

APPENDIX 1



Dated:

TAMESIDE METROPOLITAN BOROUGH COUNCIL

and

NHS GREATER MANCHESTER (NHS GM)

**FRAMEWORK SECTION 75 AGREEMENT RELATING TO THE
COMMISSIONING OF HEALTH AND WELLBEING SERVICES
(INCLUDING THE BETTER CARE FUND)**

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THIS AGREEMENT is made on the _____ day of _____
and supersedes the previous Section 75 Agreement

2024

PARTIES

- (1) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** Tameside One, Market Place, Ashton-Under-Lyne, OL6 6BH (the "**Council**")
- (2) **NHS GREATER MANCHESTER** of Tameside One, Market Place, Ashton-Under-Lyne, OL6 6BH (the "**NHS GM**")

BACKGROUND

- (A) The Council has the responsibility for commissioning social care services and may provide these on behalf of the population of the borough of Tameside.
- (B) The NHS GM has the responsibility for commissioning health services in the borough of Tameside pursuant to the 2006 Act.
- (C) The Better Care Fund has been established by the Government to provide funds to local areas to support the integration of health and social care and to seek to achieve the National Conditions and local objectives. It is a requirement of the Better Care Fund that the NHS GM and the Council establish a pooled fund for this purpose. The Parties wish to extend the scope of the pooled, aligned, and in collaboration funds to include funding streams from outside of the Better Care Fund. Each element of the Integrated Commissioning Fund comprises the NHS GM's operating and commissioning (including delegated) resource and this is detailed in the Financial Framework.
- (D) Section 75 of the 2006 Act gives powers to local authorities and integrated care boards groups to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority functions and prescribed NHS functions.
- (E) The purpose of this Agreement is to set out the terms on which the Parties have agreed to collaborate and to establish a framework for 2023-24 through which the Parties can secure the position of health and wellbeing services through lead or joint commissioning arrangements. It is also the means through which the Parties will pool funds and align budgets as agreed between the Parties.
- (F) The NHS is currently consulting on a national re-configuration of commissioning organisations which sets out proposals for legislative reform which includes giving Integrated Care Systems a firmer footing in legislation likely to take effect from 2024 (subject to Parliamentary decision).
- (G) These proposals sit alongside other recommendations aimed at removing legislative barriers to integration across health bodies and with social care, to help deliver better care and outcomes for patients through collaboration, and to join up national leadership more formally.
- (H) The **aims and objectives** of the Parties in entering into this Agreement are to:
 - (a) meet the National Conditions and local objectives;
 - (b) integrate the commissioning activities of the Parties in respect of the relevant populations (resident and GP registered) of Tameside in line with the Tameside Health and Wellbeing Board's vision of integrated health and wellbeing and through the pooling or aligning of financial resources and integrated governance in order to create a sustainable health and wellbeing system with improved system performance;
 - (c) agree strategies and ensure commissioning activity in order to make more effective use

of resources to achieve improved health and wellbeing for the populations of Tameside and prioritise prevention by ensuring people receive 'the right care in the right place at the right time';

- (d) provide and enable brilliant services that strive to exceed customer expectations;
- (e) help people take control of their lives and communities and ensure children, young people, and adults are safe and confident in their lives and communities and that people are treated with dignity and respect.

- (l) The Parties are entering into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and / or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.

1 DEFINED TERMS AND INTERPRETATION

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

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

2012 Act means the Health and Social Care Act 2012.

Accountable Officer means the accountable officer – this is the Chief Executive of TMBC and the Accountable Officer of NHS GM.

Affected Party means, in the context of Clause 27, the Party 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.

Aligned Commissioning means budgets relating to services that the Regulations specify shall not be pooled under Section 75, but which will be managed alongside the Pooled Fund.

Best Value Duty means the duty on local authorities to provide best value and to provide services efficiently, effectively, and economically and to strive for constant improvement of all services as set out in the Local Government Act of 1999 and the Local Government Act of 2000 and any similar duty.

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 Parties.

Budget Contributions means the budget contributions made by each Party to the Integrated Commissioning Fund in any Financial Year and the indicative budget contributions for the financial year 2023-24.

NHS GM Statutory Duties means the duties of the NHS GM pursuant to Sections 14P to 14Z2 of the 2006 Act and those duties that are set out in the 2012 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.

Chief Financial Officer means either the person appointed by the Council pursuant to section 151 of the Local Government Act 1972 or the person appointed to the role of Chief Finance Officer by the NHS GM in accordance with paragraph 11 of Schedule 1A of the Health and Social Care Act 2012 or both of them as the context requires.

Controller shall take the meaning given in the UK GDPR.

Commissioning Plans means the plans setting out details of how the Integrated Commissioning Strategies will be implemented and delivered. This is the Locality Plan.

Commencement Date means 1 April 2023.

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

- (a) which comprises Personal Data or Special Category 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 Party 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 Services and which, for the avoidance of doubt, does not include any Default Liability or Performance Payment.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

Data Subject shall take the meaning given in the UK GDPR.

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 Party(s) to the Provider as a consequence of (i) breach by any or all of the Parties 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 Parties are, under the terms of the relevant Services Contract, liable to the Provider.

Financial Framework means the financial framework agreed between the Parties and amended from time to time.

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 capable of being defined as a force majeure event in law,

in each case where such event is beyond the reasonable control of the Party 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 Commissioning Plans and / or Service Specifications.

Host Partner means the Party that will host and provide the financial administrative systems for the Pooled Fund and undertake to perform the duties for which they will be responsible, as set out in paragraph 7(4) and 7n(5) of the Regulations.

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.

In Collaboration Commissioning means budgets relating to services that the Regulations specify shall not be pooled under Section 75, and where the Council and NHS GM have limited direct influence over the utilisation of these funds, or where expenditure is not directly related to service delivery. Budgets include delegated co-commissioning in Primary Care, Dedicated Schools Grant, levies payable to the GMCA, Housing Benefits Grant and related expenditure, and Capital Financing costs.

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.

Integrated Care Board means the statutory body established under the Health and Care Bill 2021.

Integrated Commissioning means arrangements by which Parties commission Services in relation to an Integrated Commissioning Strategy on behalf of each other; and in the exercise of commissioning of both the NHS Functions and Health Related Functions.

Integrated Commissioning Fund or **ICF** means the single fund of the Council and NHS GM comprising the total annual budget allocations of each organisation.

Integrated Commissioning Strategies means the commissioning strategies and priorities agreed between the Parties about which services to commission within the area.

Joint Controller shall take the meaning given in the UK GDPR.

Law means:

- (a) any statute or proclamation or any delegated or subordinate legislation;
- (b) any guidance, direction, or determination with which the Party(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 Party(s) or relevant third party (as applicable); and
- (c) any judgment of a relevant court of law which is a binding precedent in England.

Lead Commissioning Arrangements means the arrangements by which one Party commissions Services in relation to an Integrated Commissioning Strategy or Commissioning Plan on behalf of the other Party in exercise of both the NHS Functions and the Health Related Functions.

Lead Commissioner means the Party responsible for commissioning an individual Service under a Commissioning Plan.

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.

Mutatis mutandis used when comparing two or more cases or situations making necessary alterations while not affecting the main point at issue.

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 NHS GM and as are relevant to the commissioning of the Services.

NHS Greater Manchester means the Integrated Care Board for Greater Manchester, which will take on the functions and responsibilities for Tameside.

Non-Recurrent Payments means funding provided by a Party to the Integrated Commissioning Fund in addition to the Budget Contributions pursuant to arrangements agreed in accordance with Clause 8.4.

Overspend means any expenditure from the Integrated Commissioning Fund in a Financial Year which exceeds the budget agreement for that Financial Year.

Party means each of the NHS GM and the Council, and references to "**Parties**" shall be construed accordingly.

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

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

Permitted Budget means, in relation to a Service, the budget that the Parties have set in relation to the particular Service (including the budgets for all the commissioning staff of each Party).

Permitted Expenditure has the meaning given in Clause 7.2.

Personal Data means Personal Data as defined by the UK GDPR.

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

Pooled Fund Manager means the Chief Finance Officer of the Strategic Commission as nominated by the Host Partner from time to time to manage the Integrated Commissioning Fund.

Previous Health Agreements means those agreements made between the Parties under sections 75, 76 and 256 of the 2006 Act.

Processor shall take the meaning given in the UK GDPR.

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

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

Risk Share Arrangements means the general risk share principles agreed by the Parties that apply to this Agreement as set out in Clause 12.

Service Specification means a specification setting out the detailed arrangements relating to a particular Service within a Commissioning Plan agreed by the Parties to be commissioned under this Agreement.

Services mean such health and wellbeing services as agreed from time to time by the Parties as commissioned under the strategies set out in this Agreement.

Services Contract means an agreement for the provision of Services entered into with a Provider by one or more of the Parties in accordance with the relevant Commissioning Plan.

Service Users means those individuals for whom the Parties have a responsibility to commission Services.

Special Category Personal Data means data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation.

Tameside Strategic Partnership Committee (or "**TSPC**") means the Tameside Strategic

Partnership Committee being a partnership committee approved by the Parties, which is responsible for review of performance and oversight of this Agreement in accordance with its terms of reference.

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

- 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 Parties 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, 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 Parties 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 replaces all previous agreements.
- 2.2 This Agreement shall continue until it is terminated in accordance with Clause 25.
- 2.3 The duration of the arrangements for each Service shall be as set out in the relevant Services Contract.

3 GENERAL PRINCIPLES

- 3.1 Nothing in this Agreement shall affect:
 - 3.1.1 the liabilities of the Parties 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 Parties 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;

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Parties will work together to establish one or more of the following:
 - 4.1.1 Integrated Commissioning;
 - 4.1.2 Lead Commissioning Arrangements;in relation to the Services (the "Flexibilities").
- 4.2 The Council delegates to the NHS GM and the NHS GM 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 NHS GM delegates to the Council and the Council agrees to exercise on the NHS GM'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 Party to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to this Agreement and the Parties shall agree arrangements designed to achieve the greatest degree of delegation to the other Party 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 Parties can secure the provision of health and wellbeing 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 Parties.
- 5.3 Where the Parties add a new Commissioning Plan to this Agreement it will need to be agreed by both Parties in accordance with the governance arrangements set out in this Agreement and include as a minimum the details of who will act as the lead commissioner, the budget, and other resource contributions of each Party.
- 5.4 The Parties shall not enter into a Commissioning Plan unless they are satisfied that the Commissioning Plan in question will improve health and wellbeing in accordance with this Agreement.

6. COMMISSIONING ARRANGEMENTS: INTEGRATED COMMISSIONING

- 6.1 Where there are Integrated Commissioning arrangements in respect of individual Services, both Parties shall work in cooperation and shall endeavor to ensure that the NHS Functions and Health Related Functions are commissioned with all due skill, care, and attention.
- 6.2 Each Party shall be responsible for compliance with and making payments of all sums due from them to a Provider pursuant to the terms of a Service Contract.
- 6.3 Both Parties shall work in cooperation and endeavor to ensure that the relevant Services as set out in each Commissioning Plan are commissioned within each Party's budget contribution in respect of that particular Service in each Financial Year.
- 6.4 The Parties shall comply with the arrangements in respect of the Aligned and In Collaboration Commissioning as set out in the relevant Service Specification.
- 6.5 Schedule 5 shall apply to the integrated management of staff.
- 6.6 Each Party shall keep the other Party and other stakeholders regularly informed, through agreed governance arrangements, of the effectiveness of the arrangements including the Better Care Fund and any overspend or underspend in the Integrated Commissioning Fund.

APPOINTMENT AND ROLE OF A LEAD COMMISSIONER

- 6.7 From time to time the Parties through the Tameside strategic partnership Committee shall appoint one of them to act as Lead Commissioner for a Commissioning Strategy, Commissioning Plan, or an individual Service and unless agreed otherwise the Lead Commissioner shall:
 - 6.7.1 exercise the NHS Functions in conjunction with the Health Related Functions;
 - 6.7.2 endeavor to ensure that the NHS Functions and the Health Related Functions are funded within the parameters of the Budget Contributions of each Party 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 Service Specification;
 - 6.7.4 contract with Provider(s) for the provision of the Services on terms agreed

between the Parties;

- 6.7.5 comply with all relevant legal duties and guidance of both Parties 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;
- 6.7.8 put in place appropriate systems to make sure that payments of all sums due to a Provider take place pursuant to the terms of any Services Contract;
- 6.7.9 keep the other Party and the Tameside strategic partnership Committee regularly informed of the effectiveness of the arrangements including the Better Care Fund and any overspend or underspend in the Integrated Commissioning Fund.

7. ESTABLISHMENT OF THE POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Parties have agreed to establish and maintain a pooled fund for revenue expenditure as set out in the Commissioning Plan.
- 7.2 The Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement and it is agreed that monies held in the Pooled Fund may only be used for the Permitted Budget and spent to commission prescribed services (as described in various legislation) and services that the Parties agree will contribute to the effective delivery of the prescribed services and Third Party Costs ("*Permitted Expenditure*").
- 7.3 The Parties may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Party.
- 7.4 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by both Parties.
- 7.5 Pursuant to this Agreement, the Parties agree to appoint a Host Partner for the Pooled Fund who shall be responsible for:
 - 7.5.1 administering the record of the funds contributed to the Pooled Fund on behalf of itself and the other Party;
 - 7.5.2 administering the record of the funds expended by the Parties in relation to the Pooled Fund;
 - 7.5.3 administering a record of the funds contributed and expended by the Parties in relation to Aligned Funds and In Collaboration funds;
 - 7.5.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement;
 - 7.5.5 For the avoidance of doubt each Party shall administer its own financial transactions initially within its own accounting ledger and seek reimbursement from the Host Partner out of the Pooled Fund.

8. POOLED FUND MANAGEMENT

- 8.1 The Parties hereby agree that the Host Partner shall appoint an officer to act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations, subject to the consent of the other Party (such consent not to be unreasonably withheld).
- 8.2 The Pooled Fund Manager shall have the following duties and responsibilities (and shall have power to delegate any of these functions to suitably qualified staff subject to the terms of the Financial Framework):
- 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 Commissioning Plans;
 - 8.2.3 maintaining an overview of all joint financial issues affecting the Parties 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 Parties as required by the Tameside Strategic Partnership Committee and the relevant Commissioning Plans;
 - 8.2.6 ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement;
 - 8.2.7 preparing and submitting to the Tameside Strategic Partnership Committee regular reports and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Parties and the Tameside Strategic Partnership Committee to monitor the effectiveness of the Pooled Fund and to enable the Parties to complete their own financial accounts and returns. The Parties agree to provide all necessary information in time for the reporting requirements to be met;
 - 8.2.8 preparing and submitting reports to the Health and Wellbeing Board as required by it.
- 8.3 In carrying out the responsibilities under Clause 8.2 the Pooled Fund Manager shall comply with the Financial Framework and have regard to the recommendations of the Tameside Strategic Partnership Committee and shall be accountable to the Parties.
- 8.4 The Tameside Strategic Partnership Committee may agree to the viring of funds within the Pooled Fund for Section 75 and Aligned elements only (subject to any specific requirements of the Financial Framework).

9. BUDGET CONTRIBUTIONS

- 9.1 The Budget Contribution of NHS GM and the Council to the Pooled Fund shall be as set out in each Commissioning Plan.
- 9.2 No provision of this Agreement shall preclude the Parties from making additional contributions of Non-Recurrent Payments to the Integrated Commissioning Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be recorded in Tameside Strategic Partnership Committee minutes and recorded in the budget statement.

- 9.3 Any grant contributions (or other ring-fenced funding) shall be subject to the relevant conditions that apply and both Parties hereby agree to comply with those conditions.
- 9.4 The annual Disabled Facilities Grant received by the Council via the Department for Levelling Up, Housing and Communities is also included within the Pooled Fund. The Disabled Facilities Grant is included within Better Care Fund planning and reporting requirements as determined by the Department of Health and Social Care, Department for Levelling Up, Housing and Communities, and NHS England and Improvement.

10. OTHER RESOURCE CONTRIBUTIONS

- 10.1 Both Parties shall review non-financial contributions toward the Integrated Commissioning Fund including staff (including the Pooled Fund Manager), premises, IT support, and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Services Contracts and the Pooled Fund) as part of the annual review.

11. FUTURE BUDGET SETTLEMENTS

- 11.1 **Risk to be addressed: Financial settlements and budget uplifts for future years are insufficient to meet rising demands and rising costs**

Possible scenarios:

- Local Government grant funding from government (Revenue Support Grant) is projected to reduce significantly;
- NHS allocation growth is significantly less than anticipated plans;
- Both Parties may be required to produce medium term efficiency plans in order to receive multi-year financial settlements;
- Financial pressures and consequences arising from a pandemic such as COVID-19;
- Greater Manchester Integrated Care or NHS England and Improvement impose additional requirements in response to the recommendations and detail included in the Health and Care Bill 2021.

- 11.2 Principles of response to these risks and future pressures:

- As far as is possible, the value of the single budgets will be kept at their equivalent current value;
- Treatment of remaining resource gaps will be addressed within the single consolidated fund with both Parties agreeing to vary contributions to mitigate variable pressures in health and care services.

12. RISK SHARE ARRANGEMENTS

- 12.1 In 2020/21, the Tameside & Glossop CCG Governing Body and Council Executive Cabinet agreed a two year risk share arrangement up to a maximum of £10 million with no more than £5 million in any one year. Any risk share arrangement enacted will have amounts repayable over the following two consecutive financial years for the benefit of the (Tameside) locality only. This period covers the financial years 2022/23 and 2023/24.
- 12.2 In acknowledgement of the terms of the risk share agreement outlined in 12.1 and enacted at 31 March 2022, a reciprocal increased contribution will be required payable to the Pooled Fund by 31 March 2024.

12.3 It is agreed by the Parties that, if the enacting of the risk share agreement leads to improved financial sustainability for the locality in 2023/24 or in subsequent financial years, then any resulting benefits are to be realised within the (Tameside) locality only.

13. PREMISES

13.1 The Parties shall be responsible for providing any premises which are necessary for the commissioning of the Services and where these requirements are not set out in the relevant Service Specification they will be agreed by the Tameside Strategic Partnership Committee.

14. PRE-EXISTING CONTRACTS

14.1 Where from time to time each Party will make available to the other respective service contracts to enable the other to carry out its role as agent from the Commencement Date.

14.2 The Parties may agree that, where necessary, and subject to the relevant Party's consent, the rights and obligations of the original contracting Party under the NHS GM Contracts or Council Contracts (as the case may be) may be transferred to the other Party by way of novation or assignment.

15. PREVIOUS HEALTH AGREEMENTS

15.1 The Previous Health Agreements shall terminate upon the coming into effect of this agreement and the monies in relation to those Previous Health Agreements shall transfer to the Integrated Commissioning Fund, and the future commissioning arrangements for those services as referred to in the Previous Health Agreements will be dealt with under this Agreement.

15.2 Termination of the Previous Health Agreements shall be without prejudice to the Parties' rights in respect of any antecedent breaches of those agreements and any provisions of those agreements which are to survive termination under those agreements.

16. CAPITAL EXPENDITURE

16.1 Neither Pooled Funds nor Aligned and In Collaboration 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 Parties. If a need for capital expenditure is identified this must be agreed by the Parties and the capital expenditure must comply with any applicable grant conditions.

17. VAT

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

18. AUDIT AND RIGHT OF ACCESS

18.1 All Parties shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the Pooled Fund in accordance with the Regulations and section 7 of the Local Audit and Accountability Act 2014.

18.2 All internal and external auditors and all other persons authorised by the Parties will be given the right of access by them to any document, information, or explanation they require

from any employee or member of the Party 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.

19. LIABILITIES AND INSURANCE AND INDEMNITY

- 19.1 Subject to Clause 19.2 and 19.3, if a Party ("First Party") 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 Party ("Other Party") which constitutes negligence, fraud, or a breach of contract in relation to this Agreement or the Services Contract then the Other Party shall be liable to the First Party for that Loss and shall indemnify the First Party accordingly.
- 19.2 Clause 19.1 shall only apply to the extent that the acts or omissions of the Other Party contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Party acting in accordance with the instructions or requests of the First Party or the Tameside Strategic Partnership Committee.
- 19.3 If any third party makes a claim or intimates an intention to make a claim against either Party, which may reasonably be considered as likely to give rise to liability under this Clause 19 the Party that may claim against the other indemnifying Party will:
- 19.3.1 as soon as reasonably practicable give written notice of that matter to the Other Party specifying in reasonable detail the nature of the relevant claim;
 - 19.3.2 not make any admission of liability, agreement, or compromise in relation to the relevant claim without the prior written consent of the Other Party (such consent not to be unreasonably conditioned, withheld, or delayed);
 - 19.3.3 give the Other Party and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents, and records within its power or control so as to enable the Indemnifying Party 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.
- 19.4 Each Party shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by National Health Service Resolution) in respect of all potential liabilities arising from this Agreement.
- 19.5 Each Party 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.

20. STANDARDS OF CONDUCT AND SERVICE

- 20.1 The Parties will at all times comply with Law and ensure good corporate governance in respect of each Party (including the Parties' respective Constitutions, standing orders, standing financial instructions, and codes of conduct).
- 20.2 The Council is subject to the Best Value Duty. This Agreement and the operation of the Integrated Commissioning Fund is therefore subject to the Council's Best Value Duty and the NHS GM will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value Duty.
- 20.3 The NHS GM is subject to the NHS GM Statutory Duties and these include a duty of

clinical governance, through which it is accountable for securing continuous improvements to 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 Fund are subject to ensuring compliance with the NHS GM Statutory Duties and clinical governance obligations.

- 20.4 The Parties are committed to an approach to equality and equal opportunities as represented in their respective policies. The Parties 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.

21. CONFLICTS OF INTEREST

- 21.1 The Parties shall comply with their respective policies for identifying and managing conflicts of interest.
- 21.2 The Tameside Strategic Partnership Committee shall maintain a register of interests.
- 21.3 In the event of a conflict arising between the Parties' respective policies the matter shall be referred to the Accountable Officer for resolution. This acknowledges that there is one Accountable Officer over the two statutory organisations. Should the Accountable Officer be unable to reach a resolution the matter shall be determined as a dispute in accordance with Clause 26.

22. GOVERNANCE

- 22.1 Section 75 of the 2006 Act states that the partner organisation's retain the statutory responsibilities and remain accountable for the prescribed services set out for each in various legislation.
- 22.2 Overall strategic oversight of the development of Integrated Commissioning is vested in the Council's Executive Cabinet and the NHS GM's Strategic Partnership Committee, which shall remain the statutory decision-making bodies.
- 22.3 The Health and Wellbeing Board will provide strategic oversight of partnership working between the Parties and shall make recommendations to the Parties as to any actions it considers necessary.
- 22.4 The Parties have established the Tameside Strategic Partnership Committee to provide oversight and leadership for delivery of Integrated Commissioning.
- 22.5 The Tameside Strategic Partnership Committee is based on a joint working group structure. Each member of the Tameside Strategic Partnership Committee who is an officer of one of the Parties and has individual delegated responsibility from the Party employing them to make decisions that enable the Tameside Strategic Partnership Committee to carry out its objects, roles, duties, and functions as set out in this Clause 22 and Schedule 2 may exercise those powers. The Tameside Strategic Partnership Committee will ensure compliance with both Parties' Constitutions, standards of clinical and corporate governance, and management and behavioral standards expected.
- 22.6 The Parties will ensure membership is appropriate to carry out the required functions of the Tameside Strategic Partnership Committee.
- 22.7 The senior management and officers delivering Integrated Commissioning will be given sufficient relevant delegated authority to carry out their role.

- 22.8 Each Party has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Party's own statutory duties and organisation are complied with.
- 22.9 The Tameside Strategic Partnership Committee is responsible for making decisions relating to the Pooled Fund in accordance with the relevant standing financial instructions and schemes of delegation. The Tameside Strategic Partnership Committee shall be responsible for the overall approval of Commissioning Plans and business cases.

23. REVIEW

- 23.1 Save where the NHS GM's Governing Body and the Council's Cabinet agrees alternative arrangements (including alternative frequencies) the Parties shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, the Integrated Commissioning Fund, and the provision of the Services each Financial Year. The Tameside Strategic Partnership Committee will agree the frequency and scale of any other reviews, monitoring, and reporting of activity and the performance of the integrated commissioning function.
- 23.2 The Tameside Strategic Partnership Committee shall within twenty (20) Working Days of the Annual Review prepare a joint annual report documenting the matters referred to in this Clause 23. A copy of this report shall be provided to the Parties.
- 23.3 In the event that the Parties fail to meet the requirements of the Better Care Fund Plan and NHS England and Improvement the Parties shall provide full co-operation with NHS England and Improvement to agree a recovery plan.

24. COMPLAINTS

- 24.1 In this Agreement, "complaints" shall include complaints, concerns, and comments that come to the attention of the Parties through any source and in any medium, and shall include complaints about any aspect of the Services commissioned and about the function of commissioning.
- 24.2 The Parties agree that they and the Tameside Strategic Partnership Committee will adhere to the relevant policies of the Parties in responding to complaints. Complaints will be handled in accordance with the policies of the most appropriate Party. In the event of there being a dispute over which is the most appropriate Party, the role shall fall to the Lead Commissioner for the service involved.
- 24.3 Analysis of the complaints handled by the Parties shall be reported to the Tameside Strategic Partnership Committee.

25. TERMINATION & DEFAULT

- 25.1 This Agreement may be terminated by either Party giving not less than three months' notice in writing to terminate this Agreement or as otherwise agreed between the Parties.
- 25.2 Each of the individual Services may be terminated in accordance with the terms set out in the relevant Service Contract provided that the Parties ensure that the Better Care Fund requirements continue to be met.
- 25.3 If any Party ("Relevant Party") fails to meet any of its obligations under this Agreement, the other Party may by notice require the Relevant Party to take such reasonable action within a reasonable timescale as the other Party may specify to rectify such failure. Should the Relevant Party fail to rectify such failure within such reasonable timescale the matter

shall be referred for resolution in accordance with Clause 26.

25.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and the provisions of Clauses 19 and 28.

25.5 Upon termination of this Agreement for any reason whatsoever the following shall apply:

25.5.1 the Parties 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 Parties is carried out smoothly and with as little disruption as possible to service users, employees, the Parties, and third parties so as to minimise costs and liabilities of each Party in doing so;

25.5.2 where either Party has entered into a Service Contract which continues after the termination of this Agreement, both Parties 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;

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

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

25.5.5 the Tameside Strategic Partnership Committee 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

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

25.6 In the event of termination in relation to an individual Service the provisions of Clause 26.5 shall apply mutatis mutandis in relation to the individual Service (as though references as to this Agreement were to that individual Service).

26. DISPUTE RESOLUTION

26.1 The following principles are to be adhered to for any dispute resolution:

26.1.1 The resolution agreement must be in the best interests of the population of Tameside. It must maintain the quality of health and social care provision now and in the future, deliver the best possible outcomes, support innovation where appropriate, make care more cost-effective, and allocate risk fairly.

26.1.2 The resolution agreement must promote transparency and accountability. It should hold the Parties to the Agreement accountable to each other and to patients and

citizens, and facilitate the sharing of appropriate information to achieve the ambition of the Care Together Programme.

26.1.3 The Parties must engage constructively with each other within the dispute resolution process when working to reach agreement.

26.2 This dispute resolution process operates in three stages:

26.2.1 The first stage involves advice and / or mediation by the Parties clarifying which points are in dispute and the basis for the dispute for each disputed point. A mediator is to be agreed by the Parties and, in default of such agreement by the Parties, the mediator shall be a person nominated by the Parties. All relevant information should be exchanged between the Parties to ensure that a clear understanding of the disputed points is established as a basis for reaching an agreement cognisant of the above-mentioned principles, to avoid the requirement to enter into the second or third stages. It is expected that this process will be conducted within a two week period. If the Parties reach an agreement, this will be binding upon each Party.

26.2.2 The second stage involves more formal negotiation between the Parties with the aim of reaching a negotiated position that is acceptable to both Parties. This stage will utilise the information shared during the stage one process as well as any additional pertinent information. This stage will be facilitated by a mediator to be nominated by an arbitration service as agreed by the Parties (at this stage the mediator is being appointed for the Parties on the basis that the mediation facilitated by the self-chosen mediator at stage one was unsuccessful). It is expected that this process will be conducted within a two-week period. If the Parties reach an agreement this will be binding upon each Party. It is anticipated that both Parties would agree to the appointment of the mediator; in the event that one or both Parties do not agree the nominee a further nominee would be sought from the arbitration service.

26.2.3 The third stage involves formal arbitration that will be affected by means of a mediation panel appointed by the Tameside Strategic Partnership Committee following nominations by the arbitration service. In the event that one or both Parties do not agree the nominee's further nominees would be sought from the arbitration service.

26.3 Each of these panel representatives will not be conflicted by the disputed points under question, with conflicts of interest defined in the following categories:

26.3.1 Financial interest: Where an individual may get direct financial benefit from the consequences of a decision;

26.3.2 Non-financial professional interest: Where an individual may obtain a non-financial professional benefit from the consequences of a decision, such as increasing their professional reputation or status or promoting their professional career;

26.3.3. Non-financial personal interest: Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit;

26.3.4. Indirect interest: where an individual has a close association with an individual who has a financial interest, a non-financial professional interest, or a non-financial personal interest in a decision (as those categories are described above).

26.4 The mediation panel will meet to review the disputed points that have been identified by the Parties in the first stage process. The panel may call on expert advice and / or on the disputed

parties at their discretion. No member of the panel will have a strong prior relationship with any organisation or with the key staff involved in the dispute.

26.5 Arbitration will be conducted using the 'pendulum principle' for each issue. This means that the mediation panel can only find wholly in favour of one of the disputed parties for each disputed point; they can neither propose a different solution nor split the difference. If there are multiple areas of dispute these will be considered separately.

26.5.1 The agreed rationale for the pendulum principle: Application of the pendulum principle is designed to reduce the need for arbitration in the first place. The Party whose proposal will be accepted will be the one whose stance is most consistent with this Agreement and the principles of the Care Together Programme. In matters where this Agreement and the principles of the Care Together Programme do not clearly determine the adjudication the accepted proposal is that which is closest to what the mediation panel believes is reasonable.

26.5.2 The mediation panel will apply the pendulum principle to the most recent proposal made by each Party. It is required that each Party is aware of the proposals of the other Party. Where there are multiple areas of dispute between the Parties these will normally be treated separately by the mediation panel and the pendulum principle applied to each individual issue of dispute. However, the mediation panel may at its discretion decide to adjudicate only once across a number of issues it perceives to be linked.

26.6 In making its decision the mediation panel will consider the relative reasonableness of the final-offer proposals. In so doing it will act in accordance with the overarching principles as detailed above, which will be updated to include any principles established as a result of previous arbitrations. The decisions of the mediation panel will be binding upon the Parties.

26.7 Once the mediation panel has reached its decisions it will write jointly to the Parties within one Working Day of the panel date informing them of the outcome of the arbitration. It is expected that this third stage process will be completed within a four week period.

26.8 Parties involved in any formal dispute have recourse to existing routes of challenge if the dispute process has not been followed correctly.

27. FORCE MAJEURE

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

27.2 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party 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 Party and any action proposed to mitigate its effect.

27.3 As soon as practicable, following notification as detailed in Clause 27.2, the Parties shall consult with each other in good faith and use all best endeavors to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 27.4, facilitate the continued performance of the Agreement.

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

28. CONFIDENTIALITY

- 28.1 In respect of any Confidential Information a Party receives from another Party (the "Discloser") and subject always to the remainder of this Clause 28, each Party (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:
- 28.1.1 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
 - 28.1.2 the provisions of this Clause 28 shall not apply to any Confidential Information which:
 - 28.1.2.1 is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
 - 28.1.2.2 is obtained by a third party who is lawfully authorised to disclose such information.
- 28.2 Nothing in this Clause 28 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.
- 28.3 Each Party:
- 28.3.1 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;
 - 28.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 28.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 28; and
 - 28.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

29. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 29.1 The Parties agree that they will each co-operate with each other to enable any Party 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 co-operation shall include but not be limited to finding, retrieving, and supplying information held, directing requests to other Parties as appropriate, and responding to any requests by the Party receiving a request for comments or other assistance.
- 29.2 Each Party acknowledges that the other Party is subject to the requirements of the 2000 Act and 2004 Regulations and each Party shall assist and co-operate with the other, at their own expense, to enable the other Party to comply with its information disclosure obligations.
- 29.3 Where a Party receives a request for information specifically in relation to a function of the other Party, it shall direct the request for information to the other Party as soon as practicable after receipt and in any event within two Working Days of receiving the request

for information.

- 29.4 Where the request relates to functions of both Parties, the Party receiving the request will share the request with the other Party as soon as practicable after receipt and, in any event, within two Working Days and that Party will assist and co-operate with the other as is necessary for it to respond to the request within the time for compliance. If either Party determines that information must be disclosed it shall notify the other Party of that decision at least two Working Days before disclosure. Each Party shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- 29.5 Any and all agreements between the Parties as to confidentiality shall be subject to their duties under the 2000 Act and 2004 Regulations. No Party shall be in breach of Clause 29 or any other confidentiality Clauses or agreements if it makes disclosures of information in accordance with the 2000 Act and / or 2004 Regulations.

30. INFORMATION SHARING AND DATA PROTECTION

- 30.1 In all instances where the Council and NHS GM share information with each other and in the functioning of the Tameside Strategic Partnership Committee, in respect of all applicable UK Data Protection Legislation the Parties acknowledge that each Party will at any point in time and from time to time be acting as Controller and Processor respectively in respect of particular actions and functions or, on other occasions, will be acting as Joint Controller and as joint Processors, and the Parties give assurance to each other that each will keep alert and recognise their responsibilities on such different occasions and will comply with all applicable Data Protection Legislation. For the avoidance of doubt, each Party will comply with their own internal corporate information governance policies and procedures.
- 30.2 Subject to the following provisions of this section the Parties shall work together to establish effective arrangements to permit and control the exchange of information to support the Integrated Commissioning arrangements.
- 30.3 Without prejudice to any other provision of this Agreement, each Party shall at all times comply with the requirements of the Data Protection Legislation in respect of any Personal Data howsoever acquired or processed for the purposes of, or in the operation of, the Integrated Commissioning arrangements and Personal Data collected or processed for any purposes connected with this Agreement will not be disclosed to any other person otherwise than in strict accordance with the provisions of the Data Protection Legislation.
- 30.4 Each Party shall ensure that in order to process any information for the purposes of this Agreement lawfully, fairly, and transparently in accordance with the Data Protection Legislation that it shall notify the subject of such Personal Data of the purposes for which it is gathered and for which it may be disclosed. Where necessary, the Parties will obtain the consent of Service Users and other Data Subjects to disclose Personal Data to be used for the purposes of this Agreement.
- 30.5 Any data disclosed by a Party to the other for use in carrying out the purposes of this Agreement will be held and processed strictly in accordance with the Data Protection Legislation and any common law obligation of confidentiality.
- 30.6 The Parties shall:
- 30.6.1 keep confidential any information obtained in connection with this Agreement and Personal Data, subject to the Data Protection Legislation; and
 - 30.6.2 take appropriate technical and organisational measures against unauthorised or

unlawful processing of such Personal Data and against accidental loss, destruction of, or damage to such Personal Data.

31 **OMBUDSMAN**

The Parties will co-operate with any investigation undertaken by the Parliamentary and Health Service Ombudsman or the Local Government and Social Care Ombudsman (or both of them) in connection with this Agreement.

32 **PARTIES / NOTICES**

32.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class post or electronic mail. The address for service of each Party shall be as set out in Clause 32.3 or such other address as each Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served if:

32.1.1 personally delivered, at the time of delivery;

32.1.2 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and

32.1.3 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 (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post on the same day as that on which the electronic mail is sent.

32.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be) and the hard copy was properly addressed and delivered into the custody of the postal authority as first class recorded delivery on the same day as that on which the electronic mail was sent.

32.3 The address for service of notices as referred to in Clause 32.1 shall be as follows unless otherwise notified to the other Party in writing:

32.3.1 if to the Council addressed to the:

Assistant Executive Director (Finance)
Tameside Metropolitan Borough Council
Tameside One
PO Box 317
Ashton-Under-Lyne
OL6 6BH

32.3.2 if to the NHS GM, addressed to the:

Associate Director of Finance
NHS Greater Manchester (Tameside)
Tameside One
PO Box 317
Ashton-Under-Lyne
OL6 6BH

33 **VARIATION**

- 33.1 Subject to Clause 33.2, no variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Parties.
- 33.2 The members of the Tameside Strategic Partnership Committee may choose to exercise their delegated powers on behalf of their employer organisation (for the avoidance of doubt in each case must either be the NHS GM or the Council) to:
- 33.2.1 agree the addition of Commissioning Plans or Integrated Commissioning Strategies to this agreement following the approval of a detailed business case by each of the Parties; and
- 33.2.2 carry out an Annual Review of this Agreement pursuant to Clause 23 and implement necessary changes following the review.

34 **CHANGE IN LAW**

- 34.1 The Parties 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.
- 34.2 On the occurrence of any Change in Law, the Parties shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Parties using all reasonable endeavors 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.
- 34.3 In the event of failure by the Parties to agree the relevant amendments to the Agreement (as appropriate), the Clause 26 (Dispute Resolution) shall apply.

35 **WAIVER**

- 35.1 No failure or delay by any Party 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.

36 **SEVERANCE**

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

37 **ASSIGNMENT AND SUB CONTRACTING**

- 37.1 The Parties shall not sub contract, assign, or transfer the whole or any part of this Agreement without the prior written consent of the other Parties, 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 Party's statutory functions.

38 **EXCLUSION OF PARTNERSHIP AND AGENCY**

38.1 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 Parties or render either Party directly liable to any third party for the debts, liabilities, or obligations of the other.

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

38.2.1 act as an agent of the other;

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

38.2.3 bind the other in any way.

39 **THIRD PARTY RIGHTS**

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

40 **ENTIRE AGREEMENT**

40.1 The terms herein contained together with the contents of the Schedules constitute the complete Agreement between the Parties 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 Party.

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

41 **COUNTERPARTS**

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

42 **GOVERNING LAW AND JURISDICTION**

42.1 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.

42.2 Subject to Clause 26 (Dispute Resolution), the Parties 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 Parties on the date of this Agreement

Executed as a Deed by affixing the common seal of **TAMESIDE METROPOLITAN BOROUGH COUNCIL**

in the presence of:

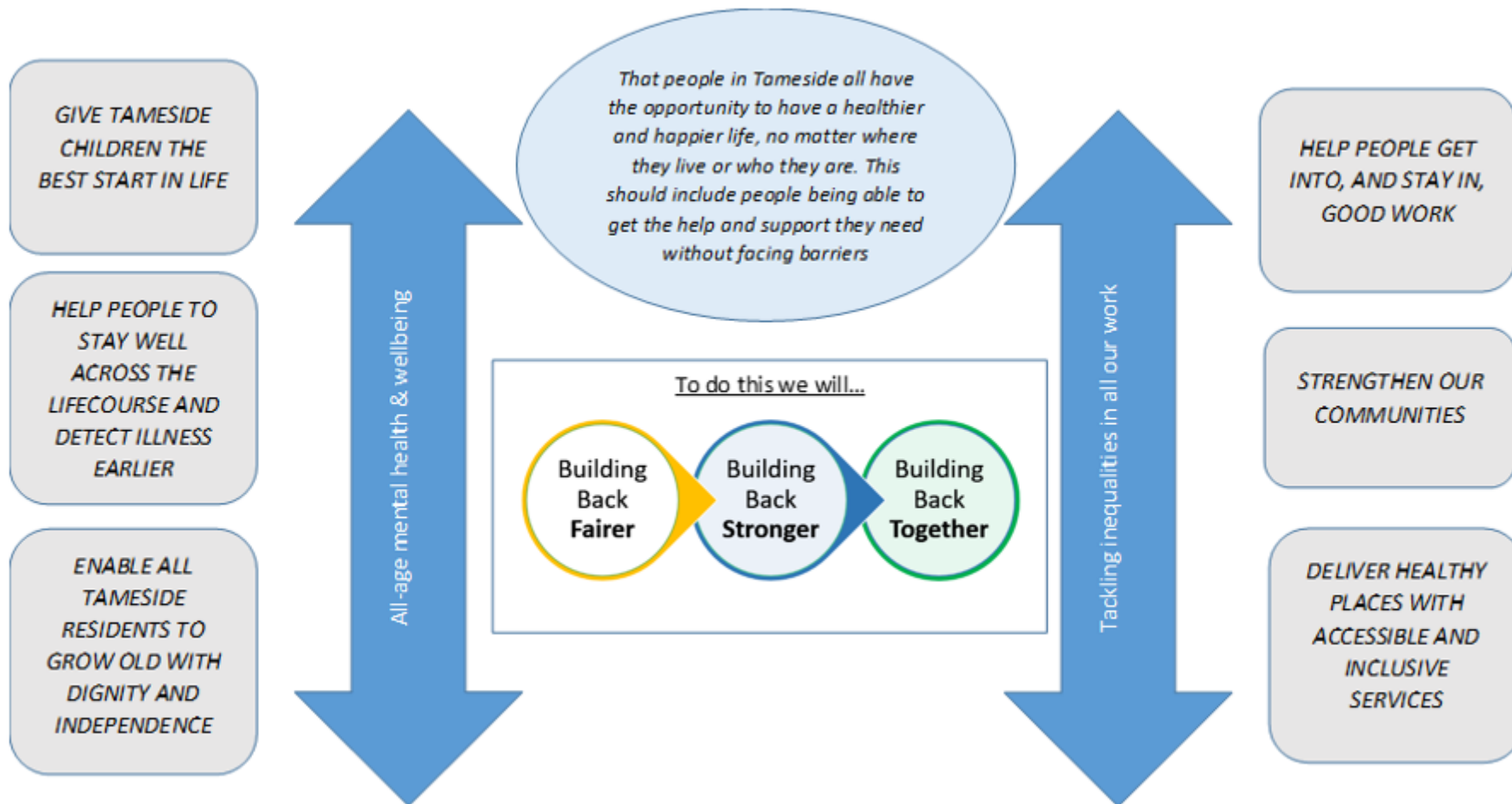
.....
Authorised Signatory

Executed as a Deed by affixing the common seal of **NHS GREATER MANCHESTER**

in the presence of:

.....
Authorised Signatory

SCHEDULE 1 – COMMISSIONING STRATEGY: PLAN ON A PAGE



SCHEDULE 2 – GOVERNANCE

1. The clinical and care principles by which the pool will be operated is overseen by the Tameside Strategic Partnership Committee. Membership includes representatives from the NHS GM Executive Board and the Executive Cabinet of the Council. As such the Tameside Strategic Partnership Committee will constitute a Joint Committee of the NHS GM and the Council in compliance with the Local Government Act 1972 and the 2006 Act, which permits the creation of a joint committee.
2. The Tameside Strategic Partnership Committee represents the interests of both Parties in securing improved operation of the local health economy. Members will have equal voting rights and so an equal stake in securing better outcomes.
3. The Tameside Strategic Partnership Committee will set out the key priorities and principles for the pool through which improvements to clinical and care outcomes and to financial sustainability will be secured. The Tameside Strategic Partnership Committee will be wholly accountable for the Pooled Fund and delegate day to day facilitation of the pool to the Single Finance Management Team and hold them responsible for this.
4. Decisions to pool funding and management of Services or commissioning areas will be made by the Tameside Strategic Partnership Committee.
5. Decisions by both the NHS GM and Council Finance Management Teams to deploy funds from the risk pool and the investment reserve will require authorisation by the Tameside Strategic Partnership Committee.
6. The management of the Integrated Commissioning Fund is facilitated jointly by the NHS GM and Council Financial Management Teams via formal delegation from the Tameside Strategic Partnership Committee. Financial and performance monitoring reports to the Tameside Strategic Partnership Committee, the NHS GM, and the Council will be provided on a regular basis.
7. As the Health and Wellbeing Board includes representatives of a number of organisations (including providers) who are not statutory commissioners of local health and care services, it is not appropriate to require the Health and Wellbeing Board to take decisions on the Pooled Fund. The Health and Wellbeing Board will however be kept informed of the performance of the Integrated Commissioning Fund.

SCHEDULE 3 – JOINT WORKING OBLIGATIONS

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.

- 1 The Lead Commissioner shall notify the other Party if it receives or serves:
 - 1.1 a Change in Control Notice (or equivalent if using a Council standard contract);
 - 1.2 a Notice of an Event of Force Majeure (or equivalent if using a Council standard contract);
 - 1.3 a Contract Query (or equivalent if using a Council standard contract);
 - 1.4 Exception Reportsand provide copies of the same (or equivalent if using a Council standard contract).
- 2 The Lead Commissioner shall provide the other Party with copies of any and all:
 - 2.1 CQUIN Performance Reports (or equivalent if using a Council standard contract);
 - 2.2 Activity Reports (or equivalent if using a Council standard contract);
 - 2.3 Review Records (or equivalent if using a Council standard contract);
 - 2.4 Remedial Action Plans (or equivalent if using a Council standard contract);
 - 2.5 Joint Investigation Reports (or equivalent if using a Council standard contract); and
 - 2.6 Service Quality Performance Report (or equivalent if using a Council standard contract);
- 3 The Lead Commissioner shall consult with the other Party before attending:
 - 3.1 an Activity Management Meeting (or equivalent if using a Council standard contract);
 - 3.2 Contract Management Meeting (or equivalent if using a Council standard contract);
 - 3.3 Review Meeting (or equivalent if using a Council standard contract);and to the extent the Service Contract permits, raise issues reasonably requested by a Party 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 (or equivalent if using a Council standard contract));
 - 4.3 agree (or vary) the terms of a Joint Investigation or a Joint Action Plan (or equivalent if using a Council standard contract);
 - 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 (or equivalent if using a Council standard contract);

without the prior approval of the other Party (acting through the Tameside Strategic Partnership Committee) such approval not to be unreasonably withheld or delayed.
- 5 The Lead Commissioner shall advise the other Party 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 Parties as part of that process.
- 6 The Lead Commissioner shall notify the other Party 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).

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.

- 8 Each Party 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:
 - 8.1 resolve disputes pursuant to a Service Contract;
 - 8.2 comply with its obligations pursuant to a Service Contract and this Agreement;
 - 8.3 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;
- 9 No Party shall unreasonably withhold or delay consent requested by the Lead Commissioner.
- 10 Each Party (other than the Lead Commissioner) shall:
 - 10.1 comply with the requirements imposed on the Lead Commissioner pursuant to the relevant Service Contract in relation to any information disclosed to the other Party;
 - 10.2 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 4 – PERFORMANCE ARRANGEMENTS

INTEGRATED PERFORMANCE MANAGEMENT FRAMEWORK FOR COMMISSIONING

1. INTRODUCTION

This Agreement between the Council and the NHS GM establishes a framework for joining together the commissioning, provision, finances, performance management, and governance for the services covered by the Agreement.

This schedule outlines the arrangements for the performance management framework for the Agreement.

2. PURPOSE

This schedule aims to ensure that Parties adopt an integrated performance management framework to ensure they plan, deliver, review, and act on relevant information to commission improved outcomes for the people of Tameside.

This approach will ensure that the actions and investment of Parties will lead towards the achievement of national, regional, and local performance targets as well as improving outcomes for the people of Tameside.

3. DEFINITION

Performance management is the overall process that integrates planning, action, monitoring, and review. Performance management means knowing:

- What you are aiming for (e.g. purpose, mission, corporate aims, strategic goals etc)
- What you have to do to meet these aims (e.g. business plan, project plan, etc)
- What the priorities are, and ensuring that there are sufficient resources (inputs)
- What the current performance is through monitoring and reporting
- How to review progress, detect problems, and take action in a timely manner to ensure the outcome/target is achieved

4. BENEFITS

Effective performance management enables relevant staff throughout the Single Commission to:

- Be clear what the strategic objectives are for commissioning
- Be clear what outcomes are to be delivered in any one Financial Year

thereby ensuring better quality Services are delivered to local people.

5. OUTLINE FRAMEWORK

Essentially the performance management framework consists of three processes in relation to joint commissioning.

5.1 BUSINESS PLANNING PROCESS

- a) Integrated Commissioning Plans that state the strategic objectives and key performance measures for a period of three to five Financial Years, and commissioning intentions for those objectives with timescales for achievement.
- b) Contracts that state how performance will be monitored, reported, and reviewed and necessary action taken, including performance indicators.

5.2 REPORTING AND REVIEW PROCESS

- a) Overall progress against delivery of the outcomes in the Integrated Commissioning Plans.
- b) Overall progress against delivery on the contracts and identification of reasons for under performance.

5.3 PERFORMANCE IMPROVEMENT PROCESS

- a) Ensuring action is taken where the continuation of current performance would lead to an outcome / target not being met.
- b) Application of a range of tools and techniques to improve overall performance.

6. FRAMEWORK DETAIL

6.1 BUSINESS PLANNING PROCESS

- 6.1.1 It is the responsibility of the relevant Host Partner to develop and annually review a Commissioning Plan on a rolling three Financial Year basis for the particular service to be commissioned. Each strategy will be developed by adherence to the 'commissioning cycle' and in consultation with service users and carers.
- 6.1.2 It is the responsibility of the relevant Host Partner to develop an annual Commissioning Plan. This plan will state the outcomes to be achieved, by when, and what the risks are if they are not achieved.
- 6.1.3 Each outcome in the Commissioning Plan should be aligned to one of the strategic objectives. Any outcome that is not so aligned should be reviewed as to why it is being considered.
- 6.1.4 The Host Partner should then go through a process of developing, negotiating, and agreeing a contract with each third party provider regarding the outcomes they are to deliver. It will be clear which Services are to be discontinued (e.g. in the advent of a budget reduction).
- 6.1.5 Contracts with third party providers should:
 - Take account of the requirements of the Better Care Fund and the agreed Commissioning strategies and annual plans of the Council and the NHS GM;
 - Include a requirement on the provider to develop a detailed service plan (e.g. stating what, by when, by who and the risk associated with not achieving the outcome) as to how the provider intends achieving the said outcomes. It should also require the provider to regularly measure progress against achieving the outcomes, to report this to the Host Partner in a timely manner to an agreed frequency (e.g. monthly), and to provide a Performance Improvement Plan or Recovery Plan where performance is significantly under par.
- 6.1.6 Include a process whereby outcomes may be added or removed as a result of changing needs.

6.2 REPORTING AND REVIEW PROCESS

- 6.2.1 Regular meetings should be held between the Host Partner and the provider to review performance.

6.2.2 The Host Partner will monitor services as part of a basket of measures that contribute to the delivery of key outcomes, having regard to national, regional, and local key performance indicators such as:

- Best Value Performance indicators
- Performance Assessment Framework indicators
- National Performance Indicators
- Public Service Agreement targets (LPSA)
- Audit and inspection recommendations
- Self-Assessment Statement actions
- Relevant Operational Plan indicators
- NHS Operating Framework targets
- Vital Signs indicators.

6.2.3 These key indicators form part of a basket of performance measures. Activity and Financial indicators will be another part of the complete basket.

6.2.4 The basket of performance indicators will be monitored and reported to the Tameside Strategic Partnership Committee using, wherever possible, existing performance reports generated within either the Council or the NHS GM, and making it clear where the areas of good performance and those of concern are, using for example a simple traffic light scheme with exception reporting on the key issues.

6.2.5 The performance of all providers should be reported on a regular basis by the relevant Host Partner to the Health and Wellbeing Board.

6.3 PERFORMANCE IMPROVEMENT PROCESS

Where necessary the Host Partner should seek the Provider to undertake specific performance improvement initiatives where performance is significantly under par.

SCHEDULE 5 – INTEGRATED STAFF MANAGEMENT

1. The Parties shall support integrated services and teams to provide health and wellbeing services to certain client groups within the population of Tameside.

2 Guiding principles

- 2.1 This guide aims to ensure that all employees are treated fairly and that the principles of equality and diversity are upheld. Where there are any problems or difficulties relating to the employment or management of employees working within integrated services, the aim will be to resolve these at a local management level whenever possible, until such time as it is necessary to put in place formalised procedures. Employees are required to conduct themselves and to reflect standards of behavior in line with the appropriate code of conduct of the Parties.
- 2.2 It is recognised that, as there are two employers within the integrated service, terms and conditions of employment will vary between parties. Every endeavor will be made to acknowledge these differences and seek to minimise the effect of differences between terms and conditions in any future workforce development, wherever this is possible. There is no commitment to agreement for harmonisation of terms and conditions of employment.
- 2.3 Both Parties will discuss with each other changes in respect of the terms and conditions of employees working within the integrated services in advance of their implementation. This includes changes affecting pay, allowances, and benefits (e.g. call out payments). These discussions will take into account the need to minimise additional costs and employee turnover in either organisation.
- 2.4 Where HR or management representatives in either organisation consider that proposed changes will have a material effect on employees working within the integrated services or any issue relevant to HR, these issues will be reported to the Tameside Strategic Partnership Committee for consideration and, if possible, a resolution agreed.

3 Scope

- 3.1 This guide is not intended to change the HR Policies of each Party. This guide applies to all employees working within integrated services in permanent positions and will also include any employees who are on fixed term contracts, or locums assigned to the service or temporarily seconded.

4 Arrangements

- 4.1 Initially employees working in the integrated commissioning function will remain employed by their current employer with their existing terms and conditions. They will continue to abide by the organisational and Human Resources Codes of Conduct and policies of their current employer (including Health and Safety and appraisal processes). Work instructions however may be by a staff member from the other Partner organisation. Both Parties will recognise all employees working in the integrated commissioning function, regardless of employer, as providing a commissioning function on behalf of both organisations and will ensure that all employees regardless of employer have access to the facilities, support services, and information necessary to undertake a commissioning role in both organisations.
- 4.2 Both Parties acknowledge that these arrangements shall be subject to review.
- 4.3 Both Parties acknowledge that some posts within the integrated commissioning function will also have corporate responsibilities and functions outside the integrated commissioning function pertaining to their host organisation. These will be clearly set

out within job descriptions and recognised. Both Parties commit to honouring these wider commitments.

SCHEDULE 6 : Section 75 Budget 2023/24

	2023/24 Funding		
	Council	ICB	Total
	£ m	£ m	£ m
Revenue			
Better Care Fund	13.145	7.427	20.572
Improved Better Care Fund	12.585	0	12.585
Discharge Fund	1.765	1.598	3.363
Sub Total	27.495	9.025	36.520
Capital			
Disabled Facilities Grant (DFG)	2.849	0	2.849
DFG - Additional	0.249	0	0.249
Sub Total	3.098	0	3.098
Total	30.593	9.025	39.618