

Dated: To be added at signing

Luton Borough Council

and

**NHS Bedfordshire, Luton and Milton Keynes
Integrated Care Board**

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

Luton S75 Agreement 2023-2024

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APPROVED LUTON HWB 05.04.23

THIS AGREEMENT is made on.....day of..... (To be added on date of signing 2023)

PARTIES

- (1) **Luton Borough Council**
- (2) **NHS Bedfordshire, Luton and Milton Keynes INTEGRATED CARE BOARD** of (the "BLMK ICB")

BACKGROUND

- The Councils have responsibility for commissioning and/or providing social care services on behalf of the population of Luton
- The BLMK ICB has the responsibility for commissioning health services pursuant to the 2006 Act for the population of Luton.
- 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 BLMK ICB and the Council establish a pooled fund for this purpose. The Partners wish to extend the use of pooled funds to include funding streams from outside of the Better Care Fund. This agreement also covers pooled funds which are agreed outside of the remit of the Better Care Fund detailed in the service specifications and schedules included as an appendix to this document. These services may be commissioned through lead commissioning, integrated or joint (aligned) commissioned model.
- 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.
- 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 means through which the Partners will to pool funds and align budgets as agreed between the Partners.
- The Agreement seeks to operationalise the prioritise the aims of the designate ICS's five key priorities and the interconnectivity with the Luton Borough Council Population Wellbeing Strategy for residents within BLMK :
 1. Start well; every child has a strong and healthy start to life from maternal health, through the first thousand days to reaching adulthood
 2. Live well; people are supported to engage with and manage their health and wellbeing
 3. Age well; people age well with proactive interventions to stay healthy, independent and active as long as possible
 4. Growth; we work together to build the economy and support the economy; and support sustainable growth
 5. Reduce inequalities; In everything we do we promote equalities in the health and wellbeing of our population

- The significant variation in the demographic needs and health uptake and outcomes across the BLMK footprint is acknowledged by the BLMK ICB. The S75 Agreement for each specific Place and the services provided will be based on local need. At the time of approval for the Luton S75 Agreement, the BLMK ICB is responsible for future plans to develop a BLMK S75 Agreement that reflects agreements in common, ensuring equality of opportunity of health and care services across BLMK, whilst continuing to set out the individual needs of Place.
- The joint aims and benefits of the Partners in entering this Agreement are to:
 1. Improve the quality and efficiency of services
 2. Meet the National Conditions and Local Objectives including promoting the integration of NHS health related functions and Council health related functions
 3. Make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the Services
 4. Ensure that commissioning decisions are informed by the Joint Strategic Needs Assessment and the Luton Population Wellbeing Strategy, under the governance of the Health and Wellbeing Board
 5. Make more effective use of resources by integrating delivery of specific services, which are under this agreement
 6. Additional aims for specific services are set out in the schedules for the services. The strategies and priorities are developed in many instances at a place (Local Authority footprint) level

The outcomes of the commissioning may include the following but are not limited to:

- Improving the quality and efficiency of the service
- Meeting the National Conditions and Local objectives
- Make more effective use of resources through the establishment and maintenance of a pooled fund for revenue expenditure on the services
- Shift resources from hospital- based care to more community- based care in order to secure improved health and experience
- Reshaping the model for prevention and early intervention through an integrated approach to primary, secondary and tertiary prevention to stop or reduce deterioration in health
- Supporting people with long term conditions through multi-disciplinary working-focussing services around general practice in locality networks and helping people to manage their own conditions in the community
- Expanding the range of services that support older people with frailty and disabilities – integrating the range of housing, mobility, carers and other services that wrap around older people with specific conditions and issues and helping to manage new demand through the Care Act
- Restructuring integrated care pathways for those with urgent care needs - ensuring that these are seamless, clear and efficient to move care away from

acute settings, where appropriate, as well as building future resilience for the responsibilities of the Council under the Care Act 2014

1 DEFINED TERMS AND INTERPRETATION

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

1998 Act means the Data Protection Act 1998.

2000 Act means the Freedom of Information Act 2000.

2004 Regulations means the Environmental Information Regulations 2004.

2006 Act means the National Health Service Act 2006.

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

Agreement means this agreement including its Schedules and Appendices.

Annual Report means the annual report produced by the Partners in accordance with Clause 20

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

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

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

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

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

Better Care Fund Plan means the plan agreed by the Partners for the relevant Financial Year setting out the Partners plan for the use of the Better Care Fund [as attached as Schedule 6].

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

ICB Statutory Duties means the Duties of the BLMK ICB pursuant to Sections 14P to 14Z2 of the 2006 Act

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

Commencement Date means 00:01 hrs on the date signed for the Luton S75 Agreement 2023 - 2024

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

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

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

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

Force Majeure Event means one or more of the following:

- (a) war, civil war (whether declared or undeclared), riot or armed conflict;
- (b) acts of terrorism;
- (c) acts of God;
- (d) fire or flood;
- (e) 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 and for any Non Pooled Fund the Partner that will host the Non Pooled Fund

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

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

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

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

Joint (Aligned) Commissioning means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint commissioning arrangement does not necessarily involve the delegation of any functions nor an equal split of activity or funding pursuant to Section 75. Arrangements will be set out in the associated schedule;

Joint Strategic Commissioning Group means the Group of Officers employed by the Partners who have responsibility for commissioning and monitoring the services covered by this Agreement. The terms of reference for this Group and reporting arrangements to the HWB are set out in Schedule 5.

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 Local Authority Health Related Functions.

Lead Partner 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.

Market Management means the process of ensuring that there is a sufficiently robust and diverse market of health and social care providers for Micro Commissioners to

buy/purchase from. The Market Management process will usually ensure that the independent sector and voluntary sector providers are subject to an umbrella contract from which Micro Commissioners call off. The Market Management process may include the negotiation and setting of annual inflation uplift with independent sector and voluntary sector providers, subject to the approval by the Council's Executive;

Micro Commissioner/commissioning means health and social care staff involved in the assessment and care management process, and Service Users arranging their own care either as self-funders or by using a direct payment or a personal budget;

Month means a calendar month.

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

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

NHS Functions means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the BLMK ICB 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 in accordance with Clause [8.4].

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

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

Partnership Board means the Luton Joint Strategic Commissioning Group, responsible for review of performance and oversight of this Agreement as set out in Clause 19.2 and Schedule 5 or such other arrangements for governance as the Partners agree.

However, it is also acknowledged that the governance of this Agreement may evolve in line with the Integrated Care Partnerships (ICPs) and Integrated Care Boards (ICBs) decisions at a future date. A timescale for the review of this S75 Agreement is agreed as March 2024 any changes during this period will be enacted via a Deed of Variation with full agreement of both parties.

Partnership Board Quarterly Reports means the reports that the Pooled Fund Manager shall produce and provide to the Joint Strategic Commissioning Board on a Quarterly basis, escalating any unresolvable issues, risks or items of importance to the Health and Wellbeing Board.

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

Permitted Expenditure has the meaning given in Clause [7.3].

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

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

Pooled Fund Manager means such officer of the Host Partner 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 [10].

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

Public Health England means the SOSH trading as UK Health Security Agency and Office for Health Improvement and Disparity

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

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

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

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

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

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

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

SOSH means the Secretary of State for Health.

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 Partnership Board.

Underspend means any expenditure from the Pooled Fund in a Financial Year which is less than the aggregate value of the Financial Contributions for that Financial Year.

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

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

2 TERM

- 2.1 This Agreement shall come into force on the Commencement Date, at which point any current separate Agreements between the Partners for Children and Young People and Adults will end and default to the position stated in this document.
- 2.2 This Agreement shall continue until it is terminated in accordance with Section 75 of the 2006 Act Clause [21]
- 2.3 The duration of the arrangements for each Individual Scheme shall be as set out in the relevant Scheme Specification or if not set out, for the duration of this Agreement unless terminated earlier by the Partners.
- 2.4 The Partners may agree to extend the 'Termination Date' for specific services identified in the Schedules by such period as they shall determine up to a maximum of twenty four (24) months.
- 2.5 This Agreement supersedes the 2022-2023 Agreement without prejudice to the rights and liabilities of the Partners under the 2023-2024 Agreement

3 GENERAL PRINCIPLES¹

- 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 Schedule or Summary Scheme specification.

4 PARTNERSHIP FLEXIBILITIES

- 4.1 This Agreement sets out the mechanism through which the Partners will work together to establish one or more of the following:-
 - 4.1.1 Lead Commissioning Arrangements;
 - 4.1.2 Integrated Commissioning;

- 4.1.3 Joint and Aligned Commissioning;
- 4.1.4 The establishment of one or more Pooled Funds; and/or
- 4.1.5 Integrated delivery of specific Health and Social Care Services managed by the Council;

These arrangements will be in relation to Individual Services and Schedules (the "Flexibilities").

- 4.2 This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:

- 4.2.1 Lead Commissioning Arrangements;
- 4.2.2 Integrated Commissioning;
- 4.2.3 Joint (Aligned) Commissioning
- 4.2.4 the establishment of one or more Pooled Funds
- 4.2.5 Integrated delivery of specific Health and Social Care services managed by the Local Authority in relation to Individual Schemes (the "Flexibilities")

Where there is a Lead Commissioning Arrangement and where the Council delegates to the BLMK ICB and the BLMK ICB 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 Where there is a Lead Commissioning Arrangement and where the BLMK ICB delegates to the Council and the Council agrees to exercise on the BLMK ICB'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.

- 4.5 At the Commencement Date the Partners agree that the following shall be in place:

- 4.5.1 The following Individual Schemes with Lead Commissioning with Council as Lead Partner:

To be negotiated and varied into Schedule 7 Financial Arrangements of this agreement where applicable.

- 4.4.2 The following Individual Schemes with Lead Commissioning with BLMK ICB as Lead Partner:

To be negotiated and varied into Schedule 7 Financial Arrangements of this agreement where applicable.

4.4.3 The following Individual Schemes with Aligned Commissioning with Council as Lead Partner:

- (i) To be negotiated and included in Schedule 7, Financial Arrangements of this agreement where applicable

4.5.2 The following Individual Schemes with Aligned Commissioning with BLMK ICB as Lead Partner.

- (ii) To be negotiated and included in Schedule 7, Financial Arrangements of this agreement where applicable

4.5.3 Integrated Commissioning Unit with Council as Lead Partner under joint arrangements established using s.113 of the Local Government Act 1983

- (iii) To be negotiated and included in Schedule 7, Financial Arrangements of this agreement where applicable

5 FUNCTIONS

5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of health and social care services in accordance with the terms of this Agreement.

5.2 This Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Services in accordance with their obligations under this Agreement.

5.3 The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in the associated Schedules.

5.4 Where the partners add a new Service or varies an existing Summary Scheme Specification to this Agreement a Summary Service Specification for an Individual Scheme or a Business Case for Better Care Fund schemes shall be completed and agreed between the partners

5.5 The Partners shall not enter into a Scheme Specification or Business Case in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.

5.6 The introduction of any Individual Scheme will be subject to business case approval by the [Partnership Board] [in accordance with the variation procedure set out in Clause 30 (Variations)].

6 COMMISSIONING ARRANGEMENTS

General

6.1 The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification

- 6.2 The Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.
- 6.3 The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 6.4 Each Partner shall keep the other Partner and the Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non-Pooled Fund.
- 6.5 Where there are Lead or Integrated Commissioning arrangements the Partners shall work in collaboration and shall endeavour to ensure that the NHS Functions and Health Related Functions are commissioned with all regard to ensuring that capability and capacity to meet identified needs reflect provision.

All Parties shall be responsible for compliance with and making payments of all sums due to a Provider pursuant to the terms of each Service Contract.

All Parties shall work in co-operation and endeavour to ensure that the relevant Services are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

Each Partner shall keep the other Partners and any other Partnership Boards regularly informed of the effectiveness of the arrangements, including use of the Better Care Fund and any Overspend or Underspend in a Pooled Fund.

- 6.6 The Partners shall comply with the arrangements in respect of Joint (Aligned) Commissioning as set out in the relevant Scheme Specification, which shall include where applicable arrangements in respect of the Services Contracts. The relevant Partnership Board will report back to the Health and Wellbeing Board as required by its Terms of Reference.
- 6.7 **Appointment of Lead Commissioner**

Where there are Lead Commissioning Arrangements in respect of an Individual Scheme, the Lead Commissioner shall:

Exercise the Council health related functions and the NHS functions in conjunction as identified in the relevant Scheme Specification;

Commission services for individuals who meet the eligibility criteria set out in the relevant Service Specification or Business Plan;

Contact with Provider(s) for the provision of the Services on terms agreed with the other Partners;

Comply with all relevant legal duties and guidance of other Parties in relation to services being commissioned;

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;

Undertake performance management and contract management of all Service Contracts;

Make payment of all sums due to a Provider to the terms of any Service Contract; and

Keep the other Parties and the relevant Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

Integrated Commissioning

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

Appointment of a Lead Partner

- 6.9 Where there are Lead Commissioning Arrangements in respect of an Individual Scheme the Lead Partner shall:
- 6.9.1 Exercise the NHS Functions in conjunction with the Health Related Functions as identified in the relevant Scheme Specification;
- 6.9.2 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.
- 6.9.3 Commission Services for individuals who meet the eligibility criteria set out in the relevant Scheme Specification;
- 6.9.4 Contract with Provider(s) for the provision of the Services on terms agreed with the other Partner;
- 6.9.5 Comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 6.9.6 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;
- 6.9.7 Undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements;
- 6.9.8 Make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- 6.9.9 Keep the other Partner and Partnership Board regularly informed of the effectiveness of the arrangements including the Better Care Fund and any Overspend or Underspend in a Pooled Fund or Non Pooled Fund.

7 ESTABLISHMENT OF A POOLED FUND

- 7.1 In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as set out in the Schedules and Summary Scheme Specification or Business Cases.
- 7.2 Subject to Clause 7.3, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
- 7.2.1 The Contract Price;
 - 7.2.2 Where the Council is to be the Provider, the Permitted Budget;
 - 7.2.3 Performance Payments
 - 7.2.4 Third Party Costs
 - 7.2.5 Approved Expenditure ("Permitted Expenditure")
- 7.3 The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner
- 7.4 For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with Clause 7.3.
- 7.5 Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
- 7.5.1 holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners;
 - 7.5.2 providing the financial administrative systems for the Pooled Fund; and
 - 7.5.3 appointing the Pooled Fund Manager;
 - 7.5.4 ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

8 POOLED FUND MANAGEMENT

- 8.1 When introducing a Pooled Fund, the Partners shall agree:
- 8.1.1 which of the Partners shall act as Host Partner for the purposes of Regulations 7(4) and 7(5) and shall provide the financial administrative systems for the Pooled Fund;
 - 8.1.2 which officer of the Host Partner shall act as the Pooled Fund Manager for the purposes of Regulation 7(4) of the Regulations.
- 8.2 The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:
- 8.2.1 the day to day operation and management of the Pooled Fund;
 - 8.2.2 ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification;

- 8.2.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund;
- 8.2.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund;
- 8.2.5 reporting to the relevant Partnership Board (JSCG) and the Financial Sub Group (FSG), as required by this Agreement and by the Partnership Board
- 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 prepare and submit Quarterly reports (or more frequent reports if required) and an annual return about income and expenditure from the Pooled Fund together with such other information as may be required by the Partners to the relevant Partnership board
- 8.2.8 The Partnership Board (JSCG) will through information received monitor the effectiveness of the Pooled Fund and Partners will then be able to complete their own financial accounts and returns. The partners agree to provide all necessary information to the Pooled Fund Manager in times for the reporting requirements to be met.
- 8.2.9 preparing and submitting reports to the Health and Wellbeing Board as required.
- 8.3 In carrying out their responsibilities as provided under Clause 8.2, the Pooled Fund Manager shall:
 - 8.3.1 have regard to National Guidance and the Partnership Board be accountable to the Partners for delivery of those responsibilities.
- 8.4 The Partnership Board may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes within the financial year.

9 NON POOLED FUNDS

- 9.1 Any Financial Contributions agreed to be held within a Non Pooled Fund will be notionally held in a fund established solely for the purposes agreed by the Partners. For the avoidance of doubt, a Non Pooled Fund does not constitute a pooled fund for the purposes of Regulation 7 of the Partnership Regulations.
- 9.2 When introducing a Non Pooled Fund in respect of an Individual Scheme, the Partners shall agree:
 - 9.2.1 which Partner if any, shall host the Non-Pooled Fund
 - 9.2.2 how and when Financial Contributions shall be made to the Non-Pooled Fund.
- 9.3 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Non-Pooled Fund, meeting all required accounting and auditing obligations.

- 9.4 Both Partners shall ensure that any Services commissioned using a Non Pooled Fund are commissioned solely in accordance with the relevant Scheme Specification
- 9.5 Where there are Joint (Aligned) Commissioning arrangements, both Partners shall work in cooperation and shall endeavour to ensure that:
- 9.5.1 the NHS Functions funded from a Non-Pooled Fund are carried out within the BLMK ICB Financial Contribution to the Non- Pooled Fund for the relevant Service in each Financial Year; and
- 9.5.2 the Health Related Functions funded from a Non-Pooled Fund are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Service in each Financial Year.

10 FINANCIAL CONTRIBUTIONS

- 10.3 The Financial Contribution of the BLMK ICB and the Council to any Pooled Fund or Non-Pooled Fund for the first Financial Year of operation shall be as set out in Schedule 7. The management of Financial Contributions going forward varies for different Services and is set out in the relevant Schedule or Summary Scheme Specification/service specifications or for BCF, through the Business Case. An Appendix summarising the contributions will be agreed as part of Schedule 7 Financial Arrangements.
- 10.4 The management of Financial Contributions going forward varies for different Services is set out in each Schedule. The financial contributions for each Service must be agreed annually in writing by the JSCG before the beginning of the new financial year. Any variations in funds, projected underspends or overspends must be reported to the JSCG Finance and Performance Sub Group and then reported to the JSCG.
- 10.5 Financial Contributions will be paid as set out in the each Schedule or Summary Scheme Specification or Business Case. This will be usually three months in arrears.
- 10.6 No provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in the relevant Partnership Board minutes and recorded in the budget statement as a separate item.

11 NON FINANCIAL CONTRIBUTIONS

- 11.1 Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. [These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.]
- 11.2 Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this

Agreement (including, but not limited to, management of Services Contracts and the Pooled Fund).

12 RISK SHARE ARRANGMENTS, OVERSPENDS AND UNDERSPENDS

Risk share arrangements

- 12.1 The Partners have agreed risk share arrangements as set out in Schedule 7, section 6 and the associated Service Specifications or Business Cases. These provide for financial risks arising from the delivery of Integrated Services the commissioning of Services from pooled funds and in the Better Care Fund Schedule the use of the contingency.

Overspends in Pooled Fund

- 12.2 Subject to Clause [12.2], the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavours to ensure that the expenditure is limited to Permitted Expenditure.
- 12.3 The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavours to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure and it has informed the Partnership Board in accordance with Clause 12.4.
- 12.4 In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and accurate data is presented with an explanation of why this has occurred

12.5 Overspends in Non Pooled Funds

- 12.6 Where in Joint (Aligned) Commissioning Arrangements either Partner forecasts an Overspend in relation to a Partners Financial Contribution to a Non-Pooled Fund that Partner shall as soon as reasonably practicable inform the other Partner and the Partnership Board.

Underspend

- 12.7 In the event that expenditure from any Pooled Fund or Non Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Schedule 3 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

In the event that the Pooled Fund Manager identifies an actual or projected under spend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible and action agreed as appropriate by the Partnership Board.

13 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.

14 VAT

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

15 AUDIT AND RIGHT OF ACCESS

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

16 LIABILITIES AND INSURANCE AND INDEMNITY

- 16.1 Subject to Clause 16.2, and 16.3, if a Partner ("First Partner") incurs a Loss arising out of or in connection with this Agreement (including a Loss arising under an Individual Scheme) 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 any Services Contract then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 16.2 Clause 16.1 shall only apply to the extent that the acts or omissions of the Other Partner contributed to the relevant Loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner or the Partnership Board.
- 16.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause 16. the Partner that may claim against the other indemnifying Partner will:
- 16.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;

- 16.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed);
- 16.3.3 give the Other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the Indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 16.4 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from this Agreement and in the event of Losses shall seek to recover such Loss through the relevant policy of insurance (or equivalent arrangement)
- 16.5 Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

Conduct of Claims

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

17 STANDARDS OF CONDUCT AND SERVICE

- 17.1 The Partners will at all times comply with Law and ensure good corporate governance in respect of each Partner (including the Partners respective Standing Orders and Standing Financial Instructions).
- 17.2 The Councils are subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

- 17.3 The BLMK ICB is subject to the ICB 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 ICB Statutory Duties and clinical governance obligations.
- 17.4 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the service.

18 CONFLICTS OF INTEREST

At the date of this Agreement the Partners confirm that they are not aware of any conflict of interest or potential conflict of interest in relation to the provision of the Services stated in this document. In the event that any of the Partners becomes aware of any such conflict at any time during the currency of this Agreement it shall immediately advise the other Partners of the same and the Partners shall thereafter agree a course of action within which the Partners shall act.

The Partners shall ensure that they:

Have adequate policies and procedures in place (that shall be shared with the other Partners, on request) to ensure that relevant controls assurance, probity and professional standards are met;

Comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2029 (Relevant Requirements)

Do not engage in any activity, practise or conduct which would constitute an offence under sections 1,2 or 6 of the Bribery Act 2021 if such activity, practice or conduct has been carried out in the UK;

Have and thereafter maintain in place for the duration of the term of this Agreement, mutual policies and procedures, including (but not limited to) adequate procedures under the Bribery Act 2021 to ensure compliance with the Relevant Requirements and Clause 19.1.2 of this agreement, and will enforce them where appropriate;

Include formal declarations of interest on the agenda for all formal meeting; and

Promptly report to the other Partners any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement

For the purpose of this clause 18, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) sections 6(5) and 6(6)) of that Act and section 8 of that Act respectively. For the purposes of Clause 18, a person associated with a Partner includes, but is not limited to, any subcontractor of the Partner.

19 GOVERNANCE

- 19.1 Overall strategic oversight of partnership working between the Partners is vested in the Health and Well Being Board, which for these purposes shall make recommendations to the Partners as to any action it considers necessary. The Health and Well Being Board will be supported in managing this responsibility by the relevant Partnership Board; the Luton Joint Strategic Commissioning Group. The overall governance for the Section 75 agreement is vested in the Place for Local Authorities.
- 19.2 A structure diagram showing the reporting arrangements is set out in Schedule 5, Joint Commissioning and Governance Boards of this agreement. This includes details of the role and function of the Partnership Board and subgroups.
- 19.3 The Partnership Board shall be responsible for the overall approval of the Individual Schemes and the financial management set out in Clause 12 and Schedule 7, Financial Arrangements .
- 19.4 The Health and Wellbeing Board shall be responsible for ensuring compliance with the Better Care Fund Plan and the strategic direction of the Better Care Fund.
- 19.5 Each Scheme Specification shall confirm the governance arrangements in respect of the Individual Scheme and how that Individual Scheme is reported to the Partnership Board and Health and Wellbeing Board.

20 REVIEW

- 20.1 Unless directed by the Health and Well Being Board who may agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement, any [Pooled Fund and Non Pooled Fund] and the provision of the Services within 3 Months of the end of each Financial Year.
- 20.2 Subject to any variations to this process required by the Health and Well Being Board, Annual reviews or Partnership agreements shall be conducted in good faith and where applicable, in accordance with the governance arrangements set out in Schedule 5.
- 20.3 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.

21 COMPLAINTS

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

22 TERMINATION & DEFAULT

- 22.1 This Agreement may be terminated by any Party. Arrangements for early termination or review are covered in each Schedule. The minimum notice period required should not be less than six (6) months notice in writing.

- 22.2 Each Individual Scheme may be terminated in accordance with the terms set out in the relevant Scheme Schedule or Summary Scheme Specification provided that the Partners ensure that statutory service requirements and Better Care Fund requirement continue to be met. The process for variation of service specification/ schedules is documented in 30.1.
- 22.3 If any Partner (“Relevant Partner”) fails to meet any of its obligations under this Agreement, the other Partners (acting jointly) may by notice require the Relevant Partner to take such reasonable action within a reasonable timescale as the other Partners may specify to rectify such failure. Should the Relevant Partner fail to rectify such failure within such reasonable timescale, the matter shall be referred for resolution in accordance with Clause 23.
- 22.4 Termination of this Agreement (whether by effluxion of time or otherwise) shall be without prejudice to the Partners’ rights in respect of any antecedent breach .
- 22.5 In the event of termination of this Agreement, the Partners agree to cooperate to ensure an orderly wind down of their joint activities and to use their best endeavours to minimise disruption to the health and social care which is provided to the Service Users.
- 22.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 22.7 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so;
- 22.8 where either Partner has entered into a Service Contract which continues after the termination of this Agreement, both 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;
- 22.8.1 the Lead Partner shall make reasonable endeavours to amend or terminate a Service Contract (which shall for the avoidance of doubt not include any act or omission that would place the Lead Partner in breach of the Service Contract) where the other Partner requests the same in writing PROVIDED THAT the Lead Partner shall not be required to make any payments to the Provider for such amendment or termination unless the Partners shall have agreed in advance who shall be responsible for any such payment.
- 22.8.2 where a Service Contract held by a Lead Partner relates all or partially to services which relate to the other Partner's Functions then provided that the Service Contract allows the other Partner may request that the Lead Partner assigns the Service Contract in whole or part upon the same terms mutatis mutandis as the original contract.
- 22.8.3 the Partnership Board shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 22.8.4 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.

- 22.7 In the event of termination in relation to an Individual Scheme the provisions of Clause 22.6 shall apply mutatis mutandis in relation to the Individual Scheme (as though references as to this Agreement were to that Individual Scheme).

23 DISPUTE RESOLUTION

- 23.1 In the event of a dispute between the Partners arising out of this Agreement, any Partner may serve written notice of the dispute on the other Partner, setting out full details of the dispute and referencing the arrangements set out in Schedule 7, Section 11.
- 23.2 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 23.1, at a Joint Strategic Commissioning Group meeting convened for the purpose of resolving the dispute.
- 23.3 If the dispute remains after the meeting detailed in Clause 23.2 has taken place, the Partners' respective chief executives or nominees shall meet in good faith as soon as possible after the relevant meeting and in any event within fourteen (14) days of the date of the meeting, for the purpose of resolving the dispute. At this point the Health and Wellbeing Board should also be informed of the dispute.
- 23.4 If the dispute remains after the meeting detailed in Clause 23.3 has taken place, then the Partners will attempt to settle such dispute by mediation in accordance with the CEDR Model Mediation Procedure or any other model mediation procedure as agreed by the Partners. To initiate a mediation, either Partner may give notice in writing (a "**Mediation Notice**") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Partners asking them to nominate a mediator. The mediation shall commence within twenty (20) Working Days of the Mediation Notice being served. Neither Partner will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one (1) hour. Thereafter, paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Partners). The Partners will co-operate with any person appointed as mediator, providing him with such information and other assistance as he shall require and will pay his costs as he shall determine or in the absence of such determination such costs will be shared equally.
- 23.5 Nothing in the procedure set out in this Clause 23 shall in any way affect either Partner's right to terminate this Agreement in accordance with any of its terms or take immediate legal action.

24 FORCE MAJEURE

- 24.1 Neither Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs and it is prevented from carrying out its obligations by that Force Majeure Event.
- 24.2 On the occurrence of a Force Majeure Event, the Affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the

Force Majeure Event, including evidence of its effect on the obligations of the Affected Partner and any action proposed to mitigate its effect.

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

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

25 CONFIDENTIALITY

The Partners shall:

25.1 Keep confidential any information obtained in connection with this Agreement and control or process any personal data of Clients in accordance with the Data Protection Act 1998; and take appropriate technical and organizational measures against unauthorised or unlawful processing of such data and against accidental loss or destruction of or damage to such personal data

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

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

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

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

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

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

25.3 All Partners:

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

- 25.3.2 will ensure that, where Confidential Information is disclosed in accordance with Clause 25.3.1, the recipient(s) of that information is made subject to a duty of confidentiality equivalent to that contained in this Clause 25;
- 25.3.3 shall not use Confidential Information other than strictly for the performance of its obligations under this Agreement.

26 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

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

27 OMBUDSMEN

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

28 INFORMATION SHARING

All Partners shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. All Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

All Partners shall share information about Service Users to improve the quality of care and enable integrated working.

Subject to the requirements of the Data Protection Laws, the parties agree throughout the Agreement Period to co-operate with each other in the provision to each other of information reasonably required to enable them to account for funds contributed by the Partners under this Agreement including reporting on their statutory obligations and planning overall strategies to meet statutory obligations.

The Partners shall follow the GDPR Schedule protocol, Schedule 8 of this agreement, in line with agreed timescales.

29 NOTICES

29.1 Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 29.3 or such other address as each Partner may previously have notified to the other Partner in writing. **A notice shall be deemed to have been served if:**

29.1.1 personally delivered, at the time of delivery;

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

29.1.3 **if sent by electronic mail, at the time of transmission a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post on the same day as that on which the electronic mail is sent.**

29.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice, or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

29.3 The address for service of notices as referred to in Clause 29.1 shall be as follows unless otherwise notified to the other Partner in writing:

- if to the Luton Borough Council, addressed to the Corporate Director Population Wellbeing

Address: 3rd Floor Arndale House, 37 The Mall, Luton LU1 2LJ

Email: mark.fowler@luton.gov.uk

and

- if to the BLMK ICB, addressed to the Director of Commissioning, Contracting & Transformation

Address: 3rd Floor Arndale House, 37 The Mall, Luton LU1 2LJ

Email: Anne.brierley2@nhs.net

30 VARIATION

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

governance schedule, agreement from all parties will be sought and the following agreed:

- The process for change or variation includes a schedule/specification, known as a Deed of Variation
- The process for introduction of new scheme/ specification
- The process for review of scheme/ specification at any point
- This agreement will be formally minuted and any future schedule/ specifications which need to be varied or introduced will follow this route.

31 CHANGE IN LAW

- 31.1 The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.
- 31.2 On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.
- 31.3 In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause 23 (Dispute Resolution) shall apply.

32 WAIVER

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

33 SEVERANCE

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

34 ASSIGNMENT AND SUB CONTRACTING

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

35 EXCLUSION OF PARTNERSHIP AND AGENCY

- 35.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render any Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- 35.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, any Partner will have authority to, or hold itself out as having authority to:
- 35.2.1 act as an agent of the other;
 - 35.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or
 - 35.2.3 bind the other in any way.

36 THIRD PARTY RIGHTS

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

37 ENTIRE AGREEMENT

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

38 COUNTERPARTS

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

39 GOVERNING LAW AND JURISDICTION

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

with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

Following on from the agreement of this document, all parties agree to review existing schedules or agree new schedules by 30th March 2024 (subject to change authorised by Executive leads for Luton Borough Council and the BLMK ICB.)

Luton 2023-2024 Schedule Matrix	
Schedule 1	Schedule for Integrated Children's and Young People's Commissioning
Schedule 2	Schedule for Commissioning Integrated Mental Health & Wellbeing
Schedule 3a	Integrated Strategic Learning Disabilities Commissioning
Schedule 3b	Schedule for Learning Disabilities Service Provision
Schedule 4	Schedule for the Better Care Fund and the Improved Better Care Fund
Schedule 5	Schedule for Joint Commissioning Arrangements and Governance Boards.
Schedule 6	The Luton At Place Board Partnership
Schedule 7	S75 Financial Agreements
Schedule 8	GDPR

APPROVED LUTON ICB 05.04.23

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

Signed for on behalf of
LUTON BOROUGH COUNCIL

**Approved by HWB - Pending
Signing & Sealing**

**Authorised Signatory
Title:**

Signed for on behalf of
INTEGRATED CARE BOARD

**Approved by HWB - Pending
Signing & Sealing**

**Authorised Signatory
Title:**

APPROVED LUTON HWB 05.04.23

SCHEDULE 1 SCHEDULE FOR INTEGRATED CHILDREN'S AND YOUNG PEOPLE'S COMMISSIONING

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

1 OVERVIEW OF SERVICES

This Schedule covers integrated commissioning of the following social care and health services for Children and Young People using aligned budgets:

1. London Road Resource Centre with variable contribution from Health & Social Care depending on the demand, and joint review of provision to be undertaken during 2023/24.
2. Children's residential placements funded by tripartite funding arrangements, variable funding from health & Social care depending on the demand
3. Integrated disability services including SENDIASS and SEND joint resource budget (2023/24) to include the parent carer forum and provide SALT provision in our three Special Schools, including Elkan training of the school aged children as part of the 0-16 speech, language and communication pathway.
4. Children's Joint Commissioner to support commissioning intentions. The role has a SEND and health focus
5. Contract Carers service with fixed contribution from Health and Social Care

Lead Commissioning of the services is undertaken by the Council.

2 AIMS AND OUTCOMES

The schedule will have governance and oversight through the children and young people sub group (CSB) of the Joint Strategic Commissioning Board (JSCG), who are responsible for:

1. Developing a commissioning priorities plan to improve the health and wellbeing for CYP, to include:
 - a. scrutiny and reporting of services within Section 75
 - b. review and agree tripartite funding processes
 - c. receive and ratify CYP needs assessments to inform joint commissioning priorities
 - d. provide a 6 monthly report to JSCG

3 THE ARRANGEMENTS

Full detail about the arrangements for each service is included in the service specifications. The Host Partner for the commissioning, and in some cases delivery, of the Services is the Council and the Lead Managers, being Officers of the Council are identified in the service specifications.

4 FUNCTIONS

The BLMK ICB delegates its functions of making arrangements for the provision of services to eligible Patients (children and their carers) under sections 5 of the Regulations to the

Council. The Council will exercise these functions alongside its own functions for the delivery of the Service to children and young people as set out under Regulation 6 and which by section 18 of the Children Act 2004 and subsequent Acts are conferred on or exercisable by the authority.

5 COMMISSIONING, CONTRACTING, ACCESS

51. Commissioning Arrangements

The services commissioned by the CSB are informed by the JSNA and by the by the Children and Young People's Trust Board.

5.2. Contracting Arrangements

The Lead agency will:

- contract with Provider(s) for the provision of the Services on terms agreed with the other Partners;
- comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned;
- 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;
- undertake performance management and contract monitoring of all Service Contracts;
- make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
- keep the other Partner and the JSCG 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.
- Information about eligibility for and access to provided services is included in each of the summary descriptions.

6 FINANCIAL CONTRIBUTIONS

Detailed Financial breakdown including contribution from both Health & Social Care is included in the Financial Schedule 7. Financial contributions for the new financial year are decided each year at the time of budget setting process for both Health & Social care and agreed by the JSCG three (3) months before the beginning of the Financial Year.

7 FINANCIAL GOVERNANCE ARRANGEMENTS

The finance arrangements of the Host Partner apply. Where there are any issues of concern there is discussion and agreement between finance managers from both Partners. Any projected overspends and use of any under spends needs to be discussed between the Partners and agreed at the JSCG.

8 VAT

The regime of the host Partner applies.

9 GOVERNANCE ARRANGEMENTS

Terms of reference for the children's sub group of the JSCG states role of oversight and reporting of the CYP S75 schedule. This will also incorporate as appropriate commissioning for children's public health services, which is not part of the integrated commissioning arrangements, however provides an opportunity to align services between the two organisations party to this agreement.

10 NON FINANCIAL RESOURCES

Council and BLMK ICB contributions where applicable are shown in the service specifications.

11 ASSURANCE AND MONITORING

Performance is presented at JSCG and when requested the Children and Young People's Trust Board.

12 LEAD OFFICERS

Lead Officers for each service are identified in the service specifications

13 INTERNAL APPROVALS

In addition to approval being given at JSCG, there should be sign off of the following schemes included in this Schedule approved as part of the Section 75 Agreement, as required:

- Out of Borough Placements for children with Complex needs; Continuing health care – Children with Complex Needs Panel and Care Resource Management Panel
- Public Health at Public Health Commissioning Board.

14 RISK AND BENEFIT SHARE ARRANGEMENTS

This Agreement covers areas of children's services, which potentially have related financial and resource risks. These risks are mainly an increase in demand for services, where the agreed aligned budget at the time of budget setting can sometimes become insufficient during the financial year to meet the increased demand. In practice, all placements services within the S75 agreement are demand led, and this has the potential to bring about under spends or overspends against the aligned budget.

The S75 Agreement is clear about how projected overspends or under spends on the pooled budget should be managed (see Clauses 12.2-12.6) with a report with recommended options being brought to JSCG, but the underlying principle is that they should both be assigned to the each party to this Agreement (the Council and the BLMK ICB) in the same proportion as the contributions made by both parties to this Agreement. The Council, as the Lead Commissioner, must notify the BLMK ICB as soon as a projected tolerance level of 5% below the budget is identified, and that no overspends on the pooled budget are allowed without the prior agreement of the BLMK ICB. In practical terms, this means that the BLMK ICB and the Council will be requested to increase their contributions to the pooled budget in the same proportions as the initial allocations, in order to reduce the likelihood of a year-end negative balance.

The highest risk area within the aligned budget are the services provided to children with complex or continuing health care needs. The initial budgets are based on current expected numbers of children and young people; however, due to the low volume and associated high costs, the demand for services is inherently volatile.

To mitigate this risk, cases will be reviewed through allocation panels, at which commissioners and providers can discuss provision according to need, identify changes in care packages and forecast future demand. Cases are discussed by the panel against a set of agreed criteria.

The panels include:

- Children with Complex Needs Panel (to include mental health complex needs)
- Care Management Resource Panel for Children and Young People

If funding is agreed that would potentially take the aligned budget into an overspend position, the Council's Population Wellbeing Department Finance Business Partner will inform the BLMK ICB Associate Director of Finance (Reporting & Contracting), as part of quarterly budget monitoring reporting. BLMK ICB. In addition, the overall quarterly budget position is also reported at the next meeting of the JSCG.

15 REGULATORY REQUIREMENTS

Statutory requirements for the commissioning of NHS Children's Services apply.

16 INFORMATION SHARING

Client specific information, where applicable, is held on the Council's Children's services database and on the client's NHS health records. All information which is held and used conforms to regulatory requirements including data protection and Caldicott Guardianship.

17 DURATION AND EXIT STRATEGY

The intention of the Partners is to provide services to meet assessed need. The arrangements are reviewed and agreed on at least a yearly basis. Arrangements for early termination or changes are set out in this Agreement. This Schedule and the services covered by it will be reviewed on an annual basis and a report taken to The JSCG.

19 OTHER PROVISIONS

All Services comply with arrangements for Safeguarding Children and may be asked to demonstrate this to Luton's Children and Young People's Safeguarding Children Board

Appendix 1 CSB ToR- Children's sub group of the JSCB ToR Jan 23



Children's sub group
of JSCG ToR Jan 23 V

Appendix 2 SEND Improvement Plan



SEND Improvement
2023-24.xlsx

SCHEDULE 2

SCHEDULE FOR COMMISSIONING INTEGRATED MENTAL HEALTH AND WELLBEING

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

1 OVERVIEW OF SERVICE

This Schedule concerns the commissioning of integrated adult mental health and mental health adult social care services (18 years and over).

Services may be administered using both pooled funds and non-pooled funds as set out in the financial schedule.

The Lead Commissioner of this commissioning function is NHS Bedfordshire, Luton & Milton Keynes Clinical Integrated Care Board (ICB).

2 AIMS AND OUTCOMES

The aim of this Schedule is to set out the strategic commissioning functions to achieve mental health outcomes for adults (including older adults), and mental health adult social care. The outcomes are to:

- a) achieve a transformed mental health and mental health social care offer for Luton, integrated with physical healthcare; and
- b) Deliver the requirements of the NHS Long Term Plan.

3 THE ARRANGEMENTS

The arrangements will include

- a) Lead commissioning
- b) Integrated commissioning
- c) The use of pooled budgets
- d) The use of non-pooled budgets.

4 FUNCTIONS

The ICB is the lead commissioner for mental health and wellbeing for the population in Luton (registered and resident). Luton Borough Council (LBC) is an associate commissioner to the contracts with the East London Foundation Trust (ELFT) and Turning Point and has contracts for mental health services.

As part of joint working at place, LBC and the ICB are committed to improving service provision for those with mental health needs and improving the mental health and wellbeing of Luton residents.

The commissioning function will:

- ensure that there are appropriate commissioned, cost-effective services to meet the needs of those adults with mental health needs ordinarily resident in Luton;
- work with local stakeholders to shape the strategic direction for mental health in Luton and, in doing so, develop jointly agreed outcome measures for local mental health and wellbeing. These outcome measures will complement national standards and, where

it adds value to Luton residents, will be designed and delivered in conjunction with a wide group of stakeholders;

- understand needs and shape the market for all cohorts (including children preparing to transition to adult services). This will involve:
 - assessing the local population prevalence of mental health;
 - analysing assessed needs in health and social care plans, to provide an early view of likely service needs and enable early intervention.
- ensure in-depth knowledge and experience of national guidance and best practice is applied to commissioning initiatives for adults with a mental health need;
- provide support to local providers;
- plan services that take a ‘whole-life’ approach and enable smooth transitions;
- develop a Market Position Statement and development strategy to include:
 - undertaking work to understand the capacity and skill-mix of current and potential health and social care providers and complete a gap analysis for inclusion in the local market position statement. enabling the robust development of community services;
 - undertaking a capacity and gap analysis of housing need and work proactively with housing and social care partners to develop and deliver personalised options for current and future demand.

5 SERVICES

- Social care and health services, including services commissioned from voluntary sector organisations, to adults with mental health needs.
- Social care and health services to older people with mental health needs, including specialist health services to older people with dementia.

The arrangement currently includes the following services and providers:

<p><i>East London NHS Foundation Trust contract</i></p>	<p>Five (plus two) year contract for provision of mental health services including but not limited to:</p> <ul style="list-style-type: none"> • Inpatient beds for adults, older adults and adults with learning disabilities • Psychiatric Intensive Care beds • Early Intervention in Psychosis • Community Mental Health teams • Psychiatric Liaison Service in Luton & Dunstable Hospital • Children & Young People’s Mental Health Service * • Specialist Learning Disability Service (SPLD) ** • Crisis support service • Memory Assessment Service and older adult support
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	<ul style="list-style-type: none"> Assessment and care management services as set out under the Care Act; includes assessment of adults with eligible need, support planning and reviewing.
<i>Complex mental health placements</i>	Individual Specialist Hospital placements for patients sectioned under the Mental Health Act and placements for patients with a primary mental health need that are not entitled to S.117 aftercare under the MHA.
<i>Section 117 Aftercare MHA</i>	This is joint support for adults entitled to S.117 aftercare
<i>MH non-contractual activity</i>	Activity undertaken by out of area providers and re-charged to the ICB
<i>GPs (Mental Health Act Assessments)</i>	Charges from GPs for Mental Health Act assessments undertaken
<i>Total Wellbeing (Turning Point)</i>	An integrated wellbeing contract between the ICB and LBC. It includes IAPT (ICB funded); social prescription (joint funded) and healthy lifestyles services (LBC funded).
<i>Mental health floating support within wider universal floating support</i>	<p>MH floating support, enabling clients to successfully secure and maintain independent living whilst offering support to address individual needs. LBC funded.</p> <p>Contract is universal floating support; a flexible peripatetic service provided to people in their own homes or tenancies with the aim of enabling or maintaining independence.</p>
<i>Penrose STEPS</i>	Acute mental health ward based support to find housing provision post discharge, LBC funded, block payment, not part of the S75 Agreement. (For service information only)

40

41 The services excluded from the Schedule for the Council are

- Client contributions, including the assessment and collection of client contributions by the Income teams
- Social care LBC in-house provided services to adults with Asperger's
- Ongoing care management and provision of social care placements for older people with dementia provided through the People Directorate.

6 COMMISSIONING, CONTRACTING, ACCESS

Commissioning Arrangements

The ICB will be the Lead Commissioner for the contracts with the East London NHS Foundation Trust and Turning Point and is responsible for contract management.

The ICB and LBC are committed to strengthening joint working by:

- Exploiting opportunities to further integrate services for the benefit of Luton residents (including people registered with Luton GPs who do not live in the local

- authority area of Luton)
- Creating a mental health strategy co-produced through the Reimagining Mental Health programme
 - Securing efficiencies in staffing and management arrangements through partnership working
 - Working to develop partnerships in strategy development and service delivery with the voluntary and community sector
 - Revitalising partnership with Luton residents through the use co-production principles.

The ICB and LBC will be open and transparent to ensure that local resources are directed appropriately to meet the mental health needs of the residents of Luton. This will include consideration between the partners about the appropriate balance of investment between population-based preventative work in mental health and service delivery.

Contracting Arrangements

1. East London NHS Foundation Trust

The former CCG contracted ELFT as the provider of secondary mental health care services in 2015, with LBC as an associate commissioner. The contract term was five years plus two and was extended to 31 March 2022. The contract has been reviewed and renewed by the ICB and is 2 years plus 1 year covering the three Local Authority areas in Bedfordshire. The contract follows NHS standard contract terms.

Activity in relation to Luton Council's statutory responsibility for Adult Social Care (ASC) for people with mental health needs is fulfilled by ELFT under this contract including mental health requirements under the Care Act.

The ICB and LBC will work together to consider the future shape and design of mental health services in Luton. As such, it may seek to make amendments to the current provider contract. The ICB and LBC will work closely with ELFT in the development of future mental health strategy and negotiate any changes that may be deemed necessary to the current provider contract. The ICB will coordinate development of any future contract with ELFT, involving LBC and other parties, including opportunities for co-production.

2. Total Wellbeing Luton

The former CCG and LBC entered into a joint commissioning arrangement in 2017/18, to provide a holistic health and wellbeing service comprising Improving Access to Psychological Therapies (IAPT, a CCG commissioned service), social prescription (funded via Public Health grant and Better Care Fund) and healthy lifestyles services (commissioned by LBC, funded by PH grant). The former CCG as the lead commissioner contracted Turning Point to provide the service, for five years and extended the contract for a further plus two years (2018-2023 or 2024/5). For the purposes of this S.75 Agreement, funding from both the ICB and LBC for this contract is aligned. The contract is a block contract, and no risk share is required. A contract review group / meeting oversees the delivery and is the governance mechanism for the overall contract.

7 FINANCIAL CONTRIBUTIONS

The ICB and LBC will align all and pool some of the financial resources allocated for

the provision of mental health services. In doing so, they will ensure that these funds are utilised to ensure the provision of quality mental health care services for Luton.

All care packages agreed by LBC and the ICB to be joint-funded will be split on a 50:50 basis. This will apply to S.117s and mental health non-S117s in accordance with joint funding protocols.

Mental Health Budget for 2023-24

The budget is included in the Financial Schedule.

Financial Year 2023/24

Financial resources in subsequent years will be agreed by the JSCG three (3) months before the beginning of the Financial Year.

8 Governance Arrangements for Mental Health and Specialist Learning Disability Teams.

The BLMK ICB ELFT Contract Review meeting and the BLMK Mental Health Programme Board will oversee delivery of the Mental Health strategy.

APPROVED LUTON HWB U5.04.23

SCHEDULE 3A

INTEGRATED STRATEGIC LEARNING DISABILITIES COMMISSIONING

1. Purpose

The purpose of this schedule is to define and explain the roles and responsibilities of Bedfordshire, Luton and Milton Keynes Integrated Care Board (ICB) and Luton Borough Council (LBC) in the commissioning of services for adults with a diagnosis of learning disabilities and/or autism².

2. Aims and Outcomes

The intention is to jointly oversee strategic commissioning, through a population-based approach, focused on health and social care outcomes for all adults with a learning disability.

The commissioning of services for people with a learning disability will be transformed through joint commissioning budgets and contracting arrangements, which incentivise system-wide improvement, placing ever-greater emphasis on the outcomes achieved in addition to the quantity of activity delivered.

3. The Arrangements

The ICB has an Associate Director for Mental Health & Learning Disabilities and a Senior Commissioner for Learning Disabilities and Autism.

The Commissioning of Specialist Learning Disability Service (SPLD) form part of the wider *East London NHS Foundation Trust contract*. See **Schedule for Commissioning Integrated Mental Health & Wellbeing**

LBC will provide a lead for the commissioning function on behalf of both parties, which will include:

- Leadership for place based commissioning
- The use and oversight of pooled budgets
- The use and oversight of non-pooled budgets.

The financial contributions, pertaining to people with learning disabilities with both health and social care needs, not met by universal services, will be made by the partners to a single Luton pooled budget hosted by LBC. The partners will also make financial contributions to some non-pooled budgets, which will be managed on behalf of partners by LBC.

4. Context and Legislation

Responsibilities and functions are derived from joint and separate legislation covering adult social care and the NHS. This includes, but is not limited to:

- The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD) and any reports and guidance following the Savile Inquiry (2015);
- The Transforming Care Programme – the next steps (2015);
- The Care Act (2014);
- The Health and Social Care Act (2012);

² Throughout 'learning disabilities' will be taken to mean 'learning disabilities and/or autism'

- The National Framework for Continuing Health Care (2012);
- Valuing People Now (2009);
- The NHS Long Term Plan 2019
- The Human Rights Act (1998).

Where appropriate plans to be informed by relevant NICE Guidance and Quality Standards including, but not limited to:

- NICE guideline 96 – Care and Support of People Growing Older with Learning Disability (<https://www.nice.org.uk/guidance/ng96>)
- NICE guideline 11 – Challenging Behaviour and Learning Disabilities: prevention and interventions for people with learning disabilities whose behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
- NICE guideline 93 – Learning disabilities and behaviour that challenges: service design and delivery (<https://www.nice.org.uk/guidance/ng93>) ;
- NICE guideline 54 – Mental Health Problems in People with Learning Disabilities: prevention, assessment and management (<https://www.nice.org.uk/guidance/ng54>).

5. Functions

The commissioning function will:

- ensure that there are appropriate commissioned, cost-effective services to meet the needs of those adults with learning disabilities ordinarily resident in Luton;
- understand needs and shape the market for all cohorts including children preparing to transition to adult services. This will involve:
 - assessing the local population prevalence of learning disabilities in children, young people and adults;
 - analysing assessed needs in education, health and social care plans, to provide an early view of likely service needs and enable early intervention;
 - identifying and using other sources of information, such as registers of people at risk of admission and other dynamic risk data; disabled children's registers; and records of referrals from liaison and diversion teams, youth offending teams and police.
- ensure in-depth knowledge and experience of national guidance and best practice is applied to commissioning initiatives for adults with a learning disability;
- provide support to local providers through the provider forum;
- plan services that take a 'whole-life' approach and enable smooth transitions;
- develop and support local and regional plans that have a single care pathway and point of access for adults with a learning disability, their families and carers that is reflected in commissioning strategies;
- develop a Market Position Statement and development strategy to include:
 - undertaking work to understand the capacity and skill-mix of current and potential health and social care providers and complete a gap analysis for inclusion in the local market position statement. enabling the robust development of community services;
 - undertaking a capacity and gap analysis of housing need and work proactively with housing and social care partners to develop and deliver personalised options for current and future demand;
- use and maintaining a register for those people most at risk of admission to hospital and put appropriate anticipatory support in place. For those on the register with offending behaviour, commission suitable providers who can manage high levels of risk and keep the person and the community safe;
- represent Luton for the Learning Disability Mortality Review (LeDeR), and the Transforming Care Partnership (TCP), attending meetings with NHS England as required and liaising with Specialised Commissioning.

6. Delivery through Partnership

Plan and deliver services in a way that:

- ensures co-production with adults using services and their families, carers and independent advocates;
- enables person-centered planning and provision;
- addresses the needs of different age groups but also takes a 'whole life' approach to planning;
- includes planning for a range of future housing and employment support needs;
- integrates health, social care and other relevant services;
- achieves quality and optimum life experience and outcomes/l for people with learning disabilities.

Working relationships:

- Ambulance Trusts (Ambulance and Patient Transport)
- Bedfordshire, Luton and Milton Keynes Integrated Care System (BLMK ICS) Providers;
- ICB and LBC Executive Teams;
- Commissioning Associate Directors and Service Directors;
- Community Trusts;
- Contracting Teams;
- Direct Reports/Team who may work within the ICB or Council;
- Finance and Business Intelligence teams;
- GP Practices, including GPs and Practice Staff;
- Integrated Urgent Care Provider;
- Luton Borough Council Adult Social Care Team;
- Luton Borough Council Community Learning Disabilities Team;
- Luton Borough Council councilors and portfolio holders;
- Mental Health Trusts;
- NHS Integrated Care Boards;
- NHS England and Improvement and NHS Digital including Specialised Commissioning;
- Members of the public and service users as appropriate;
- Quality leads across the system.

The services excluded from the Schedule for the Council are:

- Client contributions, including the assessment and collection of client contributions by the Income teams;
- LBC social care in-house provided services to adults;
- Assessment and care management and provision of social care placements provided through the Population Wellbeing Directorate, covered in the learning disabilities service schedule.

7. Financial Contributions

The ICB and LBC will align all and pool some of the financial resources allocated for the provision of learning disabilities services. In doing so, they will ensure that these funds are utilised to ensure the provision of quality services for those with learning disabilities for Luton.

All care packages agreed by LBC and the ICB to be joint-funded will be split on a 50:50 basis. This will include those subject to Section 117 arrangements in accordance with the joint funding protocols.

Learning Disabilities Budget for 2023/24

The budget is included in the Financial Schedule.

Financial Year 2023/24

Financial resources in subsequent years will be agreed by the JSCG three (3) months before the beginning of the Financial Year.

8. Governance Arrangements for Luton Integrated Strategic Commissioning Learning Disabilities Team

A Learning Disabilities Programme Board, reporting to the Joint Strategic Commissioning Group³ will oversee delivery of the LD strategy.

³ Or any subsequent group given authority to discharge this responsibility.

SCHEDULE 3B

SCHEDULE FOR LEARNING DISABILITIES SERVICE PROVISION

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

1. PURPOSE

- 1.1. The purpose of this schedule is to define and explain the roles and responsibilities of BLMK Integrated Care Board (ICB) and Luton Borough Council (LBC) in the provision of services for people (adults) with a primary diagnosis of learning disabilities including those who display behaviour that challenges or with a mental health condition.

2. SCOPE

- 2.1. This Agreement covers the management of pooled funds, care management, assessments and micro-commissioning arrangements with strategic commissioning described separately.
- 2.2. As a first principle all parties will work to ensure the effective use of funds for, the provision of the wider remit of care management across adult (18 years and above) health and social care.

3. CONTEXT

Responsibilities and functions are derived from joint and separate legislation covering adult social care and the NHS. This includes, but is not limited to:

- The Confidential Inquiry into Premature Deaths of People with Learning Disabilities (CIPOLD) and any reports and guidance following the Savile Inquiry (2015);
- The Transforming Care Programme – the next steps (2015);
- The Care Act (2014);
- Mental Capacity Act 2005
- The Health and Social Care Act (2012);
- The National Framework for Continuing Health Care (2012);
- Valuing People Now (2009);
- The NHS Long Term Plan (2019)
- The Human Rights Act (1998).

4. AIMS AND OBJECTIVES

4.1. This schedule aims to ensure:

- People with learning disabilities and their carers lead better lives;
- Better coordination and integration of health and social care activity, including early intervention and prevention;
- Better communication between all parties working with people with a learning disability;
- Best value sourcing of holistic services for people with learning disabilities, learning disabilities with autism as well as for their Carers;
- Increased safety of people with learning disability and a reduction in safeguarding risks and alerts;

- Promotion of each person's well-being and, enabling people with learning disabilities to live empowered lives as full citizens of the community.

4.2. The objectives of this schedule are largely determined by Valuing People (2000), Valuing People Now (2009), and are supplemented by National and local development including the Transforming Care Programme (TCP) and the Learning Disabilities Mortality Review (LeDeR). Key local integrated objectives include:

- Working in accordance with Section 2 of the Care Act 2014 to prevent, reduce and delay the need for care;
- Enabling people living out of the area to return to their home town where appropriate;
- Promoting social inclusion and independence through vocational training, paid employment and volunteering opportunities.

To work alongside commissioners to:

- Develop a learning disability pathway and service;
- Improve access to specialist mental health services for people with learning disabilities working with the local Mental Health provider;
- Facilitate accessible transport for people with a learning disability as a key to increasing their participation as active citizens;
- Reduce the reliance on residential care through the identification of a range of local community housing solutions.

5. THE ARRANGEMENTS

5.1. This is an integrated service arrangement with LBC as the Host Partner of the service.

5.2. The Adult Learning Disability Services will work as part of, or in collaboration, but not limited to with the following teams:

- ICB commissioned NHS Mental Health Trust;
- LBC's Quality Assurance and Care Placement;
- the ICB's Continuing Healthcare Team;
- the ICB's Commissioning Team;
- Primary Networks i.e. GPs and allied professionals
- Public Health and Wellbeing;
- The Bedfordshire, Luton and Milton Keynes Transforming Care Partnership;
- Transition teams in Children's Services and Community Health Services.

5.3. The Adult Learning Disability Team will maintain good communication and links with the police so that they can advise on assessments of vulnerability, particularly for people with mild or borderline learning disabilities who may otherwise not be identified as vulnerable and people who need support can be diverted from the criminal justice service.

6. FUNCTIONS

6.1. For the purpose of these arrangements, it is agreed that the ICB will delegate the Health Related Service Functions^{4,5} for people with learning disabilities to LBC and

⁴ Gov Legislation: The Functions of ICB's - <https://www.legislation.gov.uk/ukpga/2022/31/part/1/crossheading/integrated-care-boards-functions/enacted>

⁵ NHS England: Learning disabilities Guidance for CCG's - <https://www.england.nhs.uk/2012/10/ld-guidance-for-ccgs/>

that LBC will exercise these functions in conjunction with its Health and Social Care Functions for the purpose of fulfilling its obligations as an Integrated Micro-Commissioner and Provider under this agreement.

6.2. The services should fulfil the following core functions:

- Assess and review individuals with a learning disability identified as living with additional health needs;
- Give support to families and carers (by following the recommendations in the NICE Guideline 11 – Challenging Behaviour and Learning Disabilities: prevention and interventions for people with learning disabilities whose behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
- Provide quality assurance and service development;
- Ensure short-term assessment and intervention;
- Enable longer-term complex intervention.

6.3. Specific functions and activities include, but are not limited to:

- The recruitment and management of all health and social care staff through the Integrated Learning Disability Team ensuring that they have access to clinical and/or other appropriate supervision, continued professional development (CPD) and revalidation as appropriate;
- Facilitating the Joint Funding Panel ensuring that both health and social care assessments are evidence based and that the decision for joint funding is fair and follows the agreed joint funding protocols;
- Ensuring all people have a key worker to coordinate their care, where appropriate;
- Supporting people that use services through transition periods such as moving from children's services to adults or leaving the family home;
- Conducting assessments of carers' abilities to provide support and reviewing their ability to continue to do this⁶; signposting to carer/parent-training programmes as appropriate;
- Considering the needs of carers and knowing where to direct them to get support;
- Involving the person and their carers in all support planning using an asset and values based approach;
- Support service users take part in personalised daily meaningful activities, enabling people to develop skills for employment and referring to appropriate services;
- Encouraging service users to have their annual health check, engaging with screening programmes and supporting the uptake of flu vaccinations;
- Working alongside partner organisations to ensure people, families and providers are supported appropriately to identify the function of behaviour that challenges recognising possible triggers and environmental factors;
- Signposting to mental health partners as appropriate;
- Contributing to the development and maintenance of the dynamic risk register, providing timely updates as requested;
- Working alongside commissioning colleagues in the operational management of the Transforming Care agenda in Luton. Ensuring attendance at Care and Treatment Reviews (CTRs), supporting discharge planning and arranging LAEP meetings as a crisis response for those at risk of package breakdown;
- Supporting people who are ordinarily resident in Luton but living outside of the area to return to their community where appropriate;

⁶ Where people are under CHC funding, the Learning Disabilities Team will undertake initial checklists and assessment for verification by the CHC team. Ongoing review requirements will be completed jointly by the teams.

- Undertaking or facilitating Section 42 safeguarding enquiries in line with local arrangements;
 - Undertaking reviews for people with learning disabilities including the use of direct payments for people buying health and social care services⁷ those people with learning disabilities funded through Continuing Health Care (CHC);
- 6.4.** The service should support adults, and their family members and carers in a way that is personalised, flexible, responsive, accessible and reflective.
- 6.5** The service, where appropriate, must comply with relevant NICE guidance and Quality Standards including, but not limited to;
- NICE guideline 96 – care and Support of people growing older with learning disability (<https://www.nice.org.uk/guidance/ng96>);
 - NICE guideline 11 – Challenging behaviour and learning disabilities: prevention and interventions for people with learning disabilities who behaviour challenges (<https://www.nice.org.uk/guidance/ng11>);
 - NICE guideline 93 – Learning disabilities and behaviour that challenges: service design and delivery (<https://www.nice.org.uk/guidance/ng93>) ;
 - NICE guideline 54 – Mental health problems in people with learning disabilities: prevention, assessment and management (<https://www.nice.org.uk/guidance/ng54>)
 - The Care Act (2014).

7. SERVICES

The key priorities and activities to inform service delivery are set out in the Team Plan, Joint Strategic Needs Assessment (JSNA) and other needs assessments and the Learning Disability Strategy that inform service delivery.

7.1. Authorisation for care and health services from the pooled and aligned budgets

Where care packages meet the CHC criteria, they will be funded by the ICB, but where they do not and the panel identifies additional health needs not met by universal services, they will be funded 50/50 between the ICB and LBC. This includes packages of support for those entitled to Section 117 aftercare, in accordance with the Joint Funding Protocols.

Based on this approach, disputes over the funding of individual packages of care should be rare; however, any disputes surrounding the funding allocation will be escalated to the Service Director Adult Social Care and the ICB Associate Director Mental Health & Learning Disabilities to resolve in the first instance. Where agreement cannot be reached then this will be taken to the Corporate Director of Population Wellbeing (LBC) and the Director of Commissioning & Contracts (ICB) and if necessary to the Joint Strategic Commissioning Group (JSCG).

Pending a resolution of the dispute, and if neither authority is currently funding, nor prepared to fund, this will automatically split 50/50, without prejudice, between LBC and the ICB as a short-term measure until resolved.

⁷ Approval for user of direct payments for health services will be jointly agreed with the Continuing Healthcare Team

7.2. Community Learning Disability Team

The Community Learning Disability Team forms part of the services for people within LBC's Public Health and Wellbeing Department. The ICB will allocate funding to the team for the healthcare element.

7.3. Referral, Access and Acceptance Criteria

- **Geographic Coverage**

The Community Learning Disability Team covers adults with learning disabilities resident in the Borough of Luton and/or registered with a Luton General Practice. It also includes those eligible for services currently living outside of the Borough but ordinarily resident in Luton.

- **Eligibility for the service**

The Community Learning Disability Team supports adults from the age of 18 years with a Learning Disability who meet the national eligibility criteria outlined in the Care Act 2014 and as of 1st April 2015, carers have the right to assessment and support if assessed as eligible.

People with high-functioning autism will be supported by the Council's ASC Community Team and people with autism and a primary diagnosis of mental illness will be supported through the Mental Health Team managed by the Mental Health Provider or other relevant providers.

8. INFORMATION SHARING AND COMMUNICATION

8.1. The Integrated Community Learning Disability team will record service user information on the Council's database complying with UK General Data Protection Regulations (UKGDPR). The team will share relevant information with other health and care providers and health and social care commissioners in accordance with the information sharing agreements. Any breaches of Data Protection will be reported to the ICB and LBC leads as appropriate.

9. FINANCIAL MANAGEMENT AND AUDIT ARRANGEMENTS

9.1. Overall S75 financial reporting schedule provides details on cost and contribution arrangements for both organisations. There is a fixed contribution from ICB which may be uplifted each year in line with the Council agreed pay award as this covers mainly the staffing costs.

10. GOVERNANCE AND ASSURANCE

10.1. The service manager for care management and integration is accountable for services for people with learning disabilities within LBC. This post sits within the Adult Social Care Management Team in the Population Wellbeing Directorate. The team will provide quarterly performance reports including projected spend and user outcomes to the JSCG and/or the Finance sub-group as appropriate.

10.2. Service Performance will be managed by LBC. Monitoring includes measuring performance against an agreed set of national and local indicators as described in the service performance indicators below.

10.3. The governance of the Learning Disability service and accountability for the aligned budget set out in the 2022-2023 BLMK S75 will sit with the Joint Strategic

Commissioning Group and its governing body the Luton Health and Wellbeing Board. The Learning Disability Programme Board, sits bi-monthly. Membership includes the Associate Director (ICB), Service Manager Adult Social Care and Service Manager Adult Commissioning. Members have committed to a Luton At Place Board learning disability workstream, as set out in the At Place Board Strategic Aims, Objectives and Priorities Programme Plan (Priority 1.5) The Plan sets out a comprehensive system-wide 3 year change programme for Luton. The Learning Disability Programme Board will submit monthly reports in to the Luton At Place Board to provide assurance on progress, risks and issues, and projected outcomes on the agreed workstream.

SERVICE PERFORMANCE

Quality checking by experts by experience should be used to support the contract monitoring of services to support best outcomes for individuals who are identified as eligible for.

These indicators will be reviewed quarterly to ensure they are reportable and purposeful.

Activity	Indicator	Target % (subject to review once baseline established)
Demographics of clients	No. of clients supported (with age, gender, and level of care need breakdown)	100
	%/no. clients with learning disability getting long term support from service	90
Keeping People well for Longer	%/no. of requests for support for new ⁸ people identified as needing Joint Funded Services, where the outcomes included universal services/signposted to other services	20
	%/no. of people who have received an assessment who then go on to receive a package of care	90
	%/no. supported working age people with learning disability living in settled accommodation	80
Personalisation	%/no. with accessible person-centred care plans	100
	%/no. of people in receipt of long term support and carers who receive a direct payment	30
	%/no. of people in receipt of long term support helped to remain in settled accommodation	90
	%/no. of permanent admissions to acute setting	n2
	%/no. of all people supported to return back to living in Luton	10
	%/no. of people referred to employment support	TBC

⁸ New to the service within that financial year.

Activity	Indicator	Target % (subject to review once baseline established)
Operational	%/no. of new assessments completed within 28 days	100
	%/no. of people who have a assigned "named worker" under CPA or equivalent	95
	%/no. of people in receipt of long term support who have been reviewed in the last year	100
	quality-of-life ratings of adults who have used the service, and their family members, friends and carers	TBA
	Number of people identified as lacking capacity vs number of capacity assessments completed.	
	%/no. of those in hospital with discharge plan within 28 days	100
	%/no. of people who have had a change in placement over the preceding 12 months	10
Safeguarding	%/no. of Safeguarding Strategy Discussions held within 5 working days of referral	90
	% of Safeguarding investigation assessments completed within 28 days	100
	% of completed Safeguarding referrals where the outcome is risk reduced or removed	100
	% of people offered advocacy services when a suitable person is unavailable	100
User experience	% satisfaction of people who use services with their care and support	TBA
	measured by personalised and validated tools ⁹	

The service will work with people, carers, formal caregivers and commissioners to develop tools to measure people's satisfaction.

⁹ Outcomes measured by personalised and validated tools such as the 'measure of processes of care' (MPOC) tool, or the 'patient feedback questionnaire' (PFQ)

SCHEDULE 4

SCHEDULE FOR THE BETTER CARE FUND AND IMPROVED BETTER CARE FUND

1. BACKGROUND INFORMATION

The Better Care Fund (BCF) has been established by the Government, to provide funds to local areas in support of the integration of health and social care. The designated funding must be aligned to the National Conditions and Local Objectives. It is a requirement of the Better Care Fund that the ICB and the Council establish a pooled fund for this purpose.

The improved Better Care Fund (iBCF) is an additional Government funding allocation, paid as a direct grant to Local Authorities, with a condition that it is also pooled into the local BCF plan.

Section 75 within the National Health Service Act 2006, provides local authorities and clinical commissioning groups with powers 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. BCF and iBCF to be set out as a single schedule within the S75 Agreement, as per national guidance.

It should be noted that BCF and iBCF are not separate legal entities, joint operations or joint ventures and are therefore accounted for as a pooled budget arrangement. Neither party has unilateral control of the BCF and iBCF, as decisions of the Joint Strategic Commissioning Board need to be made unanimously. (See - Schedule 5 Joint Commissioning Arrangements and Governance Boards)

BCF Planning Guidance and Policy 2023-2024 stipulates that the Fund is to be designated as a two year fund, as such the fund will continue into 2024-2025. BCF and iBCF allocations for Luton in 2024-2025 will be published in April 2024. Through the BCF local areas will continue to deliver more joined-up care across health and social care, over the confirmed 2-year cycle, providing greater certainty against local plans. The delivery of the BCF will support 2 key priorities for the health and care system that align with the 2 existing BCF objectives:

Objective 1: to enable people to stay well, safe and independent at home for longer

The priorities for health and social care are to improve quality of life and reduce pressure on UEC, acute and social care services.

This will be achieved through various mechanisms, including:

- collaborative working with the voluntary, housing and independent provider sectors
- investment in a range of preventative, community health and housing services
- supporting unpaid carers

Objective 2: to provide people with the right care, at the right place, at the right time.

The priorities for health and social care are to tackle immediate pressures in delayed discharges and demand for hospital attendances and admissions, bringing about sustained improvements in outcomes for people discharged from hospital, and wider system flow.

This will be achieved by embedding strong joint working between the NHS, local government and the voluntary, housing and independent provider sectors.

BCF grant conditions stipulate funding should be allocated within the following areas:

- a jointly agreed plan between local health and social care commissioners, signed off by the HWB
- implementing BCF policy objective 1: enabling people to stay well, safe and independent at home for longer
- implementing BCF policy objective 2: providing the right care, at the right place, at the right time
- maintaining the NHS's contribution to adult social care (in line with the uplift to the NHS minimum contribution to the BCF), and investment in NHS commissioned out of hospital services

iBCF grant conditions stipulate funding should be allocated within the following areas:

- Meeting adult social care needs
- Reducing pressures on the NHS, including supporting more people to be discharged from hospital when they are ready
- Ensuring that the local social care provider market is supported.

There is no requirement to spend across all of the criteria, or to spend a set proportion on each.

The Disability Facilities Grant (DFG) falls under the Better Care Fund. The Housing Assistance Policy 2021 sets out the Luton duties in relation to the DFG spend.

2. OVERVIEW OF BCF SERVICES

The services funded through the BCF are identified in BCF Final Approved Budget; Appendix B, and the BCF Tracker; Appendix C, agreed by the Joint Strategic Commissioning Board (JSCG) December 2022 and the Health and Wellbeing Board (HWB), April 2023.

The Luton performance ambitions remain aligned to the BCF Metrics; Appendix A. BCF metrics.

3. AIMS AND OUTCOMES

The national conditions and metrics for the BCF are set out in items one (1) and two (2). Changes to the national conditions and metrics throughout the life of this Agreement will remain aligned to BCF Policy Framework.

4. THE ARRANGEMENTS

BCF funding, allocated to the Integrated Care Board (ICB), will be managed as a pooled budget. Through the jointly agreed Arrangements, the Council will invoice the ICB for the appropriate project or scheme funding allocation. However, the total £ 19,086,830 indicative (2023-2024) outlined in the Schedule of Funding; Appendix B, includes services delivered by providers commissioned both Partners. This figure includes £1,795,660 indicative (2023-2024) which is received directly by the Council for the purpose of delivering Disabled Facility Grants (DFG). Any changes to the designated annual allocation, throughout the life of this Agreement will be executed through a Deed of Variation for the BCF Schedule.

iBCF funding is managed as a pooled budget. In 2023-2024, it is jointly agreed, the iBCF Fund totalling £7,480, 913 which includes the Winter Pressure Fund, will be allocated in full, as core funding to Adult Social Care. Please refer to Appendix B. The decision reflects the mutual understanding of the ongoing financial pressures faced by the service. Any changes to the designated annual allocation, throughout the life of this Agreement, will be executed through a Deed of Variation for the BCF Schedule.

In 2023-2024 an additional fund, the Adult Social Care Hospital Discharge Fund is to be included in the BCF Schedule 4 as a pooled fund. The Guidance for the Fund is expected to be published by mid- April. The criteria will focus solely of relieving hospital discharge pressures and supporting gaps in the discharge pathways. The Fund criteria will not include prevention of admission. The final figure at the time of drafting is yet to be formally confirmed by the Department of Health and the Social Care and Better Care Fund Board. However, an interim announcement on the Government website states Luton Borough Council Local will receive in the region of £1.048,821. The local authority allocation is to be pooled within iBCF. The ICB element of the fund has been confirmed as a BLMK figure, although yet to be designated to Place. The Luton figure is predicted by the ICB Finance team to be in the region of the 2022-2023 figure; £1 million. The ICB element of the fund will be pooled within BCF. The local spend allocation to support discharges from the Luton and Dunstable Hospital will be agreed in consultation with all Partners supporting discharge flow and will be circulated to the Health and Wellbeing Board for minuted approval once identified.

Council and ICB Joint Staffing Arrangements in relation to the BCF and integration programmes of work are detailed in Schedule 5 Joint Commissioning Arrangements and Governance Boards.

5. FUNCTIONS

For the purpose of these Arrangements, applications for BCF and iBCF monies to change schemes and projects will require a specific Business Case to clarify the specification, functions, relevant BCF or iBCF key performance indicators, expected benefits and costs. Business cases require approval by the Joint Strategic Commissioning Group (JSCG), with advice and recommendations from the Financial Sub Group (FSG). It is agreed that Core funding will not require a Business Case and will be allocated following transparent discussion and approval by JSCG Members.

For the purposes of fulfilling its obligations as the host organisation of the pooled BCF budget under this Agreement, the Council will delegate those health commissioning functions to the ICB that it is legally empowered to delegate and the ICB will exercise these functions in conjunction with its own Health Functions.

For the purposes of fulfilling its obligations as the host organisation of the pooled

iBCF budget under this Agreement, the Council will delegate those health commissioning functions to the ICB that it is legally empowered to delegate and the ICB will exercise these functions in conjunction with its own Health Functions.

Clarification of Lead Commissioner and Lead Director responsibility will be captured within relevant Business Cases and the BCF Programme Tracker. Whichever party is not the Lead Commissioner, will delegate the relevant functions to the Lead Commissioner, including contract monitoring and reporting impact and benefits realised for the scheme.

6. SERVICES

The services and projects that are to be delivered are described in the Luton BCF Tracker, Appendix C. The services and projects will form a BCF and iBCF programme of work, managed by the Integration Programme Manager and supported by the Integration Project Manager, reporting into the FSG and the JSCG. The Luton BCF and iBCF Agreed Budget for 2023-2024 is attached, Appendix B.

The allocation to the Adult Social Care service is protected under the National Conditions. The detail of the spend will be captured by the Council's finance team. The beneficiaries of social care services within the BCF and iBCF allocations are those residents and their carers eligible for social care under the Care Act 2014.

7. COMMISSIONING AND CONTRACTING

Commissioning Arrangements

See S75 Agreement Schedule 5 – Joint Commissioning Arrangements and Governance Boards

Contracting Arrangements

The majority of service contracts are already in place and changes will be managed through contract variations with providers. Where new contracts or significant contract variations are required, the terms will be discussed and agreed through the JSCG.

8. FINANCIAL CONTRIBUTIONS

Financial Year 2023-24

BCF and iBCF Schedule of Funding for 2023-2024 is detailed in Appendix B of this Schedule. Changes to financial allocations will be executed through a Deed of Variation for Schedule 7, Financial Arrangements.

9. FINANCIAL GOVERNANCE ARRANGEMENTS

Management of the Pooled Fund

A lead finance manager, appointed on behalf of the lead commissioning organisation, as the Pooled Fund Manager will oversee the implementation of spends for each scheme or core funding allocation, in accordance with the approved Business Cases or core funding agreements. Allocations to social care services are protected under

the National Conditions, the Finance Manager will be the ASC nominated Pooled Fund Manager.

Both Partners Finance teams will monitor spend and produce regular reports for the JSCG and FSG. In addition, performance indicators are established to monitor delivery of the Enhanced Health in Care Homes change scheme and the Luton Falls Pathway to measure the expected benefits. An annual report against the core funding will evidence the qualitative and quantitative impact of the investment into allocated services.

The JSCG and FSG will both monitor spend and performance. The JSCG will recommend the jointly agreed allocations to the Health and Wellbeing Board for full approval. Allocation of any under spends are to be discussed and agreed between the Partners at the JSCG and the FSG, with unresolved issues escalated to the Health and Wellbeing Board.

Audit Arrangements

In compliance with any additional audit arrangements required by the Department of Health and Social Care for BCF, ICB audit arrangements will be applied to the pooled BCF budget and Council's audit arrangements will be applied to the pooled iBCF budget. Any recommendations from internal and external auditors pertaining to BCF and iBCF will be shared with both Partners at the JSCG.

Financial Management

Both Partners' financial management data systems will be used to capture spend for the services they each commission. The Council acting as the host for the monitoring and reporting of the BCF and iBCF will formally report spend information through FSG to the JSCG. Total spend will be agreed by both partners through FSG for approval by JSCG. Any issues or risks arising will be escalated to the JSCG.

Systems in use by both Partners will comply with any additional requirements from the Department of Health and Social Care for BCF.

10. VAT

The VAT regime of the lead commissioning organisation will apply.

11. NON FINANCIAL RESOURCES

The Partners will both contribute additional resources, including equipment, expertise and central support services, for which there will be no additional charge.

12. STAFF

Staff employed by both the Partners will support the BCF and iBCF programme. A jointly appointed Programme Manager for Integration will oversee the implementation and management of the programme. A jointly funded Project Manager will support the programme of work and a Project Support Officer will facilitate and administer to the joint Boards.

13. ASSURANCE AND MONITORING

Where services and projects are being delivered by other health and social care providers, their performance will be monitored by whichever Partner has lead commissioning responsibility, through their normal arrangements and information will be shared between the Partners.

The national conditions for the BCF and iBCF are set out in in item one (1).

The 2023-25 BCF Policy Framework sets national metrics (performance objectives) that must be included in BCF reporting and narrative plan for 2023-2024.

<https://www.gov.uk/government/publications/better-care-fund-policy-framework-2023-to-2025/2023-to-2025-better-care-fund-policy-framework>

The BCF planning process will collect agreed ambitions for 2023-24 only, including supporting rationales, plans for achieving these ambitions and how BCF funded services will support this.

Ambitions for 2023-24 will be set based on:

- current performance (from locally derived and published data)
- local priorities and anticipated demand and available capacity. Ambitions should reflect demand and capacity planning for intermediate care as well as wider capacity planning as part of the Market Sustainability and Improvement Fund (MSIF) and the UEC capacity plan.
- planned (particularly BCF funded) services and changes to locally delivered services based on performance to date.

BCF metrics are set out in Appendix One (1).

Baseline data on discharge to usual place of residence and unplanned admissions for ambulatory care sensitive conditions is available on the Better Care Exchange. Hospital trusts, local councils and ICBs will work together to continue to improve the use of situation reporting and other data to understand flow.

New discharge data collection

From Q3, areas will be required to set ambitions for a new metric that measures timely discharge.

The discharge ready date field 'Discharge Ready', in the Commissioning Data Set has become a required field and will be used to collect the date a person no longer meets any of the criteria to reside from April 2023. This data will be used as a basis for a metric linked to delayed discharge, contingent on further testing and data quality by the BCF Board.

As set out in the Delivery plan for recovering urgent and emergency care services, the BCF Board will work with local systems to develop a new metric that measures the time from the discharge-ready date to the actual date of discharge. The new data will be published by the BCF Board as soon as possible ahead of next winter, following trialling and testing with local providers and patient groups, in support of collaborative action across the NHS, local government.

Within the development of this metric the BCF Board will consider how to include the clinically ready for discharge metric for mental health, learning disability and autism services.

Changes to metrics for 2024-25 are set out in the in the 2023-2024 Policy Framework.

<https://www.england.nhs.uk/wp-content/uploads/2023/04/PRN00315-better-care-fund-planning-requirements-2023-25.pdf>

Ahead of the start of 2024-25, local areas will be asked to review their metric ambitions in relation to BCF plans for 2024-25 in collaboration with health and social care partners. Metrics outlined for 2024-25 will be designed to build on wider developments, including the new Office for Local Government (OFLOG), client level data developments and the implementation of the new discharge delay metric. Areas will be required to submit metric ambitions for 2024-25 as part of the 2023-2024 review . Further detail and the updated requirements and template will be published in early 2024. Monitoring and additional oversight is likely to be in place for areas where data shows that delayed discharges are significantly higher or increasing at a greater rate than the national averages.

In addition to the new metric, the Commissioning Team will ensure the Capacity Tracker is updated by partners with bed vacancy data daily, where possible, as this information can be used by local discharge and brokerage teams when planning patient discharges. It also helps ensure that patients are discharged to the right place for their specific care needs

The BCF Schedule of Funding 2023-2024 is attached as Appendix B.

The Enhanced Health in Care Homes change scheme lead and the Luton Falls Pathway lead will report progress bi-monthly to the Integration Project Manager. Business Intelligence teams report performance against the BCF metrics on a monthly basis. The programme is managed against BCF conditions and agreed tolerances, metrics and benefits. A bi-monthly BCF report, change scheme highlight report, risk register and a quarterly core funding report will be provided to JSCG.

The Hospital Discharge Fund will report to the BCF Board and the Department of Health and Social Care on a fortnightly basis via a new BCF template. An end of Year report will be requested by the Department of Health and Social Care for all funds held within the BCF or iBCF.

14. LEAD OFFICERS AND GOVERNANCE ARRANGEMENTS

Luton Joint Strategic Commissioning Group (JSCG) is a partnership group, co-chaired by representatives of the Integrated Care Board and the Borough Council. The JSCG operates on behalf of the Health and Wellbeing Board, providing strategic leadership across the health and social care system. The Health and Wellbeing Board are the designated Board of Governance for approvals of the Luton BCF allocations, the Luton Plan Template and any required Deed of Variations.

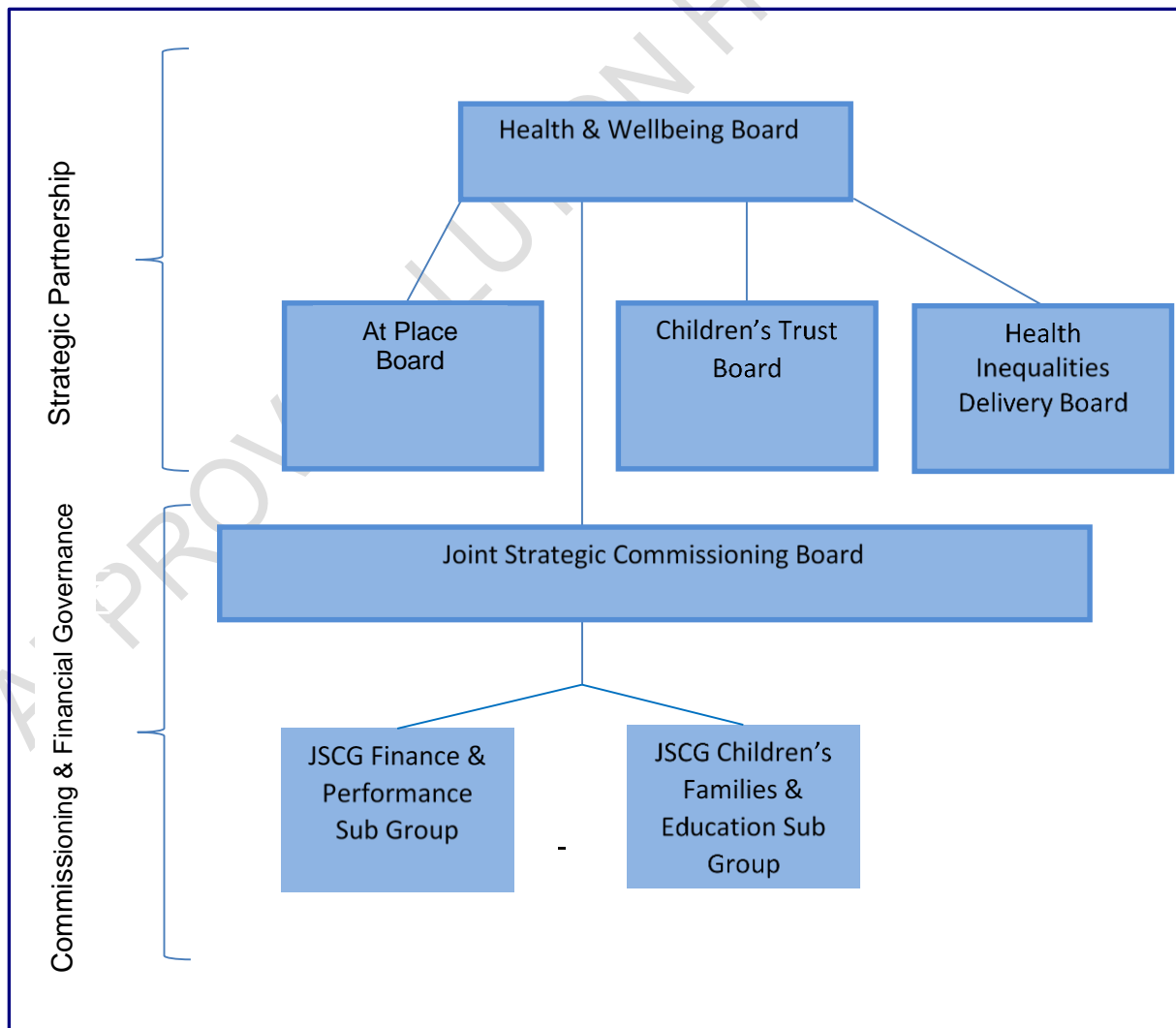
The BCF Programme Manager will report directly to the JSCG and the Joint Financial Sub Group.

Further reporting will follow arrangements for Luton Borough Council and the Integrated Care Board. When appropriate or requested, reports will be taken to Scrutiny Committee, the Health and Well Being Board and other Boards/Committees/ working groups

Lead Officers

Partner	Name of Lead Officer	Address
LBC	Corporate Director Population Health and Wellbeing	Luton Borough Council, 3 rd Floor, Arndale House, The Mall, Luton, LU1 2LJ
ICB	Chief Primary Care Officer and Executive of Place	Luton NHS Integrated Care Board, 3 rd Floor, Arndale House, The Mall, Luton, LU1 2LJ

Figure 1. Governance Structure



15. INTERNAL AND EXTERNAL APPROVALS

The programme will be managed in line with the BCF planning guidance for 2023-2024. Approvals for the Agreement will be sought from the Joint Strategic Commissioning Board and the Health and Wellbeing Board, following which legal due process will be enacted.

15. RISK AND BENEFIT SHARE ARRANGEMENTS

The risks and contingency arrangements are as outlined in the 2023-2024 S75 Agreement, Schedule 7; Financial Arrangements.

16. REGULATORY REQUIREMENTS

Statutory requirements for Children's Services, Adult Social Care and ICB/NHS requirements for commissioning services apply.

17. INFORMATION SHARING AND COMMUNICATION

The Partner responsible for each commissioned scheme and core funding allocation will be responsible for ensuring that data systems and information sharing comply with current legislation. However, the JSCG will provide the overarching information governance arrangements to comply with statutory duties.

Any breaches will be reported to and shared between the Partners.

18. DURATION AND EXIT STRATEGY

The BCF plan is about delivering transformed and integrated health services through change schemes and core funding agreements. The arrangements are intended to last for the duration of 2023-2024 BCF funding and in many cases beyond this.

On a national basis, the BCF is a requirement for 2023-2024, and provides the opportunity for the Luton health and social care system to deliver significant cultural change for personalised health care for the people of Luton, and in recent years, following the Covid-19 pandemic support the loss of commercial income and the ongoing increase in acuity and demand on local budgets, allowing core service provision to continue as financially viable entities.

BCF is expected to continue beyond the life span of the Luton Section 75 Agreement 2023-24. Funding has been confirmed for 2024-2025 increasing early planning opportunities. Additional changes to funding, national conditions, metrics, will be provided through a Deed of Variation for the BCF Schedule

19. APPENDICES (THREE APPENDICES FORM PART OF THIS SCHEDULE)

Appendix A

BCF Metrics



BCF Metrics
2023-2024 V3.xlsx

Appendix B

Approved Budget 2023-24



Final budget with
interim ASC HD.xlsx

Appendix C

Luton Better Care Fund Plan Tracker 2023-2024



BCF iBCF Tracker
2324 v1.2 Final.xlsx

APPROVED LUTON HWB 05.04.23

SCHEDULE 5

SCHEDULE FOR JOINT COMMISSIONING ARRANGEMENTS AND GOVERNANCE BOARDS

This schedule identifies the approach the Council and ICB are taking to collaborate and share responsibilities in commissioning health and care and services for the people of Luton and describes current joint working.

1. PRINCIPLES OF WORKING TOGETHER

The Council and ICB jointly affirm their commitment to co-operate on matters affecting the NHS, public health, wider health issues and social care for the people of Luton, seeking to work in an open, transparent and helpful manner, with good communication and early involvement of the other parties when appropriate. This will build on existing working relationships, with officials continuing to maintain free, informal and regular contact.

The parties will inform each other at the earliest reasonable opportunity of issues including the forming of policy, proposals for legislation, and the timing of public announcements - which are likely to be of mutual interest. In coming to decisions or developing policies or legislation which may have an impact financially or otherwise on other parties, or which may constrain others' policy development, each party will seek the views of those potentially affected at the earliest reasonable opportunity and be mindful of those views in taking any decisions.

In summary, to support better outcomes for Luton people:

- We will align, share and pool resources, budgets and accountabilities where it improves outcomes for the people of Luton
- We will focus on benefits to the public as a whole, rather than organisational interests.
- We will only take decisions that we know will impact on other parts of the Health and Social Care system in an environment of informed and mutual trust
- We will streamline Health and Social Care system governance to enable decisions to be taken at place, across system and pace
- We recognise that there are differences in how we work and the need to design and build systems together, involving our staff to mutually recognise and respect those differences and find innovative ways to address where organisationally feasible.
- We will design a system that is easy for everyone to understand and use.
- We will continue to work with our Integrated Care System partners exploring opportunities to design and deliver change, at scale and at place, which will provide the greatest opportunity to improve outcomes for Luton residents.

2. WAYS OF WORKING

To achieve this we will work in alliance with each other operating with mutual respect and mutual accountability. We will keep the residents of Luton informed of joint plans, adopting a co-production approach to transformation based soundly on the Luton voice and where it is required, conducting formal consultation. The Council and ICB will ensure that all colleagues and teams are aware of the agreed ways of working and any associated agreements or guidance.

This Schedule does not replace the legal framework or responsibilities of the two statutory organisations. It recognises the complexity of how the health and care system currently work and interact with each other to provide the best possible care and services.

The following behaviours should support joint governance arrangements between the ICB and council for place based jointly agreed plans.

- **One Luton Unified Leadership Team**
 - Work as 'One Luton' driving agreed priorities through the Luton At Place Board and the designated collaborative delivery groups, focus groups and task and finish groups.
 - Collectively champion Luton as a place of aspirations and achievements; a place with people at its heart.
 - Embed a strong collaborative and population health management approach, addressing the wider determinants of health and inequalities, to maximise outcomes for the people of Luton.
 - Facilitate stronger relationships across the system, to proactively identify, define, agree and drive the delivery of collective priorities for Luton.
 - Agree a single Luton SRO for each function with aligned resources for delivery.
 - Have the 'right conversation' in the 'right meeting', with 'pre-considered decisive outcomes' once, where possible.
- **Support each other to deliver 'sovereign' Legislative Responsibilities**
 - Be clear on how statutory / legal functions are being discharged and agree whether any legal sign off is required for any joint activities
- **Agree Joint Business Planning**
 - Bring together senior leaders and partners through the Luton At Place Board, to drive and facilitate partnership working with a common vision and purpose, to strategically shape the Luton priorities as set out in the 2021-2026 At Place Board Priorities Plan
 - Build key performance indicators and develop reporting requirements for tracking delivery on shared endeavours and evidencing improved population health outcomes for the people of Luton.
 - Establish a system wide ethos that supports open and transparent working practices
 - Strengthen effective and collaborative resource planning for common priorities and objectives
 - Recognise and respond to change and local need, using Covid-19 lessons learned to be proactive and take risks to achieve the agreed outcomes.
- **Review Joint Working Governance**
 - Keep under review and streamline where possible the decision-making and leadership meetings and terms of reference for joint boards or working groups as systems mature.

- **Engage external partners, service users and regulators**
 - Ensure feedback, engagement and co-production is central to continuous improvement plans.
 - Strengthen the resident's voice as the source of truth, informing and co-producing transformation at all stages.
 - Provide clarity around working relationships within Luton and with partners and regulators, support the 'One Luton' approach with the Health and Wellbeing Board acting as the 'One Luton Lead', speaking on behalf of the Luton At Place Board and avoiding duplication at meetings with external stakeholders.

3. SCOPE

The ICS priorities, Luton 2040 ambitions, the Population Wellbeing Strategy and the At Place Board will inform a jointly agreed 2021- 26 Luton At Place Priorities Plan. The BCF Plan and allocations will reflect the At Place Priorities Plan, focusing on prevention of inequalities and improving population health outcomes over the next five years. The jointly agreed JSCG work stream will remain an iterative, allowing further joint initiatives to be identified and included as our thinking evolves and develops.

Work streams will include but will remain iterative and not exclusive to:

- I. At Place Board, integrated programmes of work funded through BCF and/or integral to the Luton S75 Agreement
- II. Managing the Better Care Fund (BCF) and the Improved BCF
- III. Section 75 Agreement
- IV. Mental Health transformation and Total Wellbeing provision
- V. Frailty and complex care (Adults)
- VI. Learning Disabilities and Autism
- VII. Children's, Families and Education Services
- VIII. Commissioning for Quality

4. ANTENATAL AND MATERNITY SERVICES

Owing to the interdependency between commissioning local comprehensive maternity services and health visiting services, it is imperative the ICB and LA work in partnership to ensure best outcomes to women and neonates.

Luton Council commission health visitor services (0-19 services) to in-reach within the antenatal care period for pregnant women to ensure early identification of risk or additional need and to provide a smooth transition post-delivery.

5. FURTHER JOINT COMMISSIONING ARRANGEMENTS

Integrated commissioning and joint contracts present an opportunity for commissioners to work with providers to maximize productivity and ensure that gaps in services are addressed and improved experiences and outcomes for service users are promoted.

The commissioning teams from ICB and Council will be supported by their respective directors to work together to agree new models for joint commissioning, for priority areas that have been identified to improve the health and wellbeing outcomes for the population of Luton. Any change to team structures will be dependent on the mobilisation and monitoring of new models agreed and these would be updated via a Deed of Variation to the current Section 75 Agreement.

6. GOVERNANCE

6.1 Joint Strategic Commissioning Group (JSCG)

Joint Commissioning arrangements are discussed at the Joint Strategic Commissioning Group. The Joint Strategic Commissioning Group (JSCG) is responsible for the joint strategic commissioning of services in Luton for children and young people, adults and public health.

JSCG is accountable for the governance of the Section 75 Agreement and the associated Schedules, including the Better Care Fund and the Improved Better Care Fund, coordinating the development of joint strategies for the relevant service areas and ensuring necessary arrangements are in place to implement strategies and procure service changes. This includes decisions and proposals that would be inappropriate for reasons of commercial sensitivity to take to Health and Wellbeing Delivery Boards and other groups with provider representation.

The group is responsible for strategic market development, management, and overseeing plans to re-commission and de-commission services, as well aligning this work with joint strategic procurement plans.

6.2 Joint Strategic Commissioning Group (JSCG) Sub Groups

The Joint Strategic Commissioning Group (JSCG) has 2 sub-groups; the Financial Sub Group (FSG) and the Children, Families and Education Sub Group (CSG).

The Joint Strategic Finance and Performance Subgroup is tasked with supporting the JSCG by developing, implementing, monitoring and reporting all related to the financial and performance aspects of joint commissioning arrangements. Additional short-term working groups or sub committees of the JSCG will be established when appropriate.

The Children's, Families and Education Subgroup (CSG) will build upon the collective endeavour for the children and young people of Luton. The Subgroup will discuss, address and drive forward collaborative solutions in regard to contract issues, performance, educational needs, tripartite agreements and any other S75 related concerns. The Subgroup will report to JSCG on a quarterly basis.

Terms of Reference included in appendices;

Joint Strategic Commissioning Group Terms of Reference see appendix 1

Financial Sub Group Terms of Reference see appendix 2

7. JOINTLY FUNDED POSTS

7.1 Integration Programme Manager

The Integration Programme Manager is a joint role, funded through the Better Care Fund. The role is responsible for a diverse range of across-system programmes, jointly agreed and assigned by Luton Borough Council and BLMK ICB leaders.

The role includes:

- Responsible for the development and management of the Luton At Place Board Programme and associated work streams. Strategic oversight and collaboration of board members.
- Development and oversight of the National Better Care Fund (BCF) annual plan
- Reporting on the BCF plan and programme – internally to the Luton Joint Strategic Commissioning Group and Health and Wellbeing Board, and externally to the BCF Board, NHS England and ADASS
- Development and oversight of the Luton Section 75 Agreement for pooled and aligned budgets, and joint working arrangements.
- Responsible for the integration programme governance, strategic planning and implementation, ensuring that all agreed and designated integrated programmes are monitored and reported with appropriate scrutiny, support and programme controls.
- Supporting the evaluation, impact and effectiveness of integrated commissioning, funding arrangements and joint or collaborative work streams, through the Managing Successful Programmes performance framework, including Business Case planning and analysis, qualitative and quantitative reporting to associated boards, benefits realisation planning and year-end reporting as required.
- Facilitating local oversight on successful national high impact change models to influence and further integrated working plans and opportunities for Luton.
- Drive forward and manage delegated integration programmes of work, including connectivity governance and management, as set out by the At Place Board and Delivery Groups.
- Facilitating strong across-system relationships, bringing an unbiased approach and strong understanding of both the Health and Care organisations.
- Maintaining a high profile locally, regionally and nationally for Luton through effective communications and oversight, working closely with all system partners across Luton, Bedfordshire and the East of England.
- Maintaining Luton's focus on joint communications and service user voice within the programmes, and working closely with both LBC and ICB commissioning teams and Healthwatch to support resident engagement.

The role is accountable to Director Public Health and in line with agreed governance, reports to the Luton Joint Strategic Commissioning Group, the Health and Wellbeing Board and other joint boards established in relation to changing work streams. The Integration Programme Manager, line manages the Integration Project Manager.



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7.2 Integration Project Manager

The joint Project Manager supports the successful delivery of the Integration Programme and dependent Programmes. This includes the projects held within the Better Care Fund and the Luton Section 75 Agreement as enablers of the integration Programme of work.

The role includes;

- Monitoring and reporting of the individual work streams within the Luton At Place Board programme.
- Leading on the development, planning, co-ordinating and managing of multi-agency projects, to time, budget and high quality, to support the successful delivery of the Integration Programme and dependent Programmes.
- Provide independent project co-ordination support to key stakeholders both internal and external to the council.
- Develop and implement detailed project plans, meeting across system needs.
- Work effectively and collaboratively with the Programme Manager and Partners to champion, support and drive integration objectives across system.
- Engage, develop and maintain effective working relationships with all relevant colleagues; key stakeholders and partners across the Health and Social Care system to ensure a co-ordinated service and cross cutting approach to project delivery.
- To be accountable to the Programme Manager for Health and Social Care and respond to matrix management at the appropriate level with the BLMK ICB.
- Responsible for the facilitation of associated Task and Finish Groups, delivery groups and collaborative groups, managed by or reporting in to the Programme Manager.
- To review and update S75 schedules where appropriate.



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7.3 Integration Project Support Officer

The joint Project Support Officer provides support to the Programme and Project Manager for Health and Social Care Integration, in the management of the Better Care Fund, S75 Agreement and assigned integrated programmes agreed by the Joint Strategic Commissioning Group.

The role includes:

- To attend, support and administer meetings, forward plans, invites, & minutes for formal and working meetings including the Joint Strategic Commissioning Group & the Financial Sub Group.
- Support the development of project documentation to bring consistency to the integration and joint commissioning projects, BCF and iBCF projects for reporting to the relevant boards.

- Provide project support to the Integration Project and Programme Manager
- To provide support to BCF & iBCF assigned Project Managers under the guidance of the Integration Project Manager
- Attend, support and administer meetings, forward plan, invites and minutes for S75 planning.
- To support the emerging and developing integration programme as we seek to deliver an intervention designed to bring council and ICB together into an effective working team for Luton.
- Provide expert administrative capacity to organise and support complex and still emerging integration work streams
- Within this role be a point of contact for outside providers. Coordinating internal and external communications



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APPENDICES

Appendix 1. Joint Strategic Commissioning Group



JSCG ToR Jan 2023
V0.8.pdf

Appendix 2. Financial Sub Group (FSG) Terms of Reference



FSG ToR Jan 2023
V1.2 Agreed.pdf

Appendix 3. Children, Young People and Education Sub Group



Children's sub group
of JSCG ToR Jan 23 V

SCHEDULE 6 THE LUTON AT PLACE BOARD PARTNERSHIP

1. BACKGROUND

The Integrated care systems (ICSs) are new partnerships between the organisations that meet health and care needs across a designated area, to coordinate and plan services in a way that improves population health and reduces inequalities. In our area, the ICS footprint sits across the Bedfordshire, Luton and Milton Keynes (BLMK).

Government guidance has been published on the many elements of ICS delivery and governance. Following the guidance, each area is to establish an Integrated Care Partnership (ICP) a broad alliance/committee of organisations and representatives, an Integrated Care Board (ICB) responsible for the commissioning of healthcare services in the ICS area, a Provider Collaborative (Bedfordshire Care Alliance) to work at scale, where it makes sense to do so, and a Place-Based Partnership with the focused responsibility for the strategic planning and delivery of health and care services specific to the demographic needs of the local community.

The Integrated Care systems guidance *Thriving places: Guidance on the development of place-based partnerships as part of statutory integrated care systems*, sets out the structures and governance to be established in defining place-based partnerships.

In line with the guidance Luton established the Luton At Place Board Partnership (APB) on the 13th July 2021.

Luton has a long history of partners developing collaborative approaches to joint planning and delivering of health, social care, public health services and other partnership services. Arrangements in Luton have historically gone beyond strategic planning and include shared roles, joint commissioning between local authorities and the NHS, and integrated service delivery by a range of providers, enabled and supported through a comprehensive S75 Agreement, the Better Care Fund, the Joint Strategic Commissioning Group and the associated Joint Financial sub Group.

The Luton At Place Board Partnership builds on the long standing, working relationships between partners and aims to strengthen the strategic cohesion, as set out in the Luton Population and Wellbeing Strategy, the Luton 2040 Plan, the Bedfordshire, Luton and Milton Keynes (BLMK) ICS Priorities and the PCN Priorities. The Partnership Board aims to reinforce the shared ambition to deliver the best care and outcomes possible for the people living in the Borough of Luton.

As a Partnership, our collective commitment and goal is to ensure Luton becomes a more equitable town, where people thrive, have the opportunity to live a healthy life; mentally, socially and physically, and are able to maximize their potential.

2. PURPOSE

Currently, the Health and Wellbeing Board (HWB) provides a shared vehicle for political, clinical, professional and community leaders of a place to develop a shared ambition for improving health and wellbeing and addressing health inequalities. The Luton At Place Board is accountable to the Health and Wellbeing Board and responsible for the strategic planning,

arranging and delivering of an agreed set of priorities to improve health and care service provision and outcomes for the people of Luton.

The Luton At Place Board membership includes, NHS, local government providers of health and care services, including the voluntary, community and social enterprise sector (VCSE).

Partners have agreed shared objectives, built on a mutual understanding of the population and a shared vision for Luton. The vision focuses on improving the health and wellbeing outcomes for the population, preventing ill health and addressing health inequalities. The objectives partners agree to support this vision may orient around different goals related to improving the quality, co-ordination and accessibility of health and care services to better meet the needs of people and communities, and to build coalitions across a range of community partners. The objectives reflect the priorities that are most important to the partnership and our communities.

Co-production remains a critical focus for the workstreams underpinning the At Place Board priorities, bringing together the voices and contribution of people and communities (service users, their representatives, carers and local residents). Co-production will also include community partners, with a role in supporting the health and wellbeing of the population and addressing health inequalities, such as housing associations, skills and education services and local business.

The At Place Board will ensure that where the shared priorities benefit the wider BLMK footprint or the sharing of resources across the wider system generates more effective and equitable outcomes, Partners will work at-scale with the Bedfordshire Care Alliance, ensuring they meet the needs of communities in their place and wider, whilst avoiding duplication of activities across the BLMK footprint.

3. STRATEGIC AIMS, OBJECTIVES AND PRIORITIES

The Luton At Place Board partnership has a common understanding of its population, and has agreed a shared vision, including six local priorities. The place vision and local priorities have been developed in response to the needs of communities at neighbourhood and place level.

Through the agreed At Place Board Strategic Aims, Objectives and Priorities Plan (Figure 1, page 3 and Figure 2, page 4.) the Board has set out their collective commitments and interdependent, collaborative workstreams; taking a Population Health Management approach and placing people, not organisations, at the heart of everything they do.

The Strategic Aims, Objectives and Priorities Plan informs the Luton At Place Board Programme Plan, Appendix Four (4). A programme built on the 5 C's; confidence, consensus, collaboration, co-operation and commitment. Please note that the priorities set out below, are due to be reworded, aligning the narrative more closely to the Population Wellbeing Strategy narrative. Meetings are planned to refresh the matrix, which will be updated and circulated to members once agreed. The principle of the priorities will remain the same as set out in this schedule and detailed below.

Priority 1 - APB	Priority 2 - APB	Priority 3 - APB	Priority 4 - APB
Prioritising early intervention and prevention to ensure we are working upstream joined up system	Develop urgent same day care services to provide holistic care and personalised support	Working with and empowering people and communities to build resilience and a sense of control to manage their own health and wellbeing	Personalised care and support for people with complex needs and co-morbidities
Objectives	Objectives	Objectives	Objectives
1. Cancer <ul style="list-style-type: none"> Prevention and early detection Addressing inequalities and survival rates 	1. Ensure the residents of Luton know how to access urgent Primary Medical Services (GP's and 111)	1. Primary Care Networks; building neighbourhood Teams aligned to communities and working with whole system partners to build neighbourhood resilience	1. Long Term Conditions <ul style="list-style-type: none"> Early intervention and proactive care to prevent escalation of diagnosable conditions e.g. diabetes, CVD and respiratory diseases. Supporting people with long term conditions to take control of their own health and wellbeing (self-management)
4. Learning disability and autism – Prevention <ul style="list-style-type: none"> Develop a LD and Autism Strategy for Luton 	2. Improve the Integrated Urgent health and Care offer to residents With; <ul style="list-style-type: none"> Mental Health needs known Learning Disabilities Known end of life conditions 	2. Develop Community Hubs, aligned to the Fuller Report recommendations, Family Hubs and warms spaces	2. Frailty and Complex Care <ul style="list-style-type: none"> To co-design and deliver a model of care for the population of Luton who are frail and/or have complex needs, ensuring that this aligned to the Luton priorities and strategies
5. Vaccinations <ul style="list-style-type: none"> Covid-19 Flu Other 			3. Personalised Care plans to help people with complexity and LTC to access prompt help to manage exacerbations effectively

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Priority 1 - APB	Priority 2 - APB	Priority 3 - APB	Priority 4 - APB
<p>Prioritising early intervention and prevention to ensure we are working in an upstream partnership approach</p>	<p>Develop urgent same day care services to provide holistic care and personalised support</p>	<p>Working with and empowering people and communities to build resilience and a sense of control to manage their own health and wellbeing</p>	<p>Personalised care and support for people with complex needs and co-morbidities</p>
<p>Objectives</p>	<p>Objectives</p>	<p>Objectives</p>	<p>Objectives</p>
<p>2. Mental Health</p> <ul style="list-style-type: none"> · Improving access to MH support; · Self-management · Wellbeing services (Luton Wellbeing Service - Leanne) · SMI · Addressing inequalities to access · Transitions between Children & Adult (New role transition lead - ELFT) · Crisis Offer · Access to health checks and Covid vaccinations for SMI 			
<p>3. Technology and Digital Transformation</p> <ul style="list-style-type: none"> · Adopting AI or digital pilots and projects to prevent escalation in ill health, increases in care package requirements, admission to long term care or the acute. · Ensuring residents are able to remain at home for longer 			

4. ACCOUNTABILITY – A PUBLIC COMMITMENT TO THE PEOPLE OF LUTON

A Memorandum of Understanding (MOU) sets out Members commitment to the Strategic Aims, Objectives and Priorities Plan. The MOU should be read in tandem with the associated Mutual Accountability Framework, which defines Members accountability to each other and the residents of Luton, along with their commitment to the principles of collaboration and cooperation, in order to achieve the aims and objectives set out in the Plan.

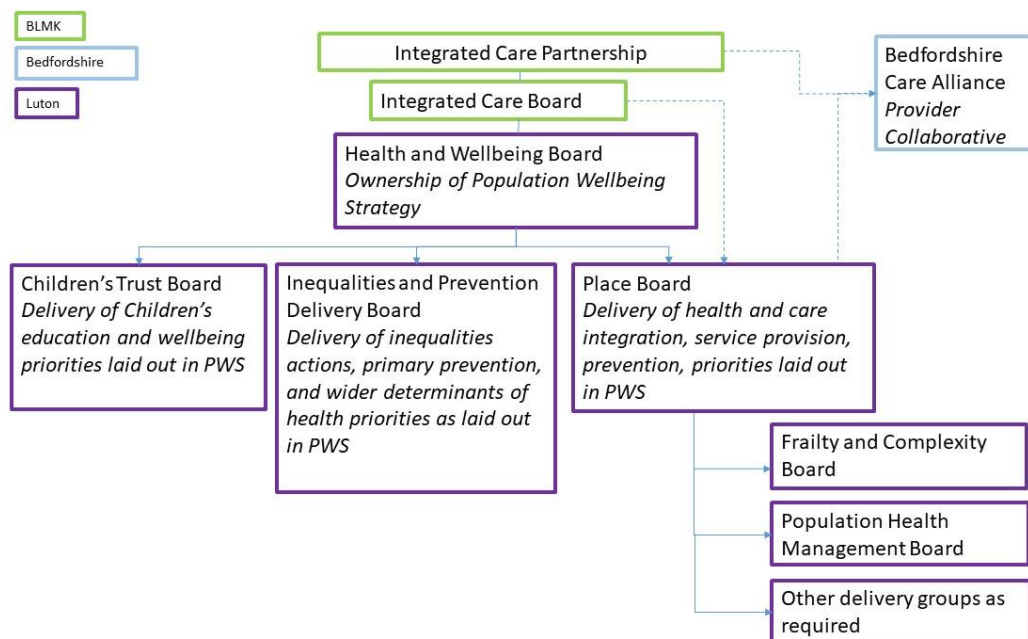
Appendix Two (2) Appendix Three (3)

5. GOVERNANCE AND ACCOUNTABILITY

The Luton At Place Board reports directly to the Health and Wellbeing Board and provides a summary of progress and performance as required, providing the opportunity to raise key issues and request recommendations for ratification or decisions by Members. An annual report will be produced, setting out the delivery progress and outcomes against the At Place Board Strategic Aims, Objectives and Priorities Plan.

To ensure full transparency and inter-connectivity across the system, the Board will provide stakeholders, as required in relation to the development of policy changes, strategic priorities and objectives and other decisions that require external partners, members or trustee’s approval or consideration. Any established Operational Sub groups delivering the priorities of the At Place Board Plan will be supported by the Programme Management Office and will report directly into the Board.

The APB Terms of Reference is attached in Appendix One (1)



6. FINANCE

The At Place Board will be provided with oversight on any Joint funding agreements e.g. S75 and other grants agreed by the Joint Strategic Commissioning Group.

APPENDICES

Appendix One (1) APB Terms of Reference



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Luton At Place ToR VC

Appendix Two (2) APB Memorandum of Understanding (Signatures not displayed for IG)



Luton At Place Board
Memorandum of Und

Appendix Three (3) Mutual Accountability Framework



Mutual
Accountability Framev

Appendix Four (4) At Place Programme



APB Programme Plan
on a Page V7.xlsx

SCHEDULE 7

S75 FINANCIAL ARRANGEMENTS

- 1 Unless the context otherwise requires, the defined terms used in this Schedule shall have the same meanings as set out in Clause 1 of the main body of Agreement.
- 2 Subject to any contrary provision in the relevant Scheme Specification, the Partners agree that overspends or underspends shall be managed in accordance with this Schedule 7.

Financial Contributions

- 3 The indicative Financial Contribution of LBC and BLMK ICB to the Pooled Funds for the 2023/24 Financial Year of operation is £60.943m excluding BCF (LBC contributing £15.395m and BLMK ICB contributing £45.548m as set out below):
 - 3.1.1 The total of "Children's Services" is £3.691m (LBC contributing £2.386m and BLMK ICB contributing £1.306m, this includes fixed and variable spend)
 - 3.1.2 The total of "Public Health Services" is £1.334m (LBC contributing £1.308m and BLMK ICB contributing £0.027m, this includes fixed spend)
 - 3.1.3 The total of "Adults with Learning Disability" is £12.356m (LBC contribution is £6.833m and BLMK ICB contribution is £5.523m, this includes fixed and variable spend)
 - 3.1.4 The total of "Others" is £37.585m (LBC contributing £1.826m and BLMK ICB contributing £35.759m, this is fixed spend)
 - 3.1.5 The total of "Collaborative Commissioning" is £5.977m (LBC contributing £3.042m and BLMK ICB contributing £2.935m which is variable spend)
- 4 Better Care Fund total indicative budgeted spend is £26.568m including iBCF and DFG which are paid directly to LBC separately. LBC spend profile is £17.230m (including iBCF & DFG) while BLMK ICB spend profile is £9.337m.
- 5 Total Section 75 budget for 2022/23 is **£87.511m** as detailed in Appendix 1. This figure excludes the newly announced Adult Social Care Hospital Discharge Fund 2023-2024. An additional £1,048,821 has been confirmed and allocated to the local authority to be pooled within iBCF. A further block allocation has been made to the BLMK ICB to be pooled within BCF. Agreement is required to split this allocation across each Health & Wellbeing Board area. The final figure at time of signing is projected by the ICB Finance Team to be circa £1 million, bringing the total Hospital Discharge Fund for Luton to circa £2,048, 821.
- 5.6 Financial Contributions will be paid as set out in each Schedule. BLMK ICB and LBC shall pay their financial contributions to the Host Partner quarterly. The first, second, third and fourth quarters invoices shall be raised within 30 days of the start of a quarter. Reconciliation invoices will then be raised 30 days before the end of the financial year using actual activity based on month 11 data, presented at FSG and JSCG in March. Any final adjustment invoices will then be issued after month 12 data has been submitted, in April. Each quarterly payment shall be paid on receipt of an invoice for that payment, in line with the partner's payment terms, subject to resolution of any queries raised.

- 5.7 Final confirmation of the BCF allocation is still awaited from NHSE. The plan may need to be revised once NHSE have released the confirmed NHS funding allocation.
- 5.8 New financial year's budgets will be considered and agreed by the JSCG before the beginning of the new financial year wherever it is possible due to the different budget setting periods of both organisations.
- 5.9 The host partner's pooled fund manager shall recommend changes to financial contributions for each service based on the latest financial information, insights on historical costs and joint understanding of any year on year increase in demand. LBC shall share information on transition clients. This shall help to inform each partners own organisational budget setting process.
- 5.10 There shall be quarterly, open and transparent reporting. Any variations in BCF & iBCF funds, projected underspends or overspends must be reported to the FSG and then reported to the JSCG.
- 5.11 Where a financial allocation is received by one or more Partners from an external body (e.g. NHS England or MHCLG) during the financial year, and in accordance with the fund/grant conditions, this allocation will be used to increase the Financial Contributions for the appropriate Services. This shall be agreed by the JSCG in accordance with the fund/grant conditions.

Risk Share

- 6 Following the June 2017 Concordat, Luton committed resources to build a S75 Pooled Budget agreement for the future years.

As detailed in Appendix One (1), each spend line has a share profile attached to it which is either Fixed or Variable.

Where it is indicated as a fixed share, any overspend or underspend by the host partner will not alter the contributions required by the non-host partner.

- 6.1 Where it is indicated as a variable share, any overspend or underspend by the host partner will alter the contributions required by the non-host partner. Luton will adopt the S75 flexibility of a pooled budget with a 50/50 risk share to the joint funding of clients for:

6.1.1 People with learning disabilities

6.1.2 People with an active mental health conditions subject to S117

6.1.3 People with an active mental health conditions subject to non-S117

6.1.4 Older People with an active mental health conditions

- 6.2 A 50:50 split for people with physical disabilities is under discussion and consideration. A deed of variation will be actioned if this is agreed.

- 6.3 There is no risk share on BCF non-electives as it is no longer a requirement within BCF planning requirements since 2019/20.

Pooled Fund Management

- 7 The Pooled Funds are managed by respective commissioning teams, in co-located offices. For example, LBC is the Host Partner to Children & Young People and Learning Difficulties & Autism Pooled Funds. BLMK ICB is the Host Partner to Mental Health & Wellbeing Pooled Fund.

Any variances and the subsequent treatment against the pooled funds will be subject to a type of contribution either being fixed or variable as explained above.

BLMK ICB lead commissions contract with ELFT and Total Wellbeing/IAPT Services. Planning guidance is usually issued in December and contracts are signed by the end of March each year. LBC finance, the non-host partner, sets its budget five months earlier in November, and once set any deviation becomes an organisational problem. Given these two timing conflicts, BLMK ICB finance has agreed to provide, in written form, any early guidance issued by NHSE to support any budget uplifts required in the LBC budgets for the subsequent financial year.

Previously both partners have agreed a new arrangement for joint funded clients as per paragraph 14 above.

S75 Overspend Position

- 8 All spend within S75 is subject to a fixed or variable share or contribution. While fixed share lines in general will never be overspent, variable spend can be overspent depending on the volume or activity level.
- 8.1 It is therefore imperative that both partners set their budgets at the start of the financial year as accurately as possible. Any variations from the originally set budgets will be discussed in FSG and then presented in JSCG accordingly.
- 8.2 The Partners agree to co-operate fully in order to establish an agreed position in relation to any overspends.
- 8.3 Any overspends within the Better Care Fund will be mitigated by the jointly agreed solutions.

S75 Underspend Position

- 9 As explained above that all spend within S75 is subject to either a fixed or variable share contribution. While fixed contributions in general will never show an underspend, variable lines can show underspends against the set budgets depending on the volume or activity level.
- 9.1 Any underspends will be returned to the relevant partners, apportioned in line with pool contributions.
- 9.2 Any underspends in better Care Fund including any un-allocated amounts or contingencies will be discussed in FSG with the recommendations on use of these made to the JSCG.

Financial Management Systems

- 10 The Host Partner will be responsible for the financial management of the budgets, as set out in this schedule.
- 10.1 The Host Partner will ensure that full and proper records for accounting purposes are kept in respect of the budgets, for which the Host Partner is responsible and that accounts are kept and cash flows are managed in accordance with proper practices and comply with the terms of all codes of practice or guidance or directions which apply to the Partners.

- 10.2 The Host Partner will provide regular summarised financial reports to partners in accordance with the agreed governance and performance arrangements for all services as set out in other schedules and statutory year-end memorandum accounts in line with both partners required financial timetables.
- 10.3 If it is deemed necessary, any of the Partners may convene a meeting to discuss any professional issues arising out of financial management of budget.

Timely Invoice Dispute Resolution

- 11 Clause 22 of the main S75 schedule defines the dispute resolution of last resort. To minimise disputes, the Partners shall follow a *timely* process of escalation.
- 11.1 FSG shall maintain a register of all the invoice disputes per Partner. FSG shall review the register at every meeting and endeavour to resolve any disputes within two meeting cycles after entry.
- 11.2 If the invoice dispute is not resolved in FSG, within the two meeting cycles, the invoice dispute shall be added to the unresolved invoice dispute register and escalated to BLMK ICB CFO and Council's S151 officer, for their attention and decision.
- 11.3 BLMK ICB CFO and Council's S151 Officer shall give priority attention to resolving the dispute within the financial year.

Timely settlement of invoices and backing data

- 12 Both partner are under financial pressures. Timely settlements of invoices within this S75 agreement are a critical part of the day to day financial operation to minimise disputes and help manage financial risk/opportunities.
- 12.1 BLMK ICB manages its cash flow on a monthly basis. Timely generation of invoices is required for collaborative working. It is agreed that S75 invoices will be presented within one month of the start of quarter 1, 2, 3 & 4, with reconciliation invoices issued in March for quarter 4 based on February forecast outturn. Any adjustment invoices required will then be issued in April, based on final outturn data.
- 12.2 Purchase Orders shall be raised, where applicable, and approved prior to invoicing and preferably at the commencement of a service. The council operates a 'No Purchase Order, No Pay' policy.
- 12.3 For payable invoices, the backing data to be supplied by either Partner shall contain the following
- For a recharge invoice / joint funded placements / client based:
 - 1) addressed to the correct approval person
 - 2) a clear description of spend, preferably with reference to this schedule 7, paragraph 3.
 - 3) authorisation from relevant Service manager,
 - 4) breakdown of spend per client
 - 5) client info subject to confidentiality
 - 6) contact name of originator in the event of query
 - For S75 quarterly invoicing
 - 1) S75 finance budget/forecast report

- 12.4 Each partner shall present to the other partner, at the monthly FSG, queries of any outstanding invoices. Responses to queries shall be within 5 work days.
- 12.5 The partners are committed to improving the sharing of information for the purposes of timely financial settlement and avoidance of disputes. The lead commissioning partner shall maintain data on spend per client as part of day-to-day operation. Both partners shall be prepared to supply client spend data upon request within a short period of time, typically 5 work days for reasonable requests, and 10 work days for more complex requests. If a complex request is likely to be more than 10 workdays, then the reasons must be given to the requesting Partner in order to understand the barriers and formulate possible solution. Simple request is where the information is inside finance department, complex request is where the information is outside of finance department in services or commissioning.
- 12.6 Failure to supply the correct backing data will lead to delays. Acknowledgement of receipt of the information needs to be made by the receiving party.

Open and Transparent S75 Reporting

- 13 S75 reporting shall promote openness, transparency, timeliness and accuracy with any variations from original budgets clearly agreed and presented.
- 13.1 S75 budget reporting shall be on a quarterly basis to FSG and JSCG.

Appendix One (1) Including ASC Hospital Discharge Fund 23-24 Figures (ICB allocation to be formally confirmed)



V1.1 S75 2023-24
Budget Incl HD Fund.x

**SCHEDULE 8
UKGDPR AND DATA PROCESSING SCHEDULE**

Requirements of Processing, Personal Data and Data

1. The Partners shall complete this Schedule as agreed between the Partners
2. Any such further requirements shall be incorporated into this Schedule

Description	Details
Subject matter of the Processing	<p>The Section 75 Agreement 2023-2024 between the Luton Borough Council (LBC) and the Bedfordshire, Luton and Milton Keynes Integrated Care Board (BLMK ICB).</p> <p>To establish a framework through which the Partners can secure the provision of health and social care services</p>
Duration of the Processing	Throughout the life of the Section 75 Agreement 2023-2024
Nature and purposes of the processing	<p>Schedule 8 outlines the data sharing agreement between the 2023-2024 Section 75 Agreement LBC and the BLMK ICB</p> <p>The S75 Agreement and the associated schedules enable the prescribed health related functions of one Partner to be delegated to the other for the purpose that the arrangements are likely to lead to an improvement in the way in which those functions are exercised. The basis of such agreements centre upon the pooling of budgets, agreed joint ways of working and the promotion and strengthening of partnership working with the aim of more effective, efficient use of resources including the appropriate and relevant data sharing associated with the S75 Agreement, in order to meet the health and social care needs of the citizens of Luton.</p> <p>In addition to the UKGDPR Schedule, BLMK ICB holds an overarching Data Sharing Agreement. This Data sharing agreement should be used in conjunction with this schedule</p>
Type of Personal Data	<p>Examples of but not limited to:</p> <p>Personal Data: Name, address, email address, telephone number, date of birth, gender, household make up including contact information for next of kin and others providing significant support, financial information including bank account details and benefit entitlement, school details, pupil ID numbers, national Insurance number; details of family relationships, lone parent status, family breakdown and relationships, history of domestic abuse, immigration status, language spoken, employment status, benefit entitlement, details of siblings, child receiving support for SEND , criminal reports and antecedents, information if child is looked after or has special guardianship, adoption information</p>

Description	Details
Type of Personal Data Cont'd	Special category data: Ethnicity, religion, NHS Number, Information contained within the patient record including dentist and GP contact details, health information including mental health, mental capacity assessment, disability status and medical conditions, history of substance misuse & addiction, Treatment details, discharge summaries, care plans, medication reviews, medical reports, results of medical investigations such as x rays.
Categories of Data Subject	Adults and Children under the care of either party
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	Information will be retained and destroyed in line with the NHS Records Management Code of Practice 2021

APPROVED LUTON HWB 03.14.21

Dated 1st April 2023

Milton Keynes City Council

and

**Bedfordshire, Luton and Milton Keynes
Integrated Care Board**

**For the provision of an Integrated Community Equipment Service and
Wheelchair Provision and Repair Service**

Wragge&Co

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THIS DEED is dated 1st April 2023

PARTIES

- (1) Bedfordshire, Luton and Milton Keynes Integrated Care Board, of 155 Sherwood Drive, Bletchley, Milton Keynes, MK3 6RT (**the "ICB"**).
- (2) **Milton Keynes City Council** of Civic Offices, 1, Saxon Gate East, Central Milton Keynes, MK9 3EJ (**the "Council"**).

BACKGROUND

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (B) The Partners are committed to better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (C) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

- 1.1 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: this Agreement between the ICB and the Authority comprising these terms and conditions together with all schedules attached to it.

Aims and Outcomes: the objectives of the Partners, setting out how the Partnership Arrangements are likely to lead to an improvement in the way the Functions are exercised, as described in Schedule 1.

Annual Development Plan: has the meaning set out in clause 7.

Authority's Authorised Officer: Mick Hancock, Group Head of Commissioning, Milton Keynes City Council.

Authority's Financial Contribution: the Authority's financial contribution for the relevant Financial Year. The Authority's Financial Contribution for the First Financial Year is set out in Schedule 3.

Change in Law: a change in Law that impacts on the Partnership Arrangements, which comes into force after the Commencement Date.

Commencement Date: 1st April 2023

Community Equipment means nursing equipment and aids to daily living and adaptations which assist an individual to perform their essential activities of daily living in the community and maintain their independence.

Data Protection Legislation: this includes:

- (a) the Data Protection Act 2018 (**DPA 1998**);
- (b) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (c) the Regulation of Investigatory Powers Act 2000;
- (d) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*);
- (e) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;
- (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2003/2426*); and
- (g) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable.

Dispute Resolution Procedure: the procedure set out in clause 28.

Financial Contributions: the financial contributions of the Partners as set out in Schedule 3.

Financial Year: 1 April 2023 to 31 March 2024.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation.

Functions: the NHS Functions and the Authority's Health-Related Functions.

Host Partner: the host partner for the Functions under this Agreement or any of the Previous Section 75 Agreements, as appropriate. The host partner during the first year of this agreement is Milton Keynes City Council. The host partner role may be undertaken by either partner following agreement by both partners to any change.

Information: has the meaning given under section 84 of FOIA.

Information Sharing Protocol: the protocol describing how the Partners will share Information contained in Schedule 9.

Initial Term: the period commencing on the Commencement Date and ending on the 1st anniversary of the Commencement Date.

Joint Leadership Team: the meeting of senior executives from the Bedfordshire, Luton and Milton Keynes Integrated Care Board and Milton Keynes City Council, which provides governance on the joint commissioning arrangements, and any pooled budgets between the Integrated Care Board and the Milton Keynes City Council. Joint Leadership Team delegates responsibility to Milton Keynes Delivery Board for the day to day management of this agreement on its behalf.

Lead Partner shall mean Milton Keynes City Council for the purposes of this agreement.

Memorandum Account: a full statement of spending prepared at year end and signed by the accountable officer/section 151 officer to provide assurance to all other parties to the pooled budget. This is likely to include:

- Contributions to the pooled budget – cash or kind
- Expenditure from the pooled budget
- The difference
- The treatment of the difference

Milton Keynes ICES Board: An officer led group, with representatives from the ICB and the Authority who meet on a quarterly basis to monitor the service and the budget and take corrective action where required. The group approves operational policy for the Services in the scope of this agreement.

NHS Act 2006: National Health Service Act 2006.

NHS Functions: shall have the meaning set out in regulation 5 of the NHS Regulations 2000.

NHS Body's Authorised Officer: Anne Brierley, Chief Transformation Officer, Bedfordshire, Luton and Milton Keynes ICB

NHS Body's Financial Contribution: The ICB's financial contribution for the relevant Financial Year. The ICB's Financial Contribution for the First Financial Year is set out in Schedule 3.

NHS Regulations 2000: the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (*SI 2000/617*).

Non-pooled Fund: a non- pooled fund comprising either the Authority's Financial Contribution or The ICB's Financial Contribution for the Services designated in Schedule 3.

Operational Management Group: a group consisting of senior leaders /managers of prescribing teams that discuss and recommend operational service developments for agreement by the Milton Keynes ICES Board.

Partner: either the ICB or the Authority, and "**Partners**" shall be construed accordingly.

Partnership Arrangements: the arrangements made between the Partners under this Agreement.

Personal Data: shall have the same meaning as set out in the DPA 1998.

Pooled Fund: a pooled fund comprising the Authority's Financial Contribution and The ICB's Financial Contribution for the Services designated in Schedule 2, out of which payments may be made by the ICB towards expenditure incurred in the exercise of the Functions.

Pre-Existing Contracts: as set out in Schedule 7.

Previous Section 75 Agreements: previous agreements entered into by the Partners or their predecessor bodies under section 75 NHS Act 2006 or the *Health Act 1999*, as listed in Schedule 8.

Quarter: one of the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

Regulatory Body: those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Authority.

Representative: a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (*SI 2004/3391*) (**EIR**).

Service Provider: a third-party provider of any of the Services, as commissioned by the ICB or the Authority.

Service Users: individuals who are eligible to receive the Services, as more particularly described in Schedule 2.

Services: the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in Schedule 2.

Standing Financial Instructions: the financial policies and procedures of an organisation

Term: the period of the Initial Term as may be varied by:

- (e) any extensions to this Agreement that are agreed under clause 3; or
- (f) the earlier termination of this Agreement in accordance with its terms.

VAT Guidance: the guidance published by the Department of Health entitled "VAT arrangements for Joint NHS and Local Authority Initiatives including Disability Equipment Stores and Welfare- Section 31 Health Act 1999" as amended or replaced from time to time.

Working Day: any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2. COMMENCEMENT AND DURATION

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

3. EXTENDING THE INITIAL TERM

The Partners may extend this Agreement beyond the Initial Term for a period and on varied terms as they agree, subject to the approval of each of the Partners' Boards.

4. PARTNERSHIP ARRANGEMENTS

4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to commission integrated health and social care services to better meet the needs of Milton Keynes residents than if the Partners were operating independently.

4.2 The specific aims and outcomes of the Partnership Arrangements are described in Schedule 1.

4.3 From the Commencement Date, the Previous Section 75 Agreements are replaced by the provisions of this Agreement.

4.4 The Partnership Arrangements shall comprise:

(a) the establishment of Pooled Funds for the following Services:

(i) **Integrated Community Equipment Services**

(b) the establishment of Non-Pooled Funds for the following Services:

(i) **Equipment to support education**

(ii) **Equipment purchased using the Better Care Fund**

(iii) **Wheelchair purchase and repair services**

4.5 The Council shall host and provide the financial administrative systems for the Pooled **and** Non-Pooled Fund.

- 4.6 The Council shall appoint a Pooled Fund manager, which will be the Commissioning Lead, ASC Older People. This officer supported by the Commissioner, Community Equipment Services and Pooled Budget Lead (MKCC) will be responsible for:
- (a) managing the Pooled Fund **and** Non-Pooled Fund on behalf of the Partners;
 - (b) submitting quarterly reports and an annual return to the Partners about the income of and expenditure from, the Pooled Fund and other information, to enable them to monitor the effectiveness of the Partnership Arrangements.
- 4.7 In accordance with Regulation 4(2) of the NHS Regulations 2000, the Partners have carried out a joint consultation on the proposed Partnership Arrangements with service users, and other individuals and groups who appear to them to be affected by the Partnership Arrangements.
- 4.8 Nothing in this Agreement shall prejudice or affect:
- (a) the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
 - (b) the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
 - (c) the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

5. DELEGATION OF FUNCTIONS

- 5.1 For the purposes of the implementation of the Partnership Arrangements, the ICB hereby delegates the exercise of the ICB's functions to the Authority to exercise alongside The Authorities Functions and act:
- (a) as lead commissioner of the Integrated Community Equipment Service, including provision for educational establishments and equipment for use by children with disabilities.
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.

6. SERVICES

- 6.1 Milton Keynes City Council is the Host Partner for the Partnership Arrangements, and agrees to act as lead commissioner of the Services listed in clause 5.1.
- 6.2 The Council shall provide the Services or procure that they are provided and shall be accountable to the Council for the 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, and The Council's applicable policies set out in Schedule 2;
 - (d) in accordance with its standing orders or other rules on contracting; and
 - (e) in accordance with all applicable Law.

7. PERFORMANCE MANAGEMENT

The Partners shall adhere to the performance management framework set out in Schedule 5.

8. FINANCIAL CONTRIBUTIONS

- 8.1 The Authority shall agree its financial contribution with the ICB in respect of the Pooled and Non-pooled Funds in accordance with the process specified in schedule 3 of this agreement and the Annual Development Plan, if applicable.
- 8.2 The ICB shall agree their Financial Contribution to the Pooled **AND** Non-Pooled Fund and shall manage the Pooled and Non-Pooled Fund in accordance with this Agreement and the Annual Development Plan, if applicable.
- 8.3 The ICB's Financial Contribution and the Authority's Financial Contribution for the 2023/24 Financial Year are set out in Schedule 3.
- 8.4 The Partners shall pay the Financial Contributions into the Pooled **AND** Non-Pooled Fund monthly in arrears on receipt of an invoice.

- 8.5 The Partners shall agree The ICB's Financial Contribution and the Authority's Financial Contribution for the following Financial Year by 31 March.
- 8.6 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the relevant Pooled **AND** Non-Pooled Fund.
- (a) The Partners agree to adopt "Partnership Structure (b)" as set out in the Department of Health/HMRC guidance for joint NHS/local authority initiatives issued in June 2002 whereby the lead body acts as an 'agent' for the other partner. As a result, the Council is required to purchase the goods and services in its own name and re-invoice the relevant share to the other party. Thus enabling the ICB to recover any VAT which may be incurred under its VAT regime. Invoices shall be issued in the format given in Annex A to the VAT Guidance.]
 - (b) The Authority will provide sufficient and complete documentation to the ICB to enable the ICB to satisfy the requirements of HM Revenue and Customs with respect to reclaiming any VAT.

9. OVERSPENDS AND UNDERSPENDS

- 9.1 The Authority shall use all reasonable endeavours to arrange for the discharge of the Authority Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.
- 9.2 The Authority shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.
- 9.3 The Authority shall make the ICB aware of any potential overspend as soon as it becomes aware of this possibility and inform the Authority on a monthly basis of the projected outturn effect. The Pooled Fund manager will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.
- 9.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend of either or both Partners' Financial Contribution for:
- (a) Pooled Funds, the Partners shall meet the overspend proportionately to their respective financial contribution to the pooled fund; **AND**

- (b) Non-Pooled Funds for Authority Related Functions, the Authority shall fund overspends (e.g. education); **AND**
- (c) Non-Pooled funds for NHS related functions (e.g. wheelchairs) the ICB will fund overspends.

9.5 The Authority shall make the ICB aware of any projected underspend in relation to Financial Contributions, on a monthly basis throughout the Financial Year. The Authority shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

9.6 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an underspend of either or both Partners' Financial Contribution for:

- (a) Pooled Funds, the underspend shall be returned to the partners proportionately to their respective financial contribution to the pooled fund; **AND**
- (b) Non-Pooled Funds for Authority Related Functions, the underspends shall be retained by the Authority (e.g. education); **AND**
- (c) Non-Pooled funds for NHS related functions (e.g. wheelchairs and admin costs) the underspends shall be retained by the NHS Body.

10. CAPITAL EXPENDITURE

The Financial Contributions in the Pooled Fund shall be directed exclusively to revenue expenditure. Any Capital expenditure made available by the Authority is managed through the joint arrangements, but it is part of the non-pooled funds.

11. SET UP COSTS

Each Partner shall bear its own costs of the establishment of the Partnership Arrangements under this Agreement.

12. ASSETS

12.1 The Integrated Community Equipment Service operates on a loan arrangement basis, where items of equipment are loaned to service users for a period of time to meet their needs. Once the service user has no need for them, they are returned to the store, decontaminated and cleaned and available for re-use and generate another rental charge.

- 12.2 On occasions, the needs of particular service users are not able to be met by the equipment on the ICES catalogue, and equipment has to be specially purchased for their use.
- 12.3 Once an item of equipment has been purchased as a special order, it is then owned by either the Pooled Fund, or by the Non-Pooled Fund if it is an item of equipment to support educational needs, or a specialist wheelchair. The equipment item then becomes an asset.
- 12.4 All special orders can be re-used once the service user no longer requires them and they can be re-issued to other service users. There is no rental charge levied to the pooled fund or non-pooled fund, as this item of equipment belongs either to the Authority or to the NHS Body, depending on its intended use.
- 12.5 All equipment purchased to meet a health or social care need that would ordinarily be met by the Pooled Fund, becomes an asset of the Pooled Fund. Any special equipment purchased to meet an educational need will belong to the Authority. Any wheelchair purchased will remain an asset of the NHS Body.

13. GOVERNANCE

- 13.1 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the ICB and shall be responsible in connection with the Partnership Arrangements.
- 13.2 The ICB shall nominate The ICB's Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the ICB and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 13.3 The Pooled Fund Manager will be the Commissioning Lead for ASC Older People supported by the Commissioner for Community Equipment Service, who can represent both the ICB and the Authority.
- 13.4 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to the Joint Leadership Team and their respective boards.
- 13.5 The Partners shall each appoint officers to the MK ICES Board in accordance with Schedule 4. The terms of reference of the MK ICES Board is set out in Schedule 4.

13.6 The Partners shall each appoint officers to the Joint Leadership Team and the Milton Keynes Delivery Board. The Joint Leadership team will delegate responsibility to Milton Keynes Delivery Board and details of its role is set out in Schedule 4.

14. REVIEW AND REPORTING

14.1 The Pooled Fund manager supported by the Commissioner, Community Equipment Services will prepare a report following the Milton Keynes ICES Board. This report will outline any improvements made to the service; the current budget position and any actions implemented to address any overspends.

14.2 The Pooled Fund manager shall submit a six monthly report to the Milton Keynes Delivery Board setting out:

- (a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and
- (b) any forecast overspend or underspend of the Financial Contributions.

15. ANNUAL REVIEW

15.1 The Partners agree to carry out a review of the Partnership Arrangements within three months of the end of each Financial Year including:

- a) the performance of the Partnership Arrangements against the Aims and Outcomes;
- b) plans to address any underperformance in the Services;
- c) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
- d) review of plans and performance levels for the following year; and
- e) plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

16. VARIATIONS

16.1 This Agreement may be varied by the Partners at any time by agreement in writing, in accordance with the Partners' internal decision-making processes.

17. STANDARDS

17.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:

- the service standards set out in Schedule 2 and Schedule 5;
- the prevailing standards of clinical governance;
- the Authority's standing orders; and those of the Host Partner

18. EQUALITY DUTIES

18.1 The Partners acknowledge their respective duties under equality legislation, in particular but without limitation, the Equality Act 2010, to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

18.2 The Authority agrees to adopt and apply policies in its carrying out of the ICB Health-Related Functions and NHS Functions, to ensure compliance with their equality duties.

18.3 The Authority shall take all reasonable steps to secure the observance of clause 19.2 by all servants, employees or agents of the NHS body, the Authority and all Service Providers employed in delivering the Services described in this Agreement.

19. FREEDOM OF INFORMATION

The Partners acknowledge that each is subject to the requirements of FOIA and the EIR and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.

20. DATA PROTECTION AND INFORMATION SHARING

- 20.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 20.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working. This data will be anonymised, as the ICB is not able to view service user identifiable data at present. The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

21. CONFIDENTIALITY

- 21.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.
- 21.2 Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.

22. AUDIT

- 22.1 The Authority shall arrange for the audit of the accounts of the Pooled Fund **AND** Non-Pooled Fund in accordance with its statutory audit requirements.
- 22.2 The Authority shall provide to the ICB any reports required concerning the ICB Functions on reasonable notice.
- 22.3 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

23. INSURANCE

- 23.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

24. INDEMNITIES

Each Partner (**Indemnifying Partner**) shall indemnify and keep indemnified the other Partner (**Indemnified Partner**) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself, the Indemnifying Partner's employees, or any of its Representatives or sub-contractors, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its Representatives.

25. LIABILITIES

25.1 Subject to clause 26.2, neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.

25.2 Liabilities arising from Services provided or commissioned under the Previous Section 75 Agreements shall remain with the Host Partner for the Service under the relevant agreement.

25.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

26. COMPLAINTS AND INVESTIGATIONS

26.1 The Partners shall deal with all complaints received concerning the Services in the first instance through The ICB's complaints procedures.

26.2 The Partners shall endeavour to agree a joint complaints procedure within the first year of the Term.

26.3 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

27. HEALTHWATCH

- 27.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.
- 27.2 The Authority shall ensure the effective discharge of its obligations in the establishment of Local HealthWatch.
- 27.3 The Authority shall ensure its contracts with the Service Provider require co-operation with Local HealthWatch as appropriate.

28. DISPUTE RESOLUTION

- 28.1 The members of the Joint Leadership Team shall use their best endeavours to resolve disputes arising out of this Agreement.
- 28.2 If any dispute referred to the Joint Leadership Team is not resolved within 21 days, either Partner, by notice in writing to the other, may refer the dispute to the chief executives (or equivalent) of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within 21 days of service of the notice.
- 28.3 Subject to clause 29.4, if the chief executives (or equivalent) fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Partner may commence legal proceedings.
- 28.4 This clause 29 shall not prevent either Partner from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 29 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

29. TERMINATION

- 29.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 30.2 or 30.3, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner.
- 29.2 Either Partner (for the purposes of this clause 30.2, the **First Partner**) may terminate this Agreement in whole with immediate effect by the

service of written notice on the other Partner (for the purposes of this clause 30.2, the **Second Partner**) in the following circumstances:

- if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement under clause 30.2 if the Second Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner (**Remediation Notice**) to do so;
- there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement.

29.3 The provisions of clause 31 shall apply on termination of this Agreement.

30. CONSEQUENCES OF TERMINATION

30.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:

- a) the Partners will comply with the exit strategy Schedule 10;
- b) assets purchased from the Pooled Fund shall be disposed of by the ICB and the proceeds of sale allocated according to the Partners' Financial Contributions or, if otherwise agreed and subject to the conditions of such agreement, shall be retained by either party, subject to agreement **AND/OR**
- c) assets purchased from the Non-Pooled Funds shall be returned to the Partner from whose Financial Contribution the purchase was made;
- d) contracts entered into by the ICB concerning the Authority shall be novated to the Authority by agreement with the Authority; and
- e) the ICB shall transfer to the Authority all records in its possession relating to the Authority's Functions.

30.2 Overspends on termination of the Agreement shall be dealt with in accordance with clause 10.4.

30.3 Subject to clause 31.4 under spends on termination of the Agreement shall be dealt with in accordance with clause 10.5.

30.4 Subject to clause 25, the ICB shall be entitled to direct any under spends to the following purposes:

- (a) to meet obligations under existing contracts;
- (b) to defray the costs of making any alternative arrangements for Service Users

30.5 The provisions of the following clauses shall survive termination or expiry of Agreement:

- Clause 20 (Freedom of Information);
- Clause 21 (Data Protection and Information Sharing);
- Clause 23 (Audit);
- Clause 25 (Indemnities);
- Clause 6 (Liabilities); and
- Clause 31 (Consequences of Termination);

31. PUBLICITY

The Partners shall use reasonable endeavours to consult one another before making any press announcements concerning the Services or the discharge of either Partner's Functions under this Agreement.

32. NO PARTNERSHIP

Nothing in this Agreement shall be construed as constituting a legal partnership between the Partners or as constituting either Partner as the agent of the other for any purpose whatsoever, except as specified by the terms of this Agreement.

33. THIRD PARTY RIGHTS

33.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.

33.2 Despite clause 34.1, it is expressly agreed that the parties to this Agreement may, by agreement, rescind or vary this Agreement, or any term of this Agreement without the consent of any person who has a right to enforce this Agreement or the term in question.

34. NOTICES

34.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the chief executive (or equivalent) or another person duly notified by the Partner for the purposes of serving notices on that Partner, at the address set out for the Partner in this Agreement.

34.2 Notices may be sent by first class mail or email. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed email communications shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

35. ASSIGNMENT AND SUBCONTRACTING

35.1 Subject to clause 36.2, This Agreement and any right and conditions contained in it may not be assigned or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.

35.2 The Partners recognise the recent changes to the structure of the NHS and agree that where necessary, the ICB shall be entitled to novate, assign in whole or in part and right or condition under this Agreement to any other NHS organisation or any other entity replacing the ICB or who has become responsible for the exercise of any or all of the NHS functions.

36. SEVERABILITY

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

37. WAIVER

37.1 The failure of either Partner to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Partner thereafter to enforce such provision.

37.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

38. ENTIRE AGREEMENT

This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

39. GOVERNING LAW AND JURISDICTION

Subject to clause 29, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

40. FAIR DEALINGS

The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 AIMS AND OUTCOMES

- 1.1 The overall aim of the Partnership Arrangements is to improve standards and quality of services through more effective coordination of resources within the partnership.
- 1.2 The purpose of this Agreement is to enable the Partner Organisations to deliver the joint vision for provision of equipment and wheelchair services, in line with local strategies. This will be enabled by the delegation of lead commissioning and integrated service provision to the Lead Partner and supported by the flexible use of funds in a Pooled Fund (the Pooled Fund). This will be extended to commission comprehensive and integrated community equipment services and minor aids and adaptations, with the aim of improving outcomes, for individuals. This will be achieved through the Pooled Fund arrangement between the Partner Organisations basing expenditure on need of service users, and the level of contribution from each of the Partner Organisations.
- 1.3 This Agreement provides a robust framework within which agreed monies can be pooled for the individuals who require equipment or minor aids and adaptations in Milton Keynes to the benefit of individuals and carers, and defines the legal, practical and strategic context for pooling budgets.
- 1.4 This Agreement shall be governed and construed in English Law. Section 75 of the National Health Service Act 2006 describes the scope of the functions that are allowed within the Pooled Fund arrangement.
- 1.5 This Agreement relates to funds contributing to joint budgets for each Financial Year during the term of this Agreement. If additional funding or services are to come within the remit of the Pooled Fund arrangement, then a review of the budget will be undertaken by the Pooled Fund manager and approved by the Joint Leadership Team.
- 1.6 The service which is primarily subject to this Agreement is the procurement by the Lead Partner of an integrated community equipment and minor aids and adaptations service, the defining characteristics of which are set out in the appendices to this Agreement.
- 1.7 The development and performance of the Services are discussed and recommended by the Operational Management Group. The Operational Management Group is accountable to the Authority or ICB that members are representing.

Schedule 2 SERVICES IN SCOPE

Joint eligibility criteria for community equipment, aids to daily living and adaptations:

Geographical criteria:

- Those resident in Milton Keynes and whose GP practice is a member of Bedfordshire, Luton or Milton Keynes ICB. In this instance the Pooled Fund will fund Nursing equipment, aids to daily living and adaptations
- Those who are resident in Milton Keynes, but whose GP is hosted by another Clinical Commissioning Group e.g. Northampton. In this instance the Pooled Fund will fund aids to daily living and adaptations
- Those who do not live within the Borough of Milton Keynes, but who are registered with a GP practice hosted by Bedfordshire, Luton or Milton Keynes ICB. In this instance the Pooled Fund will fund equipment to meet a nursing/medical need

Priority A – Clients/carers whose health or disability would be seriously impaired and the provision is essential in order that the person can continue to live/be cared for at home. This will apply to hospital discharges and to individuals requiring equipment to support them at the end of their life

Priority B – Clients who are experiencing difficulty with sustaining independence without help
Or
Physical deterioration likely without provision
Or
Where the carer is experiencing difficulty in the provision of care without assistance.

Priority C – Indicates the equipment would provide the ideal solution to further independence/rehabilitation or care or physical comfort, where an alternative solution is available at no risk to client or carer.

Schedule 3 CONTRIBUTIONS 2023/24

3.1 Pooled Budget 2023/24

Annual Budget 2023/24

ICES Pooled Budget	Total
	£
ICB Equipment Pool Budget	485,826
MKCC Equipment Pool Budget (Adults & Children)	551,226
<hr/>	
Sub-Total - ICES Pooled Budget	1,037,052
<hr/>	
ICES Provider Management:	
ICB Administration	344,060
MKCC Administration (BCF)	200,000
<hr/>	
Sub-Total - Management	544,060
<hr/>	
Total Pool & Management	1,581,112
<hr/>	
Items not in Pool	
MKCC Education	150,000
<hr/>	
Total ICES Budget	1,731,112
<hr/>	

- 3.2 The Partners shall operate a Pooled Fund for the purchase of equipment to support medical needs, aids for daily living and adaptations. The budgets to be pooled are specified above. The Host Partner shall create clear identifiable cost centres and report formats to enable effective monitoring and reporting. This will include the production of monthly budget statements and statutory year end Memorandum Accounts or estimates thereof to coincide with financial timetables. The year-end position shall be reported to the Joint Leadership Team and the Memorandum Accounts shall be sent to both Partners by the Host.
- 3.3 The Partners may extend the Pooled Fund to include additional budgets for equipment by agreement.
- 3.4 The Pooled Fund shall be used for the purchase of equipment and for improving service delivery to the Integrated Community Equipment Service.
- 3.5 The base budgets contributed by the Partners to the Pooled Fund shall be negotiated annually based on the previous Financial Year's budget from each of the Partners, plus an equal agreed inflationary uplift if deemed necessary by the Partners.

- 3.6 In the event of a year-end **overspend** in the Pooled Fund this will be offset by the additional funding set aside in the BCF and IBCF for ICES equipment services. Any remaining overspend will be borne by each partner on the terms outlined in 10.4 (a).
- 3.7 In the event of an **under spend** in the Pooled Fund at the end of a Financial Year-, this shall be returned to the partners in proportion to their contributions. Budget variances elsewhere in the Authority or the ICB shall not affect the Pooled Fund.
- 3.8 The Standing Financial Instructions for the Host Organisation will govern the deployment of these resources. The Pooled Fund will be governed by the financial rules, statutory requirements and duties of the NHS body. Due delegation will be extended to cover the Partnership Arrangements.
- 3.9 The ICB shall process all supplier invoices due for payment within 30 days in line with the public sector payment policy.
- 3.10 The Partners agree that purchases made under the Pooled Fund will be subject to the VAT rules of "Partnership Structure (b)" as set out in the Department of Health/HMRC guidance for joint NHS/local authority initiatives issued in June 2002 whereby the lead body acts as an 'agent' for the other partner. This shall be subject to the advice of the Department of Health and HM Customs and Excise.
- 3.11 The partners shall consult the Joint Leadership Team in writing before any decision is taken by the partners to make financial investment or disinvestments.
- 3.12 Requirement for additional investment will be identified by the Pooled Fund manager in response to identified service gaps, shortfall in meeting demand, or in response to new targets or guidance from Government and acknowledged through the Commissioner's Group. These requests will be submitted by the Commissioner's Group to the Boards of each partner for ratification.
- 3.13 In the event that one Partner identifies an uplift in contribution to the Pooled Fund and the other organisation is not in a position to match this, each Partner shall decide, through their respective decision making processes, whether the Partner who has prioritised the uplift will be required to invest it in the absence of matched funding from the other Partner.
- 3.14 The Lead Partner will be responsible for the management of the Pooled Fund and the management of the contract with the Service Provider. The Lead Partner will delegate the management of the Pooled Fund to the Pooled Fund manager supported by the Contracts, finance and quality teams of the Lead Partner. The Pooled Fund manager will report to the Commissioner's Management Group every two months, and who will monitor activity, performance, finance, quality of the service against agreed targets. The Commissioner's management group is accountable to the Joint Leadership Team and will provide reports every 2 months on the performance of the pool. The Joint

Leadership Team will oversee the strategic direction of the use and application of the Pooled Fund. They will agree the budget contributions each year and receive an annual report on the performance of the pool within 8 weeks of the end of the financial year.

- 3.15 It is acknowledged by both parties that the role of Lead Partner can by agreement be assigned to either of the Partners in accordance with Clause 17, such assignment being made pursuant to this partnership agreement and the role of Lead Partner will apply to the current Lead Partner.
- 3.16 The Commissioner's Group has representation and delegated responsibility for developing and monitoring services.
- 3.17 The Partner Organisations shall determine the shape and strategic direction of services through the Joint Leadership Team, based on recommendations from the Commissioners Group. Activity levels will be agreed annually between the Partner Organisations.
- 3.18 Catalogue Stock Equipment procured pursuant to this Agreement will remain in the ownership of the Provider but will be made available for use by the Partnership Organisations. Items ordered under the contract as "specials" will be owned under the pool and shared between each organisation based on their percentage contributions to the pool. The contractor will be responsible for the maintenance and storage of these assets. The lead partner will liaise with the contractor at each year end to undertake a stock take of this equipment which will be fed through for inclusion in the yearend financial position.
- 3.19 In the event of the termination of the Agreement, nursing and aids to daily living equipment purchased through the Pooled Fund as "specials" will become the property of the appropriate partner. The equipment will be distributed to whichever partner needs it to carry out its statutory obligations.

Schedule 4 GOVERNANCE

4.0 Joint Leadership Team

4.1 The Joint Leadership Team will provide the governance for this Section 75 Agreement.

The Joint Leadership Team will delegate its responsibility to the Milton Keynes Delivery Board whose role will be to:

- Review the operation of this Agreement and consider its renewal subject to the terms of any existing contractual commitments under the management of the Authority or ICB in its role as Lead Commissioner on behalf of the Partners.
- Review and consult on commissioning strategies and intentions, and revise this agreement as appropriate
- Receive six monthly finance reports as set out in this Schedule.
- Agree the financial contributions to the Pooled Fund on an annual basis
- Agree such variations to this Agreement from time to time as it sees fit
- Review and agree annually revisions to this agreement as required.
- Receive quarterly performance reports from the lead commissioner
- Consider progress on key objectives as outlined in this agreement and consult further where necessary.
- Approve the quarterly and annual reports on outcomes as appropriate from the lead joint commissioner
- Report on progress to stakeholders through the relevant Programme or Partnership Board

4.2 Milton Keynes ICES Board

The Terms of Reference for this Board is as follows:

Name	Milton Keynes ICES Board
Purpose of the Group	To oversee and ensure that the development of the BLMK ICES partnership achieves short/medium term efficiencies and effectiveness in ICES through the integration of the local service with BL ICES Partnership and the re-procurement of the service on BLMK basis.
Accountable to	Section 75 Partnership Agreement partners Joint Leadership Team

Terms of Reference	<p>Clear and robust governance framework regarding the administration and management of MK ICES that ensures:</p> <ul style="list-style-type: none"> • Expenditure managed within the agreed budget. • Panel process in place to manage specials. • Delivery timescales are achieved. • Collections, PPM etc meet the agreed performance targets. • Action is taking to rectify any financial or performance issues. • Operational group in place and agreed actions are constantly reviewed. • Equipment review group in place and actively manages the catalogue ensuring value for money is achieved. • Prescriber policy in place and updated as necessary. • Catalogue reviewed regularly to ensure that items offer best value for money through equipment review group. • The new partnership arrangements will comply with VAT regulations. • Contract meetings are held regularly with Millbrook to ensure performance and financial issues are addressed in a timely manner. • The implementation of BLMK partnership does not result in additional cost pressures or in VAT arrangements that increases costs.
Membership	<p>Group Head of Commissioning, Commissioner and Contract Officer – MKCC Associate Director, Personalised Care and System Flow - ICB Commissioner and Contract Monitoring Officer for the Community Equipment Service - ICB Commissioning Lead for ASC Older People, Head of Contracts and Head of Commissioning - MKCC Finance representatives from MKCC and ICB</p>
Frequency of meetings, Venue, Minutes	<p>Quarterly A minuted record will be kept of each meeting.</p>

Schedule 5 PERFORMANCE MANAGEMENT FRAMEWORK

- 5.1 The Lead Partner shall be responsible for managing the budget and forecasting and reporting to the partners on the planned outputs/outcomes, including how far financial targets are being met.
- 5.2 The Partner Organisations will each account for their contribution to the Pooled Fund in their accounts.
- 5.3 The Lead Partner as the host organisation for the Pooled Fund, will arrange for monitoring reports to be sent to the ICB on a quarterly basis. At the end of a Financial Year, the Lead Partner will prepare a memorandum of accounts within its statement of accounts, which shows what has been received, spent and what remains. This memorandum of accounts will be sent to the Partner Organisation at the end for inclusion in their statement of accounts. Records will need to be retained for at least six years plus the current year.
- 5.4 The Lead Partner will ensure that monthly budget monitoring reports are made available to the Partner Organisation.
- 5.5 Performance targets and service outcomes will be agreed between the Partner Organisations and detailed in the service and financial planning document at the beginning of each financial year.
- 5.6 All the Milton Keynes provider services that use the Community Equipment Service will provide the Lead Partner with a list of authorised prescribers. Where changes occur, the Lead Partner will be notified of these changes.
- 5.7 The Milton Keynes provider organisations will provide the Lead Partner with information in respect of any known risks or hazards in respect of the provision of the Services.
- 5.8 Any in year overspend will be actively managed. The Milton Keynes ICES Board shall be responsible for the development of a recovery plan for a projected overspend of greater than 10% of the total budget or its component elements. This should be signed off by the Milton Keynes ICES Board and the remedial actions reported to the Joint Leadership Team.

Schedule 6 STAFFING

NOT APPLICABLE FOR THIS AGREEMENT

Schedule 7

Pre-Existing Contracts

All pre-existing leases and contracts will be honoured for the specified duration and be unaffected by this Agreement.

Schedule 8

Previous Section 75 Agreements

There was a Section 31 agreement in place for this service, agreed in September 2003. However, since this was issued, there have been several changes made to how the service is commissioned, governed and delivered.

A new service provider was appointed in December 2013, and the decision taken that the Bedfordshire, Luton and Milton Keynes ICB would be the lead partner for the purposes of the contract and the S75 agreement.

A new service provider was appointed in April 2017, and the decision taken that Milton Keynes City Council would be the lead partner for the purposes of the contract and the S75 agreement.

It is important that the Agreement is flexible enough to be amended should these lead partner arrangements change in the future over the life of this agreement.

All previous agreements between the Partners relating to the subject are superseded by this Agreement

Introduction

This information sharing agreement has been written in accordance with the guidelines contained within NHS England's Information Sharing Policy – personal information. The Health and Social Care Information Centre's code of confidentiality (Dec 2014) and the Office of the Information Commissioner guidance on data sharing.

9.1 This Protocol has been developed to enable information to be lawfully shared between the ICB and the Council, in the context of the partnership agreement entered into between the Partners. In developing the Protocol, the Partners have considered the following legal constraints and best practice:-

- Access to Health Records 1990
- Data Protection Act 2018
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- Health and Social Care Act 2013
- UKGDPR

9.2 Definitions

Accessible Record – unstructured personal information usually in manual form relating to health, education, social work and housing.

Agent – acts on behalf of the data subject.

Aggregated – collated information in a tabular format.

Anonymous data – anonymous data is where an Organisation does not have the means to identify an individual from the data they hold. If the Data controller has information, which allows the Data Subject to be identified, regardless of whether or not they intend to identify the individual is immaterial - in the eyes of the IC this is not anonymous data. Data Controller must be able to justify why and how the data is no longer personal.

Consent – The Information Commissioner's legal guidance to the Data Protection Act 2018 is to refer to the Directive, which defines consent as "...any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed" (3.1.5).

Data/Information –

- a) Information being processed by means of equipment operating automatically or
- b) Information recorded with the intention it be processed by such equipment.

c) Recorded as part of a relevant filing system or

Not in a or b or c, but forming part of an accessible record. Recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

Data Controller – a person or a legal body such as a business or public authority who jointly or alone determines the purposes for which personal data is processed.

Data Processing – any operation performed on data. The main examples are collection, retention, deletion, use and disclose.

Data Processor – operates on behalf of the Data Controller. Not staff.

Data Set – a defined group of information

Data Subject – an individual who is the subject of personal information.

Disclosure – the passing of information from the Data Controller to another organisation / individual

Duty of Confidentiality – everyone has a duty under common law to safeguard personal information.

European Economic Area (EEA) – this consists of the EU members together with Iceland, Liechtenstein and Norway.

Fair processing – to inform the Data Subject how the data is to be processed before processing occurs

Fully informed implied consent - In order to comply with the Data Protection Act, to validate implied consent if necessary and to satisfy moral obligations, the sender must always strive to fully inform the subject wherever possible of the uses to which their information will be put, what disclosures could be envisaged and what the consequences of the processing are. All parties must strive to be open and transparent.

Health Professional – In the Data Protection Act 2018 "health professional" means any of the following who is registered as:

- A medical practitioner, dentist, optician, pharmaceutical chemist, nurse, midwife or health visitor, and osteopaths.

and

- Any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 currently extends to, clinical psychologists, child psychotherapists and speech therapist,

music therapist employed by a health service body, and scientist employed by such a body as head of department.

Health Record – any information relating to health, produced by a health professional.

Need to know – to access and supply the minimum amount of information required for the defined purpose.

Personal Data – means data relating to a living individual who can be identified from those data (including opinion and expression of intention).

Processing – any operation performed on data. Main examples are collect, retain, use, disclosure and deletion.

Purpose – the use / reason for which information is stored or processed.

Recipient – anyone who receives personal information for the purpose of specific inquiries

Relevant Filing System – two levels of structure, (i) filing system structured by some criteria (ii) each file structured so that particular information is readily accessible.

Sensitive Personal Data – The DPA defines sensitive personal data as:

- (a) the racial or ethnic origin of the data subject;
- (b) his political opinions;
- (c) his religious beliefs or other beliefs of a similar nature;
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992);

genetic data

biometric data

sexual orientation

- (e) his physical or mental health or condition;
- (f) his sexual life;
- (g) the commission or alleged commission by him of any offence; or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Serious Crime – There is no absolute definition of "serious" crime, but section 116 of the Police and Crime evidence Act.

Subject Access – the individual's right to obtain a copy of information held about themselves.

Third Party – any person who is not the data subject, the data controller, the data processor (includes Health, Housing, Education, Carers, Voluntary Sector etc. as well as members of the public).

9.3 Policy Statement and Purpose of this Data Sharing Agreement.

This data sharing agreement is set up between

- Milton Keynes City Council
- Bedfordshire, Luton and Milton Keynes ICB

Milton Keynes City Council (MKCC) will share with BLMKICB the data set out in this agreement. The records will be shared with and utilised for the purpose developing joint commissioning activities.

This document is a Data Sharing Protocol (for the purpose of this protocol, the terms data and information are synonymous). The aim of this document is to facilitate sharing of information between the public, private and voluntary sectors so that members of the public receive the services they need.

Organisations involved in providing services to the public have a legal responsibility to ensure that their use of personal information is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share information to provide quality service and protection of confidentiality is often a difficult one to achieve

The parties to this agreement may only use the information disclosed to them under this agreement for the specific purpose(s) set out in this document. The information will not be shared with, or passed to, any third parties without prior approval of the originating partner's Data Controller.

9.3.1 This information governance protocol is consistent with those used in other S75 agreements and has been developed in consultation with the following information governance leads:

- Consultant Psychiatrist and Caldicott Guardian for CNWL
- Operational Director Children's & Specialist Services and Link Caldicott Guardian for CNWL-MK
- Head of Information Governance, CNWL
- Head of Policy and Performance and Caldicott Guardian for MKCC
- Head of Corporate Services and Systems, MKICB

9.4 Information Governance Standards

The Partners must comply with, or be working with an agreed action plan towards, a minimum of level 2 compliance with the NHS Digital Data and

Security Protection Toolkit. The obligations of confidentiality contained below shall survive the termination of this Agreement. All enquiries or considerations given to common law duties of confidence or confidentiality must be dealt with as per section 24 of the Agreement.

9.5 Freedom of Information

The Partners acknowledge that each is subject to the requirements of Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Partners shall assist and co-operate with one another to enable each Partner to comply with information disclosure requirements where necessary and in compliance with locally developed policies and protocols which will be developed for this purpose. All enquiries or considerations given to the Freedom of Information Act legislative requirements must be dealt with as per section 25 of the Agreement.

9.6 Non-personal confidential information

The Partners shall keep confidential any information acquired through their conduct of this Agreement and will take all reasonable steps to ensure that their employees and contractors do not divulge such information to a third party without the express consent of the Partners, except in accordance with the requirements of law. This will include, but is not limited to, commercially sensitive information.

9.7 System Access

The Partners shall ensure that staff who access systems will abide by the relevant local policies and procedures. Any contractors who are working for the Partners must sign a Confidentiality Agreement to ensure compliance. The system host Partner will be responsible for the provision of equipment and resolution of any issues or difficulties.

9.8 Data Protection

All Partners shall duly observe all their obligations under the Data Protection Act 2018 (DPA), which arise in connection with this Agreement. Parties to this agreement will act as “Joint Data Controllers” under this Agreement and shall comply with any notification requirements under the DPA. Each Partner will procure so that any of its representatives or delegates involved in the provision of the services are likewise compliant. All Partners shall have an understanding of the Caldicott Principles when dealing with confidential information.

9.9 Information Sharing

9.9.1 Primary Use

The Partners shall share information about service users to improve the quality of care and enable integrated working, The information Shared in the

provision of this agreement is shared with the fully informed consent of the patient, in compliance with schedule 2 and 3 of the Data Protection Act 2018, and to provide Direct patient Care (defined in Caldicott 2 review) consent is also provided to comply with the common law duty of confidentiality.

However, where secondary uses of data are required the ICB will use pseudonymised to achieve its commissioning requirement – under CAG 2-03 powers, all Information will be shared within the legislative requirements of:-

- Access to Health Records 1990
- Data Protection Act 2018
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- The Children Act 2004
- Safeguarding Vulnerable Groups Act 2006
- Education Act 2002
- Mental Capacity Act 2005
- Local Government Act 2000
- Homelessness Act 2002
- Criminal Justice Act 2003
- Civil Contingencies Act 2004
- Health and Social Care Act 2012
- Mental Health Act 1983
- Common Law Duty of Confidentiality
- UKGDPR

9.9.2 Information for Secondary Use shall be pseudonymised before sharing. This includes:

- information used for the audit/assurance of the quality of the healthcare provided
- information used for either preventative medicine, medical or other ethically approved research, financial audit or the management of health [and social] care services
- risk stratification e.g. planning for vulnerable groups such as families at high risk of domestic violence

Where pseudonymisation is not practicable due to system constraints, personal identifiable data may only be used with the explicit situation-specific consent from the relevant Caldicott Guardian.

NHS Bedfordshire, Luton and Milton Keynes ICB is not able, under the current legislation of the Health and Social Care Act 2012, to process or hold Patient Confidential Data, and if PCD data is required must either use a DSCRO or have a statutory gateway as below.

Under the Secretary of State Directions, the NHS Digital is directed to establish and operate systems to collect and analyse Local Commissioning Data and Historical CCG data to deliver Data Services for Commissioners.

NHS Digital delivers the service largely through its Regional Offices (DSCROs). DSCRO collect data specified in contracts between the commissioner and the provider, when requested to do so by commissioning organisations who are party to these contracts.

The directions do require the data to be sent in an anonymised format unless a separate legal gateway exists, such as patient Consent, to support Direct Patient Care or s.251

Consent or Section 251 of the NHS Act 2006 allows the health secretary to set aside the common law duty of confidentiality in specific circumstances in which anonymised information is not sufficient and where patient consent is not practicable. This is a short-hand term and refers to section 251 of the National Health Service Act 2006 and its current Regulations, the Health Service (Control of Patient Information) Regulations 2002.

This legal Gateway has been used by the HSCIC as a basis to support the DSCROs onward provision of clear patient data to Commissioning Support Units (CSUs) and Clinical Commissioning Groups (ICBs) for:

Risk Stratification	CAG 7-04(1)/2013
Invoice Validation	CAG 7-07(b)/2013, CAG 7-07(c)/2013

As these provisions do not meet the requirements of this agreement – the ICB will not hold PCD for the purposes of this activity.

9.10 Data Storage Requirements

Both parties to this agreement will:

- Ensure that unauthorised staff and other individuals are prevented from gaining access to personal data
- Ensure visitors are received and supervised at all times in areas where personal data is stored
- Ensure that all computer systems that contain personal data are password protected on the type of data held, but ensure that only those who need to use the data have access. The level of security should depend on the type of data held, but ensure that only those who need to use the data have access.
- Not leave their workstation/PC signed on when they are not using it.
- Not disclose personal data to anyone other than the Data Subject unless the Data Subject's consent has been provided, or it is a registered disclosure, required by law, or permitted by a Data Protection Act 2018 exemption
- Not leave information on public display in any form

9.11 Methods of transfer

Any sharing of patient data or confidential information must be made by secure email (NHS.net or EGRESS) or password protected.

9.12 Retention of the Data

NHS Data held on both parties systems will be held in line with The Department of Health retention guidelines, NHS Records Management Code of Practice 2021.

9.13 Further Use of Data

It is necessary to ensure that only appropriate access to information is granted therefore it is the responsibility of each organisation to ensure individuals' rights are met appropriately and that the data agreed to be shared is between MKCC and MKICB.

Further sharing must be in agreement and with the consent of the data controller

9.14 Breach of Confidentiality

The systems are audited and any abuse or security breach in which data is compromised will be notified at the earliest opportunity to the Caldicott Guardians of MKCC and BLMKICB and the incident reported onto their incident reporting tool for investigation. Access to the system will be immediately withdrawn and disciplinary action may be taken.

9.15 Access to Information

The sixth principle of the Data Protection Act 2018 provides individuals the right to have access to information held about them with limited exemptions. Both parties will ensure that if required individuals will have access to the information that has been shared across the two agencies.

9.16 Review of Data Sharing Agreement

The Data Sharing Agreement will be reviewed one year after signature and at every year thereafter. This review will be the responsibility of both parties to the agreement.

9.17 Closure/Termination of Agreement

The Data Sharing Agreement will be suspended for 45 days if security has been seriously breached. This will be in writing and be evidenced. Any suspension will be subject to a Risk Assessment and Resolution meeting, the panel of which will be made up of the signatories of this agreement, or their nominated representative.

This meeting is to take place within 14 days of any suspension.

Termination of this Data Sharing Agreement will be in writing giving at least 30 days notice.

9.18 Requests for Disclosure of Information received under this Data Sharing Agreement

All recorded information held by public sector agencies is subject to the provisions of the Freedom of Information Act 2000 and the Data Protection Act 2018. While there is no requirement to consult with third parties under FOIA, the parties to this Data Sharing Agreement will consider their views to inform the decision making process. All decisions to disclose must be recorded by the disclosing organisation.

9.19 Partner Organisations must be aware that a data subject may withdraw consent to processing (i.e. Section 10 DPA) unless an available exemption applies. Where the Partner Organisations rely on consent as the condition for processing then withdrawal means that the condition for processing will no longer apply. Any such withdrawal of consent should be communicated to Partner Organisations and processing cease as soon as possible.

Partner Organisations must be committed to having procedures in place to address complaints relating to inappropriate disclosure or failure to disclose personal information. Individuals must be provided with information about these procedures.

Schedule 10 Exit Strategy

- 10.1 In the event of either of the Partner Organisations wishing to terminate this Agreement, the principal consideration will be maintaining continuity of service for users. Therefore, a minimum of twelve months' notice is required for this Agreement to be terminated or for one of the partners to withdraw, except in exceptional circumstances outlined in Clause 10.2.
- 10.2 Either party may at any time, by notice in writing to the other party, terminate this Agreement in the event of the following:-
- There is a fundamental breach by the other party of any provision hereof; or
 - A party commits a breach of any of its obligations hereunder which is not capable of remedy, or if capable of remedy has not been remedied within 28 days after written notice requiring it to remedy the breach; or
 - A party is unable to fulfil its obligations hereunder, as a result of any change in law or legislation; or
 - A party, in fulfilling its obligations hereunder, would be in contravention of any guidance from any Secretary of State
- 10.3 In the event that this Agreement is terminated for whatever reason, the provisions of clause 31 will apply and the parties agree to co-operate to ensure the orderly wind down of their joint activities set out in this Agreement.

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

**THE CORPORATE SEAL of THE
CITY COUNCIL OF MILTON
KEYNES**

was hereunto affixed in the
presence of:

Victoria Collins, Director Adult
Services
Authorised Signatory

Signed for on behalf of
**BEDFORDSHIRE, LUTON AND
MILTON KEYNES INTEGRATED
CARE BOARD**

Chief Executive Officer
Authorised Signatory

Report of the Finance and Investment Committee

Date of Meeting: 16th May 2023

Vision: “For everyone in our towns, villages and communities to live a longer, healthier life”

Please state which strategic priority and / or enabler this report relates to **mark all that apply**

Strategic priorities

<input checked="" type="checkbox"/>	Start Well: Every child has a strong, healthy start to life: from maternal health, through the first thousand days to reaching adulthood.
<input checked="" type="checkbox"/>	Live Well: People are supported to engage with and manage their health and wellbeing.
<input checked="" type="checkbox"/>	Age Well: People age well, with proactive interventions to stay healthy, independent and active as long as possible.
<input checked="" type="checkbox"/>	Growth: We work together to help build the economy and support sustainable growth.
<input checked="" type="checkbox"/>	Reducing Inequalities: In everything we do we promote equalities in the health and wellbeing of our population.

Enablers

Data and Digital <input type="checkbox"/>	Workforce <input type="checkbox"/>	Ways of working <input type="checkbox"/>	Estates <input type="checkbox"/>
Communications <input type="checkbox"/>	Finance <input checked="" type="checkbox"/>	Operational and Clinical Excellence <input checked="" type="checkbox"/>	Governance and Compliance <input checked="" type="checkbox"/>
Other <input checked="" type="checkbox"/> (please advise):	Contracting and Procurement		

Executive summary

Section 75 (S75) agreements ensure that we are compliant with statute, but more crucially, that we are commissioning services in an integrated way through the use of delegation agreements and pooled budget arrangements, including the Better Care Fund (BCF).

Section 75 of the NHS Act 2006 states as follows:

The Secretary of State may by regulations make provision for or in connection with enabling prescribed NHS bodies (on the one hand) and prescribed local authorities (on the other) to enter into prescribed arrangements in relation to the exercise of—

(a) prescribed functions of the NHS bodies, and

(b) prescribed health-related functions of the local authorities,

if the arrangements are likely to lead to an improvement in the way in which those functions are exercised

Inline with BLMK ICB SFI's the Finance and Investment Committee must recommend to the ICB Board approval to sign all S75 agreements.

This paper includes the following:

- Full S75 with Luton Borough Council for approval
- Community Equipment Services S75 with Milton Keynes City Council for approval
- Update on outstanding S75's

The full agreements for approval are appended to this paper for information.

Luton Borough Council

We have proposed 1 S75 agreement between Luton Borough Council (LBC) and BLMK ICB for 2023/24, inline with previous years. This agreement includes governance arrangements between parties and multiple schedules for the various pooled funds to a total value of £87,510,929.

In line with the governance requirements in LBC the S75 and schedules have been approved by the Joint Strategic Commissioning Group and, Health and Wellbeing Boards.

Additional ASC Discharge Funds will be varied into the Better Care Fund once plans have been developed.

The services and total value of pooled funds are set out below:

S75 Schedule	Summary	Value
Integrated Children's and Young People's Commissioning	<p>The aligned budgets, service commissioning and provision set out in the schedule are set out below:</p> <ol style="list-style-type: none"> 1. London Road Resource Centre with variable contribution from Health & Social Care depending on the demand 2. Children with complex needs including out of borough placements and tripartite funding, variable funding from health & Social care depending on the demand 3. Integrated disability services including SENDIASS and SEND joint resource budget (2022/23) to deliver the written statement of action with fixed share of funding from health & Social care. 4. Contract Carers service with Fixed contribution from Health and Social Care 5. Supporting children 's inequalities and dental health needs fixed share 	£3,780K
Commissioning Integrated Mental Health & Wellbeing	<p>The commissioned services covered by this schedule are:</p> <ol style="list-style-type: none"> 1. East London NHS Foundation Trust contract 2. Complex mental health placements 3. Section 117 Aftercare MHA 4. MH non-contractual activity 5. GPs (Mental Health Act Assessments) 	£44,807K

	<ul style="list-style-type: none"> 6. Total Wellbeing (Turning Point) 7. Mental health floating support within wider universal floating support 8. Penrose STEPS 	
Integrated Strategic Learning Disabilities Commissioning and Learning Disabilities Service Provision	<p>The Integrated Strategic Learning Disabilities Commissioning schedule outlines the joint commissioning functions and joint working arrangements. It sets out the remit to plan, develop and support local and regional plans that have a single care pathway and point of access for adults with a learning disability, their families and carers. The pooled funds support the following:</p> <ul style="list-style-type: none"> 1. Adults Commissioning Team function 2. Integrated Community Learning Disability Team function <p>The Learning disabilities provision (aligned budget) and joint ways of working included within this schedule are for the following areas:</p> <ul style="list-style-type: none"> 1. Day care 2. Supported Living 3. Residential & nursing 	£12,356k
Better Care Fund and the Improved Better Care Fund	<p>This schedule provides an overview of the indicative pooled fund allocations (the value will be confirmed following submission of BCF plans in July 2023). 95% of the BCF and iBCF funding for Luton has been allocated to core service provision with the remaining 5% allocated to the following schemes:</p> <ul style="list-style-type: none"> 1. Enhanced Health in Care Homes 2. The Falls Service 3. Ageing Well 4. End of Life 	£26,568K (indicative budget)
Joint Commissioning Arrangements and Governance	<p>The schedule sets out the governance and joint working arrangements for leadership. This includes the functions of the Joint Strategic Commissioning Group and associated sub groups and the remit of jointly funded roles (pooled fund).</p>	Non-Financial
Financial Agreements	<p>The Schedule sets out financial contributions to the S75 and the arrangements within, including:</p> <ul style="list-style-type: none"> 1. Risk Share 2. Pooled Fund Management 3. S75 Overspend Position 4. S75 Underspend Position 5. Financial Management Systems 6. Timely Invoice Dispute Resolution 7. Timely settlement of invoices and backing data 8. Open and Transparent S75 Reporting 	Summary of above schedules
UKGDPR	<p>The Schedule sets out the requirements of processing, personal data and data sharing</p>	Non-Financial
The Luton At Place Board Partnership	<p>The Schedule sets out the remit of the Place Board, the governance arrangements, values and approach to whole system working. Currently there is no pooled or aligned budget but option exists to include ICS monies allocated to Place.</p>	Non-Financial

Milton Keynes City Council

We are proposing 3 S75 agreements between Milton Keynes City Council (MKCC) and BLMK ICB for 2023/24, inline with the previous year. The table below sets out the current progress to date and highlights the Community Equipment S75 agreement for signature. The S75 has been jointly developed and agreed between MKCC and BLMK ICB colleagues, and these are progressing through MKCC's governance process simultaneously. The table below sets out progress to date and the value of any agreed S75's:

S75 Agreement	Summary	Value
Better Care Fund	Work has commenced through the Joint Milton Keynes Discharge & Flow workstream to review current BCF services with a view to recommendation for any changes later in the year. The draft BCF plan for 23/24 is based on the current plans whilst this work continues. This is predominantly based around core service provision. Final plans are due to be submitted in July 2023 and the government has specified that S75's in relation to BCF should be signed by 31 st October 2023.	£25,817k (BCF & IBCF) £2,193k (Discharge Funds)
Learning Disabilities	The Learning Disabilities team have proposed that the current S75 should be rolled over for 2023/24 whilst conversations into a new way of working progress with the local authority. This is currently being taken forward with an expectation to finalise in Q2.	TBC
Community Equipment	The current Integrated Community Equipment Service within Milton Keynes is a joint health and social care service funded via a pooled and non-pooled budget. It enables the Council and the ICB to provide equipment that: <ol style="list-style-type: none"> 1. supports the care of people within their own homes, enabling them to maximise their independence; 2. reduces hospital admissions and facilitates prompt hospital discharge; 3. reduces the requirement for Service Users to enter long-term care; 4. reduces the demand on domiciliary care through reduced care packages, double handed care; and 5. enables access to the curriculum and care at home for children with a range of health and social care needs. This service is a critical element of the health, education and social care economy in Milton Keynes through maximising independence and improving wellbeing for the local community.	£1,037K

Bedford Borough Council

We are proposing 2 S75 agreements for 2023/24 between Bedfordshire Borough Council (BBC) and BLMK ICB. Progress to date has been set out below:

S75 Agreement	Summary	Value
Better Care Fund	Final plans are due to be submitted in July 2023 and the government has specified that S75's in relation to BCF should be signed by 31st October 2023.	£16,815k (BCF & IBCF) £1,335K (Discharge Funds)
Personal Health Budgets	Schedules are drafted and in the process of being finalised with local authority colleagues. These agreements will be presented to the August committee for approval.	

Central Bedfordshire Council

We are proposing 2 S75 agreements for 2023/24 between Central Bedfordshire Council (CBC) and BLMK ICB. Progress to date has been set out below:

S75 Agreement	Summary	Value
Better Care Fund	Final plans are due to be submitted in July 2023 and the government has specified that S75's in relation to BCF should be signed by 31st October 2023.	£24,058k (BCF & IBCF) £1,834K (Discharge Funds)
Personal Health Budgets	Schedules are drafted and in the process of being finalised with local authority colleagues. These agreements will be presented to the August committee for approval.	

Decisions Required


Decision to recommend approval of the LBC S75 and MKCC Community Equipment S75 agreements to the ICB board.


Recommendation/s

The Finance and Investment Committee is asked to:

- Note the contents of this report
- Note the progress made on the development of 2023/24 S75 agreements, and outstanding agreements
- Recommend to the board that the proposed 2023/24 S75 agreements are approved for signature

What are the members being asked to do? [mark one box only](#)

Decision or Approval <input checked="" type="checkbox"/>	Information <input type="checkbox"/>	Discussion <input type="checkbox"/>	
Report Title	2023/24 BLMK S75		
Report Author	Kathryn Cragg, Head of Acute and Strategic Contract		
Senior Responsible Owner	Anne Brierley, Chief Transformation Officer		
Key Risks and Issues https://blmk.insight4grc.com/Risk	Please confirm your risk/s have been recorded in the organisation's risk management centre: Risks are included within the Contracting risk register as required		
The following individuals were consulted and involved in the development of this report:	Commissioning colleagues within the ICB and local authorities ICB Contracting leads Finance colleagues within the ICB and local authorities Information Governance colleagues within the ICB Governance colleagues within the ICB		
How will / does this work help to address the Green Plan Commitments? https://blmkhealthandcarepartnership.org/our-publications/plans/	Through appropriate contracting inline with operational plan requirements which reflect green plan commitments.		
How will / does this work help to address inequalities?	Through the management of contracts and pooled funds we can work together with local authority colleagues and providers to address inequalities across these services, tailored to the demography of place.		
Are there any financial implications or other resourcing implications? Please outline sources and applications of funds	Values of the pooled funds are set out in the paper and S75 agreements.		
What are the available options?	N/A		
Date to which the information this report is based on was accurate	27 th April 2023		
Next steps	Once confirmation is received that the Committee are content with this paper and S75 agreements we will put the agreements forward to the ICB board for approval.		
Appendices	Appendix No.	S75 Agreement Name	S75 Document
	1	2023/24 LBC S75	 Final BLMK ICB and Luton Borough Council

	2	2023/24 MKCC Community Equipment S75	 MK ICES S75 2023-4 v2 Final Version.pdf
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