of £250,000 or below will be required to be approved in advance by the CCG's Director of Commissioning Operations and Chief Finance Officer.
- 3.2 All financial expenditure with a value of above £250,000 will be required to be approved in advance by the CCG's Governing Body.
- 3.3 The CCG's Chief Financial Officer and Director of Commissioning Operations and/or 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 Services 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 Services Contract;
 - 4.5 agree to or propose any variation to the Services Contract (including any Schedule or Appendices);

- 4.6 suspend all or part of the Services;
- 4.7 serve any notice to terminate a Services 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 Services 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 Services Contract;
 - 1.2 comply with its obligations pursuant to a Services 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 Services 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 Services 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. Terms of Reference
7. Health and Well Being Board Terms of Reference
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)
12. NHSE Guidance in relation to the Hospital Discharge Scheme

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 both 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.



Data Protection

- 2.1 The Partners shall observe all of their obligations under the Data Protection Legislation that arise in connection with this Agreement.
- 2.2 With respect to the Partners' rights and obligations under this Agreement, the Partners agree that in relation to the Personal Data contained within Service User records, the Partners are each Controllers.

- 2.3 The Partners shall ensure that Personal Data is safeguarded at all times in accordance with the Law, which shall include without limitation obligations to:
- 2.3.1 have a "Caldicott Guardian" (where applicable), as defined by the Local Authority Circular LAC 2002/2, in this case the Council's nominated information governance lead, able to communicate with the other Partners, who shall take the lead for information governance and from whom the other Partners shall receive regular reports on information governance matters, including but not limited to details of all incidents of data loss and breach of confidence;
 - 2.3.2 (where transferred electronically) only transfer essential data that is (i) necessary for direct Service User care; and (ii) encrypted to the higher of the international data encryption standards for healthcare (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes);
 - 2.3.3 have policies, which are rigorously applied, that describe individual personal responsibilities for handling Personal Data;
 - 2.3.4 have agreed protocols for sharing Personal Data with other NHS and non-NHS organisations; and
 - 2.3.5 perform an annual information governance self-assessment.
- 2.4 To the extent that one Partner (including its staff) is acting as a "Processor" on behalf of the other Partner, that Partner shall, in particular, but without limitation:
- 2.4.1 notify the Partner acting as "Controller" immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation;
 - 2.4.2 provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - (a) systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
 - 2.4.3 only process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the other Partner under this Agreement. If it is so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 2.4.4 ensure that it has in place appropriate and technical organisational measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and

- (d) cost of implementing any measures;
- 2.4.5 ensure that:
- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement;
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the duties under this Schedule;
 - (ii) are subject to appropriate confidentiality undertakings with the Partner or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement;
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (v) are aware of and trained in the policies and procedures identified in Clauses **Error! Reference source not found.** and 2.3.4 above;
- 2.4.6 not transfer Personal Data outside of the UK; unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 2.4.7 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data;
- 2.4.8 maintain complete and accurate records and information to demonstrate their compliance with this Schedule 7;
- 2.4.9 allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor; and
- 2.4.10 designate a data protection officer if required by the Data Protection Legislation.
- 2.5 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- 2.5.1 notify the Controller in writing of the intended Sub-processor and Processing;

- 2.5.2 obtain the written consent of the Controller;
 - 2.5.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 7 such that they apply to the Sub-processor; and
 - 2.5.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 2.6 The Processor shall remain fully liable for all acts or omissions of any Sub-processor. Subject to clause 2.4, either Partner shall notify the other Partners immediately if it:
- 2.6.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.6.2 receives a request to rectify, block or erase any Personal Data;
 - 2.6.3 receives any other request, complaint or communication relating to either Partner's obligations under the Data Protection Legislation;
 - 2.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 2.6.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 2.6.6 becomes aware of a Data Loss Event.
- 2.7 The Partners' obligations to notify under Clause 2.6 shall include the provision of further information to the other Partner in phases, as details become available.
- 2.8 Taking into account the nature of the Processing, each Partner shall provide the other with full assistance in relation to either Partner's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 2.6 (and insofar as possible within the timescales reasonably required by the Partners) including by promptly providing:
- 2.8.1 the other Partner with full details and copies of the complaint, communication or request;
 - 2.8.2 such assistance as is reasonably requested by the other Partner to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.8.3 the other Partner, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.8.4 assistance as requested by the other Partner following any Data Loss Event;
 - 2.8.5 assistance as requested by the other Partner with respect to any request from the Information Commissioner's Office, or any consultation by the other Partner with the Information Commissioner's Office.
- 2.9 Either Partner may, at any time on not less than 30 Working Days' notice, revise this Schedule 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 2.10 The Partners agree to take account of any guidance issued by the Information Commissioner's Office. Either Party may on not less than 30 Working Days' notice to the other amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

SCHEDULE 8: EXPENDITURE PLAN

1) Pooled Aligned Budget		
		2021/22
		Budget
		£'000
OMBC Lead Commissioner / Provider	Provider	
Care Management Placements includes inter alia, home care, care homes, personal budgets and respite care		
Learning Disability	Various	18,152
Mental Health	Various	8,803
Physical Support	Various	31,625
Sensory Support	Various	943
Support with Memory & Cognition	Various	3,068
Mental Health and LD block and external contracts	Various	4,958
Older People contracts	Various	995
Mio-Care Contract, including reablement	Mio-Care	11,542
Hollybank	Mio-Care	912
Hospital and Urgent Care Social Work Team	OMBC	919
Community Cluster Teams	OMBC	2,878
Carers Services	OMBC / Various	468
Minor Adaptations	OMBC	110
Housing Related Commissioning	Various	420
Delivering a Sustainable Future/ Children's Integration	OMBC	233
Total OMBC Lead Commissioner /Provider		86,026
Disabled Facilities Grant (DFG)		2,343
Total DFG		2,343
Note: This table includes OMBC commissioned services for which funding is received from the CCG.		
		Budget
		£'000
CCG Lead Commissioner	Provider	
Mental Health Contracts	Pennine Care FT	32,143
	Greater Manchester Mental Health (GMMH) FT	653
	Learning Assessment & Neurocare Centre (LANC)	189
	Turning Point	731
	Others	3,785
Dementia	Various	
	Making Space	
	Age UK	
Child and Adolescent Mental Health	Various	1,332
Improving Access to Psychological Therapies	TOG Mind	1,185
	Others	-
Mental Capacity Act	Various	107
Mental Capacity Services - Non-Contracted Activity	Various	49
Mental Capacity Services - Other	Various	10
Learning Disabilities block contracts	Various	724
Placements		
Mental health (collaborative and s117)	Various	3,606
Mental Capacity Services - Adults	Various	5,739
Mental Capacity Services - Older People	Various	453
Learning Disabilities (s117)	Various	917
Adult CHC and FNC	Various	12,353
Children's CHC	Various	773
Less CHC Running Costs		-807
Intermediate Care Placements	Various	774

Intermediate Care - Butler Green (Reablement)	SRFT	2,402
PCFT Contract		581
Falls Service	SRFT	227
Falls Service	Age UK	80
Early Supported Discharge and Community Stroke	SRFT	915
Alternate to Convey	Go To Doc	274
Wheelchair Service	Rosscare	575
End of Life Coordinator	SRFT	47
End of Life Consultant	Dr Kershaws	80
Carers	OMBC	455
Stroke Association		154
Patient Support	Action for Blind People (formerly RNIB)	20
Assisted Discharge	Red Cross	105
Joint Working Agreement	Various	-
Alcohol Liaison	PAHT	115
Dementia		165
Care Home Support		165
Warm Homes (Fuel Poverty)	OMBC	125
Acute		
Acute Commissioning	Various	189,146
Ambulance Services	NWAS	9,402
Other Acute services	Various	7,682
- Less Acute items not permitted to be pooled	Various	-21,566
Community		
Community Services	Various	25,715
Planned Care	Various	28,909
Hospices and Palliative Care	Various	1,185
Other Community	Various	154
Primary Care		
Local Schemes	Various	7,264
GP Forward View	Various	1,874
Primary Care IT	Various	2,311
Other Primary Care	Various	293
Less primary care running costs	Various	-678
Prescribing	Various	
Prescribing	Various	44,042
Central Drugs	Various	1,395
Oxygen	Various	365
Other areas of spend:		
Estates	Various	1,955
Programme staffing services	Various	1,955
Other Programme	Various	-7,338
Less Other running costs	Various	-2,230
Total CCG Lead Commissioner		363,037
Total Pooled Aligned Budget Expenditure		451,406

Pooled Aligned Budget analysed by End Commissioner		
OMBC Contribution		
OMBC Disabilities Facilities Grants		2,343
OMBC Social Care Support Grant (improved BCF grant)		10,859
OMBC funding for OMBC commissioned services		63,640
Total OMBC Contribution		76,842
CCG Contribution		Budget
		£'000
CCG funding for OMBC commissioned services		11,527
CCG funding for CCG commissioned services		363,037
Total CCG Contribution		374,565
Total Contribution		451,406
2) Community Equipment Pooled Budget		
		Budget
		£'000
Community Equipment Expenditure		1,562
Financed By:		
OMBC Contribution		700
CCG Contribution		862
Total Pooled Budget		1,562
3) Transformation Fund		
		Budget
		£'000
Transformation Fund Expenditure		3,504
Total Transformation Fund		3,504

4) Covid-19 Expenditure		
OMBC Lead Commissioner / Provider	Provider	Budget £'000
Hospital discharge		2,000
Supporting Care Providers		
Cost to Council		7,422
Total		9,422
CCG Lead Commissioner / Provider		
Acute		92
Community		295
Continuing Care - Care costs		1,439
Mental Health Services		
Other services		374
Estates costs		
Primary Care costs		2,190
		4,390
OMBC funding for OMBC commissioned services		7,422
		7,422
CCG funding for OMBC commissioned services		2,000
CCG funding for CCG commissioned services		4,390
		6,390
Total		13,812
5) Summary of Pooled Funds		
		Budget £'000
Pooled Aligned Budget		451,406
Community Equipment Pooled Budget		1,562
Transformation Fund		3,504
Covid-19 Expenditure Including HDP		13,812
Total Pooled Funds		470,284
OMBC Contribution		Budget £'000
Pooled Aligned Budget		76,842
Community Equipment		700
Transformation Fund		-
Covid-19 expenditure		7,422
Total OMBC Contribution		84,964
CCG Contribution		Budget £'000
CCG funding for OMBC commissioned services		13,527
CCG funding for CCG commissioned services		371,793
Total CCG Contribution		385,321
Total Contribution		470,284