

**Dated**

**2017**

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**LEICESTERSHIRE COUNTY COUNCIL**

**and**

**NHS WEST LEICESTERSHIRE CLINICAL  
COMMISSIONING GROUP**

**and**

**NHS EAST LEICESTERSHIRE AND RUTLAND CLINICAL  
COMMISSIONING GROUP**

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

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- (H) This Agreement supersedes a prior s75 agreement between the Partners (as extended by a deed of variation) and which governed delivery of the Better Care Fund between 1 April 2015 and 31 March 2017.

## 1 DEFINED TERMS AND INTERPRETATION

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

**1998 Act** means the Data Protection Act 1998.

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

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

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

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

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

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

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

**Authorised Officers** means an officer of each Partner appointed to be that Partner's representative for the purpose of this Agreement, details of which are more particularly set out in Clause 29.

**BCF Deed of Variation** means the deed of variation dated 17<sup>th</sup> June 2016 which amended the BCF 2015 Agreement, setting out the terms on which the Better Care Fund was delivered by the Partners between 1 April 2016 and 31 March 2017.

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

**BCF 2015 Agreement** means the agreement between the Partners in respect of the Better Care Fund for the period commencing 1 April 2015, as amended by the Deed of Variation.

**Better Care Fund** means the Better Care Fund as described in NHS England Publications NHS England Publications Gateway Ref. No.06945 as relevant to the Partners.

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

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

**CCGs' Statutory Duties** means the duties of the CCGs pursuant to Sections 14P to 14Z2 of the 2006 Act

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

**Commencement Date** means 1 April 2017;

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

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

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

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

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

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

**Force Majeure Event** means one or more of the following:

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

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

**Functions** means the NHS Functions and the Health Related Functions;

**HART Services** means the Homecare Assessment and Reablement Team Services that are more particularly described in the Individual Scheme set out in the Scheme Specification at Schedule 1 part 3A to this Agreement.

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

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

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

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

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

**Initial Term** means the period commencing on the Commencement Date and ending at 00.00 hours on the 31<sup>st</sup> March 2019.

**Integration Executive** means a body which both advises the Health and Wellbeing Board on matters relating to the management of the Better Care Fund and delivers the health and care integration programme on behalf of the Health and Wellbeing Board.

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

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

**Law** means:

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

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

**Lead Partner** means the Partner responsible for commissioning a Service as part of a Lead Commissioning Arrangement.

**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.

**Menorrhagia Service** means the services that are more particularly described in the Individual Scheme set out in the Scheme Specification at Schedule 1 part 3B to this Agreement.

**Month** means a calendar month.

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

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

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

**Non Pooled Fund** means the budget detailing the financial contributions of the Partners which are not included in a Pooled Fund in respect of a particular Service as set out in the relevant Scheme Specification.

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Clause 10.5 and Schedule 3

**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 CCGs and the Council, and references to "**Partners**" shall be construed accordingly.

**Partnership Board** means the partnership board known as the Integration, Finance and Performance Group responsible for review of performance and oversight of this Agreement whose terms of reference are set out in Schedule 2.

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

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

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

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

**Pooled Fund Manager** means such officer of the Host Partner as is nominated by the Host Partner from time to time to manage the Pooled Fund.

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

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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



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

**Scheme Specification** means a specification setting out the arrangements for an Individual Scheme agreed by the Partners to be commissioned under this Agreement and to which the arrangements set out in Part 1 of Schedule 1 to this Agreement shall apply (unless an Individual Scheme expressly states that alternative arrangements apply in whole or part to that Individual Scheme).

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

**Services** means such health and social care services as agreed from time to time by the Partners as commissioned under the arrangements set out in this Agreement (and more specifically defined in each Scheme Specification, including the arrangements common to each Scheme Specification (which are more particularly set out in Schedule 1)).

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

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

**SOSH** means the Secretary of State for Health.

**Term** means the term of this Agreement as more particularly set out in Clause 2.

**Third Party Costs** means all such third party costs (including legal and other professional fees) in respect of each Individual Scheme as the Partnership Board shall agree in advance may be incurred by a Partner in the proper performance of its obligations under this Agreement.

**Underspend** means the funds from Financial Contributions that remain in the Pooled Fund at the end of the Financial Year and which have not been spent or committed to be spent.

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

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental

body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.

- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2 TERM**

- 2.1 This Agreement shall come into force on the Commencement Date and, subject to the provisions of this Clause 2 and Clause 22, shall continue for the Initial Term.
- 2.2 The Partners may extend this Agreement beyond the Initial Term for a period or periods and on varied terms as may be agreed between them and as approved by the Partners provided that the agreed period or periods of extension and the varied terms are recorded in the minutes of the meeting of the Integration Executive and such minutes are attached as memoranda to this Agreement, which shall constitute a variation pursuant to Clause 30.
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless otherwise agreed by the Partners through the Partnership Board.
- 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 Partners agree that the BCF 2015 Agreement shall terminate (notwithstanding such of its provisions which expressly or impliedly survive termination), immediately prior to the Commencement Date.

## **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; or
  - 3.1.3 the powers of the Council to set, administer and collect charges for any Council Health-Related Function; or
  - 3.1.4 the Council's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990; or
  - 3.1.5 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity
- 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.
- 3.4 No changes to the budget or operational arrangements for any Individual Scheme or Financial Contributions will be made without the prior approval of the Partnership Board and such arrangements shall be recorded in the minutes of Partnership Board meetings.

#### **4 PARTNERSHIP FLEXIBILITIES**

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following mechanisms:
  - 4.1.1 Lead Commissioning Arrangements;
  - 4.1.2 Integrated Commissioning;
  - 4.1.3 Joint (Aligned) Commissioning; and
  - 4.1.4 the establishment of one or more Pooled Funds,
 in relation to Individual Schemes (the "Flexibilities")

#### **5 FUNCTIONS**

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.
- 5.3 The Partners may add new Individual Schemes to this Agreement provided that the provisions of Schedule 1 Part 1 shall apply to each new Individual Scheme unless otherwise agreed between the Partners. Such an addition of a new Individual Scheme shall constitute a variation pursuant to Clause 30 and the Partners shall complete a Scheme Specification in the form set out in Part 2 of Schedule 1 in respect of that Individual Scheme. The initial Individual Schemes which will commence on the Commencement Date are listed at Schedule 1 part 3. The initial Individual Schemes are not in the form set out in Part 2 of Schedule 1 rather the terms of Part 1 of Schedule 1 apply to them. The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.4 The introduction of any Individual Scheme will be subject to business case approval by the Partners and the Integration Executive.

#### **6 COMMISSIONING ARRANGEMENTS**

##### General

- 6.1 The Partners shall comply with the arrangements in respect of any Lead, Integrated or Joint (Aligned) Commissioning as set out in the relevant Scheme Specification

- 6.2 Each Partner shall keep the other Partners, the Integration, Finance and Performance Group and the Integration Executive regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.3 The Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.
- 6.4 Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
- 6.4.1 how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
- 6.4.2 whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.)
- 6.5 Where the Council is itself the Provider of Services, the Council; agrees that it shall report to the Partnership Board in respect of the delivery of those Services and shall comply with the performance arrangements for the relevant Services, as are set out in Schedule 6.

#### Integrated Commissioning

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

#### Appointment of a Lead Partner

- 6.7 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
- 6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
- 6.7.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
- 6.7.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 6.7.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;

- 6.7.5 comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 6.7.6 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;
- 6.7.7 undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices, enforcement action and all other means deemed appropriate by the Lead Partner where Services fail to deliver contracted requirements;
- 6.7.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 6.7.9 keep the other Partner and Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

## **7 ESTABLISHMENT OF A POOLED FUND**

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Scheme Specifications.
- 7.2 Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.3 Subject to Clause 7.4, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
  - 7.3.1 the Contract Price;
  - 7.3.2 where the Council is to be the Provider, the Permitted Budget;
  - 7.3.3 Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board;
  - 7.3.4 Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance and recorded in the minutes of the Partnership Board: and
  - 7.3.5 Management costs associated with the hosting and management of the Pooled Fund (including the costs of engaging the Pooled Fund Manager) as agreed in advance in writing and recorded in the minutes of the Partnership Board,
 ("Permitted Expenditure").
- 7.4 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure where both the approval of the Partnership Board and the express written agreement of each Partner has been provided.
- 7.5 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with Clause 7.4.
- 7.6 Pursuant to this Agreement, the Partners agree to appoint the Council as Host Partner for each of the Pooled Funds set out in the Scheme Specifications save where the Partners expressly agree through the Partnership Board that a Partner other than the Host Partner shall be the Host Partner for specific Individual Schemes. The Host Partner shall be the Partner responsible for:

- 7.6.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
- 7.6.2 providing the financial administrative systems for the Pooled Fund;
- 7.6.3 appointing the Pooled Fund Manager; and
- 7.6.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **8 POOLED FUND MANAGEMENT**

- 8.1 When introducing a Pooled Fund, the Partners shall agree:
  - 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund (across the Individual Schemes and their composite Services);
  - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager shall have the following duties and responsibilities:
  - 8.2.1 the day to day operation and management of the Pooled Fund;
  - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;
  - 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
  - 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
  - 8.2.5 reporting to the Partnership Board as required by the Partnership Board and the relevant Scheme Specification;
  - 8.2.6 ensuring action is taken to manage any projected Underspends or Overspends relating to the Pooled Fund in accordance with this Agreement;
  - 8.2.7 preparing and submitting to the Partnership Board, Partnership Board Quarterly Reports (or more frequent reports if required by the Partnership Board) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the 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 including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance;
  - 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as may be required by it and any relevant National Guidance including (without limitation) supplying Quarterly Reports referred to in Clause 8.2.7 above to the Health and Wellbeing Board.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:
  - 8.3.1 have regard to National Guidance and the recommendations of the Partnership Board and shall be accountable to the Partners.

- 8.4 Unless otherwise agreed by the Partnership Board, there shall be no viring of funds between Pooled Funds or between Financial Contributions which are made in respect of Individual Schemes.

## **9 NON POOLED FUNDS**

- 9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established for the purpose of commissioning that Service as set out in the relevant Scheme Specification. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.
- 9.2 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
- 9.2.1 which Partner if any shall host the Non-Pooled Fund; and
- 9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.
- 9.4 The Partners shall ensure that any Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification.
- 9.5 Where there are Joint (Aligned) Commissioning arrangements, the Partners shall work in cooperation and shall endeavour to ensure that:
- 9.5.1 the NHS Functions funded from a Non-Pooled Fund are carried out within the relevant CCG's Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
- 9.5.2 the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

## **10 FINANCIAL CONTRIBUTIONS**

- 10.1 The Financial Contribution of the CCGs and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of the Term are set out in Schedule 3.
- 10.2 The Financial Contributions of the respective Partners to any Pooled Fund or Non-Pooled Fund for each subsequent Financial Years will be as agreed by the Partners prior to the start of each Financial Year.
- 10.3 Financial Contributions will be agreed as follows:-
- 10.3.1 to reflect the resources required to deliver the agreed service models for the Services; and
- 10.3.2 to reflect the National Guidance (including any funding requirements set out therein).
- 10.4 Financial Contributions will be paid as set out in Schedule 3.
- 10.5 With the exception of Clause 13, no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Partnership Board minutes and recorded in the budget statement as a separate item.

## **11 NON FINANCIAL CONTRIBUTIONS**

- 11.1 Schedule 3 shall set out any non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Service Contracts and the Pooled Fund).

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

### **Risk share arrangements**

- 12.1 The Partners have agreed risk share arrangements as set out in Schedule 3, which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds as set out in National Guidance.
- 12.2 Subject to Clause 12.3, the Host Partner for of the relevant Pooled Fund shall manage its expenditure on the Individual Schemes within the Financial Contributions allocated to them, and shall ensure that the expenditure is limited to Permitted Expenditure. The Host Partner shall report its expenditure of Financial Contributions to the Pooled Fund Manager and shall notify the Pooled Fund Manager of potential and actual Overspends and Underspends.
- 12.3 The Pooled Fund Manager shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies or is notified of an actual or projected Overspend in relation to any Individual Scheme or Service, the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and the provisions of Schedule 3 shall apply.

### **Overspends in Non Pooled Funds**

- 12.5 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partner's Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partners and the Partnership Board.
- 12.6 Where there is a Lead Commissioning Arrangement the Lead Partner is responsible for the management of the Non-Pooled Fund. The Lead Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board.

### **Underspend**

- 12.7 In the event that expenditure (including monies committed to be spent) from any Pooled Fund or any Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the surplus monies shall be spent, in accordance with Schedule 3. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

## **13 CAPITAL EXPENDITURE**

- 13.1 Neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners.
- 13.2 The Partners agree that capital expenditure may be made from Pooled Funds where this is in accordance with National Guidance.



## **14 VAT**

- 14.1 The Partners shall implement the required treatment of each Pooled Fund for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.
- 14.2 Subject to Clause 14.1, Services commissioned by the Council will be subject the VAT regime of the Council and Services commissioned by the CCGs will be subject to the VAT regime of the National Health Service.

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

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

## **16 LIABILITIES AND INSURANCE AND INDEMNITY**

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme or Services Contract) as a consequence of any act or omission of another Partner or Partners ("Other Partner(s)") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or any Services Contract then the Other Partner(s) 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 or Partners contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner or Partners acting in accordance with the instructions or requests of the First Partner or the Partnership Board.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against a 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(s) will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner or Partners 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 or Partners (such consent not to be unreasonably conditioned, withheld or delayed);
- 16.3.3 give the Other Partner or Partners and its/their 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 it maintains policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement).
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

### **Conduct of Claims**

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

## **17 STANDARDS OF CONDUCT AND SERVICE**

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners' respective Standing Orders and Standing Financial Instructions).
- 17.2 The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 17.3 The CCGs are subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled are therefore subject to ensuring compliance with the CCGs' Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

## **18 CONFLICTS OF INTEREST**

- 18.1 The Partners shall comply with the agreed policy for identifying and managing conflicts of interest as set out in Schedule 7 and with any statutory obligations applicable to any of the Partners (for example but not limited to statutory obligations of the CCGs pursuant to Clause 14O of the National Health Service Act 2006 and statutory guidance issued thereunder) .

## **19 GOVERNANCE**

- 19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Wellbeing Board. The Integration Executive shall make recommendations to the Partners on behalf of the instructions of Health and Wellbeing Board and as to any action it considers necessary.
- 19.2 The Partners have established a Partnership Board (known as the Integration, Finance and Performance Group) whose terms of reference and remit are set out in Schedule 2 (Governance).
- 19.3 The Partnership Board is based on a joint working group structure. Each member of the Partnership Board shall be an officer of one of the Partners and will have individual delegated responsibility from the Partner employing them to make decisions which enable the Partnership Board to carry out its objects, roles, duties and functions as set out in this Clause 19 and Schedule 2
- 19.4 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 19.5 The Health and Wellbeing Board is responsible for leading and directing work to improve the health and wellbeing of the population of Leicestershire through the development of improved and integrated health and social care services including the Better Care Fund.
- 19.7 The Partnership Board shall be responsible for ensuring that the Better Care Fund Plan achieves its aims and outcomes within the Financial Contributions agreed by the Partners and shall operate in accordance with Schedule 2.
- 19.6 Each Individual Scheme shall be overseen and reported upon in accordance with the governance arrangements set out in this Agreement except where alternative governance arrangements are specified in the relevant Scheme Specification.

## **20 REVIEW**

- 20.1 The Partners shall produce a BCF Quarterly Report which shall be provided to the Health and Wellbeing Board in such form and setting out such information as required by National Guidance and any additional information required by the Health and Wellbeing Board or National Health Service Commissioning Board (NHS England).
- 20.2 Save where the Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake:
- 20.2.1 a review, at least annually of the operation of this Agreement;
- 20.2.2 a Quarterly review of Pooled Funds, and Non Pooled Funds; and
- 20.2.3 a review of the provision of the Services within 3 Months of the end of each Financial Year.
- 20.3 Subject to any variations to the review process required by the Partnership Board, reviews shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule 2.
- 20.4 The Partners shall within 20 Working Days of an annual review prepare a joint Annual Report documenting the matters referred to in this Clause 20. A copy of the Annual Report shall be provided to the Partnership Board and the Integration Executive.
- 20.5 In the event that the Partners fail to meet the requirements of the Better Care Fund Plan and NHS England the Partners shall provide full co-operation with NHS England to agree a recovery plan.

## 21 COMPLAINTS

- 21.1 The Partners' own complaints procedures shall apply to this Agreement. The Partners agree to assist one another in the management of complaints arising from this Agreement or the provision of the Services.
- 21.2 In deciding which Partner should deal with a complaint, the following should be taken into consideration:
- 21.2.1 where a complaint wholly relates to one or more of the Council's Health Related Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;
  - 21.2.2 where a complaint wholly relates to one or more of the CCG's NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the relevant CCG;
  - 21.2.3 where a complaint relates partly to one or more of the Council's Health Related Functions and partly to one or more of the CCG's NHS Functions then a joint response will be made to the complaint by the Council and the relevant CCG, in line with the local joint protocol;
  - 21.2.4 where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, then the Partnership Board will set up a complaints subgroup to examine the complaint and recommend remedies. All complaints shall be reported to the Partnership Board.

## 22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Partner giving not less than 12 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Specification provided that the Partners ensure that the Better Care Fund requirements continue to be met.
- 22.3 If any Partner ("Relevant Partner") fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners' rights in respect of any antecedent breach and any terms of this Agreement that expressly or by implication survive termination of this Agreement.
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.6.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to Service Users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
  - 22.6.2 where either Partner has entered into a Service Contract in order to fulfil its obligations, pursuant to this Agreement, the term of which continues after the termination of this

Agreement, both Partners shall continue to contribute to the Contract Price in accordance with the agreed Financial Contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;

22.6.3 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing, provided that the Lead Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment;

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

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

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

22.8 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, a Partner may serve written notice of the dispute on any one or more of the other Partners, setting out full details of the dispute. For the avoidance of doubt, if one of the Partners is not involved in the dispute, that Partner shall also be required to be provided with a copy of the dispute notice and to be party to any dispute resolution proceedings under this Clause 23.

23.2 The Authorised Officers of all of the Partners shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 23.1, at a meeting convened for the purpose of resolving the dispute.

23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Director of Adults & Communities for the Council and the Managing Directors of the respective CCGs or their nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.

23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate 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 a Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## 24 FORCE MAJEURE

- 24.1 No Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by another Partner or incur any liability to another 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 Partners 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], a Partner shall have the right to terminate the Agreement by giving [fourteen (14) days] written notice of termination to the other Partners. For the avoidance of doubt, no compensation shall be payable by any Partner as a direct consequence of this Agreement being terminated in accordance with this Clause.

## 25 CONFIDENTIALITY

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

## 26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

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

## **27 OMBUDSMEN**

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

## **28 INFORMATION SHARING**

The Partners will comply with the Information Sharing Protocol set out in Schedule 8, and in so doing will ensure that the operation of this Agreement complies with the Law, in particular the 1998 Act.

## **29 NOTICES**

- 29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:
- 29.1.1 personally delivered, at the time of delivery;
  - 29.1.2 sent by facsimile, at the time of transmission;
  - 29.1.3 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and
  - 29.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient informing the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.
- 29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).
- 29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:
- 29.3.1 if to the Council, addressed to The Director of Adults and Communities, County Hall, Glenfield. Leicestershire ;

Tel: 0116 2323232  
 Fax: 0116 3057440  
 E.Mail: [jon.wilson@leics.gov.uk](mailto:jon.wilson@leics.gov.uk)

29.3.2 if to WLCCG, addressed to The Managing Director, 55 Woodgate, Loughborough, Leicestershire, LE11 2TZ;

Tel: 01509 567700

Fax: 01509

E.Mail: [toby.sanders@westleicestershireccg.nhs.uk](mailto:toby.sanders@westleicestershireccg.nhs.uk)

29.3.3 if to ELRCCG, addressed to The Managing Director, Room G30, Pen Lloyd Building, County Hall, Glenfield, Leicester, LE3 8TB.

Tel: 0116 2955105

Fax: 0116

E.Mail: [karen.english@eastleicestershireandrutlandccg.nhs.uk](mailto:karen.english@eastleicestershireandrutlandccg.nhs.uk)

29.4 The postholders set out in clauses 29.3.1, 29.3.2 and 29.3.3 shall be the Authorised Officers for the purposes of this Agreement, unless the Partners notify the other Partners in writing that they wish to change the designation of their Authorised Officer. Such notification shall constitute a variation pursuant to Clause 30.1 and shall be agreed by the Partners in writing.

### **30 VARIATION**

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

### **31 CHANGE IN LAW**

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

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

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

### **32 WAIVER**

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

### **33 SEVERANCE**

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

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

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

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



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

### **36 THIRD PARTY RIGHTS**

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

### **37 ENTIRE AGREEMENT**

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

### **39 GOVERNING LAW AND JURISDICTION**

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

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

THE CORPORATE SEAL of )  
**LEICESTERSHIRE COUNTY COUNCIL** )  
was hereunto affixed in the presence of: )

Executed as a deed for on behalf of  
**WEST LEICESTERSHIRE CLINICAL  
COMMISSIONING GROUP**

\_\_\_\_\_  
Authorised Signatory

Executed as a deed for on behalf of **EAST  
LEICESTERSHIRE AND RUTLAND  
CLINICAL COMMISSIONING GROUP**

\_\_\_\_\_  
Authorised Signatory

**SCHEDULE 1- PART 1 ARRANGEMENTS COMMON TO ALL INDIVIDUAL SCHEMES**

Unless the context otherwise requires, the defined terms used in this Part 1 shall have the meanings set out in the Agreement.

The following will apply to the Scheme Specifications listed in Schedule 1 part 3, being the Individual Schemes set out in the Better Care Fund Plan 2017/2019 except where alternative arrangements have been expressly set out in a particular Scheme Specification.

**1 FUNDING**

Individual Schemes shall be funded from Financial Contributions made to the Pooled Fund in accordance with the terms of this Agreement, provided that alternative funding arrangements may be put in place for an Individual Scheme if such alternative arrangements are expressly set out in the relevant Scheme Specification or agreed between the Partners.

**2 AIMS AND OUTCOMES**

Each Individual Scheme will specify the aims and outcomes for that Individual Scheme

**3 THE ARRANGEMENTS**

Unless otherwise expressly stated in an Individual Scheme, the Service will be commissioned by the Partner that has statutory responsibility for providing the Services which are the subject of the Individual Scheme and will be funded from Financial Contributions made to the Pooled Fund.

**4 FUNCTIONS**

The Health Related Functions or NHS Functions relevant to each Individual Scheme will be identified in that Scheme Specification. Unless otherwise expressly stated, there will be no delegation of functions for the commissioning of Services in accordance with an Individual Scheme.

**5 SERVICES**

Where new Services are being commissioned they will be procured in accordance with EU procurement regulations and in accordance with the rules and standing orders of the Partner who is commissioning those Services.

**6 ASSURANCE AND MONITORING**

The assurance framework and performance measures in relation to each Individual Scheme will be as specified in that Individual Scheme.

Performance of Individual Schemes will be monitored and reported in accordance with Schedule 5.

**7 STAFF**

Where Council staff are to be made available to a CCG or vice versa in relation to an Individual Scheme the terms on which such staff will be made available will be as specified in that Individual Scheme

## **8 INFORMATION SHARING AND COMMUNICATION**

The Partners will comply with the terms of the Information Sharing Protocol in Schedule 8 and will enter into information-sharing agreements in respect of each Individual Scheme as appropriate.

## **9 DURATION AND EXIT STRATEGY**

9.1 The contractual arrangements for the variation or termination of Individual Schemes will include arrangements for:

- (a) maintaining continuity of Services;
- (b) allocation and/or disposal of any equipment relating to the Individual Scheme;
- (c) responsibility for debts and on-going contracts;

9.2 No Partner will terminate an Individual Scheme without gaining prior approval from the other Partners. No Partner will make any variations to an Individual Scheme that may have an impact on the health and care integration programme of the Better Care Fund Plan, without the prior agreement of the other Partners and prior consultation with the Integration Executive.

9.3 Upon termination of the Individual Service, unless otherwise expressly stated in the Individual Scheme:

- (a) responsibility for any termination of contractual arrangements with Service Providers as a result of the termination of the Individual Scheme and the consequences of such termination shall be the responsibility of the Partner or Partners who commissioned the Individual Scheme unless otherwise agreed by the other Partners;
- (b) the responsibility for liabilities arising in relation to or out of or in connection with the termination of the Individual Scheme shall lie with the Partners or Partners with the responsibility for commissioning the Services .

## PART 2 TEMPLATE SCHEME SPECIFICATION

**THIS TEMPLATE SHALL BE USED TO SET OUT THE TERMS OF ANY NEW INDIVIDUAL SCHEMES AGREED IN ACCORDANCE WITH CLAUSE 5.3 OF THE AGREEMENT**

### TEMPLATE SCHEME SPECIFICATION

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

#### 10 OVERVIEW OF INDIVIDUAL SCHEME

*Insert details including:*

- (a) **Name of the Individual Scheme**
- (b) *Relevant context and background information*
- (c) *Whether there are Pooled Funds:*

*The Host Partner for Pooled Fund X is [ ] and the Pooled Fund Manager, being an officer of the Host Partner is [ ]*

#### 11 AIMS AND OUTCOMES

*Insert agreed aims of the Individual Scheme*

#### 12 THE ARRANGEMENTS

*Set out which of the following applies in relation to the Individual Scheme:*

- (1) *Lead Commissioning;*
- (2) *Integrated Commissioning;*
- (3) *Joint (Aligned) Commissioning;*
- (4) *the establishment of one or more Pooled Funds and/or Non Pooled Funds as may be required.*

#### 13 FUNCTIONS

*Set out the Council's Functions and the CCG's Functions which are the subject of the Individual Scheme including where appropriate the delegation of such functions for the commissioning of the relevant service.*

*Consider whether there are any exclusions from the standard functions included (see definition of NHS Functions and Council Health Related Functions)*

#### 14 SERVICES

*What Services are going to be provided within this Scheme. Are there contracts already in place? Are there any plans or agreed actions to change the Services? Who are the beneficiaries of the Services? <sup>1</sup>*

#### 15 COMMISSIONING, CONTRACTING, ACCESS

<sup>1</sup> This may be limited by service line –i.e. individuals with a diagnosis of dementia. There is also a significant issue around individuals who are the responsibility of the local authority but not the CCG and Vice versa

**Commissioning Arrangements**

Set out what arrangements will be in place in relation to Lead Commissioning/Joint (Aligned) commissioning. How will these arrangements work?

**Contracting Arrangements**

Insert the following information about the Individual Scheme:

- (a) relevant contracts
- (b) arrangements for contracting. Will terms be agreed by both partners or will the Lead Commissioner have authority to agree terms

what contract management arrangements have been agreed?

What happens if the Agreement terminates? Can the partner terminate the Contract in full/part?

Can the Contract be assigned in full/part to the other Partner?

**Access**

Set out details of the Service Users to whom the Individual Scheme relates. How will individuals be assessed as eligible.

**16 FINANCIAL CONTRIBUTIONS**

Financial Year 201.../201

	CCG contribution	Council Contribution
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		
Pooled Fund Y		

Financial Year 201.../201

	CCG contribution	Council Contribution
Non-Pooled Fund A		
Non-Pooled Fund B		
Non-Pooled Fund C		
Pooled Fund X		
Pooled Fund Y		

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

**17 FINANCIAL GOVERNANCE ARRANGEMENTS**

[(1) As in the Agreement with the following changes:

## (2) Management of the Pooled Fund

Are any amendments required to the Agreement in relation to the management of Pooled Fund  
 Have the levels of contributions been agreed?  
 How will changes to the levels of contributions be implemented?  
 Have eligibility criteria been established?  
 What are the rules about access to the pooled budget?  
 Does the pooled fund manager require training?  
 Have the pooled fund managers delegated powers been determined?  
 Is there a protocol for disputes?

## (4) (3) Audit Arrangements

What Audit arrangements are needed?  
 Has an internal auditor been appointed?  
 Who will liaise with/manage the auditors?  
 Whose external audit regime will apply?

## (4) Financial Management

Which financial systems will be used?  
 What monitoring arrangements are in place?  
 Who will produce monitoring reports?  
 Has the scale of contributions to the pool been agreed?  
 What is the frequency of monitoring reports?  
 What are the rules for managing overspends?  
 Do budget managers have delegated powers to overspend?  
 Will delegated powers allow underspends recurring or non-recurring, to be transferred between budgets?  
 How will overspends and underspends be treated at year end?  
 Will there be a facility to carry forward funds?  
 How will pay and non pay inflation be financed?  
 Will a contingency reserve be maintained, and if so by whom?  
 How will efficiency savings be managed?  
 How will revenue and capital investment be managed?  
 Who is responsible for means testing?  
 Who will own capital assets?  
 How will capital investments be financed?  
 What management costs can legitimately be charged to pool?  
 What re the arrangement for overheads?  
 What will happen to the existing capital programme?  
 What will happen on transfer where if resources exceed current liability (i.e. commitments exceed budget) immediate overspend secure?  
 Has the calculation methodology for recharges been defined?  
 What closure of accounts arrangement need to be applied?

## 18 VAT

Set out details of the treatment of VAT in respect of the Individual Service consider the following:

- Which partner's VAT regime will apply?
- Is one partner acting as 'agent' for another?
- Have partners confirmed the format of documentation, reporting and accounting to be used?

## 19 [GOVERNANCE ARRANGEMENTS FOR THE INDIVIDUAL SCHEME

*Will there be a relevant Committee/Board/Group that reviews this Individual Scheme?  
Who does that group report to?  
Who will report to that Group?*

*Pending arrangements agreed in the Partnership Agreement, including the role of the Health & Wellbeing Board, Partners to confirm any bespoke management arrangements for the Individual Scheme*

## 20 NON FINANCIAL RESOURCES

### Council contribution

	Details	Charging arrangements	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

### CCG Contribution

	Details	Charging arrangements	Comments
Premises			
Assets and equipment			
Contracts			
Central support services			

## 21 STAFF

*Consider:*

- *Who will employ the staff in the partnership?*
- *Is a TUPE transfer secondment required?*
- *How will staff increments be managed?*
- *Have pension arrangements been considered?*

### Council staff to be made available to the arrangements

*Please make it clear if these are staff that are transferring under TUPE to the CCG.*

*If the staff are being seconded to the CCG this should be made clear*

### CCG staff to be made available to the arrangements

*Please make it clear if these are staff that are transferring under TUPE to the Council.*

*If the staff are being seconded to the Council this should be made clear.*

## 22 ASSURANCE AND MONITORING



Set out the assurance framework in relation to the Individual Scheme. What are the arrangements for the management of performance? Will this be through the agreed performance measures in relation to the Individual Scheme.

In relation to the Better Care Fund you will need to include the relevant performance outcomes. Consider the following:

- What is the overarching assurance framework in relation to the Individual Scheme?
- Has a risk management strategy been drawn up?
- Have performance measures been set up?
- Who will monitor performance?
- Have the form and frequency of monitoring information been agreed?
- Who will provide the monitoring information? Who will receive it?

## 23 LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address	Fax Number
Council					
CCG					

## 24 INTERNAL APPROVALS

- Consider the levels of authority from the Council's Constitution and the CCG's standing orders, scheme of delegation and standing financial instructions in relation to the Individual Scheme;
- Consider the scope of authority of the Pool Manager and the Lead Officers
- Has an agreement been approved by cabinet bodies and signed?

## 25 RISK AND BENEFIT SHARE ARRANGEMENTS

Has a risk management strategy been drawn up?

Set out arrangements, if any, for the sharing of risk and benefit in relation to the Individual Scheme.

## 26 REGULATORY REQUIREMENTS

Are there any regulatory requirements that should be noted in respect of this particular Individual Scheme?

## 27 INFORMATION SHARING AND COMMUNICATION

What are the information/data sharing arrangements?

How will charges be managed (which should be referred to in Part 2 above)

What data systems will be used?

- Consultation – staff, people supported by the Partners, unions, providers, public, other agency

Printed stationary

## 28 DURATION AND EXIT STRATEGY

What are the arrangements for the variation or termination of the Individual Scheme.

Can part/all of the Individual Scheme be terminated on notice by a party? Can part/all of the Individual Scheme be terminated as a result of breach by either Partner?

What is the duration of these arrangements?

Set out what arrangements will apply upon termination of the *Individual Service*, including without limitation the following matters addressed in the main body of the Agreement

- i) (1) ***maintaining continuity of Services;***
  - ii) (2) ***allocation and/or disposal of any equipment relating to the Individual Scheme;***
  - iii) (3) ***responsibility for debts and on-going contracts;***
  - iv) (4) ***responsibility for the continuance of contract arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the contract arrangements);***
  - v) (5) ***where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners.***
- *Consider also arrangements for dealing with premises, records, information sharing (and the connection with staffing provisions set out in the Agreement.*

## 29 OTHER PROVISIONS

Consider, for example:

- *Any variations to the provisions of the Agreement*
- *Bespoke arrangements for the treatment of records*
- *Safeguarding arrangements*

**PART 3 AGREED INDIVIDUAL SCHEMES**



BCF Expenditure  
Plan\_2017-19.xls

## PART 3A – SCHEME SPECIFICATION FOR HART SERVICES

### SCHEME SPECIFICATION- HART SERVICES

#### 30 OVERVIEW OF INDIVIDUAL SERVICE

HART is a Homecare Assessment and Reablement Team Service which is provided on an in house basis by the Council. The Council will provide the HART Services to the CCGs in accordance with this Scheme Specification and as such is referred to as the “provider” of those services.

#### DEFINED TERMS

The following definitions apply in this Scheme Specification:

**Assigned IPRs:** all Intellectual Property Rights (being Intellectual Property Rights other than Retained IPRs) developed by or on behalf of the Council in the provision of the Services.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Health Case Manager:** means a person authorised by the CCGs to act as a Referrer and Assessor of Service Users on Pathway 2 to the HART Services as further defined in the HART Service Specification.

**Charges:** the payments made from the Permitted Budget for the HART Services which shall be calculated in accordance with the provisions of the Finance Protocol (set out in Schedule 3 of this Agreement).

**HART Reablement Screening Tool:** means the screening tool to be completed by the Health Case Manager or other health professional which will inform whether it is appropriate to Refer a patient to the HART team for receipt of the Services. The screening tool may be replaced by another tool developed by the Partners from time to time, provided that the replacement of the tool and the details thereof have been agreed by the Partners in writing and signed by the Authorised Officers on behalf of the Partners to record their agreement.

**HART Staff:** all persons employed or engaged by the Council or any of its Sub-contractors (included volunteers, agency workers, locums, casual or seconded staff) in the provision of the HART Services or any activity related to or connected with the provision of the HART Services

**Health & Social Care Protocol:** means the Leicester, Leicestershire and Rutland Health and Social Care Protocol (Revised 2014) as it might be amended or superseded from time to time

**HART Services:** short term intensive reablement support in Service Users’ homes delivered by the Council HART Staff and as more particularly described in this Scheme Specification and which are the subject of an Order placed by the CCGs with the Council

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether

registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Local Healthwatch:** an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007

**NHS:** the National Health Service in England

**NICE Technology Appraisals:** technology appraisals conducted by NICE in order to make recommendations on the use of drugs and other health technologies within the NHS

**Ordinary Residence:** has the meaning given to it in the Care Act 2014 and associated guidance and “Ordinarily Resident” or “Ordinarily Resident” shall be construed accordingly

**Permitted Budget:** means the Financial Contributions to the HART Services as set out in the Finance Protocol (at Schedule 3 of this Agreement).

**Reablement Plan:** means the reablement Support Plan agreed

**Referral Process:** means the process by which Service Users are referred by each of the CCGs to the Council’s HART Staff pursuant to a Reablement Plan and Referred and Referral shall be construed accordingly. The Referral Process is more particularly set out in the service specification embedded at paragraph 5 below.

**Regulatory or Supervisory Body:** any statutory or other body having authority to issue guidance, standards or recommendations with which the parties or any of them must comply or to which they must or should have regard, including as applicable:

The Care Quality Commission;

the corporate body known as Monitor provided by section 61 of the Health and Social Care Act 2012;

the Special Health Authority known as the National Health Service Trust Development Authority established under the NHS Trust Development Authority (Establishment and Constitution) Order 2012 (NHSTDA);

The National Health Service Commissioning Board established by section 1H of the National Health Service Act 2006, also known as NHS England;

the Department of Health or such other body superseding or replacing it;

the National Institute for Health and Care Excellence (NICE)

Healthwatch England

**Retained IPRs:** all Intellectual Property Rights either owned by the Council or its third party licensors before the commencement of the provision of the HART Services by the Council or subsequently developed by or on behalf of the Council after the commencement of the provision of the HART Services by the Council other than in the provision of the Services except that such Intellectual Property Rights shall be Assigned IPRs where used by the Council in the provision of the HART Services.

**Service User:** A person resident in the administrative area of the county of Leicestershire who has been Referred to the Council by the CCGs

**Support Plan:** means the support plan prepared by the CCGs which specifies the Services required for a Service User as it may from time to time be reviewed and revised to reflect changes to the Service User's needs

### 31 AIMS AND OUTCOMES

The Aims and Outcomes for the HART Services are set out on page 3 of the service specification embedded at paragraph 5 below.

### 32 THE ARRANGEMENTS

The Council shall act as provider of the HART Services which are commissioned by the CCG in exercise of NHS Functions related to continuing health care in a domiciliary setting.

### 33 FUNCTIONS

The HART Services are commissioned in exercise of the NHS Functions set out in Regulation 5 of the Regulations. There is no delegation of Functions from the CCGs to the Council.

### 34 SERVICES



HART Service  
Specification Final.doc

**In addition to the obligations set out at Clause 17 of the Agreement in respect of Standards of Conduct and Service, the Partners agree, in view that the Council is the in house provider of the HART Services, that the Council shall comply with the following provisions:**

#### 5.1 Council Obligations

5.1.1 In supplying the HART Services, the Council shall (and in accordance with the embedded service specification in this paragraph 5):

- (a) Ensure that the provision of the HART Services is consistent with the Service User's needs as identified in the Referral Process;
- (b) perform the HART Services with the highest level of care, skill and diligence in accordance with best practice and appropriate clinical standards;
- (c) co-operate with the CCGs in all matters relating to the HART Services, and comply with all reasonable instructions of the CCGs;
- (d) use personnel who are suitably and appropriately registered, qualified, skilled, competent, experienced and appropriately trained in the application to the Service of the Health & Social Care Protocol and where revalidation is required by the appropriate professional regulatory body this is completed to perform tasks assigned to them, and in sufficient number to ensure that the Council's obligations are fulfilled and are covered by the Council's (and/or any

subcontractor that is approved by the CCGs) indemnity arrangements for the provision of the HART Services;

- (e) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations;
- (f) comply where applicable with the registration and regulatory compliance guidance of any relevant Regulatory or Supervisory Body and any standards and recommendations issued from time to time by any such Body;
- (g) comply with the standards and recommendations issued from time to time by any relevant professional body and agreed in writing between the CCGs and the Council;
- (h) comply, where applicable, with the recommendations contained in the NICE Technology Appraisals and have regard to other guidance issued by NICE from time to time;
- (i) respond to any reports and recommendations made by Local Healthwatch;
- (j) ensure that the HART Services conform with all descriptions and specifications set out in this Scheme Specification;
- (k) ensure that the Services are carried out so as to meet the Service User's outcomes as identified in the Service User's Reablement Plan;
- (l) provide all equipment, tools, vehicles and other items required to provide the Services;
- (m) ensure that all staff using equipment in the delivery of the HART Services and all Service Users and carers using equipment independently as part of the Service User's care or treatment have received appropriate and adequate training and have been assessed as competent in the use of that equipment;
- (n) ensure that all goods, materials, standards and techniques used in providing the HART Services are of an acceptable standard;
- (o) observe all health and safety rules and regulations and any other reasonable security requirements that apply in respect of the HART Services;
- (p) not knowingly do or omit to do anything which may cause the CCGs to lose any licence, authority, consent or permission on which they rely for the purposes of conducting their business;
- (q) not knowingly do or omit to do anything which may constitute, cause or contribute to any breach by the CCGs of any licence or contract binding on the CCGs; and
- (r) comply with the CCGs' policies on the use of their logo and branding and where applicable comply with the applicable NHS Branding Guidance which is available at [www.nhsidentity.nhs.uk](http://www.nhsidentity.nhs.uk).

5.1.2 The Council shall comply with such of the CCGs' policies and procedures as are relevant and are specifically brought to the attention of the Council in the provision of the HART Services and with any relevant statute, regulations, circulars or guidance made under any relevant statute. In particular, the Council shall:

- (s) comply with the Health and Safety at Work Act 1974 and of any other Acts Regulations or Orders pertaining to the health and safety of employees;
- (t) comply with the Environmental Protection Act 1990 and the Water Resources Act 1991 and other environmental legislation;
- (u) use reasonable endeavours to reduce the environmental impact of the HART Services and will implement and maintain systems designed to ensure good environmental practice including compliance with any relevant British Standards or European equivalents;
- (v) have regard at all times to the welfare of children and vulnerable members of society;
- (w) comply with the Council's policies relating to the protection of children and vulnerable members of society;
- (x) comply with relevant provisions of the Mental Capacity Act 2005 and the Health & Social Care Act 2008 (including but not limited to the duty of candour);
- (y) have regard to and do all that is reasonable to prevent crime and disorder in the community;
- (z) comply with the Public Interest Disclosure Act 1998 and develop a whistle blowing policy for its staff to encourage them to report any incidents of malpractice within the Service; and
- (aa) comply with relevant legislation concerning the use of vehicles on the public highway.

5.1.3 The Council shall develop and continuously review Business Continuity Plans to minimise the impact of unforeseen events in connection with the HART Services including in respect of:

- (bb) damage by fire
- (cc) the effects of extreme weather conditions
- (dd) the effects of pandemic illness on staff or Service Users
- (ee) other failures affecting buildings, utilities or equipment (including ICT equipment)

5.1.4 Where the provision of the HART Services requires the operation of vehicles the Council shall ensure that it complies with all relevant legislation. It shall also ensure that all vehicles used in the provision of the Services (whether or not they are owned by the Council) are adequately serviced and maintained and that management, monitoring and risk management procedures are in place in order to guarantee safe working practices.

5.1.5 The Council shall ensure that all staff and volunteers providing the HART Services are aware of the provisions of the Human Rights Act 1998(as amended) and shall take all reasonable steps and precautions to ensure that it does not infringe the human rights of any person (including Service Users) in the provision of the Services.

5.1.6 The Council shall co-operate fully with the authorised representative of the relevant Healthwatch who from time to time may wish to visit the Council in the exercise of its powers under the Local Government and Public Involvement in Health Act 2007 as amended and the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013

**The CCGs agree that they shall comply with the following provisions in order to assist the Council with the delivery of the HART Services:**



## 5.5 . The CCGs' Obligations

- 5.5.1 The CCGs shall cooperate with the Council and provide such information and assistance to the Council's Staff as the Council may reasonably request in order to facilitate the smooth implementation of Reablement Plans.
- 5.5.2 The CCGs shall provide such access to their data, and other facilities as may reasonably be requested by the Council and agreed with the CCGs in writing in advance, for the purposes of the Services;
- 5.5.3 The CCGs shall inform the Council of all health and safety rules and regulations and any other reasonable security requirements that apply in respect of any Referral.
- 5.5.4 The CCGs shall ensure that any person making a Referral is trained to use the HART Reablement Screening Tool and uses it appropriately as part of the Referral process
- 5.5.5 The CCGs shall ensure that each Service User to be Referred is assigned a named Health Case Manager who is responsible for liaising with HART Staff and who is authorised to take responsibility for clinical matters
- 5.5.6 The CCGs shall monitor the number of hours of care Referred to ensure that the cost of Referrals does not exceed the Financial Contributions of ELRCCG or WLCCG.

## 35 COMMISSIONING, CONTRACTING, ACCESS

The CCGs will commission the HART Services from the Council who shall act as in house provider of the HART Services in accordance with the terms of this Scheme Specification. Further details of access for the HART Services are set out in the specification embedded at paragraph 5 above.

ELR CCG will act as co-ordinating commissioner on behalf of WL CCG in respect of the HART Services.

### Access

At the date of writing of this Scheme Specification, the Partners are working together to finalise the details of the Referrals Process with which they shall be required to comply in respect of the HART Services. Once finalised, details of the Referrals Process shall be recorded in writing and signed by the Authorised Officers on behalf of the Partners to record their agreement to them

**The following provisions will apply in respect of Service Users who are not already resident in the administrative area of Leicestershire:**

The CCGs may from time to time seek to Refer a Service User who is not Ordinarily Resident in the administrative area of Leicestershire. In those circumstances, the provisions relating to 'population' set out in paragraph 5 of the HART Service Specification (embedded at paragraph 5 above) shall apply and the Council may accept or decline such Referral provided that in determining whether to accept the Referral the Council will have regard to the following principles:

- (ff) All Service Users who are Ordinarily Resident in the administrative areas of Leicestershire, Leicester City or Rutland (LLR) who require the Services should receive an effective and timely response
- (gg) The Council and the CCGs should work together to ensure that Service Users' health and social care needs are addressed during the period of reablement.
- (hh) Arrangements for accessing reablement should be broadly consistent across LLR
- (ii) Responsibilities for which organisation commissions reablement services should be clear and straightforward, so that hospital staff know who should be referred, when they should be referred and where referrals should be made.
- (jj) No Service User should be denied a service because of disputes about which local authority or CCG is responsible for paying for care.

### **36 FINANCIAL CONTRIBUTIONS**

Please refer to the Finance Protocol at Schedule 3 of the Agreement in respect of the HART Services.

#### **Costs where CCG Financial Contributions exceeded:**

If the cost of Referrals (as defined in the specification embedded at paragraph 5 above) referable to either ELRCCG or WLCCG in any Financial Year exceeds that CCG's Financial Contribution, the Council is not obliged to accept any further Referrals in that Financial Year of Service Users for whom the overspent CCG is responsible.

### **37 FINANCIAL GOVERNANCE ARRANGEMENTS**

Please refer to the Finance Protocol at Schedule 3 of the Agreement in respect of the HART Services.

### **38 VAT**

All amounts payable by the CCGs to the Council in respect of HART Services are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under an order by the Council to the CCGs, the CCGs shall, on receipt of a valid VAT invoice from the Council, pay to the Council such additional amounts in respect of VAT as are chargeable on the supply of the HART Services at the same time as payment is due for the supply of the HART Services

### **39 GOVERNANCE ARRANGEMENTS**

The terms of reference in [Schedule 2] shall apply to the HART Services

### **40 NON FINANCIAL RESOURCES**

Details of Non Financial Resources to be committed to the HART Services are set out in the service specification embedded at paragraph 5 above.

### **41 STAFF**

12.1 The Council shall operate policies on personnel matters for both staff and volunteers. These shall include appropriate arrangements for recruitment, checks for suitability, levels of qualification and/or experience for specific posts, registration requirements, appraisals, training and development, and supervisory (managerially and professionally), disciplinary and grievance procedures, having regard to the nature of the Services, copies of which must be provided to the CCGs on request. The Council shall ensure itself and its Staff and any subcontractors meet the obligations as detailed in these policies.

12.2 Before the Council engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Council must without limitation, complete:

- (kk) **the Employment Checks; and**
- (ll) **such other checks as required by the DBS.**

12.3 The Council must have policies and procedures which acknowledge and provide for ongoing monitoring of Staff DBS status.

12.4 The Council shall comply with the Public Interest Disclosure Act 1998 (as if such Act applied to the Council) and shall establish and where necessary update from time to time a procedure for its personnel encouraging personnel to report to the Council any incidents of malpractice within the Council or the CCGs. In this context "malpractice" shall include any fraud or financial irregularity, corruption, criminal offences, failure to comply with any legal or regulatory obligation, endangering the health or safety of any individual, endangering the environment, serious misconduct or serious financial maladministration.

## 42 ASSURANCE AND MONITORING

Details of the assurance and monitoring for the HART Services are set out in the specification embedded at paragraph 5 above.

## 43 LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address
Council	Claire Jones	County Hall	0116 305773	<a href="mailto:Claire.Jones@leics.gov.uk">Claire.Jones@leics.gov.uk</a>
ELR CCG	Simon Pizzey (Head of Strategy and Planning)	G30, Pen Lloyd, County Council, Glenfield	0116 2953405	<a href="mailto:Simon.Pizzey@eastleicestershireandrutlandccg.nhs.uk">Simon.Pizzey@eastleicestershireandrutlandccg.nhs.uk</a>
WL CCG	Arlene Neville	55 Woodgate, Loughborough, Leicestershire, LE11 2TZ	01509 567720	<a href="mailto:Arlene.Neville@westleicestershireandrutlandccg.nhs.uk">Arlene.Neville@westleicestershireandrutlandccg.nhs.uk</a>

#### **44 INTERNAL APPROVALS**

This Individual Scheme has been approved in accordance with the lines of accountability described in the Agreement and in accordance with the Governance Arrangements.

#### **45 RISK AND BENEFIT SHARE ARRANGEMENTS**

[The Schedule 3] Financial Protocol shall apply to the HART Services

#### **46 REGULATORY REQUIREMENTS**

Regulatory Requirements are set out in the specification embedded at paragraph 5 above.

#### **47 INFORMATION SHARING AND COMMUNICATION**

[The Protocol at Schedule 8] of this Agreement will apply to the HART Services. The Parties will comply with the requirements of the Information Sharing Agreement (and the requirement to have an Information Sharing Agreement in place), in respect of the HART Services.

#### **48 DURATION AND EXIT STRATEGY**

The provisions at [Clause 22] of the agreement will apply to the HART services.

In the event of the termination of the HART Services, howsoever arising (including expiry), the Council shall be required to agree a Succession Plan with the CCGs.

In addition to the obligations set out at [Clause 22.6] of the Agreement, the Partners agree that 6 months' notice shall be given by the Council or the CCGs in the event that they wish or require to terminate the provision/commissioning (as appropriate) of the HART Services (except in the case of Force Majeure).

#### **49 OTHER PROVISIONS**

49.1 The Council shall not be permitted to sub contract its obligations to deliver the HART Services without the express written agreement of the CCGs.

20.2 Unless otherwise specified, the Council shall retain ownership of all Retained IPRs and the CCGs shall own all Assigned IPRs (and the CCGs shall determine between themselves whether the title, rights and interests in the Assigned IPRs shall continue to be held by them jointly or shall be allocated between them, and shall determine any such allocation of the title, rights and interests between themselves) and shall grant to the Council an irrevocable, unrestricted royalty-free licence to use the Assigned IPRs.

**PART 3B – SCHEME SPECIFICATION FOR MENORRHAGIA SERVICES**

Gynaecology Section 75 Schedule **SCHEME SPECIFICATION****Part 1 – Template Services Schedule****TEMPLATE SERVICE SCHEDULE**

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

**1. OVERVIEW OF INDIVIDUAL SERVICE**

(a) Provision, review and subsequent removal, of Levonorgestrel Intrauterine System (LNG-IUS) for gynaecological (non-contraceptive) purposes including management of menorrhagia and hormone replacement therapy (HRT)

(b) Local authority commissions provision of LNG-IUS fitting, review and removal on behalf of the Clinical Commissioning Group (CCG).

The Section 75 service has zero value pooled budget, the CCG will pay on a cost per case basis for each IUS fitted, reviewed or removed following a quarterly invoice from the local authority.

**2. AIMS AND OUTCOMES**

This agreement aims to provide the fitting and removal element of LNG-IUS for women requiring Levonorgestrel intrauterine system LNG-IUS fitting as management of menorrhagia or other gynaecological purpose such as HRT, endometriosis etc, where clinically relevant, thus reducing the requirement for hysterectomy.

**BACKGROUND**

The (LNG-IUS) is an intrauterine, long-term progestogen-only method of contraception licensed for 5 years of use. The effects of the LNG-IUS are local and hormonal, including prevention of endometrial proliferation and thickening of cervical mucus and suppression of ovulation in a small minority of women. The system has to be fitted and removed by a qualified practitioner. As well as being licensed as a contraceptive device, the LNG-IUS is also licensed for the management of idiopathic menorrhagia.

Menorrhagia / Heavy menstrual bleeding is defined as excessive menstrual blood loss which interferes with the woman's physical, emotional, social and material quality of life, and which can occur alone or in combination with other symptoms. Any intervention should aim to improve quality of life measures. The Levonorgestrel-releasing intrauterine system (LNG-IUS) is recommended as first line treatment for women with heavy menstrual bleeding and no underlying pathology (dysfunctional uterine bleeding) and in some women with heavy menstrual bleeding and identified benign pathology such as small fibroids (less than 3 cm in diameter which are causing no distortion of the uterine cavity) provided that long-term use is anticipated (at least 12 months). The LNG-IUS may also be recommended, following gynaecological investigation, for the management of conditions such as endometriosis.<sup>2</sup>

Evidence from two systematic reviews and one subsequent publication shows that LNG-IUS produces a clinically relevant reduction in menstrual blood loss in women complaining of heavy menstrual bleeding. <https://www.fsrh.org/standards-and-guidance/documents/cec-ceu-guidance-womenover40-jul-2010/>

**Local defined outcomes**

- Reduction in secondary care referrals to gynaecology (in particular for menorrhagia)
- Reduction in number of hysterectomies
- Improved uptake of long-acting reversible contraception (LARC)

<sup>2</sup> Heavy menstrual bleeding: assessment and management. Clinical guideline. National Institute for Health and Care Excellence. 2007. Last updated August 2016.

- Reduction in unplanned pregnancies
- Improved quality of life for women receiving the LNG-IUS
- Locally convenient service with improved access to care and reduced waiting times for LNG-IUS fitting
- Improved quality of care

### 3. THE ARRANGEMENTS

Leicestershire County Council will provide a lead commissioning arrangement for the CCGs, ensuring access to the service within the integrated sexual health service and community based contracts.

### 4. FUNCTIONS

The 2012 Health and Social Care Act created fragmentation across the sexual health commissioning system. Local Authorities are responsible for commissioning coils (intrauterine devices (IUDs) and intrauterine systems (IUSs) for contraceptive purposes and CCGs are responsible for commissioning IUS for non-contraceptive/gynaecological purposes such as for menorrhagia.

The fitting of IUSs for either purpose must be delivered within the same clinical guidelines, quality and service standards, including insertion by appropriately trained/qualified practitioners. Therefore, the CCGs will delegate the function for IUS fitting, review and removal for gynaecological, non-contraceptive purposes to Local Authorities to deliver as combined contraceptive and non-contraceptive services. This enables better use of resources and improved access for women.

Contract management and clinical governance arrangements will be led by the local authority as part of their existing contracts. Performance and financial monitoring of this schedule will be undertaken through the quarterly Integrated Finance and Performance meetings which are part of the Integration Executive's governance arrangements. CCGs will be provided with quarterly performance reports, results of the annual LARC audits and informed of any clinical governance issues/ risks relating to the service as required. CCGs will be required to pay for the reconciled quarterly activity on a cost per case basis within 30 days of receiving the invoice.

### 5. SERVICES

To deliver the delegated service, contract variations are needed to extend the Local Authority commissioned integrated sexual health service and community-based services for IUS to include provision of IUS for non-contraceptive purposes. (Current services are only commissioned to provide IUS's for contraceptive use.)

The Service(s) will be required to:

- **Ensure all clinicians delivering the service are fully qualified** including having up to date Letter of Competencies in IUD/S fitting.
- **Fit, review and remove LNG-IUS as appropriate** for the management of menorrhagia or other gynaecological purposes. This includes confirming the woman is not pregnant at time of IUS fitting.
- **Maintain an up-to-date register of patients fitted with an LNG-IUS.** This will include the name of the clinician and details of the device fitted. This is to be used for the annual audit purposes as well as call and recall.
- **Provide adequate equipment.** Certain special equipment is required for fitting and removal. This includes an appropriate treatment room fitted with a couch and with adequate space, emergency equipment and drugs for resuscitation. For LNG-IUS fittings, a variety of vaginal specula, (and if skills allow cervical dilators, and equipment for cervical anaesthesia) need to be available and meet sterilisation requirements. Women should be informed about the availability of local anaesthesia and offered where possible. An appropriately trained assistant also needs to be present in the building to support the patient and assist the doctor during LNG-IUS procedures if required.
- **Undertake a risk assessment.** To assess the need for sexually transmitted infection (STI) or HIV testing and advice.
- **Assessment and follow up** in accordance with national clinical guidelines.
- **Wait times.** Patients will be seen within 6 weeks of referral. Patients seen outside of this timescale to be reported to the contract manager by exception. GPs of patients who cannot be seen within the 6 week period should be notified.

**Follow-up arrangements:**

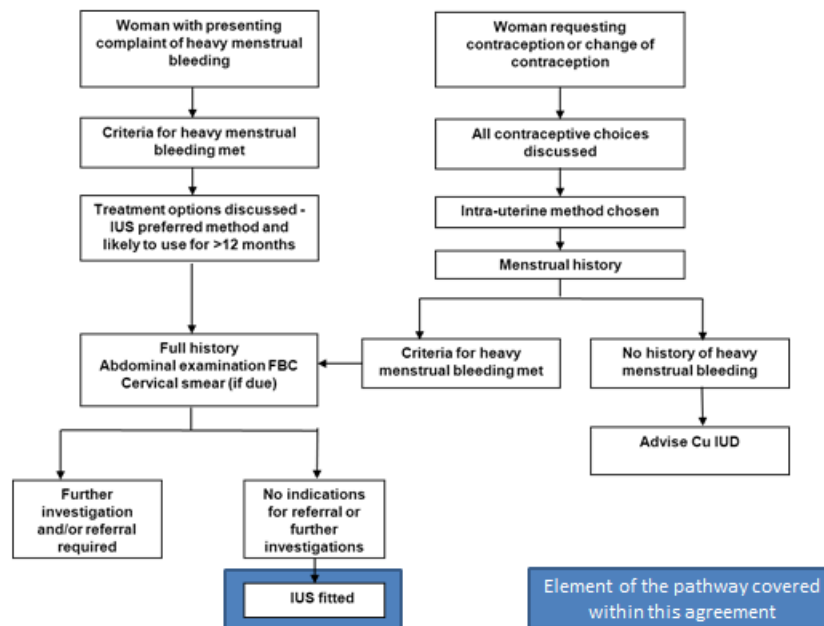
Patient information and follow-up arrangements include:

- Appropriate verbal and written information, about the effectiveness, duration of use and side effects of all options for the management of menorrhagia, should be provided at the time of counselling and reinforced at fitting with information on follow up, effectiveness, duration of use, side effects and those symptoms that require urgent assessment.
- All women should be advised to seek immediate medical advice if they develop symptoms of fever, pelvic pain, irregular bleeding or vaginal discharge which might indicate infection. Arrangements should be in place to review patients experiencing problems in a timely fashion and to provide information and treatment.
- All women should be advised to seek medical advice if threads are not palpable or they can feel the stem of the IUS.
- A routine follow up visit can be advised after the first menses following insertion of LNG-IUS, or 3-6 weeks later. However, this is not essential and it is more important to advise women as to signs and symptoms of infection, perforation and expulsion, returning if they have any problems relating specifically to the intrauterine method.
- Follow up that does not relate specifically to the insertion of the LNG-IUS i.e. related to the overall gynaecological condition is not included in this agreement. This remains part of the general GMS/PMS contract.

All the above should be recorded in the patient record.



### Algorithm for use of LNG-IUS for management of gynaecological conditions such as menorrhagia



#### Applicable national standards

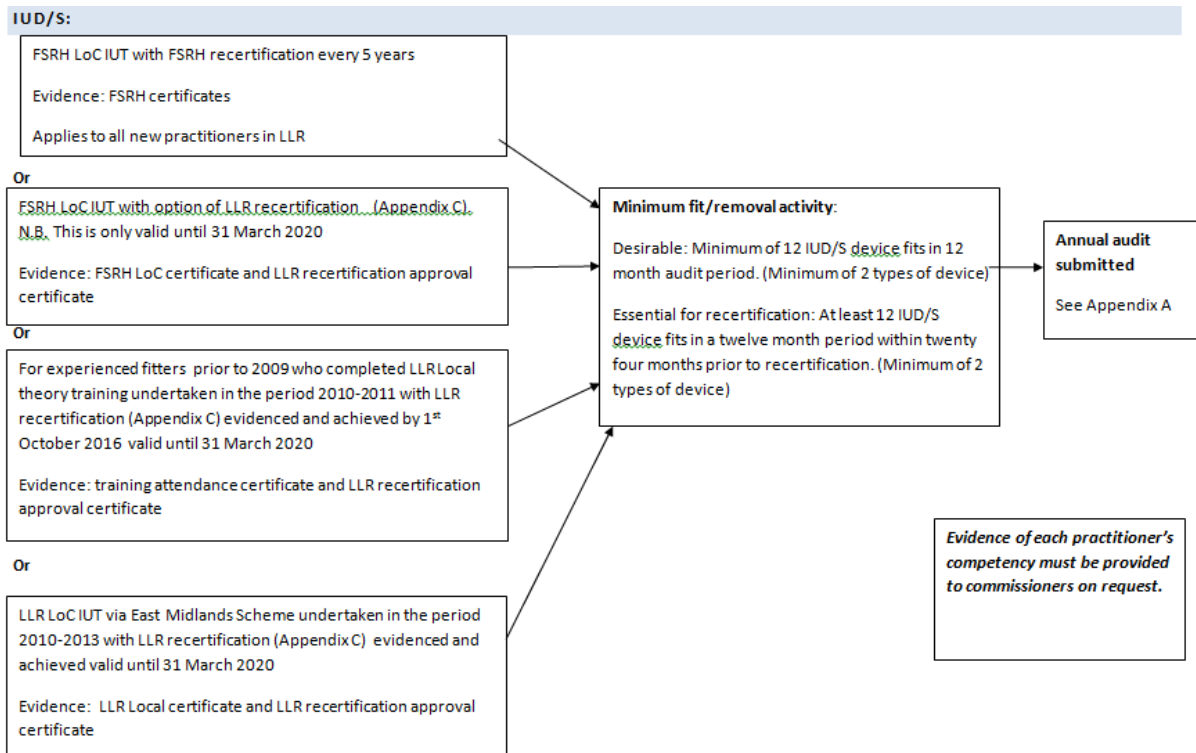
- NICE clinical guideline 44 (January 2007. Last updated August 2016) *Heavy Menstrual Bleeding: assessment and management*.
- Referral guidelines for suspected cancer – gynaecological cancers (Implemented Oct 2000 DOH)
- NICE (2005a) *Referral guidelines for suspected cancer: quick reference guide*. Clinical guideline 27. National Institute for Health and Clinical Excellence.
- NICE (2005b) *Long-acting reversible contraception (NICE guideline)*. National Institute for Health and Clinical Excellence.
- NICE (2007a) *Heavy menstrual bleeding: understanding NICE guidance*. National Institute for Health and Clinical Excellence.
- NICE (2007b) *Audit criteria: heavy menstrual bleeding*. National Institute for Health and Clinical Excellence.
- RCOG (1998) *The initial management of menorrhagia*. Evidence-based clinical guidelines no.1. Royal College of Obstetricians and Gynaecologists.
- FSRH (2009) *UK medical eligibility criteria for contraceptive use [Superseded]*. Faculty of Family Planning and Reproductive Health Care.
- NICE *support for commissioning for heavy menstrual bleeding*. (September 2013)
- FSRH CEU Clinical Guidance *Intrauterine Contraception*. (2015)

#### Applicable local standards

The Provider shall demonstrate compliance with the following standards:

- Healthcare professions providing the service must hold membership of an approved professional body and be approved and eligible to practice in a setting that is appropriate to deliver this service as detailed in the specification, including DBS check.
- Device shall be inserted by appropriately trained/qualified practitioner as detailed in flowchart below.
- Standards relevant to premises requirements including:
  - Appropriate CQC registrations must be in place
  - A procedure for cleaning of the environment must be in place based on national guidance and audited
  - Hand hygiene training of staff involved
  - Equipment cleaning protocol based on national guidance must be in place
- The Provider shall cooperate in any announced and unannounced quality visits by the Commissioner.
- Provider must meet all standards of overarching existing contracts.

## Summary of training requirements for practitioners delivering IUS fitting/removal service.



### Quality and Monitoring Requirements:

Quarterly reporting (in arrears) of:

- Number IUS inserted for
  - contraceptive purpose
  - gynaecological purposes
  - joint contraception/gynaecological purposes

Annual reporting of:

- Numbers of complex patients further referred from community based service providers onto gynaecology or integrated sexual health service. (based on audit returns)
- Numbers of serious complications in community based services: e.g. perforations at time of insertion (based on audit returns)
- Patient satisfaction surveys (Generic information in relation to the integrated sexual health service)
- LARC audit for community based services practitioner providers.

### Beneficiaries:

Beneficiaries are women residing or registered in Leicestershire that require IUS insertion for gynaecological, non-contraceptive purposes such as menorrhagia.

## 6. COMMISSIONING, CONTRACTING, ACCESS

### Commissioning Arrangements

Leicestershire County Council will provide a lead commissioning arrangement for the CCGs, ensuring access to the service within the integrated sexual health service and community based contracts.

### Contracting Arrangements

Leicestershire County Council and Rutland County Council already commission IUD/S provision for contraceptive purposes from:

- a) General practices in their respective localities via community based contracts, including opportunity to deliver at Federation level and

b) Staffordshire and Stoke-on-Trent Partnership Trust as part of the integrated sexual health service contract. This contract ends 31<sup>st</sup> December 2018. The service will be re-procured to ensure continuity of sexual health service provision including IUS.

Contract management and clinical governance arrangements will be led by the local authority as part of their existing contracts. Performance and financial monitoring of this schedule will be undertaken through the quarterly Integrated Finance and Performance meetings which are part of the Integration Executive's governance arrangements. CCGs will be provided with quarterly performance reports, results of the annual LARC audits and informed of any clinical governance issues/ risks relating to the service as required. CCGs will be required to pay for the reconciled quarterly activity on a cost per case basis within 30 days of receiving the invoice.

Either party can terminate the contract in full by providing 12 months formal written notice to the other party. All activity relating to this notice period would be invoiced by the local authority and need to be paid by the CCGs. Local Authorities would need to implement contract variations with the relevant providers within 10 working days of receiving the notice.

### Access

Referral will be via General Practice in order to ensure assessment and ongoing management of gynaecological issues which will not be included in this agreement.

### 7. FINANCIAL CONTRIBUTIONS

This schedule of the Section 75 has zero (£0) value, instead the CCG will pay on a cost per case basis for each IUS fitted, reviewed or removed following a quarterly invoice (in arrears) from the local authority. No pooled budget will be established between the CCG and local authority.

The CCG will reimburse the local authority for IUS services for gynaecological purposes such as menorrhagia with costs split as follows:

- IUS fitted for gynaecological purposes such as menorrhagia only are funded by East Leicestershire and Rutland CCG/ West Leicestershire CCG for patients registered /residing in their CCG locality.
- IUD/S fitted for contraception only are funded by Leicestershire County Council (for patients resident in Leicestershire).
- IUS fitted for joint gynaecological purposes (such as menorrhagia) and contraception purposes are funded on a 50/50 split between the CCG of residence/registered patient and Leicestershire County Council (for Leicestershire residents).

The cost of each IUS fitting will be aligned with the local authority existing payment structures for the integrated sexual health service and community based service. CCGs will be informed of these on an annual basis. Current costs for 17/18 are:	Community Based Service Contract	Specialist Sexual Health Service Contract
IUS Fit	£81.31	£146.40
IUS post-fitting review (if required in accordance with FSRH guidance)	£21.69	£66.94
Device cost (LNG-IUS)	£81.44	Included in unit price of fit
Complex fit/removal. (SRH Complex Tariff)	N/A	£220.38

The local authority will not charge the CCG for existing contract management, new quarterly performance reports and invoices. If additional work is needed this would need specific negotiation between the two parties.

Initial data suggests that the cost to each CCG would not exceed £50,000 per annum. However, exact figures will be determined once the service is established.

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

## 8. FINANCIAL GOVERNANCE ARRANGEMENTS

There will be a zero based pooled fund for this schedule. The CCG will be charged on a cost per case basis on a quarterly basis in arrears following completion of the activity.

### Audit Arrangements

The Public Health department within the local authority will provide:

- Quarterly performance report detailing the number of IUS fits, reviews and removals by individual provider, the split of the cost (i.e. 100% or 50% CCG depending if also for contraception)
- Quarterly invoice for the activity in the previous quarter
- Annual LARC audit summary report for CBS service providers detailing the number of LARC fitters, their qualifications, complication rates and action taken. (Dependent on timely submission of completed audits from CBS providers)

These reports will be reported via the quarterly Integrated Finance and Performance meetings which are part of the Integration Executive's governance arrangements.

## 9. VAT

The local authority VAT regime will apply.

## 10. GOVERNANCE ARRANGEMENTS

The schedule will be managed through the quarterly Integrated Finance and Performance meetings which are part of the Integration Executive's governance arrangements. Lead officers are named in Section 14.

## 11. NON FINANCIAL RESOURCES

### Council contribution

	Details	Charging arrangements <sup>3</sup>	Comments
Premises			
Assets and equipment			
Contracts	Integrated sexual health service	Recharge on cost per case basis as described in 7.	New service will be re-procured for January 2019. It is expected that the current section 75 arrangement would be applicable to any new sexual health provider.
	Community based contracts for IUD/S and SDI	Recharge on cost per case basis as described in 7.	
Central support services	Contract management,	No charge. Will be	Additional work

<sup>3</sup> Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

	Details	Charging arrangements <sup>3</sup>	Comments
	development of standardised quarterly performance report, invoice and copy of annual LARC audit.	absorbed within existing Public Health contract management process for the sexual health services.	above these details would need to be individually negotiated with the local authority.

### CCG Contribution

	Details	Charging arrangements <sup>4</sup>	Comments
Premises			
Assets and equipment			
Contracts			
Central support services	Commissioning support is required from the CCG to develop the section 75 and monitor progress.		

### 12. STAFF

No staff will be transferring from either organisation. Representatives from each organisation are required to develop and maintain the performance monitoring arrangements of this schedule.

### 13. ASSURANCE AND MONITORING

Contract and assurance monitoring will be extended to include IUS fitting for menorrhagia/gynaecological purposes within the existing processes for the Public Health Community Based Contract and Specialist Integrated Sexual Health Service contracts.

### 14. LEAD OFFICERS

Partner	Name of Lead Officer	Address	Telephone Number	Email Address	Fax Number
Council	Mike Sandys	Leicestershire County Council, County Hall, Glenfield, LE3 8TB	0116 305 4259	mike.sandys@leics.gov.uk	0116 305 3795
CCG					

### 15. INTERNAL APPROVALS

Developing a more coordinated approach to sexual health commissioning has already been approved at Leicestershire County Cabinet as part of the Sexual Health Strategy 2016-19 in April 2016. Papers available at <http://politics.leics.gov.uk/ieListDocuments.aspx?CId=135&MId=4601&Ver=4>

<sup>4</sup> Are these to be provided free of charge or is there to a charge made to a relevant fund. Where there are aligned budgets any recharge will need to be allocated between the CCG Budget and the Council Budget on such a basis that there is no "mixing" of resources

**16. RISK AND BENEFIT SHARE ARRANGEMENTS**

Majority of the risks are managed as part of the existing local authority core public health business, due to the statutory responsibility to provide an open access sexual health service. The key risk is to the CCGs if activity levels are higher than predicted. This will be monitored on a quarterly basis and CCGs have the ability to provide the local authority 12 months' notice if they wish to cease the arrangement.

**17. REGULATORY REQUIREMENTS**

All clinician's providing the service must have an up to date letter of competency in IUS/D fitting, as detailed in the flowchart in section 5 above. This is managed as part of existing public health contract management.

**18. INFORMATION SHARING AND COMMUNICATION**

A four week stakeholder consultation (including CCGs, integrated sexual health provider, GPs, UHL gynaecology etc.) was completed from 13<sup>th</sup> February to the 13<sup>th</sup> March 2017, this suggested overall support for the schedule development. A summary of the consultation responses is available on request.

Data reports will be developed using the existing provider structures (Pathway analytics for the integrated sexual health service and the community based service portal for primary care.)

**19. DURATION AND EXIT STRATEGY**

Either party can terminate the contract in full by providing 12 months formal written notice to the other party. All activity relating to this notice period would be invoiced by the local authority and need to be paid by the CCGs. Local Authorities would need to implement contract variations with the relevant providers within 10 working days of receiving the notice. The schedule will be reviewed on an annual basis.

## SCHEDULE 2– GOVERNANCE

### Part 1 – TERMS OF REFERENCE OF THE PARTNERSHIP BOARD

#### Partnership Board

- (A) The membership of the Partnership Board will be as follows:
- 1) the finance director for the time being of NHS East Leicestershire and Rutland Clinical Commissioning Group;
 

or a deputy to be notified to the Partners in advance of any meeting;

the strategy and planning director (or equivalent) of NHS East Leicestershire and Rutland Clinical Commissioning Group;

or deputy to be notified to the Partners in advance of any meeting;
  - 1.1.2 the finance director for the time being of NHS West Leicestershire Clinical Commissioning Group;
 

or a deputy to be notified to the Partners in advance of any meeting;

the head of service integration and delivery (or equivalent) of NHS West Leicestershire Clinical Commissioning Group;

or deputy to be notified to the Partners in advance of any meeting;
  - 1.1.3 the Section 151 Officer for the time being of the Council;
 

or a deputy to be notified to the Partners in advance of any meeting;

the assistant director for strategy and commissioning (adults and communities) of Leicestershire County Council;

or a deputy to be notified to the Partners in advance of any meeting;
  - 1.2 At the first meeting of the Partnership Board the members will elect from their number, by unanimous agreement, a Chairperson. Thereafter, there will be a re-election at the next meeting following each anniversary of the first meeting of the Partnership Board. The Chairperson may vote but will not have a casting vote.
  - 1.3 To distinguish between the role of the Partnership Board and other health and social care integration groups, the Partnership Board will be more commonly referred to as the Integration Finance and Performance Group.

#### Role of Partnership Board

The Partnership Board shall:

- 2) receive financial and activity information regarding the performance of the Individual Schemes in the Better Care Fund Plan on a Quarterly basis or at a frequency otherwise agreed between the Partners, and shall take decisions on the delivery of the Individual Schemes based on that information, provided that, no decision shall be taken or acted upon without prior consultation with the Integration Executive where such decision could have an impact on the delivery of the health and care integration programme as set out in the Better Care Fund Plan;

- 3) receive financial and activity information regarding the Help to Live at Home Service on a quarterly basis, or at a frequency otherwise agreed between the Partners.
- 4) receive financial and activity information regarding the Learning Disabilities Pooled budget on a quarterly basis, or at a frequency otherwise agreed between the Partners.
- 5) review the operation of Agreements under Section 75 of the NHS Act 2006 under the remit of the Partnership Board (such Agreements being listed at Schedule 1 to this Part 1) and make variations where appropriate, subject to any implications that would have an impact on the health and care integration programme being reported to the Integration Executive;
- 6) review and agree at least annually a financial risk assessment in relation to services operated under a section 75 agreement and submit a report to the Integration Executive;
- 7) agree such protocols and guidance as it may consider necessary in order to enable each Pooled Fund Manager to approve expenditure from a Pooled Fund;
- 8) receive reports from and consider any recommendations from the Integration Executive.

### **Accountability**

The Partnership Board shall operate within the lines of accountability set out in Part 2 of Schedule 2 of this Agreement.

### **Partnership Board Support**

The Partnership Board will be supported by officers from the Partners' organisations, as may be agreed by the Partners from time to time.

### **Meetings**

- (B) The Partnership Board will meet at least Quarterly at a time to be agreed by the Partners. Each meeting will usually take place following receipt by the Partnership Board of each Quarterly report submitted by the Pooled Fund Manager, but may take place more frequently if the Partners so agree.
  - (C) The quorum for meetings of the Partnership Board shall be a minimum of one representative from each of the Partner organisations.
  - (D) Decisions of the Partnership Board shall be made unanimously. Where unanimity is not reached then the item in question will in the first instance be referred to the next meeting of the Partnership Board. If no unanimity is reached on the second occasion it is discussed then the matter shall be escalated to the Authorised Officers. If no agreement can be reached following escalation to the Authorised Officers, any Partner may invoke the Dispute Resolution procedure of the relevant section 75 Agreement.
- 5.4 A meeting of the Partnership Board cannot take place unless it is quorate. In the event of inquoracy the Partners shall procure that the meeting will be re-convened within one month of the date of the inquoracy.
- 5.5 Minutes of all decisions shall be kept by the Chairperson and copied to the Authorised Officers within seven (7)] days of every meeting.

### **Delegated Authority**

Each member of the Partnership Board will have delegated authority from his/her Partner, through that Partner's own governance structure and schemes of delegation, to take decisions relating to the management of the Individual Schemes and Pooled Fund. These include, but are not limited to,



determining commitments which exceed or are reasonably likely to result in an Overspend provided that the members of the Partnership Board can only authorise commitments in accordance with the risk sharing arrangements set out in the relevant Agreement.

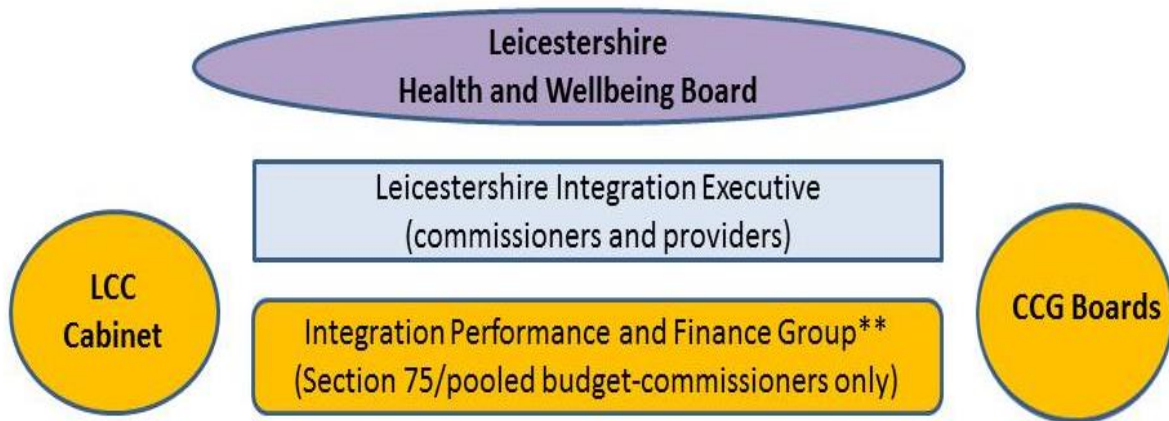
**7. Information and Reports**

The Pooled Fund Manager shall supply to the Partnership Board on a Quarterly basis with the financial and activity information required under the Agreement in relation to the operation of the Individual Schemes and the Pooled Fund.

**8. Post-termination**

The Partnership Board shall unless otherwise agreed by the Partners in writing continue to operate in accordance with this Schedule following any termination of this Agreement but shall endeavour to ensure that the benefits of any Service Contracts are received by the Partners in the same proportions as their respective contributions at the date of termination.

## Part 2 to Schedule 2 – Lines of Accountability of Partnership Board



	Role	Responsible
1	To lead and direct work to improve the health and wellbeing of the population of Leicestershire through the development of improved and integrated health and social care services including the Better Care Fund	Health and Wellbeing Board
2	To provide leadership, direction and assurance on behalf of Leicestershire Health and Wellbeing Board so that the vision for integrated health and care in Leicestershire is delivered, in line with national policy and local priorities including the management of Individual Schemes and services.	Integration Executive
3	To ensure that the Better Care Fund Plan achieves its aims and outcomes within the Financial Contributions agreed by the Partners and operating in accordance with its Terms of Reference	Partnership Board
4	To ensure that the Help to Live at Home Service achieves its aims and outcomes within the Financial Contributions agreed by Partners and operating in accordance with its Terms of Reference.	Partnership Board

**SCHEDULE 3 – FINANCE PROTOCOL****Part 1****Statement on Financial Arrangements**

The Better Care Fund Plan will be enabled by a Pooled Fund.

The Council will manage the Pooled Fund acting as Host Partner and engaging the Pooled Fund Manager in accordance with the terms of this Agreement.

The Financial Contributions to the Pooled Fund shall be made from the following funding streams and any other funding streams that may be made available to the Partners or any of them from time to time:

- CCG Revenue Funding for the Better Care Fund
- Disabled Facilities Grants
- DCLG Funding for the Improved Better Care Fund

**Financial Contributions for 2017/18**

The Financial Contributions of each of the Partners for the Initial Term are more particularly set out in Table 1 below:

Table 1 Financial Contributions for 2017/18

	NHS East Leicestershire and Rutland CCG	NHS West Leicestershire CCG	Leicestershire County Council	Total
CCG Minimum allocation	£15,838,107	£20,843,463	Nil	36,681,570
Additional CCG Allocation	1,195,473	1,367,273	Nil	2,562,746
Disabled Facilities Grant	Nil	Nil	£3,349,869	£3,349,869
IBCF (Comprehensive Spending Review 2015)	Nil	Nil	Nil	Nil
IBCF (Additional Adult Social Care Allocation Spring Budget 2017)	Nil	Nil	£9,525,578	£9,525,578
<b>Total BCF Funding</b>	<b>17,033,580</b>	<b>22,210,736</b>	<b>12,875,447</b>	<b>52,119,763</b>

Financial Contributions for subsequent Financial Years will be agreed between the Partners in accordance with Clause 10 of the Agreement.

Payments in respect of all Individual Schemes commissioned by the Partners from the Better Care Fund shall be made in accordance with the Agreement and this Schedule 3.

The cost of the operation of the Pooled Fund will be as identified by the Council and as agreed by the Partners. Pooled Fund operational costs and how they will be met will be set out in the Better Care Fund Spending Plan.

The Pooled Fund Manager will be responsible for the day-to-day management of the Pooled Fund. At the date of this Agreement the Pooled Fund Manager is:

Phil D'Mello  
Assistant Business Partner (Finance)  
Leicestershire County Council  
E-mail -Philip.D'Mello@leics.gov.uk  
Telephone - 0116 3058318229

The Council undertakes to inform the CCGs if the identity of the Pooled Fund Manager is to change during the Term.

### **Budget Setting**

The key budget setting deadlines for each Financial Year during the Term are set out below. The timings are intended to ensure the strategic development of health and social care integration and that Individual Schemes are procured and signed off in a timely manner.

October	Financial Modelling to be undertaken to predict future financial commitments to be funded from the Better Care Fund.
November	Proposed Better Care Fund spending plan to be discussed and agreed by the Partnership Board.
January	Better Care Fund Plans to Cabinet / Scrutiny committees (Council) Better Care Fund Plans to CCG Boards Better Care Fund Plan to the Integration Executive and the Leicestershire Health and Wellbeing Board
February	Final Council approval Final CCG approval

The above timeline shows where actions will take place and how recommendations on strategic development and investment from the Partnership Board will need to feed into the financial planning and processes of the CCGs and the Council.

Each Partner will need to confirm the level of investment available for the Better Care Fund in each Financial Year of the Term. The Partner responsible for commissioning each Individual Scheme will receive from the Pooled Fund the amount agreed for that Individual Scheme in the Better Care Fund Spending Plan, which will be used to procure the relevant Services as appropriate.

The Better Care Fund Plan will include details of Individual Schemes that will be funded from the Better Care Fund. Each Individual Scheme will be allocated a maximum budget within which Partners must work. The Better Care Fund Plan will include analysis of the cost per Individual Scheme.

Should the Partners agree not to continue to fund an Individual Scheme any liabilities or costs associated with its termination will be the liability of the Partner responsible for commissioning that Individual Scheme unless otherwise agreed by the Partnership Board.

Inflationary pressures will be identified by the commissioning organisation and reported to the Pooled Fund Manager for inclusion into the Better Care Fund Spending Plan.

If any Partner receives an allocation or grant part or all of which is specific to an Individual Scheme identified in this Agreement, the relevant Partner will pay the relevant part or all of those allocations or grants as appropriate to the Pooled Fund in addition to the sums that make up their agreed Financial Contributions to the Pooled Fund.

Non-recurrent Payments will be recognised as such and the commitments against them highlighted. This is to reduce the risk of Non-recurrent budgets funding recurrent commitments and should this happen that all Partners are aware of the risk.

### **Budgetary Control and Reporting**

The Pooled Fund Manager will administer the Pooled Fund in accordance with the budgetary control systems and other applicable financial procedures of the Council. The relevant governance documents of the Council as Host Partner will be applied, save that the Council will only vire funds out of the Pooled Fund into its own funds with the prior agreement of all of the other Partners (for example but not limited to: in the circumstances where the Council is acting as a provider of Services pursuant to a Scheme Specification).

The financial systems of the Council will be used to record and monitor income and expenditure. Financial and relevant budget reports will be provided to each Partner by the Council in respect of the Pooled Fund and the Individual Schemes in a format such that each of the other Partners is able to maintain and complete their financial records in accordance with the accounting and statutory requirements to which that Partner is subject. The co-ordination of this information will be arranged by the Council with all Partners continuing to maintain records and supply detail as required in order to assist with completion of any Pooled Fund reports required pursuant to the Agreement.

The content and frequency of Pooled Fund reports presented to the Partnership Board will be in accordance with Schedule 5.

The Pooled Fund Manager will draw any actual or projected Under- or Overspend to the attention of the Partners as soon as reasonably possible, with reasons for the occurrence and options for the Partnership Board to consider. Under and Overspends will be dealt with in accordance with this Schedule 3

The Council will be responsible for the internal audit of the Pooled Fund. Internal Auditors appointed by the CCGs will undertake reviews as part of an agreed annual work programme. The Council's external auditors will audit the operation of the Pooled Fund as part of their ongoing work programme.

An annual memorandum of Account must be produced by the Council in accordance with Section 75 of the NHS Act 2006. This will need to be incorporated into each Partner's final accounts and fit with individual final accounts timetables. The audit of the Memorandum of Account will be undertaken by the Council's external auditors.

### **Financial Risk Management and Sharing**

Only services included in the Better Care Fund Plan are subject to the financial risk management and sharing protocol.

#### Financial Risk

With the exception of the HART service and the Menorrhagia Service, overspends on each Individual Scheme included in the Better Care Fund Plan are the responsibility of the Partner responsible for commissioning that Individual Scheme and will not be funded from the Pooled Fund, unless agreed by all the Partners.

Where Overspends on Individual Schemes have been agreed, these shall be funded from:

1. Current Financial Year Underspend on other Individual Schemes funded through the Better Care Fund, or if there is no such Underspend;
2. Agreed additional partner contributions at the time individual scheme overspends are agreed by Partnership Board.



## Part 2 - Financial Risk Management and Risk Sharing of the HART Service

### Overarching Principles

1. The following principles apply in relation to the management of the Pooled Fund for HART Services:
  - I. The HART Service will be paid for from the Pooled Fund. Payments will be calculated based on the numbers of hours of care delivered to Service Users Referred by each CCG.
  - II. The Council's Medium Term Financial Strategy and the CCGs' QIPP efficiency savings will not operate under a risk sharing basis, each Partner will manage this risk individually.

### Contributions to the Pooled Fund

2. Contributions to the Pooled Fund in 2017/18 will be as set out in table 1 below:

<b>Table 1</b> <b><u>HART Reablement 2017/18</u></b>	<u>NHS West</u> <u>Leicestershire</u> <u>Clinical</u> <u>Commissioning</u> <u>Group</u>	<u>NHS East</u> <u>Leicestershire</u> <u>&amp; Rutland</u> <u>Clinical</u> <u>Commissioning</u> <u>Group</u>	<u>Leicestershire</u> <u>County</u> <u>Council</u>	<u>Total</u>
Anticipated number of referrals	120	96	2,221	2,437
Total reablement hours delivered	10,887	8,641	106,791	126,319
<b>Forecast Cost</b>	<b>£403,810</b>	<b>£330,555</b>	<b>£4,084,738</b>	<b>£4,819,103</b>
<b>Percentage Contribution</b>	<b>8.6%</b>	<b>6.8%</b>	<b>84.6%</b>	<b>100%</b>

2. Partner's contributions into the Pooled Fund shall be reviewed and, where necessary, adjusted annually on 1<sup>st</sup> April or at a later date as agreed by the Partnership Board
3. In order to manage costs effectively, and to ensure that there are no inappropriate Referrals into the HART Services, the CCGs will consistently apply the eligibility criteria (as set out in the Hospital Discharge Screening Tool) for the HART Services.
4. The hourly rates used in calculating costs will be the actual cost of the Services.
5. In 2017/18 the cost of the HART Services for WLCCG and ELRCCG respectively will be funded from the Better Care Fund. The indicative contribution from the BCF will be:

<b><u>BCF funded cost of step down reablement services</u></b>			
<u>Financial Year</u>	<u>NHS West</u> <u>Leicestershire</u> <u>Clinical</u> <u>Commissioning</u> <u>Group</u>	<u>NHS East</u> <u>Leicestershire</u> <u>&amp; Rutland</u> <u>Clinical</u> <u>Commissioning</u> <u>Group</u>	<u>Total</u>
2017/18	£403,810	£330,555	£734,365

6. Financial monitoring will be undertaken by the Council throughout the financial year and will report to CCGs details of:
  - Total hours delivered against planned volumes of activity.
  - Actual expenditure.
  - Forecast for the financial year based on trends.
  - Any forecast overspend or underspend in the reablement pool.

- Outcomes of assessment following the reablement episode.
17. At the end of a financial year a reconciliation of expenditure in the Pooled Fund will be undertaken by the Council. Unless otherwise agreed by all Partners, any overspends or underspends will be shared by Partners on the basis of their proportional contribution into the Pooled Fund as outlined in table 1.
  18. Each Partner will advise the other Partners at the earliest opportunity of any issues that will impact on the cost and/or volume of activity in the Pooled Fund.

### **Financial Governance**

19. Financial aspects of the HART Services will be presented to and jointly assured by the Integration Finance and Performance Group.

### Financial Risk Management and Risk Sharing of the Menorrhagia Service

20. The financial arrangements relating to the Menorrhagia Service will be separate from the BCF pool and the HART Risk Sharing Arrangements. The CCGs shall make payment for the Menorrhagia Services within [30] days of receipt of invoices from the County Council's Public Health Directorate for the activity delivered in the previous quarter for the Menorrhagia Service. The rates for the Menorrhagia Service will be as identified in the Scheme Specification for Menorrhagia Services set out in Schedule 1 Part 3B to this Agreement as they may be amended from time to time.



## SCHEDULE 4– JOINT WORKING OBLIGATIONS

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

Where Lead Commissioning Arrangements are in place in respect of an Individual Scheme, the Partners shall agree which of provisions in Part 1 and Part 2 of this Schedule shall apply to that Individual Scheme and may agree further provisions.

Where Lead Commissioning Arrangements are not in place in respect of an Individual Scheme, the provisions in Part 3 of this Schedule shall apply.

### – LEAD COMMISSIONER OBLIGATIONS

- 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 unless otherwise agreed provide the other Partners with copies of any and all:*
  - 2.1 *CQUIN Performance Reports;*
  - 2.2 *Monthly Activity Reports;*
  - 2.3 *Review Records; and*
  - 2.4 *Remedial Action Plans;*
  - 2.5 *JI Reports;*
  - 2.6 *Service Quality Performance Report;*
  
- 3 *The Lead Commissioner shall consult with the other Partners before attending:*
  - 3.1 *an Activity Management Meeting;*
  - 3.2 *Contract Management Meeting;*
  - 3.3 *Review Meeting;*

*and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.*
  
- 4 *The Lead Commissioner shall not:*
  - 4.1 *permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;*

- 4.2 vary any Provider Plans (excluding Remedial Action Plans);
- 4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
- 4.4 give any approvals under the Service Contract;
- 4.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
- 4.6 suspend all or part of the Services;
- 4.7 serve any notice to terminate the Service Contract (in whole or in part);
- 4.8 serve any notice;
- 4.9 agree (or vary) the terms of a Succession Plan;  
  
without the prior approval of the other Partners (acting through the [JCB]) such approval not to be unreasonably withheld or delayed.
- 5 The Lead Commissioner shall advise the other Partners of any matter which has been referred for dispute and agree what (if any) matters will require the prior approval of one or more of the other Partners as part of that process.
- 6 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
- 7 The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)
- 8 [INSERT]

#### – OBLIGATIONS OF THE OTHER PARTNER

- 9 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:
  - 9.1 resolve disputes pursuant to a Service Contract;
  - 9.2 comply with its obligations pursuant to a Service Contract and this Agreement;
  - 9.3 ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;
- 10 No Partner shall unreasonably withhold or delay consent requested by the Lead Commissioner.
- 11 Each Partner (other than the Lead Commissioner) shall:
  - 11.1 comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Partners;
  - 11.2 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.
- 12 [INSERT]

**Part 2– OBLIGATIONS OF THE PARTNERS (GENERAL)**

- 1 Each Partner shall (at its own cost):
  - 1.1 resolve disputes pursuant to a Service Contract to which it is a party;
  - 1.2 comply with its obligations pursuant to a Service Contract and this Agreement;
  - 1.3 ensure continuity and a smooth transfer of any Services that have been suspended, expired or terminated pursuant to the terms of the relevant Service Contract;

## **PART 3 – PERFORMANCE ARRANGEMENTS**

### **Part 1 - Statement on Performance Arrangements**

All Partners recognise the need for a robust performance framework to monitor and measure delivery of the Better Care Fund Plan (BCF).

The performance framework will ensure that Partners have visibility and assurance relating to local progress in delivering BCF priorities and the impact on national metrics and local Key Performance Indicators (KPIs). The framework will also provide assurance to any regional or national scrutiny.

### **Performance Framework**

Reporting and monitoring of performance will be underpinned by the performance dashboard attached as appendix 1.

The Council will be responsible for producing the performance dashboard liaising with scheme leads across all organisations to validate data as appropriate.

Performance will be reported to the Integration Executive on a Quarterly basis (as a minimum), or other frequency as agreed by all Partners.

Performance will include progress against nationally and locally prescribed metrics, namely:

- Reduction in permanent residential admissions.
- Increased effectiveness of reablement.
- Reduction in delayed transfers of care.
- Reduction non-elective admission to hospital.
- Any other metrics arising through changing national conditions, or locally agreed by all Partners.

Definitions used for measuring the impact against performance metrics will be agreed by all Partners and reported to the Integration Executive.

Individual schemes in the Better Care Fund will have a Red, Amber, Green (RAG) risk rating against:

- Delivery of planned savings where applicable.
- Actual expenditure against the financial allocation in the Better Care Fund Plan.
- Progress against agreed milestones.
- Impact on metrics.

Definitions of the RAG ratings will be agreed by all Partners and included on the performance dashboard for transparency.

The performance dashboard, key milestones and commentary with headline information on Individual Schemes along with exception commentary where 'red' risks have been highlighted. A detailed performance report will be provided quarterly.

Reporting will make reference to Overspending and Underspending schemes and any financial implications linked to 'pay for performance' metrics to support Partners in the decision making process and inform any remedial actions needed.

Where metrics are linked to the pay for performance element of the Better Care Fund, the payment will be based on terms in accordance with Schedule 3.

Part 2

Better Care Fund Performance Dashboard



Performance report  
201718-Q2.docx

**SCHEDULE 5– BETTER CARE FUND PLAN**

The Better Care Fund Plan submitted to NHS England can be viewed at Leicestershire's Health and Wellbeing Board pages on the Leicestershire County Council website. A link to the plan is below:

<http://www.healthandcareleicestershire.co.uk/resources/local-resources/>

## SCHEDULE 6– POLICY FOR THE MANAGEMENT OF CONFLICTS OF INTEREST

1. The Partners will adhere to the Code of Conduct for the Council’s Health and Wellbeing Board for Co-opted Members and Integration Executive (attached as Parts 1 and 2 to this Schedule 7)\_
2. The Partners will each ensure that their employees, agents and representatives complete and keep updated in accordance with paragraph 4.12 of the Register of Interests the form attached as Part 3 to this Schedule 7 in relation to their duties as members of the Health and Wellbeing Board, the Integration Executive and the Partnership Board.
3. The Partners will each ensure that their employees, agents or representatives comply with the statutory obligations of the relevant Partner relating to conflicts of interest when they are acting as commissioners of Services pursuant to Individual Schemes under this Agreement.

### Part 1



B - Appendix A  
Code of Conduct...

### Part 2



B - Code of  
Conduct and Re...

### Part 3



B - Appendix B  
Register of Int...

## SCHEDULE 8 – INFORMATION SHARING AGREEMENT AND PROTOCOL

### PART A

#### INFORMATION SHARING AGREEMENT (the ISA)

The Partners agree that they will comply with the following terms in relation to the sharing of information in connection with the Agreement:

#### 1. Purpose and Definitions

##### 1.1 Purpose

This Information Sharing Agreement (ISA) is supplementary to the Information Sharing Protocol attached as Part B to this Schedule 8. The ISA will support the smooth running of the Pooled Fund arrangements in respect of the Services commissioned pursuant to the Agreement (as defined below).

Specifically information is shared to achieve

- the efficient delivery of the Better Care Fund Plan
- effective performance monitoring of the Individual Schemes included with the Agreement
- an effective process for ensuring that services commissioned provide value for money and meet service user outcomes

The ISA will ensure the transfer of information in accordance with the Data Protection Act 1998 (DPA)

##### 1.2 Definitions

In the ISA:

**WLCCG and ELRCCG** will be referred to collectively where the context allows as the CCGs and all the parties together will be referred to as the Partners

**Agreement** means the agreement to which the ISA is a Schedule.

**Data** means all data generated, held, utilised or accessed by or on behalf of the Parties prior to the Commencement Date in respect of the Services including all data processed from time to time for the purpose of this Agreement

**Records** means (i) all Data; and (ii) all files, records, documents, notebooks, books and accounts, statistics, surveys, blueprints, designs, drawings and specifications including any such information recorded or stored in writing or upon magnetic tape or disc or otherwise recorded or stored for reproduction whether by mechanical or electronic means and whether or not such reproduction shall result in a permanent record being made which are held and used by the Partners prior to the Commencement Date of the Agreement in connection with the Agreement, and any Records which are created by the Partners in connection with the Agreement throughout its Term

**Other defined terms** where the context allows have the meanings given to them in the Agreement

#### 2 Legal Basis

The information to be shared in accordance with the ISA is governed by section 75 of the NHS Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617 as amended)

#### 3. Duration



The ISA will apply for the duration of the Agreement and will expire automatically on termination or expiry of the Agreement

#### **4. Extent and Type of Information to be Shared**

- 4.1 The Partners agree to share such information and data as is necessary to enable the efficient administration, audit and monitoring of the Pooled Fund and the Individual Schemes commissioned pursuant to the Agreement
- 4.2 Wherever possible information relating to expenditure from the Pooled Fund will be anonymised.
- 4.3 While it is envisaged that very little of the information shared in relation to the administration, audit and monitoring of the Pooled Fund will be personal or sensitive personal data as defined in the DPA, any such data shall be processed in accordance with the provisions of the DPA and the Freedom of Information Act 2000 (FOIA)

#### **5 Information Sharing**

- 5.1 All requests for information about the Pooled Fund from the CCGs to the Council will be sent to the Pooled Fund Manager for the time being

##### 5.2 Subject Access Request

- 5.2.1 Where a Subject Access Request under the Data Protection Act 1998 is made to any Partner in relation to the Agreement or services commissioned under it and one of the other Partners may hold additional and separate records relevant to the said Subject Access Request the receiving Partner will inform the Service User of that and provide details on how the Service User might obtain those records.

##### 5.3 **Access** to Records by the Partners

- 5.3.1 The Partners will provide to each other such copies of Data and Records relating to the Agreement which may reasonably be requested of the relevant Partner's Records Manager in order to facilitate:
  - Audit
  - Investigation of complaints
  - Clinical Governance
  - Investigation of care e.g. an inquiry

- 5.3.2 Copies of Data and/or Records will be transferred in an appropriately secure format and confirmation of receipt by the Records Manager of the receiving Partner will be provided to the Records Manager of the Partner providing the Data and/or Records.

- 5.3.3 Copies of Records or Data transferred under this clause 5.3 will be retained by the relevant Partner until the completion of the relevant process and then for the purposes of the Data Protection Act 1998 will be securely disposed of in accordance with the relevant Partner's destruction policy.

- 5.3.4 Records held by any of the Partners include commissioning data and Service Provider data.

#### **6. How information may be used**

- 6.1 The primary purpose for keeping personal records is to support the planning, delivery and continuation of care to a Service User. The Partners may use personal information from Records for different purposes for example:
  - monitoring and protecting public health
  - managing and planning Services;
  - contracting for Services
  - auditing accounts
  - Assuring and improving the quality of care and treatment performance

- risk Management
- investigation of complaints and notified of potential legal claims
- monitoring performance, including internally and to the Government
- clinical governance
- investigation of care e.g. an Inquiry

6.2 Additional conditions need to be met for some uses of personal information e.g. research may require Research Ethics approval before Records may be collected. If any non-anonymised Records that have been collected and supplied by a Partner are to be used for research by another Partner then the Caldicott Guardian of the Partner who has supplied the information must provide written consent. The only exemption to this is where a specific data exchange agreement or other agreement has been signed for this purpose.

6.3 Information will be shared with Service Providers in the private, voluntary and state sectors in accordance with the terms of Agreement and the provisions of the Scheme Specifications made under it to the extent necessary to be able to procure the Individual Services included in the Better Care Fund Plan including:

- Basic demographics
1. Any details required enabling the Service Provider to undertake appropriate risk assessments, including health and medical information.
    - Care Plans
    - Commissioning requirements
    - Carer arrangement and demographics
    - Risks Assessments and Risk factors
- 6.4 Confidential personal information must only be used for the purposes specified at the time of disclosure and it is a condition of access that it must not be used for any other purpose without meeting the requirements of the Data Protection Act 1998. Information provided by any Partner to any other Partner for specific purposes, must not be provided to a third party or used for a different purpose unless in accordance of the requirements of the Data Protection Act 1998.

## 7. **Appropriate Security Levels**

- 7.1 The Partners warrant that each have the minimum standards of security in place to safeguard the information relating to for example:
  - Storage
  - How data will be transferred
  - Secure destruction
  - Accessibility
  - Integrity
  - Availability
- 7.2 Data which is personal data or sensitive person data as defined in the DPA will be accessed and transferred electronically using a secured private network or link ("the Link") between the CCGs and the Council.
- 7.3 Where loss of communications via the Link occurs due to virus infection or network failures by any of the Partner's systems or failure of the Link itself resulting in loss of Service, the technical network support staff of the relevant Partner will endeavour to resolve the problem and keep the other Partners informed of progress of recovery.
- 7.4 Security and robustness of the Link and virus control procedures will be managed in line with the CCGs standards and will be confirmed by the Leicestershire Health Informatics Service (LHIS) Network Manager on behalf of the CCGs.

- 7.5 Each Partner will maintain personal data, sensitive personal data or confidential information received, in strictest confidence. Unless specifically stated in the conditions of release, the Partners will not share such data with any other organisation or agency unless required to do so by law.
- 7.6 Each Partner will ensure that their members of staff are informed that they have an obligation to request proof of identity from recipient members of staff of another Partner before confidential personal information is passed on.
- 7.7 Each Partner will ensure that their members of staff are informed that they are personally responsible for taking precautions to ensure the security of confidential personal information whilst it is in their possession and when it is being transferred from one person or organisation to another.
- 7.8 Recommended procedures to be followed by the Partners to ensure the safe transfer of information:
- Envelopes should be securely sealed, clearly addressed to a known contact and marked 'confidential' and 'addressee only'. A return to sender address should also be marked on the envelope.
  - Telephone validation, or 'call back' procedures should be followed before disclosing information to someone not known to a Party to confirm their identity and authorisation. Fax transfer is not safe and should be avoided wherever possible. Where it is necessary 'Safe Haven' procedures should be followed.
  - Data held on any removable electronic storage device or disk should be password protected and the physical security of the electronic storage device or disk should be protected i.e. kept under lock and key.
  - Confidential information relating to a Service User must not be transmitted via the Internet or via e-mail unless a specific separate data exchange agreement is in place.

## **8. Breach of Confidentiality**

- 8.1 The objective of reporting security incidents and weaknesses is to minimise damage from security incidents and, by learning from such incidents, reduce the risk that they will happen again. Breaches of security (including any breach of confidentiality) will be reported in line with existing security incident procedures. Security incidents at the CCGs are reported to the HIS Helpdesk (and in some circumstances to the line manager), and escalated to the IM&T Lead or a deputy and to East Midlands Internal Audit Services where appropriate.
- 8.2 Within the Council all staff have a responsibility to report immediately any security incident or weakness they observe to their manager. Staff should not try to deal with any such incidents personally. All managers have a responsibility to take immediate and appropriate action to respond to all security reports they receive from staff. If the investigation of a security incident or weakness results in the possibility of disciplinary action against an employee then the Council's relevant Human Resources Section must be consulted before any action is progressed. If necessary, the Council's Information Manager should be contacted for advice.
- 8.3 Any breaches or issues concerning the ISA by the Partners or a third party organisation processing data on their behalf must be reported to all relevant Partners as described above:
- CCGs Contact – Relevant Caldicott Guardians
  - Council Contact – Adults and Communities Information Manager, who will inform the Caldicott Guardian
- 8.4 Both requesting and providing Partners must carry out a full investigation of any breach of this ISA, with the assistance of an independent agency if required.
- 8.5 Once the investigations have been concluded then a report will be taken to the Caldicott Guardians or their nominated representatives from the affected Parties, who will review the findings and make

recommendations. In the case of the Council, the Council's Information Management Team will decide if the matter should be referred to the Information Commissioner.

8.6 Priority 1 incidents (ref. LHS Security Incident Procedures) reported within the CCGs should be brought to the attention of the Head of Information.

8.7 All Staff within the Council are bound by the Council's policies and procedures, specifically the ICT Security and Information policies and procedures.

## 9. Indemnity

Each Partner will keep each of the other Partners fully indemnified against any and all costs, expenses and claims arising out of any breach of this ISA and in particular, but without limitation, the unauthorized or unlawful access, loss, theft, use, destruction or disclosure by the offending Partner or its sub-contractors, employees, agents or any other person within the control of the offending Partner of any information obtained in connection with this ISA

## 10. Release of Third Party Information

Information provided by one agency must not be given to another agency or used for a different purpose without informing and obtaining the consent of the original provider unless an exemption under the DPA applies or unless specifically authorised under this or another agreement.

## 11 Standards for Information Use

11.1 The Partners agree to ensure that there is an adequate support facility available to members of their staff involved in the provision of the Services. This includes the following as a minimum:

- Appropriate training on the Data Protection Act 1998
- Appropriate training on Information Sharing
- Training in the use of this ISA
- Training of all staff in permissible use of NHS Number
- A named designated post who can offer advice and guidance in Data Protection Law and Information Security
- Records of training will be made available to each Partner on request.

11.2 Monitoring, implementation and distribution of this ISA will be carried out by the relevant Partner's operational management team.

11.3 The ISA is not exempt under the Freedom of Information Act 2000.

## 12. Appropriate Signatories

12.1 The lead for each Partner for the ISA is the relevant Caldicott Guardian of:

- East Leics and Rutland CCG
- West Leics CCG and
- Leicestershire County Council

12.2 Each Partner's Caldicott Guardian will be responsible for:

- The implementation of the ISA within their respective organization.
- Ensuring compliance to the standards within the ISA.
- Ensuring mechanisms are in place to monitor the operation of the ISA.
- Authorising access levels to personal information covered by the ISA.
- Providing advice and guidance on adherence to the ISA.
- Acting as a point of contact for other Partners or organisations affected by the ISA.
- Ensuring incidents are investigated and appropriate action is taken.
- Agreeing amendments to the ISA

12.3 The role of Records Manager for each Partner is assigned to the following post holders:

- East Leics & Rutland CCG's Team Manager (Information Governance)
- West Leicestershire CCG's Team Manager (Information Governance)
- Leicestershire County Council's Adult Social Care and Health Service's IT and Information Manager

12.4 The role of Information Governance lead for each Partner is assigned to the following post holders:

- East Leics and Rutland CCG
- West Leics CCG
- Leicestershire County Council

### **13. Review of the ISA**

13.1 The ISA will be reviewed annually, on or within two weeks of the anniversary of the Commencement Date of the Agreement unless legislative or organisational changes necessitate a prior review.

13.2 The ISA may be reviewed at any time at the request of any of the Partners' Caldicott Guardians.

### **14 Suspension of this Information Sharing Agreement**

14.1 Any Partner may suspend this ISA for 45 days if security has been seriously breached. Notification of suspension should be given in writing to the other Partners and should provide reasons for the suspension, plus evidence of any incidents prompting the decision to suspend.

14.2 Any suspension will be subject to a Risk Assessment and Resolution meeting, the panel of which will be made up of nominated representatives of the Parties. The meeting to take place within 14 days of any suspension.

### **15 Termination of the ISA**

15.1 The ISA can only be terminated during the period when the Agreement is in place with the agreement of all the Partners and always provided that suitable alternative information sharing arrangements are put into place for the duration of the Agreement prior to the ISA being terminated.

15.2 Termination of the ISA shall be without prejudice to the rights and remedies of the Partners accrued before such termination and nothing in the ISA or the Agreement shall prejudice the right of any Partner to recover any amount outstanding as at the date of such termination

Schedule 8 - PART B

# **Leicester Leicestershire and Rutland**

## **Information Sharing Protocol**

**Version 1.0**

**6<sup>th</sup> February 2014**

## Document Control

### *Control Details*

**Author:**

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• **Owner:**

• Stephen Curtis

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• 4.92	• Amendments from Leicestershire Constabulary (agreed by SIMG)	• AC	• 22 Aug 13	•
• 4.93	• Minor formatting and wording changes	• SC	• 15 Oct 13	•
• 4.94	• Amendment proposals following consultation	• LW	• 29 Nov 13	•

### *Document Sign-off*

• Organisation

• Chief Officer (Job Title)

• Signature

•

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## Context

This protocol defines the framework for the sharing of information by agencies operating within Leicester, Leicestershire and Rutland. It replaces version 4, which was agreed in 2009. Since then, the Information Commissioners Office (ICO) has published the Data Sharing Code of Practice, which contains much of the substance of the previous version.

This protocol therefore seeks commitment to put in place the arrangements required to ensure secure and appropriate sharing of information and data, whilst maintaining the controls (largely through agreements) that give assurance and accountability, and respects the right to privacy.

The information sharing framework has a number of tiers, set out below. Governance arrangements are indicated in brackets for each tier.

Tier 1: National framework for sharing information – legislation and codes of practice (National Government / ICO)

Tier 2: Commitments contained in this Information Sharing Protocol v 5.0 (Chief Officers, Partnership Boards)

Tier 3: Guidance, training, tools (SIMG, Organisational governance frameworks)

Tier 4: Information sharing agreements (Managers, organisational governance frameworks)

## Protocol

This Information Sharing Protocol provides a commitment by the signatories to ensure that a framework is in place that facilitates the sharing of information between partners and respects the individual's right to privacy. Information sharing is increasingly important in the provision of services to our communities. To this end, the signatories commit to:

- Sharing information within a framework where it supports the provision of better services to our service users and communities.
- Ensuring that information is shared safely and securely.
- Ensuring that in sharing information:
  - There is a clearly defined requirement,
  - It is lawful,
  - It accords with the Data Protection Act 1998 (DPA)
  - Only appropriate information is shared,
  - It is in the interests of service users and communities.
- Putting in place governance that ensures that managers and staff are aware of their responsibilities and recognise the need to work with partners.
- Working with partners to develop guidance / tools (technical and non-technical) to support good information sharing.
- Training staff on information sharing and management.
- Communicating the importance of appropriate information sharing to staff.
- Ensuring early consideration of information issues in service developments.
- Being transparent with service users about how their personal data is going to be used, and respecting their privacy.
- Ensuring adherence to the ICO's Data Sharing Code of Practice.
- Ensuring that written information sharing agreements are developed and monitored for regular sharing of information and data.



- Maintaining a single register of information sharing agreements.
- Working with partners towards an aligned information policy framework to support safe and secure information sharing.
- Ensuring that the Caldicott principles are adhered to when sharing health information
- Ensuring adherence to other Department of Health guidance on information sharing e.g. 'Striking the Balance'

When sharing information, each signatory will commit to:

- a) Ensuring that when acting as the Data Controller for information they will apply the conditions set out in the Information Sharing Agreement (ISA) and assume responsibility under the DPA.
- b) Ensuring any new ISA will set out the purpose, use and scope of the data to be shared, the point at which responsibility moves from one Data Controller to another or the circumstances where the role of Data Controller is exercised together and the responsibilities of each agency signing this ISA
- c) Ensuring that any new ISA will be specific and clearly identify only the data that needs to be shared.

Information security is important, both for the interests and privacy of individuals, and also for the reputation of our organisations. Signatories will drive the development of a culture in which their organisations work together to investigate incidents and put in place measures to reduce the risk of repetition. This partnership culture is central to facilitating information sharing.

The Strategic Information Management Group will support the delivery of the partnership aspects of these commitments. Signatories will commit to supporting the work of SIMG as it relates to this protocol. The partnership aspects include (for example):

- Aligned policy across partners, where relevant
- Shared Guidance
- Shared training
- A coordinated register of information sharing agreements
- Shared operational arrangements such as information security incident handling
- Aligned communications

Developing these partnership aspects requires signatories to ensure that appropriate resources are made available from within their organisations.

Agreement: We the undersigned do hereby agree to implement the terms and conditions of this Protocol.

*Name* .....

*Signature*.....

*Organisation*.....

*Date*.....

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