

**Dated 1<sup>st</sup> April 2016**

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**Torbay Council**

**and**

**NHS South Devon and Torbay CLINICAL  
COMMISSIONING GROUP**

**and**

**Torbay and South Devon NHS Foundation Trust**

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**FRAMEWORK PARTNERSHIP AGREEMENT RELATING  
TO THE COMMISSIONING OF HEALTH AND SOCIAL  
CARE SERVICES <sup>1</sup>**

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

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

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

[www.bevanbrittan.com](http://www.bevanbrittan.com)

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## Contents

Item		Page
	<b>PARTIES (REFERRED TO AS THE PARTNERS IN THIS AGREEMENT)</b>	<b>3</b>
	<b>BACKGROUND</b>	<b>3</b>
1	DEFINED TERMS AND INTERPRETATION	3
2	TERM	8
3	GENERAL PRINCIPLES	8
4	PARTNERSHIP FLEXIBILITIES	8
5	FUNCTIONS	8
6	COMMISSIONING ARRANGEMENTS	9
7	ESTABLISHMENT OF A POOLED FUND	10
8	THE POOLED FUND SHALL BE MANAGED AND MAINTAINED IN ACCORDANCE WITH THE RISK SHARE AGREEMENT (SEE SCHEDULE 2 - GOVERNANCE)	10
9	POOLED FUND MANAGEMENT	10
10	FINANCIAL CONTRIBUTIONS	10
11	RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS	11
12	CAPITAL EXPENDITURE	11
13	VAT	11
14	AUDIT AND RIGHT OF ACCESS	11
15	LIABILITIES AND INSURANCE AND INDEMNITY	12
16	STANDARDS OF CONDUCT AND SERVICE	12
17	CONFLICTS OF INTEREST	12
18	GOVERNANCE	13
19	REVIEW	13
20	COMPLAINTS	13
21	TERMINATION & DEFAULT	13
22	DISPUTE RESOLUTION	14
23	FORCE MAJEURE	15
24	CONFIDENTIALITY	15
25	FREEDOM OF INFORMATION AND ENVIRONMENTAL PROTECTION REGULATIONS	16
26	OMBUDSMEN	16
27	INFORMATION SHARING	16
28	NOTICES	16
29	VARIATION	17
30	CHANGE IN LAW	17
31	WAIVER	17
32	SEVERANCE	17
33	ASSIGNMENT AND SUB CONTRACTING	17
34	EXCLUSION OF PARTNERSHIP AND AGENCY	17
35	THIRD PARTY RIGHTS	18
36	ENTIRE AGREEMENT	18

<b>37</b>	<b>COUNTERPARTS</b>	<b>18</b>
<b>38</b>	<b>GOVERNING LAW AND JURISDICTION</b>	<b>18</b>
	<b>SCHEDULE 1 – SCHEME SPECIFICATIONS AND METRICS</b>	<b>20</b>
	<b>SCHEDULE 2 - GOVERNANCE</b>	<b>24</b>
	<b>ENCLOSURE A</b>	<b>28</b>
	<b>ENCLOSURE B</b>	<b>29</b>
	<b>ENCLOSURE C</b>	<b>30</b>
	<b>SCHEDULE 3 - CONTRIBUTIONS TO POOLED FUNDS, RISK SHARE AND OVERSPENDS</b>	<b>31</b>
	<b>SCHEDULE 4 – JOINT WORKING OBLIGATIONS</b>	<b>32</b>
	<b>Part 2 – LEAD COMMISSIONER OBLIGATIONS</b>	<b>32</b>
	<b>Part 3 – OBLIGATIONS OF THE OTHER PARTNER</b>	<b>33</b>
	<b>SCHEDULE 5 - BETTER CARE FUND PLAN</b>	<b>34</b>
	<b>SCHEDULE 6 – POLICY FOR THE STANDARDS OF BUSINESS CONDUCT AND MANAGEMENT OF CONFLICTS OF INTEREST</b>	<b>35</b>
	<b>SCHEDULE 7 - INFORMATION SHARING PROTOCOL</b>	<b>35</b>

**THIS AGREEMENT** is made on 1<sup>st</sup> day of July 2016

**PARTIES (referred to as the Partners in this agreement)**

- (1) **Torbay Council** (the "**Council**")
- (2) **NHS South Devon and Torbay CLINICAL COMMISSIONING GROUP** [(the "**CCG**")]
- (3) **Torbay and South Devon NHS Foundation Trust** (the "**ICO**")

**BACKGROUND**

- (A) The Council has responsibility for commissioning and/or providing social care services on behalf of the population of the borough of Torbay.
- (B) The CCG has the responsibility for commissioning health services pursuant to the 2006 Act in the boroughs of South Devon and Torbay.
- (C) The ICO has the responsibility for providing health and adult social care services on behalf of the Council and the CCG in the boroughs of South Devon and Torbay.
- (D) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the CCG and the Council establish a pooled fund for this purpose. See Schedule 5 for Better Care Fund Plan.
- (E) Section 75 of the 2006 Act gives powers to local authorities and clinical commissioning groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (F) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also the means through which the Partners will pool funds and align budgets as agreed between the Partners.
- (G) The aims and benefits of the Partners in entering in to this Agreement are to:
  - a) improve the quality and efficiency of the Services;
  - b) meet the National Conditions and Local Objectives;
  - c) make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services
- (H) The Partners have jointly carried out consultations on the proposals for this Agreement with all those persons likely to be affected by the arrangements.
- (I) The Partners are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

**1 DEFINED TERMS AND INTERPRETATION**

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

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

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

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

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

**Affected Partner** means, in the context of Clause 23, 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.

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

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

**Better Care Fund Plan** means the plan attached at Schedules 3 and 5 setting out the Partners plan for the use of the Better Care Fund.

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

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

**Commencement Date** means 00:01 hrs on 1<sup>st</sup> July 2016

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

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

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

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

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

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

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

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;
- (c) acts of God;
- (d) fire or flood;
- (e) industrial action;

- (f) prevention from or hindrance in obtaining raw materials, energy or other supplies;
- (g) any form of contamination or virus outbreak; and
- (h) any other event,

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

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

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

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

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

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

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

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

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

**Law** means:

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

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

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

**Losses** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses and "Loss" shall be interpreted accordingly.

**Month** means a calendar month.

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

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

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

**Non-Recurrent Payments** means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed

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

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

**Partnership Board** means the partnership board responsible for review of performance and oversight of this Agreement as set out in Schedule 2.

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

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

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

**Pooled Fund Manager** means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause [9].

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

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

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

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

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

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

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

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

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

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

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

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



then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **2 TERM**

2.1 This Agreement shall come into force on the Commencement Date

2.2 This Agreement shall continue until it is terminated in accordance with Clause [21].

2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification.

## **3 GENERAL PRINCIPLES**

3.1 Nothing in this Agreement shall affect:

3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations (including the Functions); or

3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.

3.2 The Partners agree to:

3.2.1 treat each other with respect and an equality of esteem;

3.2.2 be open with information about the performance and financial status of each; and

3.2.3 provide early information and notice about relevant problems.

3.3 For the avoidance of doubt, the aims and outcomes relating to an Individual Scheme may be set out in the relevant Scheme specification.

## **4 PARTNERSHIP FLEXIBILITIES**

4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:

4.1.1 the establishment of one or more Pooled Funds

in relation to Individual Schemes (the "Flexibilities")

4.2 The Council delegates to the CCG and the CCG agrees to exercise, on the Council's behalf, the Health Related Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the NHS Functions.

4.3 The CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the Health Related Functions.

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

## **5 FUNCTIONS**

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.
- 5.2 This Agreement shall include such functions as shall be agreed from time to time by the Partners.
- 5.3 Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be in the form set out in Schedule 1 shall be completed and agreed between the Partners.
- 5.4 The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5 The introduction of any Individual Scheme will be subject to business case approval by the Health and Wellbeing Board.

## **6 COMMISSIONING ARRANGEMENTS**

### Integrated Commissioning:

- 6.1 Where there are Integrated Commissioning arrangements in respect of an Individual Scheme, Partners shall work in cooperation and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
- 6.2 Partners shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.
- 6.3 Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.
- 6.4 Partners shall comply with the arrangements in respect of the Joint Commissioning as set out in the relevant Scheme Specification.
- 6.5 Each Partner shall keep the other Partners and the ICO Contract Review Meetings 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.
- 6.6 The Better Care Fund Delivery Group will report back to the Health and Wellbeing Board as required by its Terms of Reference.

### Appointment of a Lead Commissioner –Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Commissioner shall:

- 6.6.1 exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
- 6.6.2 endeavour to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year.
- 6.6.3 commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 6.6.4 contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
- 6.6.5 comply with all relevant legal duties and guidance of Partners in relation to the Services being commissioned;
- 6.6.6 where Services are commissioned using the NHS Standard Form Contract, perform the obligations of the “Commissioner” and “Co-ordinating Commissioner” with all due skill,

care and attention and where Services are commissioned using any other form of contract to perform its obligations with all due skill and attention;

- 6.6.7 undertake performance management and contract monitoring of all Service Contracts;
- 6.6.8 make payment of all sums due to a Provider pursuant to the terms of any Services Contract.
- 6.6.9 keep the other Partners and the ICO Contract Review Meetings 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.

## **8 THE POOLED FUND SHALL BE MANAGED AND MAINTAINED IN ACCORDANCE WITH THE RISK SHARE AGREEMENT (SEE SCHEDULE 2 - GOVERNANCE)**

- 8.1 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner.
- 8.2 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.

## **9 POOLED FUND MANAGEMENT**

- 9.1 All expenditure from the Pooled Fund is in accordance with the provisions of the Partners' Risk Share Agreement. Partners will be responsible for:
  - 9.1.1 reporting to the Torbay Health and Wellbeing Board as required by the Torbay Health and Wellbeing Board;
  - 9.1.2 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund ;
  - 9.1.3 preparing and submitting to the Better Care Fund Delivery Group Quarterly reports (or more frequent reports if required by the Better Care Fund Delivery Group 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 Torbay Health and Wellbeing 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 in time for the reporting requirements to be met.
  - 9.1.4 preparing and submitting reports to the Torbay Health and Wellbeing Board as required by it.

## **10 FINANCIAL CONTRIBUTIONS**

- 10.1 The Financial Contribution of the CCG and the Council to any Pooled Fund for the Financial Year of operation is set out in Schedule [3].
- 10.2 Provisions around how Financial Contributions will be determined going forward will be set out each year as and when financial allocations are agreed.
- 10.3 The total amount of the Better care fund agreement between the parties equates to £11.829m. This is part of the total pooled budget for the ICO described above and comprises the following elements:
- 10.4 Disabled facilities grant and social care capital grant allocations totalling £1.524m. It is received and retained by Torbay council and is excluded from the s75 agreement.

- 10.5 The total CCG minimum contribution of £10.305m is supporting the development of schemes within the integrated care organisation.
- 10.6 The total amount payable directly to Torbay Council by the CCG as part of this overall amount being £2,050,000 paid quarterly £512,500.
- 10.7 With the exception of Clause [13], no provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to the Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the Torbay Health and Wellbeing Board minutes and recorded in the budget statement as a separate item.

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

### **Risk share arrangements**

- 11.1 The partners have agreed risk share arrangements as set out in schedule 3 which provide for financial risks arising within the commissioning of services from the pooled funds and the financial risk to the pool arising from the payment for performance element of the Better Care Fund.

### **Overspends in Pooled Fund**

- 11.2 Subject to Clause [11.4], the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall ensure that the expenditure is limited to Permitted Expenditure.
- 11.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 11.4.
- 11.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and the provisions of the relevant Scheme Specification and Schedule [3] shall apply.

### **Underspends in Pooled Fund**

- 11.5 In the event that expenditure from any Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year the Partners shall agree how the surplus monies shall be spent, carried forward and/or returned to the Partners as per schedule [3]. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners and the terms of the Performance Payment Arrangement.

## **12 CAPITAL EXPENDITURE**

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 VAT**

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

## **14 AUDIT AND RIGHT OF ACCESS**

- 14.1 All Partners shall promote a culture of probity and sound financial discipline and control.
- 14.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in

connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

## **15 LIABILITIES AND INSURANCE AND INDEMNITY**

- 15.1 Subject to Clause 15.2, and 15.3, if a Partner (“First Partner”) incurs a Loss arising out of or in connection with this Agreement or the Services Contract as a consequence of any act or omission of another Partner (“Other Partner”) which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 15.2 Clause 15.1 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.
- 15.3 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 15. the Partner that may claim against the other indemnifying Partner, or partners will:
- 15.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partners specifying in reasonable detail the nature of the relevant claim;
  - 15.3.2 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);
  - 15.3.3 give the Other Partners and 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, or partners, and their 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.
- 15.4 Each Partner shall ensure that they maintain policies of insurance in respect of all potential liabilities arising from this Agreement.
- 15.5 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.

## **16 STANDARDS OF CONDUCT AND SERVICE**

- 16.1 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).
- 16.2 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.
- 16.3 The CCG is subject to the CCG Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 16.4 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.

## **17 CONFLICTS OF INTEREST**

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

## **18 GOVERNANCE**

- 18.1 Overall strategic oversight of partnership working between the partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary.
- 18.2 The ICO Contract Review Meetings and Social Care Programme Board will, monitor performance and agree allocation of resources
- 18.3 The Better Care Fund Delivery Group is based on a joint working group structure. Each member of the BCF Delivery Group 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 18 and Schedule 2.
- 18.4 The Better Care Fund Delivery Group has been established to focus on delivery and metrics of Better Care Fund schemes as a sub group of the ICO Contract Review Meetings. Governance is set out in Schedule [2] and the Torbay Better Care Delivery Group – Terms of Reference as set out in Schedule 8.
- 18.5 Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisation are complied with.
- 18.6 The Torbay Health and Wellbeing Board shall be responsible for the overall approval of the Better Care Fund Plan and the strategic direction of the Better Care Fund.

## **19 REVIEW**

- 19.1 Save where the ICO Contract Review Meetings agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review (“**Annual Review**”) of the operation of this Agreement and the provision of the Services within 3 Months of the end of each Financial Year.
- 19.2 Subject to any variations to this process required by the Better Care Fund Delivery Group, annual Reviews of relevant projects shall be conducted in good faith and, where applicable, in accordance with the governance arrangements set out in Schedule [2].
- 19.3 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.

## **20 COMPLAINTS**

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

## **21 TERMINATION & DEFAULT**

- 21.1 This Agreement may be terminated by any Partner giving not less than 3 Months' notice in writing to terminate this Agreement provided that such termination shall not take effect prior to the termination or expiry of all Individual Schemes.
- 21.2 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.
- 21.3 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 22.

- 21.4 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 21.5 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 21.5.1 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 21.5.2 where a Partner has entered into a Service Contract which continues after the termination of this Agreement, Partners shall continue to contribute to the Contract Price in accordance with the agreed contribution for that Service prior to termination and will enter into all appropriate legal documentation required in respect of this;
- 21.5.3 the Partners 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 Partners in breach of the Service Contract) where the other Partners request the same in writing provided that the Partners shall not be required to make any payments for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
- 21.5.4 here a Service Contract held by a Partner relates all or partially to services which relate to other Partners' Functions then provided that the Service Contract allows the other Partners may request that the Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
- 21.5.5 The ICO Contract Review Meeting 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
- 21.5.6 Termination of this Agreement shall have no effect on the liability of any rights or remedies of Partners already accrued, prior to the date upon which such termination takes effect.
- 21.6 In the event of termination in relation to an Individual Scheme the provisions of Clause 21.5 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

## **22 DISPUTE RESOLUTION**

- 22.1 In the event of a dispute between the Partners arising out of this Agreement, Partners may serve written notice of the dispute on the other Partners, setting out full details of the dispute.
- 22.2 The Authorised Officer shall meet in good faith as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to Clause 22.1, at a meeting convened for the purpose of resolving the dispute.
- 22.3 If the dispute remains after the meeting detailed in Clause 22.2 has taken place, the Partners' respective Chief Executives or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event with fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute.
- 22.4 If the dispute remains after the meeting detailed in Clause 22.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate mediation, Partners 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.

22.5 Nothing in the procedure set out in this Clause 22 shall in any way affect Partners right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

## 23 FORCE MAJEURE

23.1 Partners shall not be entitled to bring a claim for a breach of obligations under this Agreement by other Partners nor incur any liability to other Partners 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.

23.2 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.

23.3 As soon as practicable, following notification as detailed in Clause 23.2, 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.

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

## 24 CONFIDENTIALITY

24.1 In respect of any Confidential Information a Partner receives from another Partner (the "**Discloser**") and subject always to the remainder of this Clause 24, 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:

24.1.1 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

24.1.2 the provisions of this Clause 24 shall not apply to any Confidential Information which:

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

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

24.2 Nothing in this Clause 24 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.

24.3 Each Partner:

24.3.1 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



24.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 24.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 24;

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

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

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

25.2 Any and all agreements between the Partners as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Act. No Partner shall be in breach of Clause 25 if it makes disclosures of information in accordance with the 2000 Act and/or 2004 Act.

## **26 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.

## **27 INFORMATION SHARING**

The Partners will follow the Information Governance Protocol set out in schedule 7, and in so doing will ensure that the operation this Agreement complies with Law, in particular the 1998 Act.

## **28 NOTICES**

28.1 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:

28.1.1 personally delivered, at the time of delivery;

28.1.2 sent by facsimile, at the time of transmission;

28.1.3 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

28.1.4 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner, or partners, 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.

28.2 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).

28.3 The address for service of notices as referred to in Clause 28.1 shall be as follows unless otherwise notified to the other Partners in writing:

28.3.1 if to the Council, addressed to the Director of Adults Social Care, Torbay Council, Town Hall, Torquay, TQ1 3DR.

Tel 01803 207116, E.mail: caroline.taylor@torbay.gov.uk

28.3.2 if to the CCG, addressed to Director of Commissioning, South Devon and Torbay Clinical Commissioning Group, Pomona House, Oak View Close, Torquay TQ2 7FF.

Tel: 01803 652508, E.mail: simon.tapley@nhs.net

28.3.2 If to the ICO, addressed to Liz Davenport, Director of Operations, Torbay and South Devon NHS Foundation Trust, Hengrave House, Torbay Hospital, Lowes Bridge, Torquay, TQ2 7AA  
Tel: 01803 655703 Email: liz.davenport@nhs.net

## **29 VARIATION**

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

## **30 CHANGE IN LAW**

30.1 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.

30.2 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.

30.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 22 (Dispute Resolution) shall apply.

## **31 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.

## **32 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.

## **33 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.

## **34 EXCLUSION OF PARTNERSHIP AND AGENCY**

34.1 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 any of the Partners directly liable to any third party for the debts, liabilities or obligations of the other.

34.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, Partners will not have authority to, or hold themselves out as having authority to:

34.2.1 act as an agent of the other;

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

34.2.3 bind the others in any way.

### **35 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.

### **36 ENTIRE AGREEMENT**

36.1 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.

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

### **37 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.

### **38 GOVERNING LAW AND JURISDICTION**

38.1 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.

38.2 Subject to Clause 22 (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 **TORBAY COUNCIL**

was hereunto affixed in the presence of:



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Caroline Taylor, Director of Adult Services

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



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Simon Tapley, Director of Commissioning and Transformation

## **SCHEDULE 1 – SCHEME SPECIFICATIONS AND METRICS**

Unless the context otherwise requires, the defined terms used in this Scheme Specification shall have the meanings set out in the Agreement. The terms apply to all four schemes unless otherwise specified.

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

#### **Scheme 1: Single Point of Access (SPOA)**

The entry point entitled 'SPOA' Single Point of Access, aims to provide a multimedia gateway for both members of the public and for clinicians to be signposted to the right provider within the system (this may include voluntary, private and independent sector provision).

The SPOA will be the link between statutory and non-statutory health and social care provider services directly or through locality teams. It will provide a gateway to a range of provider services that can be accessed immediately or through a direct appointment booking system. The SPOA will be managed through a 24 hour response service. The range of services that could be accessed through the SPOA is likely to include:

1. GP/ practice nurse clinics/ pharmacists
2. Children and young people's services
3. Health/ social care/ mental health professional
4. Hospital at home
5. End of life services
6. Domiciliary care services
7. Voluntary care services
8. Community groups/ activities
9. Out of hours services
10. Lifestyles team and wellbeing activities

In addition to providing a single point of access for the public the SPOA will also provide a central hub for clinicians. The aim of this service is two-fold:

1. To operate a live Directory of Commissioned Services that Clinicians can access to identify what options exist for a patient requiring a change in their current level of care in real time – the aim of this being to stream patients to the most appropriate service or facility to meet their immediate care needs thereby preventing avoidable non-elective admissions or facilitating early discharge from A & E or hospital
2. To facilitate patient matching (client-needs led approach) to appropriate services and e-referral to that service to facilitate the transfer of care.

The service is expected to be accessible 24 hours a day, seven days a week via telephone or internet.

#### **AIMS AND OUTCOMES**

- Reduction in 'face to face' clinical appointments by up to 25% (based on Devon Care Direct Plus model)
- The increase in utilisation of existing staff will free up capacity to manage the increase in workload generated from the introduction of the Care Bill
- Allocation of required based on patient need, this will shift some frontline work out of traditional health or social care providers into the domiciliary or third sector market
- 10% increase in citizens sourcing their own health and care solutions
- 10% reduction in numbers of citizens requiring assessment
- Reductions in non-elective hospital admissions (target initially 15% reduction in inappropriate admissions (net 5%))
- More appropriate treatment/management of patients
- Better utilisation of non-hospital resources
- Promoting self-care
- Increased involvement and utilisation of the Voluntary Sector

- The extension of the SPOA service to provide in-home monitoring is also expected to reduce 30-day, post-acute readmission as well as provide an early warning system for at-risk patients that will enable early intervention prior to a crisis occurring

## **THE ARRANGEMENTS**

(1) *Joint Commissioning;*

### **FUNCTIONS**

*The scheme is part of a programme to create new models of integrated care across the South Devon and Torbay health and care community*

*No functions of the NHS are delegated as a result of this scheme.*

*Additional services may be brought within the scope of this Agreement during the Term by agreement.*

### **SERVICES**

The CCG is the Host Partner for the Partnership Arrangements, and agrees to act as lead commissioner of the Services listed in part 2 of this schedule.

Torbay Council shall provide the Services or procure them through external providers and, working closely with its NHS partners, shall be accountable to the NHS bodies for the NHS Functions for the benefit of Service Users:

- (a) to ensure the proper discharge of the Partners' Functions;
- (b) with reasonable skill and care, and in accordance with best practice guidance;
- (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement in accordance with its standing orders or other rules on contracting; and
- (d) in accordance with all applicable Law.

## **COMMISSIONING, CONTRACTING, ACCESS**

### ***Commissioning Arrangements***

Torbay Council is the lead commissioner for this scheme

### ***Contracting Arrangements***

The costs of this scheme are staff costs of both health and social care staff. The health staff are employed by the acute and community Trusts

- (a) Section 31 partnership agreement with Torbay and Southern Devon Health and Care Trust pending planned creation of ICO arrangements will be monitored by ICO Contract Review Meetings

### ***Access***

People who are eligible for health and care services. The target demographic for this service is

- Adults
- Older People
- People who are acutely or terminally ill
- People with long term conditions
- People with mental health problems
- People with dementia or cognitive impairment
- People with learning disabilities
- People with physical disabilities

The Care Act requirements will be met in assessing the individuals eligible for the scheme.

## **STAFF**

Staff working within this scheme will continue to be employed by Torbay and South Devon NHSFT

## **RISK AND BENEFIT SHARE ARRANGEMENTS**

The risk and benefits in relation to the funding are outlined in schedule [3].

## **REGULATORY REQUIREMENTS**

This scheme complies with the Care Act 2014.

## **OVERVIEW OF INDIVIDUAL SERVICE 2**

### **Enhanced Intermediate care services**

To redesign community based services in order to manage more people in a proactive way to prevent hospital admission, reduce delayed discharges and reduce admissions to long term care. This includes the enhancement of the current primary care service to provide a single multi-disciplinary assessment service. The aim is to shift from a 'reactive' care model to a 'proactive' care model, focusing on enabling and empowering citizens, carers, and communities to support themselves and provide varying care settings dependent upon the individual's needs.

This work currently provides case management/care coordination for the vulnerable and frail population as identified by the risk stratification done via the GP DES. Further population segmentation is required in the future as outlined in the case for change section and action plan to further target our approach.

The model of care involves greater collaboration between citizens, carers, voluntary sector, health and social care in community and acute settings to support older persons. This includes agree goals with patients, carers, access to individual health record and sharing of data. We are planning to enhance this in our action plan.

The service model will link an enhanced single point of coordination primarily developed to reduce reliance on the statutory sector to local Multidisciplinary Teams which will be enhanced by support from primary care, the voluntary sector, mental health and hospital consultants to deliver more preventative care and support within the community. This will link through to the development of one GP practice per care home. This scheme will also focus clinical interventions earlier in the day, more pro-active care for patients most at risk of admissions, improve and enhance quality of medical care for care home patients and improve discharge planning for patients in acute and community hospitals.

The identification of individuals that would benefit from care co-ordination or case management through risk stratification will ensure identification of those individuals who require a care plan and increase supported to manage their needs.

Other additional work that is in progress that supports this:

- Working with care homes to ask them to notify the GP when a 999 call has been made, also linking with the ambulance service to try to prevent unnecessary conveyances to hospital as part of their "Right Care, Right Time, Right Place" strategy
- Changing working arrangements in practices to enable visits to be made earlier in the day in order to try to prevent overnight admissions occurring simply due to the time of day
- Care Homes – working towards one care home, one practice; extending the medication review pilot already underway; mentoring of care home staff by GPs and annual reviews of care home residents.

## **AIMS AND OUTCOMES**

- a) Reduction in minor injury attendances at A & E by approximately 3,000 per annum
- b) Improve the quality, equity and consistency of services delivered across the South Devon and Torbay footprint
- c) In conjunction with SPOA outcome reduction in 'face to face' clinical appointments by up to 25% (based on Devon Care Direct Plus model)
- d) The increased utilisation of existing staff will free up capacity to manage the increases in work generated from the introduction of the care bill
- e) Reduction in community bed based care and bed days.
- f) Increased use of Crisis Response Team/domiciliary care/social care/Intensive Home Support Services
- g) Reduction in total number of admissions to acute wards.
- h) Less patients feeling a loss of independence in acute trust by giving autonomy for quick reablement in their own home.
- i) Fewer resulting in overnight stays
- j) Fewer emergency hospital admissions from care homes
- k) An increase in the number of high-risk patients who have a care plan
- l) Fewer 999 calls from care homes
- m) Improved experience of patients and carers as a result of proactive case management and link to a case manager
- n) Reduction in placements into long term care
- o) Reduction in delayed transfer of care
- p) Increase in the number of patients offered rehabilitation following discharge from hospital
- q) Reduction in the number of readmissions to hospital within 91 days - 79.7% of older people (65's and over) still at home 91 days after discharge
- r) An increase in the number of people with a dementia diagnosis to 66.71%
- s) An increase in the number of people with a dementia diagnosis
- t) Increase in patient satisfaction
- u) Reduction in hospital admissions for patients diagnosed with dementia
- v) Reduction in predictable end of life deaths in acute setting

## **OVERVIEW OF INDIVIDUAL SERVICE 3**

### **Multiple Long Term Conditions**

The Multi long term conditions model describes a new service for people with multiple LTCs. This will allow consistent and co-ordinated multidisciplinary management of all of a person's medical conditions in one place and at one time. For example individuals with heart failure, atrial fibrillation, diabetes, chronic kidney disease, hypertension and obesity will be managed by one multi-disciplinary locality team. Each individual will have a care co-ordinator who will monitor and manage the person's status and care needs. The service will be staffed by medical and nursing staff with a broad range of clinical skills and, supported by allied health professionals appropriate to the needs of the users and with integrated links to social care, mental health and the voluntary sector. The service will be supported by specialist consultants and nurses in appropriate clinical areas with regular education support and rapid access for advice rather than referral to specialist clinics. Multi-condition care planning will be the hall mark of the service. Clear linkages with 'Virtual wards' and services for frail elderly will be established. This service will function across all sectors (primary care, community services and hospital inpatient) allowing the services team to follow patients through their care journey and retain clinical management and accountability throughout.

### **AIMS AND OUTCOMES**

- a) Promote self-care and self-efficacy, and support carers
- b) Be integrated at an individual user level to as great a degree as possible- patient centred, co-ordinated care (National Voices)
- c) Be integrated across a range of providers including service provider partners outside the combined organisation e.g. local authorities, mental health providers
- d) Be accessible and responsive to service users and to health professionals needing advice and support
- e) Able to respond to the needs of localities as outlined in locality plans
- f) Be unrestrained by the traditional barrier in healthcare both physical and professional
- g) Reduce hospital admissions before and after commencement of the service
- h) Changes in volume of activity within the multi-LTC service and the specialty LTC services
- i) Reduction in outpatient appointments for patients



- j) Reduction in unnecessary hospital admissions as LTC is managed more proactively
- k) Improved palliative care and less patients dying in an acute trust through the single holistic care plan

## OVERVIEW OF INDIVIDUAL SERVICE 4

### Community Care (Locality Teams & Community Hospital beds)

We want to make sure that people do not travel further than they need to for treatment and support, prevent unnecessary admissions to hospital and provide care in or close to people's homes as possible. To do this, we need to move resources away from bed based hospital care in order to strengthen the teams which support people within their local communities.

By doing this, we believe we can do more to keep people healthy, strengthen the health services that most people use and need, keep pace with the rising demand and ensure that we can afford to deliver these into the future. We want to use 21<sup>st</sup> century clinical approaches to meet the diverse needs of our population. In 2013 South Devon and Torbay CCG began to engage with the public to identify what matters to them in terms of their health and care to help the three organisations to develop proposals to create a new model of care. This engagement has continued into 2016 and we plan to launch a public consultation on these proposals in the autumn of 2016. The proposals include:

**Locality clinical hub:** each of the four localities which are part of this process – Moor to Sea, Newton Abbot, Paignton and Brixham, Torquay – will have a clinical hub which will provide community hospital beds, a long term conditions service and specialist outpatient clinics where insufficient people need to be seen to justify holding them in local towns. The clinical hub will also host a multi agency team. In Totnes and Newton Abbot, there will be a seven day a week, 8 am to 8 pm, minor injuries unit which will enable people to access urgent care closer to home and avoid unnecessary attendances at A&E.

**Health and wellbeing centres:** these will be based in Ashburton/Buckfastleigh, Bovey Tracey, Brixham, Dartmouth, Newton Abbot, Paignton, Torquay and Totnes. Locally based community staff will work alongside GP, pharmacists and voluntary sector organisations to provide health and well-being services and community clinics.

**Health and wellbeing teams:** these will operate out of the above centres and provide local services. The teams will bring together community health and social care staff, mental health professionals and our voluntary sector partners.

**Intermediate care:** will be provided in people's own homes supported by community staff or in local nursing and residential homes.

**Investing in community services:** by switching to this model of care we will be able to invest £3.9 million strengthening community services such as:

- Health and Wellbeing Co-ordinators, to be employed by our Voluntary Sector partners to support and signpost local people to the most appropriate services in their local area.
- Clinics and services for people with multiple long term conditions
- Additional intermediate care services in or close to people's own homes

**Fewer hospital beds:** to deliver this we will reduce the number of community hospitals to one per locality - in Brixham, Newton Abbot, Totnes (and Torbay Hospital) as well as in Teignmouth. By concentrating medical beds in fewer hospitals, we will be able to meet national safe staffing levels of one qualified nurse to eight beds with two nurses being on duty at any one time. This means closing hospitals in Ashburton/Buckfastleigh, Bovey Tracey, Dartmouth and Paignton.

**Concentrating MIU activity:** to ensure that MIUs provide a viable, effective service, we propose to reduce the number to three and have them located in Newton Abbot and Totnes, as well as Dawlish. All MIUs will open 8 am to 8 pm, seven days a week and will have with x ray facilities.

## 28 AIMS AND OUTCOMES

Outcomes from the draft consultation proposals:

1. Reduction of 32 hospital beds

2. Reduction of 24,000 attendances to A & E for minor injuries due to the streamlining and increased efficiency of MIU's within the plan
3. Reduction in roles within existing community hospital configuration will be realigned to increase community locality teams providing additional capacity to support a more proactive approach to care
4. Reduction in spend on intermediate care spot purchase beds
5. Meet increasing demand for services
6. Deliver high quality care and improve health outcomes
7. Increase joint health & social care working
8. Improve life expectancy, especially in our most deprived areas
9. Keep people out of hospital unless absolutely essential
10. Support people in the community, near to or in their own homes
11. Focus limited resources where they have most impact
12. Make best use of our staff and our building

## SCHEDULE 2- GOVERNANCE

### Introduction

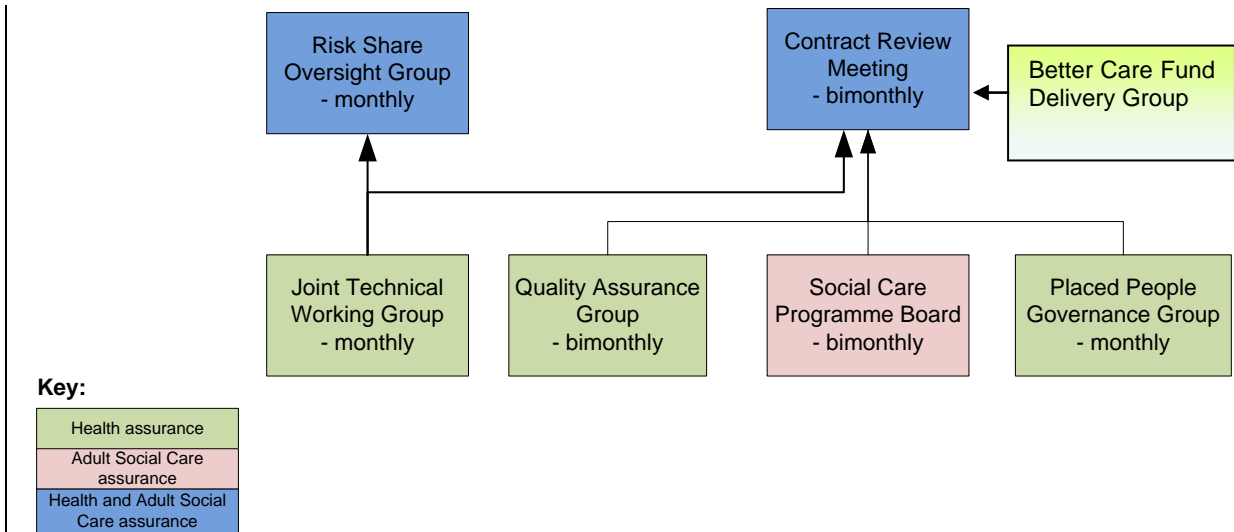
As a result of the acquisition that created Torbay and South Devon NHS Foundation Trust (TSD), the integrated care organisation (ICO), the health and social care commissioners, Torbay Council (TC) and South Devon & Torbay Clinical Commissioning Group (CCG), revised the governance arrangements that delivered assurance for the provided services. Whilst the arrangements have been in place for over six months, this paper provides an update to those arrangements.

### Core assurance groups

Whilst there are many groups that meet across the three organisations, the following groups have a significant responsibility for gaining assurance across health and social care.

- 1 Risk Share Oversight Group (RSOG). The group will provide strategic assurance on the financial aspects of all *health and social care* commissioned services. It will also provide assurance on system performance, oversee strategy (short, medium and long term) and reach agreement on support of major service development plans and contract changes. Meetings will take place monthly and will be chaired by the CCG Director of Finance. Alternate meetings will run back to back with the bimonthly Contract Review Meeting.
- 2 Contract Review Meeting (CRM). To provide strategic assurance and discuss issues and exceptions on key aspects of all *health and social care* commissioned services including quality, performance, service developments and improvements. Meetings will take place bimonthly and will be chaired by the CCG Director of Commissioning. As stated above, meetings will run on the same day as Risk Share Oversight Group.
- 3 Social Care Programme Board (SCPB). To provide detailed assurance on *social care* commissioned services including quality, performance, finance and service developments & improvements. Meetings will take place bimonthly and will be chaired by Torbay Council's Director of Adult Social Services. Meetings will run in the alternate months to the Contract Review Meeting (CRM). Exceptions and issues relating to social care services will be discussed at the bimonthly CRM.
- 4 Better Care Fund delivery Group. The BCF Delivery Group has a performance focus and is responsible for the commissioning, monitoring and review of the BCF schemes. All BCF schemes are part of a programme of work to deliver new models of integrated care through Torbay and South Devon NHS Foundation Trust. Meetings will run monthly
- 5 Quality Assurance Group (QAG). To provide assurance on the quality (safety, effectiveness and experience) of *health* commissioned services by receiving data / information, identifying risks / trends and escalating where necessary on areas such as quality requirements, operating principles, CQUIN, serious incidents, never events and major complaints. Meetings will take place bimonthly and will be chaired by the CCG Director of Quality. The group will be a subcommittee of the Contract Review Meeting.
- 6 Joint Technical Working Group (JTWG). To provide assurance of the delivery of *health* commissioned services by receiving data / information, identifying risks / trends and escalating where necessary on areas such as performance indicators, delivery of agreed capacity, financial impact and service improvements / developments. Meetings will take place monthly and will be chaired by the CCG Head of Performance. The group will be a subcommittee of the Contract Review Meeting and Risk Share Oversight Group.
- 7 Placed People Governance Group (PPGG). To provide assurance on the quality, performance and finance aspects of the placed people service (Continuing Healthcare and individuals with complex health needs). The meetings will take place monthly and will be chaired by the CCG Director of Commissioning. The group will be a subcommittee of the Contract Review Meeting.

A diagram of the proposed governance structure is shown below.



It is incumbent upon members of the relevant groups to ensure knowledge is shared appropriately within organisations to maintain effective communication. Within the CCG, the RSOG and CRM will report to the Commissioning and Finance Committee, a subcommittee of Governing Body.

Further details on membership and meeting dates are contained within enclosures A and B.

Terms of Reference will be updated where relevant and meeting dates distributed.

## Enclosure A

Membership of the core assurance meetings:

Meetings / representatives:	Contract Review Meeting	Risk Share Oversight Group	Joint Technical Working Group	Social Care Programme Board	Quality Assurance Group	Placed People Governance Group	Better Care Fund Delivery Group
<b>Commissioning representatives (SD&amp;TCCG unless specified):</b>							
Finance Director, CCG		Chair					
Commissioning Director, CCG	Chair	Yes				Chair	Yes
Director of Adult Social Services, Torbay Council	Yes	Yes		Chair			Chair
Clinical lead, CCG	Yes						
Quality Director, CCG	Yes				Chair		
Chief Accountant, Torbay Council		Yes					Yes
Deputy Finance Director, CCG	Yes	Yes	Yes				Yes
Deputy Commissioning Director, CCG	Yes						
Performance lead, CCG	Yes		Chair				
Contract lead, CCG			Yes	Yes			
Finance lead, CCG			Yes			Yes	
Finance lead, Torbay Council	Yes	Yes		Yes			Yes
Quality lead, CCG					Yes	Yes	
Commissioning lead, CCG			Yes	Yes			Yes
Commissioning lead, Torbay Council	Yes			Yes		Yes	Yes
NHS associate commissioner representatives (NHS England and NEW Devon CCG)	Yes		Yes				
Administrator	Yes	Yes	-	Yes	Yes	Yes	
Provider representatives							
Medical Director	Yes						
Chief Nurse	Yes				Yes		
Director of Finance	Yes	Yes		Yes			Yes
Chief Operating Officer	Yes					Yes	
Deputy Chief Nurse				Yes	Yes		
Divisional Manager				Yes		Yes	yes
Head of Performance, Information & Contracting	Yes	Yes	Yes	Yes			Yes
Performance lead			Yes	Yes			Yes
Finance lead			Yes	Yes		Yes	
Quality & Safety lead					Yes	Yes	
Associate Director for Adult Social Care				Yes			

## Enclosure B

Current and proposed dates of core assurance meetings:

Month / group	Risk Share Oversight Group monthly (4 <sup>th</sup> Wed), 2hrs	Contract Review Meeting bimonthly (4 <sup>th</sup> wed), 2hrs	Social Care Programme Board bimonthly, 3hrs	Joint Technical Working Group monthly (4 <sup>th</sup> Thur), 2hrs	Quality Assurance Group bimonthly, 2hrs	Placed People Governance Group monthly, 3hrs	Better Care Fund Delivery Group
Mar-16	9Mar 11.30-1.30, 23Mar 9-11			24Mar, 1-3		11Mar. 9-12	
Apr-16	6Apr & 20Apr, 9-11		19Apr,	cancelled		8Apr, 9-12	
May-16	18May & 25May, 9-11	12May,	12May,	cancelled		6May, 9-12	
Jun-16	22Jun, 9-11		16Jun, 11-1	23Jun, 1-3		10Jun, 9-12	
Jul-16	<del>20Jul, 9-11</del> , cancel <b>27Jul,9-11</b>	<del>14Jul, 10-12</del> cancel <b>27Jul, 11.30-1</b>	<del>4Jul, 11-1</del> cancel	28Jul, 1-3	06Jul, 10-12	8Jul, 9-12	21 Jul
Aug-16	<b>24Aug, 9-11</b>	-	11Aug 12.30-4 change time to <b>11-2</b>	25Aug, 1-3		TBC	15 Aug
Sep-16	<b>28Sep, 9-11</b>	<b>28Sep, 11.30-1</b>	<del>1Sep, 10-12</del> cancel	22Sep, 1-3	TBC	TBC	20 Sep
Oct-16	<b>26Oct, 9-11</b>		<b>w/c 17Oct, 3hrs</b>	22Oct, 1-3		TBC	18 Oct
Nov-16	<b>23Nov, 9-11</b>	<b>23Nov, 11.30-1</b>	<del>1Nov, 1.30-3.30</del> cancel	24Nov, 1-3	TBC	TBC	16 Nov
Dec-16	<b>28Dec, 9-11</b>		15Dec, 11-1 <b>extend to 3hrs</b>	22Dec, 1-3		TBC	19 Dec
Jan-17	<b>25Jan, 9-11</b>	<b>25Jan, 11.30-1</b>	<del>5Jan, 10-12</del> cancel	TBC	TBC	TBC	
Feb-17	<b>22Feb, 9-11</b>	-	09Feb, 12.30-4 <b>reduce to 3hrs</b>	TBC		TBC	
Mar-17	<b>22Mar, 9-11</b>	<b>22Mar, 11.30-1</b>		TBC	TBC	TBC	

**Key:** current / *proposed*

NB. Dates have been established using the following principles:

1. To allow RSOG to have timely financial information, it needs to meet as close after the ICO's internal finance committee. Therefore as the finance committee meet on the 4th Tuesday of each month, RSOG will meet on the 4th Wednesday of each month.
2. CRM will run concurrently on the same day as alternate RSOG.
3. SCPB will run in the alternate months to CRM

## Enclosure C

### Terms of Reference for the BCF Delivery Group

#### 1. Introduction

Torbay Council, South Devon and Torbay CCG and Torbay and South Devon NHS Foundation Trust have jointly developed a plan in accordance with the national programme for the development of the Better Care Fund. Delivery of this plan will sit with Torbay and South Devon NHS Foundation Trust where a pooled budget arrangement is in place for health and social care. This plan has been fully assured at a national level and endorsed locally by the Torbay Health and Well Being Board. A prime aim of the Torbay BCF plan is to improve the delivery of health and social care services in order that people are able to live well in their own homes and communities and return to a place of their choice as soon as appropriate following a period of ill health. The intended consequence of this will be to improve the experience of people using services, reduce the number of people who require more intensive health and social care services and, as appropriate, the length of time that people remain in hospital or other institutional settings. This is being measured through a combination of national and local performance metrics (see Appendix). Progress on delivery and performance is subject to regular reporting to the Torbay Health and Well Being Board.

Torbay is served by one acute hospital, Torbay and South Devon NHS Foundation Trust, which is an Integrated Care Organisation (ICO). The activity and flow of patients is overseen and managed through the Systems Resilience Group.

The Torbay Better Care Delivery Group will ensure co-ordination of delivery of the better care fund plan.

#### 2. Purpose and Responsibilities

The BCF Delivery Group has a performance focus and is responsible for the commissioning, monitoring and review of the BCF schemes. All BCF schemes are part of a programme of work to deliver new models of integrated care through Torbay and South Devon NHS Foundation Trust (ICO). The Schemes should have formal service specifications, including clear and measurable performance indicators which align to core BCF outcomes, and will be embedded in provider contracts. There are three exceptions to this general rule: (i) support to social care, which is a contribution to services as a whole rather than to specific BCF objectives; (ii) support for Care Act duties; (iii) support for community health services, which is allocated to CCGs as lump sums and not monitored in detail by the BCF Delivery Group. The performance review schedule informs the core agenda for the BCF Delivery Group, and there is an agreed process for decommissioning schemes which do not deliver against the KPIs. Any decision on redistribution of resources and the funding of new schemes is included in the S75 agreement and will be subject to the agreement of all parties.

**Purpose:** To provide a clear and collaborative management structure for the Better Care Fund for the Torbay Council footprint

**Responsible for:** Delivery of the Better Care Fund outcomes for improved health and social care services through effective use and performance management of the resources available within the pooled fund.

**Accountable to:** ICO Contract Review Meetings and onward to the Health & Well Being Board.

**Aim:** To enable effective collaborative working between providers of services and commissioners in order to inform the optimum use of resources to achieve the required outcomes.

### SCHEDULE 3- CONTRIBUTIONS TO POOLED FUNDS, RISK SHARE AND OVERSPENDS

#### a) Financial Contributions to the Pooled Fund

- 1.2 Each partner shall make the financial contributions set out in the table below to the pooled fund in the financial year

<b>The Torbay Better Care Fund 2016/17</b>		
<b><i>For the period 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2017</i></b>		
	<b>£000</b>	<b>£000</b>
<b>Funding provided to the pooled fund</b>		
South Devon and Torbay CCG	10,305	
Torbay Council	1,524	
		<b>11,829</b>
<b>Expenditure met from the pooled Budget</b>		
Torbay and South Devon NHS Healthcare Foundation Trust	8,255	
Torbay Council	2,050	
Torbay Council (capital)	1,524	
		<b>11,829</b>
<b>Net underspend</b>		<b>-</b>
		-
Pooled Budget accounted for on a contribution basis		

#### b) Overspend and underspends

- 1.3 If there is an overspend or underspend in any of the revenue expenditure pools the ICO Risk share agreement will apply.
- 1.4 Torbay Council are 100% responsible for any overspend or underspend on Capital.



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

### **Part 1 - LEAD COMMISSIONER OBLIGATIONS**

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

- 2 The Lead Commissioner shall notify the other Partners if it receives or serves:
  - 2.1 a Change in Control Notice;
  - 2.2 a Notice of a Event of Force Majeure;
  - 2.3 a Contract Query;
  - 2.4 Exception Reports and provide copies of the same.
- 3 The Lead Commissioner shall provide the other Partners with copies of any and all:
  - 3.1 CQUIN Performance Reports;
  - 3.2 Monthly Activity Reports;
  - 3.3 Review Records; and
  - 3.4 Remedial Action Plans;
  - 3.5 JI Reports;
  - 3.6 Service Quality Performance Report;
- 4 The Lead Commissioner shall consult with the other Partners before attending:
  - 4.1 an Activity Management Meeting;
  - 4.2 Contract Management Meeting;
  - 4.3 Review Meeting; and, to the extent the Service Contract permits, raise issues reasonably requested by a Partner at those meetings.
- 5 The Lead Commissioner shall not:
  - 5.1 permanently or temporarily withhold or retain monies pursuant to the Withholding and Retaining of Payment Provisions;
  - 5.2 vary any Provider Plans (excluding Remedial Action Plans);
  - 5.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan;
  - 5.4 give any approvals under the Service Contract;
  - 5.5 agree to or propose any variation to the Service Contract (including any Schedule or Appendices);
  - 5.6 suspend all or part of the Services;
  - 5.7 serve any notice to terminate the Service Contract (in whole or in part);
  - 5.8 serve any notice;
  - 5.9 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.

- 6 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.
- 7 The Lead Commissioner shall notify the other Partners of the outcome of any Dispute that is agreed or determined by Dispute Resolution
- 8 The Lead Commissioner shall share copies of any reports submitted by the Service Provider to the Lead Commissioner pursuant to the Service Contract (including audit reports)

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

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

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

## SCHEDULE 5 - BETTER CARE FUND PLAN



BCF narrative FOR  
s75 agreement final.c

A clear work plan detailing a review of services that contribute to the delivery of the BCF metrics is in development with NHS E.

Two priority areas of focus for the review by the end of Q2:

- Reablement
- DTOC

## **SCHEDULE 6 – POLICY FOR THE STANDARDS OF BUSINESS CONDUCT AND MANAGEMENT OF CONFLICTS OF INTEREST**

### **Standards of Business Conduct and management of conflicts of interest**

- Employees, Members, Committee and Sub-committee members of the parties should uphold the utmost standard of business conduct in all their dealings with and pertaining to this section 75 agreement. They should act in good faith and in the interests of the population of Torbay and should follow the Seven Principles of Public Life, set out by the Committee on Standards in Public Life (the Nolan Principles).
- They must comply with their own party's policy on business conduct, including the requirements set out in the policy for managing conflicts of interest, section 8 of the CCG's constitution and with Torbay Council's Constitution.
- Individuals contracted to work on behalf of the parties or otherwise providing services or facilities to the parties will be made aware of their obligation with regard to declaring conflicts or potential conflicts of interest. This requirement will be written into their contract for services.

## **SCHEDULE 7 - INFORMATION SHARING PROTOCOL**

Can be accessed via the following web addresses:

### **South Devon and Torbay CCG**

<http://www.southdevonandtorbayccg.nhs.uk/about-us/foi-ig/Pages/information-governance.aspx>

### **Torbay Council**

<http://www.torbay.gov.uk/accesstoinformation>

### **Torbay and South Devon NHS Foundation Trust**

<http://www.torbayandsouthdevon.nhs.uk/uploads/data-protection-policy.pdf>