

DATED <date to be inserted>

NHS BRACKNELL AND ASCOT CLINICAL COMMISSIONING GROUP

and

BRACKNELL FOREST BOROUGH COUNCIL

AGREEMENT

Partnership Arrangements under Section 75  
of the National Health Service Act 2006  
relating to the Integrated Commissioning and Delivery of Services  
In the Borough of Bracknell Forest

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PARTNERSHIP ARRANGEMENTS  
UNDER SECTION 75 OF THE HEALTH SERVICE ACT 2006

NHS BRACKNELL AND ASCOT CLINICAL COMMISSIONING GROUP

and

BRACKNELL FOREST BOROUGH COUNCIL

THE AGREEMENT

THIS AGREEMENT is made on the 1<sup>ST</sup> day of April 2013 between BRACKNELL FOREST BOROUGH COUNCIL of Time Square, Market Street, Bracknell, RG12 1JD (1) and NHS BRACKNELL AND ASCOT CLINICAL COMMISSIONING GROUP of King Edward VII Hospital, St Leonards Road, Windsor, SL4 3DP (2)

## SECTION 1. DEFINITIONS AND INTERPRETATION PROVISIONS

1.1 Words and expressions which are stated in this Agreement shall (in the absence of any contrary provision) be construed in accordance with the definitions that are set out in the following table:

DEFINITIONS	
Word/Phrase	Definition
Adult Social Care	The Council's Directorate of Adult Social Care Health and Housing
Agreement	This agreement made pursuant to S.75 of the National Health Service Act 2006 and the schedules attached to it
Best Value	The Council's duty to secure continuous improvement as defined in S.3 of the Local Government Act 1999
Chief Officers	The Chair of the Bracknell and Ascot Clinical Commissioning Group and the Director of Adult Social Care Health and Housing of Bracknell Forest Borough Council
Care Groups	Those individuals who have satisfied the relevant Eligibility Criteria of the Partners in respect of whom the Partners respectively have a statutory responsibility for the provision of Services
CCG's Constitution	The CCG's Constitution comprising its rules and procedures, standing orders, financial orders and any other governance requirements that may be imposed on the CCG from time to time
CCG's Functions	Those functions of the CCG specified in paragraph 5 of the Regulations which relate to the Partnership Arrangements
Clinical Commissioning Group	NHS Bracknell and Ascot Clinical Commissioning Group
Commencement Date	1 <sup>st</sup> April 2013
Contract Arrangements	As described in Section 13
Council	Bracknell Forest Borough Council
Council's Constitution	The Council's Constitution comprising its rules and procedures, standing orders, financial orders and any other governance requirements that may be imposed on the Council from time to time
Council's Functions	Those health-related functions of the Council which are specified in paragraph 6 of the Regulations which relate to the Partnership Arrangements
Eligibility Criteria	The criteria which are determined by the Partners from time to time in respect of an individual's eligibility to access the services
Equipment	The equipment and assets which are made available by a Partner for an Individual Service as prescribed in a Services Schedule

Financial Contributions	The financial contributions that are made by the Partners to an Individual Service Budget
Financial Year	Each financial year commencing on 1 <sup>st</sup> April and ending on 31 <sup>st</sup> March of the following year
Functions	The Council's Functions and the CCG's Functions collectively
Health and Wellbeing Board	The Health and Wellbeing Board for the Locality
Host Partner	The Partner responsible for appointing and managing the Pool Manager and any Pooled Fund as prescribed in the Services Schedule
Individual	Any person who meets the requirements of the relevant Eligibility Criteria of the Partners in respect of the Partners and is a member of a Care Group
Individual Service	One of the Services which is agreed by the Partners to be procured for the benefit of a Care Group using one or more of the powers under Section 75 and which together comprise the Services
Individual Service Budget	The budget which has been agreed by the Partners for the provision of an Individual Service
Information Sharing Protocol	The protocol for the secure and confidential sharing of information between the Partners
Integrated Commissioning	The process for commissioning any one or more of the Services by a Partner as agreed by the Health and Wellbeing Board for the benefit of one or more of the Care Groups
Lead Commissioning Arrangements	The arrangements by which one Partner commissions service on behalf of the other Partner
Locality	The Council's administrative boundary
Month	A calendar month
Non-Pooled Fund	A budget for the joint commissioning of an Individual Service under Lead Commissioning Arrangements as prescribed in the relevant Services Schedule
Notice	A notice in writing which is served by one of the Partners on the other, in accordance with paragraph 19.1
Partners	The Council and the CCG or its successors
Partnership Arrangements	The arrangements which have been agreed between the Partners pursuant to the Regulations and S.75 and are set out in this Agreement
Performance Measures	The arrangements which are agreed by the Health and Wellbeing Board for the monitoring of Services as set out in a Services Schedule
Pooled Fund	A fund administered by a Pool Manager from contributions by the Partners as prescribed in a Services Schedule
Property(ies)	The properties made available by a Partner for the Purposes of the Partnership Arrangements or an Individual Service in accordance with a Services Schedule
Regulations	The NHS Bodies and Local Authorities Partnership Arrangements and Regulations 2000 SI Number 617 (as amended or re-enacted from time to time)

S.75	Section 75 National Health Service Act 2006 which makes provision for permitted National Health Service bodies and permitted Local Authorities to enter into partnerships with pooled funding arrangements to provide their respective health and well-being functions if the arrangements are likely to lead to an improvement in the way in which those functions are exercised
Section 75 Management Board	The Health and Wellbeing Board for the Locality
Service Provider	Any provider with whom a partner contracts for the provision of an Individual Service under the Contract Arrangements
Services	The Individual Services together
Services Schedule	A schedule which forms, or will form, part of this Agreement and shall be subject to the terms of this Agreement in relation to an Individual service and documents the aims, objectives and arrangements agreed by the Partners in relation to the Individual Service in question (and will be signed by the Partners)
Staff	The Council's employees or the CCG's employees who are made available by a Partner for an Individual Service in accordance with the Services Schedule
Term	The period of time during which this Agreement is to take effect, as defined in paragraph 3.1
Transfer Date	The date upon which the contract of employment of a member of Staff transfers from one Partner to another Partner under TUPE
TUPE	The Transfer of Undertaking (Protection of Employment) Regulations 2006 (as amended)
VAT	Value Added Tax charged in accordance with the Value Added Tax Act 1994 (as amended)
week	A period of seven (7) consecutive days commencing on a Sunday
year	Each consecutive twelve (12) months of the Term (or any truncated part thereof)
1999 Act	The Health Act 1999
2001 Act	The Health and Social Care Act 2001
2006 Act	The National Health Service Act 2006

- 1.2 Words denoting one gender shall include the other genders, words in the singular shall include the plural and vice versa and words denoting individuals shall be treated as including a body of persons corporate or unincorporated.
- 1.3 References in this contract to the "Council", the "CCG" and any other relevant body or authority, shall include their respective statutory successors in title.
- 1.4 References to any enactment in this Agreement shall also include any re-enactment, amendment, or replacement of the same and also any regulation, direction, guidance, or code of practice, which is made or issued by the relevant authority there under.
- 1.5 The headings and titles within this Agreement shall not affect the interpretation of the provisions of this Agreement.

- 1.6 References to any section, schedule or paragraph are references to the sections, schedules or paragraphs of this Agreement in the absence of any contrary indication.
- 1.7 In the case of any inconsistency between the provisions of this Agreement and the provisions of a Service Schedule, the provisions of the Service Schedule shall prevail unless the Partners agree otherwise in writing.

## SECTION 2. RECITALS

- 2.1 The Council is the local Social Services Authority in the Borough of Bracknell Forest within the meaning of the Local Authority Social Services Act 1970 and is the provider and commissioner of social care services for people who are resident in Bracknell Forest
- 2.2 The CCG is the NHS Bracknell and Ascot Clinical Commissioning Group as provided for by the Health and Social Care Act 2012 and is responsible for commissioning community health and hospital services for people who are resident in Bracknell Forest.
- 2.3 This Agreement is made pursuant to Section 75 of the 2006 Act and the Regulations.
- 2.4 The Partners will give formal notification of their intention to exercise the flexibilities in S75 in relation to the Partnership Agreements and the Services ad required by HSC 2000/010:LAC (2000) 9 to the relevant office of the Department of Health.
- 2.5 The Partners will carry out consultation on the proposals for the Partnership Arrangements and any Services with those persons, user groups, staff and statutory and non-statutory providers, who appear to be affected by the arrangement, as required by Regulation 4(2) of the Regulations.
- 2.6 The Partners have agreed to enter into this Agreement to fulfil the requirements in Regulation 8(2) of the Regulations and to record their respective rights and obligations under the Partnership Arrangements and the terms on which the Partnership Arrangements will be exercised.
- 2.7 By entering into this Agreement, each of the Partners empowers the Health and Wellbeing Board under regulation 10(2) of the Regulations to fulfil the Functions of that Partner in relation to the Partnership Arrangements subject to the terms of this Agreement.
- 2.8 It is the intention of the Partners that that the Services provided under this Agreement will lead to improvements in outcomes for Individuals benefitting from the Service.



### SECTION 3: THE TERM OF THE AGREEMENT

- 3.1 This agreement shall come into force on the Commencement Date and shall be, subject to the terminations provisions in section 12 of this Agreement, for an initial term of five (5) years.
- 3.2 Any extension to the Term of this Agreement shall be agreed by the partners in writing at least twelve (12) months prior to the expiry of the Term by authorised representatives of the Partners. The Partners shall evidence any such extension in writing by exchange of letters between the Chief Officers.
- 3.3 If this agreement is extended by the Partners in accordance with paragraph 3.2 then the following provisions shall apply:
  - (1) this Agreement shall continue unless and until terminated by notice served in accordance with section 12;
  - (2) notwithstanding the provisions of section 12, the Partners shall have the right to terminate this Agreement at any time after the expiry of the initial Term on service of six (6) months' notice.

#### **Service Schedules**

- 3.4 The duration of the arrangements for each Individual Service shall be set out in the relevant Services Schedule. Each Services Schedule shall be reviewed annually by the Partners.

## SECTION 4: THE PARTNERSHIP ARRANGEMENTS

### **Purposes**

- 4.1 The Partners have entered into this Agreement for the purposes of:
- (1) improving the Services for residents of Bracknell Forest through closer working between the National Health Services and Local Government to fulfil their obligations to co-operate with each other in providing the Services pursuant to Section 82 of the 2006 Act;
  - (2) consolidating existing partnership arrangements;
  - (3) creating an integrated approach to the design and redesign of health and social care services to provide a seamless service to people across the health and social care interface and to achieve an improvement in the way in which the Partners' respective Functions are exercised in relation to the provision of community care, accommodation, health services and the management of associated funds;
  - (4) identifying other health and social care services which can be delivered more effectively using the Health Act Flexibilities.
- 4.2 This Agreement establishes a partnership framework which enables the Partners:
- (1) to meet their respective statutory obligations to improve the health and well-being of the residents in Bracknell Forest
  - (2) to meet their responsibilities for the commissioning, planning, delivery and monitoring of health and well-being and such other services as agreed by the Partners from time to time through the implementation of flexibility, co-ordination, accountability and robust governance arrangements;
  - (3) to work together to commission jointly services which enable people to make the right choices about their health and care and live longer and healthier lives in accordance with the Joint Health and Wellbeing Strategy;
  - (4) to develop the fullest possible integration between the Partners;
  - (5) to achieve greater flexibility in the use of resources, increased efficiencies and improved outcomes.

### **Principal Aim of the Partnership Agreement**

- 4.3 The principal aims of the Partnership Agreement are:
- (1) to ensure the most cost-effective use of the combined resources of the Partners to address the health and social care needs of the residents in the Area;

- (2) to improve the physical and mental health, and well-being of the residents in the Area;
- (3) to support the independence of vulnerable and potentially vulnerable people in the Area;
- (4) to ensure that local communities serviced by the Partners are more informed and involved;
- (5) to recognise the Health and Wellbeing Board which will be responsible for overseeing and monitoring the Partnership Arrangements;

### **Governance Arrangements**

- 4.4 The governance structure of the Health and Wellbeing Board and the decision making processes of the Partners in relation to the Partnership Arrangements are set out in the Terms of Reference of the Health and Wellbeing Board.

### **Health Act Flexibilities**

- 4.5 This Agreement sets out the arrangements for:

- (1) Lead Commissioning;
- (2) Integrated Commissioning;
- (3) the establishment of Pooled Funds

### **Services to be included in the Partnership Arrangements**

- 4.6 The Partnership Arrangements shall include such Individual Service as shall be agreed from time to time by the Partners for the benefit of residents in the Area.
- 4.7 The introduction of any Individual Service by the Partners into these Partnership Arrangements during the Term shall be documented in a Services Schedule, setting out the details of the Individual Service in question (without limitation) the matters which are set out in paragraph 5.2, which shall be signed by duly authorised representatives of the Partners and shall be subject to compliance with any applicable legal requirements including consultation and notification under S75.
- 4.8 No Partner shall be under any obligation to agree to a Service Schedule unless it is satisfied that to do so will improve Services for residents of the Area.
- 4.9 The introduction of any Services by the Partners into these Partnership Arrangements during the term will be subject to a business case being endorsed by the Health and Wellbeing Board and approval by the Council's Executive and the CCG Board as appropriate.
- 4.10 The Partners agree and confirm that the Partnership Arrangements shall not affect:

- (1) the liabilities of each Partner either, to the other Partners, or to any third party, for the exercise of their respective Functions and obligations, or,
- (2) the powers or duties of each Partner to recover charges for the provision of any services in the exercise of any of the Functions

### **Consultation**

- 4.11 The Partners shall retain their individual responsibility for consultation with Care Groups and relevant stakeholders in relation to health services and social care services. Where appropriate, the Partners shall agree combined and/or co-ordinated consultation protocols in order to achieve effective engagement with Care Groups and communities.

### **Best Value**

- 4.12 The Council is subject to the duty of Best Value and the CCG is subject to the principles of value for money and best use of resources. Each Partner shall therefore co-operate with all reasonable requests from the other Partners in order to fulfil their respective obligations in this respect.

### **Clinical Governance**

- 4.13 The CCG is subject to a duty of Clinical Governance (Health Service Circular 1999/065) and shall be responsible in respect of the Partnership Arrangements. Clinical Governance is the system through which NHS organisations are accountable for continuously improving the quality of their services and safeguarding high standards of care, by creating an environment in which clinical excellence will flourish.

### **Corporate Governance**

- 4.14 The Partners shall each comply with the principles and standards of corporate governance which are relevant to each of the Partner's Constitution.

## SECTION 5: THE SERVICES SCHEDULES

### Consultation – Individual Services

- 5.1 Where any proposed consultation related to an Individual Service to be included in a Services Schedule, then the Partners agree to work together to carry out consultation in accordance with the 2006 Act and the Regulations with such persons as appear to them to be affected by such arrangements.

### Services Schedules

- 5.2 Each Services Schedule shall include provision in relation to the following matters:
- (1) the agreed aims for the Service;
  - (2) which of the Health Act Flexibilities applies to the Individual Service;
  - (3) the Council's Functions and the CCG's Functions which are the subject of the Individual Service;
  - (4) the duration of the Individual Service and the provisions for the review, variation or termination if the Individual Service;
  - (5) the Financial Contribution of the CCG and the Financial Contribution of the Council to any Pooled Fund or any Non-Pooled Fund for each Individual Service in the first Financial Year for the Individual Service in question and how these Financial Contributions may be varied;
  - (6) if the Individual Service includes the establishment of a Pooled Fund, provision for the appointment of a Pool Manager and the production of reports and other information by which the Partners and the Project Board can monitor the effectiveness of the Pooled Fund;
  - (7) the treatment of VAT in relation to the Individual Service;
  - (8) the person/Care Group to whom the Individual Service relates and the services which are to be provided to the person/Care Group;
  - (9) the Property and/or Equipment (if any) to be provided by each Partner in connection with the Individual Service;
  - (10) the Staff to be made available by any of the Partners in relation to the Individual Service;
  - (11) the central services (if any) to be provided by each Partner in connection with the Individual Service;
  - (12) any integrated management and support structures available (if applicable) which will apply to the Individual Service;
  - (13) the Performance Measures and arrangements for monitoring of the Individual Service;
  - (14) the Contract Arrangements in relation to the Individual Service;

- (15) the name and contact details of the officers from all Partners who will act as lead officer for the Individual Service;
- (16) the exit strategy upon termination of the Individual Service;
- (17) the levels of authority under the CCG's Constitution and the Council's Constitution which apply to the Individual Service and details of the amendments necessary to appropriate schemes of delegation;
- (18) risk and benefit share arrangements that will apply for the duration of the Individual Service;
- (19) Care Quality Commission registration requirements in relation to the Individual Service.

5.3 The Partners shall not enter into a Services Schedule in respect of an Individual Service unless they are satisfied that the Individual Service in question will improve health and well-being in accordance with this Agreement.

#### SECTION 6: STAFFING PROVISIONS

- 6.1 The Partners shall comply with and operate the management and governance arrangements in relation to the Staff which are applicable to each Individual Service as set out in the relevant Service Schedule.
- 6.2 The Partners shall use all reasonable endeavours to ensure that the Staff comply with the management and governance arrangements which are applicable to each Individual Service as set out in the relevant Services Schedule.
- 6.3 Where there are Lead Commissioning arrangements for an Individual Services and Staff are employed by one Partner but made available to the other Partner, the day to day management of the Staff in question will be the responsibility of the Lead Commissioning Partner. However, the personnel procedures operating in relation to the Staff in question shall be those of the employing Partner and matters relating to terms and conditions of the employment, discipline, grievances and all other employment procedures shall be the responsibility of the employing Partner.

#### SECTION 7: FINANCIAL PROVISIONS

- 7.1 Each Partner shall promote a culture of probity and sound financial discipline and control and shall ensure that full and proper records for accounting purposes are kept in terms of Partnership Arrangements and shall agree from time to time the format in which the accounts shall be maintained.
- 7.2 The Partners shall co-operate with each other in the preparation of accounts in relation to the Partnership Agreements and with each other's internal and external auditors.

## **Financial Contributions**

- 7.3 The Financial Contribution of the CCG or the Council to any Pooled Fund or any Non-Pooled Fund for each Individual Service shall be set out in the relevant Services Schedule.
- 7.4 Any money specifically allocated by HM Government for an Individual Service shall be put into the relevant Pooled Fund or Non-Pooled Fund.

## **Host Partner and Pool Manager**

- 7.5 When introducing a Pooled Fund in respect of an Individual Service, the Partners shall agree:
- (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;
  - (2) which officer of the Host Partner shall act as the Pool Manager for the purposes of Regulation 7(4) of the Regulations.
- 7.6 The Pool Manager shall be:
- (1) responsible for managing the relevant Pooled Fund within overall financial balance and will report any potential or actual variations to budget, as soon as practically possible to the Health and Wellbeing Board and in any event to the next meeting of the Health and Wellbeing Board following identification of any such variation;
  - (2) accountable for managing the Individual Service Budget and forecasting and reporting to the Partners via the Health and Wellbeing Board on the outputs and outcomes and the achievements of targets as set out in the relevant Services Schedule, and;
  - (3) required to submit to the Health and Wellbeing Board quarterly reports on the relevant Pooled Fund and an annual return and all other information required by the Partners in order to monitor the Pooled Fund.
- 7.7 The monies in any Pooled Fund:
- (1) may be expended on the Council's Functions and/or the CCG's Functions without regard to the proportions in which the Council and the CCG shall have contributed to the Pooled Fund;
  - (2) shall be spent in accordance with any restrictions which have been agreed by the Partners on the establishment of the Pooled Fund or as varied by agreement between the Partners from time to time;
  - (3) shall not be transferred to another Pooled Fund without the consent of the Partners.

- 7.8 Subject to the Regulations, if the CCG is acting as the Host Partner in relation to a Pooled Fund, then the CCG's Constitution shall apply to the management of the Pooled Fund in question.
- 7.9 Subject to the Regulations, if the Council is acting as the Host Partner in relation to a Pooled Fund, then the Council's Constitution shall apply to the management of the Pooled Fund in question.
- 7.10 The Host Partner shall be responsible for:
- (1) establishing the financial and administrative support necessary to enable the effective and efficient management of the Pooled Fund;
  - (2) establishing effective and efficient accounting arrangements for the Pooled Fund within the Host Partner's systems, including separate cost centre(s) to enable effective monitoring, reporting and separate statements of accounts to be prepared;
  - (3) arranging for the financial accounts of the Pooled Fund for each financial year to be audited and sending a year-end statement showing income received, expenditure and any balance remaining to partners for inclusion in their statutory accounts. The Host Partner shall require the Audit Commission to make arrangements to certify an annual return of those accounts under section 28(1)(d) of the Audit Commission Act 1998.
- 7.11 The Host Partner shall endeavour to ensure that the CCG's Functions and the Council's Functions which are funded from a Pooled Fund are carried out within the Individual Service Budget available for the relevant Individual Service in each financial year.
- 7.12 The Partners shall endeavour to ensure that:
- (1) the CCG's Functions funded from a Non-Pooled Fund for an Individual Service are carried out within the CCG's Financial Contribution to the Non-Pooled Fund for the relevant Individual Service in each Financial Year.
  - (2) the Council's Functions funded from a Non-Pooled Fund for an Individual Service are carried out within the Council's Financial Contribution to the Non-Pooled Fund for the relevant Individual Service in each Financial Year.
- 7.13 Without prejudice to paragraphs 7.14 and 7.15, each Partner shall keep the other Partners and the Health and Wellbeing Board regularly informed of any overspend or underspend in a Pooled Fund or Non-Pooled Fund.

#### **Changes to the Level of Pooled Funds – Overspends and Underspends**

- 7.14 If in relation to a Pooled Fund, the Pool Manager forecasts changes in the total level of agreed planned expenditure of the Pooled Fund in question during any financial year, then the Pool Manager shall report such forecasted changes to the Health and Wellbeing Board and the other Partners as soon as possible and in any event within fourteen (14) days of the forecast being made.



- 7.15 The Health and Wellbeing Board shall then agree appropriate action either, to contain expenditure within the Individual Service Budget(s), or to utilise any surplus available in the agreed Individual Service Budget(s), or, exceptionally, where additional funding is thought to be required, shall submit a case of need to the Partners. Where additional funding is required, the Partners will consider the appropriateness of continuing such level of funding as part of the budget setting process for the following financial year.
- 7.16 If at the end of the Agreement period there is an overspend of a Pooled Fund for an Individual Service, the Partners must determine as to how such an overspend will be funded. Any additional funding required must take account of the specific circumstances, each Partner's proportionate contribution to the Pooled Fund in question, and whether activity in creating the overspend can be clearly ascribed to one Partner's specific responsibility.
- 7.17 If at the end of the Agreement period there is an underspend of a Pooled Fund for an Individual Service, then the underspend shall be refunded to the Partners in proportion to their Financial Contributions to the relevant Pooled Fund. .
- 7.18 If there is an underspend of a Pooled Fund upon termination of a Services Schedule, or upon termination of this Agreement, then the underspend shall be refunded to the Partners in proportion to their Financial Contributions to the relevant Pooled Fund.
- 7.19 In the event of dispute and disagreement in relation to the liability or benefit for any overspend or underspend in any Pooled Fund, the matter may be referred by either Partner to the disputes procedures which are set out in section 11.

#### **Changes to the Level of Non-Pooled Funds – Underspends**

- 7.20 Where an underspend of a Partner's Financial Contribution to a Non-Pooled Fund is forecast by the Partner responsible for the management of the Non-Pooled Fund in question shall as soon as is reasonably practicable inform the Health and Wellbeing Board and the other Partner and the Partners shall discuss whether that underspend should be redeployed within the Individual Service in which the underspend is forecasted.
- 7.21 Any underspend of a Partner's Financial Contribution to a Non-Pooled Fund at the end of a Financial Year shall be repaid to that Partner.

#### **VAT**

- 7.22 The Partners shall comply with Her Majesty's Revenue and Customs Guidance published on 14 September 2005 entitled "Treatment of VAT within Partnership Arrangements" ("the Guidance"). The Partners shall construe any references in the Guidance to Section 31 of the NHS Act 1999 as references to Section 75 of the 2006 Act.

## **Finance and Governance Checklist**

- 7.23 Prior to the introduction of any Services by the Partners into these Partnership Arrangements during the Term, the Partners shall consider answers to the questions posed in the Finance and Governance Checklist contained within Appendix 1 to this Agreement.

### **SECTION 8: PROPERTY**

- 8.1 Any Property provided by a Partner for the use of the Partners for an Individual Service shall be specified in the Services Schedule and shall be used in accordance with the terms of the Services Schedule and the terms of any lease, license, covenant or easement to which the Property is otherwise subject.
- 8.2 The Partners will make available the Property referred to in an individual Services Schedule.
- 8.3 The Council will not transfer ownership of any of the Properties referred to in any Services Schedules, but may grant a lease or licence of these at a rent/licence fee on terms to be agreed between the Partners acting reasonably. Ownership will remain with the Council.
- 8.4 The CCG will not transfer ownership of any of the Properties referred to in any Services Schedules, but may grant a lease or licence of these at a rent/licence fee on terms to be agreed between the Partners acting reasonably. Ownership will remain with the CCG.
- 8.5 Each Partner will continue to provide the same Properties, support services and facilities management that it provided before the relevant commencement date of each Services Schedule. Any changes to Properties, support services and facilities management shall be agreed by the Partners through the Health and Wellbeing Board.
- 8.6 Each Services Schedule shall set out how the outgoings and expenses incurred (including any notional costs of the Properties) in respect of any Property (or any part thereof) used for the purposes of an Individual Service shall be taken into account in the financial arrangements for the Individual Service in question.
- 8.7 Nothing in this Agreement shall prevent any of the Partners from selling or otherwise withdrawing one (1) or more of their Properties from use for the purposes of an Individual Service but the relevant Partner must use reasonable endeavours to give at least three (3) months' notice in writing of such sale or withdrawal to the other Partners, who may then terminate the relevant Services Schedule to which the Property relates in accordance with paragraph 12.4.

## SECTION 9: EQUIPMENT

- 9.1 Each Partner shall provide and make available in respect of each Individual Service:
- (1) the Equipment which is specified in the relevant Services Schedule;
  - (2) any existing contracts for Equipment which exclusively relate to their Functions in relation to the Individual Service in question and which are set out in the relevant Services Schedule.
  - (3) the transfer of ownership of any Equipment or the novation of any contracts will be negotiated and agreed under each Services Schedule and the financial impact of such transfers will be taken into account in the overall financial schedule.

## SECTION 10: ICT AND OTHER RESOURCES

- 10.1 Each Partner shall provide and make available in respect of each Individual Service the central services which are specified in the relevant Services Schedule.
- 10.2 ICT Equipment and central services will be treated as all other equipment, services and contracts and approaches to transfer and contract novation will apply as in paragraph 9.1(3).
- 10.3 The Partners shall have specific regard to the impact on organisational licensing agreements for operating systems and application software.

## SECTION 11: DISPUTES

### **Disputes Procedures**

- 11.1 If any dispute arises between the parties in relation to this Agreement, then any party may refer the dispute:
- (1) in the first instance, to the Council's Chief Officer: Adults and Joint Commissioning and the CCG's Head of Operations who shall act in good faith and endeavour to settle the dispute between themselves and, failing settlement;
  - (2) in the second instance, to the Council's Director of Adult Social Care, Health and Housing and the CCG's Chairman in order to discuss the dispute and to agree a strategy to resolve it;
  - (3) in the third instance, to the Health and Wellbeing Board.
- 11.2 If the dispute cannot be resolved within a reasonable period of time having regard to the nature of the dispute by the Partners' representatives in accordance with paragraph 11.1, the Partners may seek the assistance of a mediator appointed by agreement to resolve the dispute.

## **Binding Agreement**

- 11.3 If any dispute between the parties is resolved pursuant to the provisions of sub-paragraphs 11.1(1), or 11.1(2), or paragraph 11.2, then the Partners shall record the resolution of their dispute in writing and shall each promptly sign the same. The signed document shall then form a legally binding agreement between the parties.

## **SECTION 12: DEFAULT AND TERMINATION**

### **Termination of the Agreement**

- 12.1 Any Partner shall have the right to serve at least three (3) months' notice in writing upon the other Partners to terminate this Agreement if:
- (1) there is a fundamental breakdown in the Partners' relationship such that they cannot reasonably work together as intended by this Agreement;
  - (2) another Partner commits a material breach of any of its obligations under this Agreement which is not capable of remedy;
  - (3) another Partner commits a material breach of any of its obligations under this Agreement which is capable of remedy but has not been remedied within a reasonable time following receipt of a written default notice from the Partners not in breach which required the breach to be remedied;
  - (4) there is a change in law or legislation which results in the Partner in question being unable to fulfil its obligations under this Agreement.

### **Winding Down/Exit Arrangements**

- 12.2 If any Partner serves notice on the other Partners to terminate this Agreement as a whole, then the Partners shall use their best endeavours, either to agree an alternative partnership agreement, or to agree a variation to this Agreement.
- 12.3 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 Care Group(s).

### **Termination of Individual Services**

- 12.4 Any Partner may terminate any of the Services Schedules at any time during the Term by serving at least three (3) months' notice on the other Partners if any one of the following circumstances apply:
- (1) the Partners are unable to agree appropriate changes to the Individual Service in question so that expenditure is covered by the Partners' Financial Contributions in a new financial year;
  - (2) the Partners are unable to agree their respective Financial Contributions to a Pooled Fund;

- (3) the Partners are unable to agree the inflation rate.
- 12.5 Detailed provisions regarding the winding down/exit arrangements in relation to an Individual Service shall be set out in the relevant Services Schedule including (without limitation):
- (1) maintaining continuity of Services;
  - (2) allocation and/or disposal of any Equipment relating to the Individual Service;
  - (3) responsibility for debts and on-going contracts;
  - (4) responsibility for the continuance of Contract Arrangements with Service Providers (subject to the agreement of any Partner to continue contributing to the costs of the Contract Arrangements);
  - (5) where appropriate, the responsibility for the sharing of the liabilities incurred by the Partners with the responsibility for commissioning the Services and/or the Host Partners.

#### SECTION 13: CONTRACT ARRANGEMENTS

- 13.1 All Contract Arrangements with Service Providers for the provision of any of the Services which are entered into:
- (1) by the Council shall be procured in accordance with the Council's Constitution;
  - (2) by the CCG shall be procured in accordance with the CCG's Constitution.
- 13.2 The Partner which enters into Contract Arrangements shall ensure that the Contract Arrangements:
- (1) are first approved by the other Partners;
  - (2) are capable of being assigned or novated to the other Partners;
  - (3) can be terminated either, upon termination of this Agreement, or upon termination of the Services Schedule to which the Contract Arrangements in question relates (subject to the winding down/exit arrangements);
  - (4) are performed by the Service Provider in accordance with its terms and conditions.
- 13.3 Each Partner shall co-operate with the others to facilitate the overseeing and monitoring of the Contract Arrangements.

- 13.4 Any Partner concerned at a breach or irregularity or substandard performance of the arrangements covered under this Agreement may call a review meeting to be convened within 5 working days of becoming aware of the breach or irregularity and the Parties shall agree a way forward which may include the application of clause 11 hereof.
- 13.5 In monitoring Contract Arrangements, none of the Partner accepts liability to the other Partner for any breach of the Contract Arrangements, or any irregularity relating to the Service Contract, by a Service Provider except in circumstances where a Partner fails in performing its obligations to monitor the Services. Where a Partner fails to perform its obligations to monitor Services, the Partner in question shall be liable to the other Partners for the consequence of its failure.
- 13.6 Each Partner shall remain liable for its own statutory functions in respect of the Services that are being procured under a Service Contract either on its own behalf, or on behalf of the other Partners, in accordance with this Agreement regardless of which Partner has entered into the Service Contract.
- 13.7 Each Partner shall retain statutory responsibility for its statutory functions notwithstanding the terms of this Agreement.

## SECTION 14: MONITORING AND REVIEW OF THE PARTNERSHIP ARRANGEMENTS

### **Monitoring Arrangements**

- 14.1 The Partners shall, through the Health and Wellbeing Board, monitor the effectiveness of the Partnership Arrangements every three (3) months throughout the Term in order to assess:
- (1) the extent to which the aims of the Partnership Arrangements are being achieved;
  - (2) the extent to which the exercise of the flexibilities under Section 75 of the 2006 Act is the reason for improved performance or a reduction in the performance of the Services;
  - (3) how the Partnership Arrangements compare with the previous arrangements and other approaches to providing the Services.

### **Changes in Legislation**

- 14.2 The Partners shall review the operation of the Partnership Arrangements and all or any procedures or requirements of this Agreement on the coming into force of any relevant statutory or other legislation or guidance affecting the Partnership Arrangements and agree to take all necessary steps to ensure that the Partnership Arrangements comply with such legislation.

## Performance Measurement

- 14.3 The Performance Measures for each Individual Service shall be agreed by the Partners and detailed in the Services Schedule.

## SECTION 15: LIABILITY, INDEMNITY AND INSURANCE

- 15.1 The CCG shall not be responsible for any legal liabilities to third parties arising from the Council's provision of the Council's Functions prior to the Commencement Date, except where such responsibility is created by statute.
- 15.2 The Council shall not be responsible for any legal liabilities to third parties arising from the CCG's provision of the CCG's Functions prior to the Commencement Date, except where such responsibility is created by statute.
- 15.3 Without prejudice to the primary liability of each Partner for its respective Functions preserved by Section 75(5)(a) and (b) of the 2006 Act, the indemnity provisions in paragraphs 15.5 to 15.13 shall apply.
- 15.4 References in this section 15 to damages, claims and liabilities shall include the obligation to pay any sums which are recommended by an Ombudsman or under any other complaint resolution process.
- 15.5 The Council shall indemnify the CCG against any damages, claims or liabilities suffered, and reasonable legal fees and costs incurred by, the CCG and arising from the exercise of the Council's Functions or the breach by the Council of any obligation under this Agreement (except insofar as such damages, claim or liability arise from any negligent act, or omission, or breach of any obligation in this Agreement by the CCG, its employees or agents) including, without prejudice to the generality of this provision, any act, neglect or default of the Council, its agents, contractors or employees.
- 15.6 The CCG shall indemnify the Council from and against any damages, claims or liabilities suffered, and reasonable legal fees and costs incurred by, the Council arising from the exercise of the CCG's Functions or the breach by the CCG of any obligation under this Agreement (except insofar as such damages, claim or liability arise from any negligent act, or omission, or breach of any obligation in this Agreement by the Council, its employees or agents) including, without prejudice to the generality of this provision, any act, neglect or default of the CCG, its agents, contractors or employees.
- 15.7 Each Partner shall indemnify the other Partner from and against loss and expense suffered, and reasonable legal fees and costs incurred, by the other Partner as a result of any breach of this Agreement by it, except to the extent that such loss etc. is caused by the breach of contract or the act, neglect or default of the other Partner, their employees, agents or contractors.
- 15.8 In relation to the diagnosis, care and treatment of a client or patient of the CCG under the CCG's Functions, the provisions of NHS Indemnity (HSG 96/48) shall apply in relation to any acts or omissions of the CCG, its employees or agents in consequence of which the client or patient suffers.
- 15.9 The Partners shall use their reasonable endeavours to inform the other partners promptly of any circumstances reasonably thought likely to give rise

to any claim or proceedings which is or may be subject to any indemnity under this Agreement and any material developments. The Partners shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by either Partner in dealing with a complaint or in connection with any professional or disciplinary proceedings shall vitiate its right to be indemnified by the other under this Agreement.

## **Insurance**

15.10 In respect of liabilities arising under any indemnity in this Agreement:

- (1) the CCG shall maintain membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts, or such other scheme as may be operated from time to time by the National Health Services Litigation Authority;
- (2) the Council shall maintain such insurance as it considers appropriate.

15.11 The Partners shall co-operate with each other in the defence of any claim arising under this Agreement using as guidance the Insurance Protocol which has been agreed between Local Authorities and NHS bodies in operating partnership arrangements under section 75 of the 2006 Act.

## **SECTION 16: RECORDS AND INFORMATION**

### **Data Protection Act**

16.1 When any of the Partners obtains access to personal data (as defined in the Data Protection Acts 1998 and 2004) which has been obtained by, or is in the possession of, the other Partner, then the Partner in question and its employees shall duly observe all their obligations under the Data Protection Act 1998 and 2004 which arise in connection with this Agreement. Partners will maintain their registration under the Data Protection Acts and shall ensure that nothing is done to adversely affect that registration

### **Sharing and Handling of Information**

16.2 With effect from the Commencement Date, the Partners agree to comply with the relevant Information Sharing Protocol. The Partners shall also agree and enter into a Data Sharing Agreement in relation to each Individual Service in the form contained within the Information Sharing Protocol in respect of each Individual Service.

### **Access to Information – Freedom of Information Act 2000**

16.3 Each of the Partners is subject to the Freedom of Information Act 2000. The Partners agree to provide all reasonable assistance to each other to deal with any requests which are received under the Freedom of Information Act 2000, and with any subject access requests, in accordance with the relevant Requests for Information Protocol.



## **Confidentiality**

- 16.4 Except as required by law, each Partner agrees at all times throughout the Term and following the expiry of this Agreement to keep confidential all documents or papers which it receives or otherwise acquires in connection with the other Partner and which are marked with such words signifying that they should not be disclosed.
- 16.5 Each Partner also agrees at all times throughout the Term to adopt and comply with HM Government's Protective Marking System in order to ensure that access to information and other assets relating to this Agreement is correctly managed and appropriately safeguarded.

## **Policy, Practice and Research Governance**

- 16.6 As each Individual Service is included within the Partnership Arrangements through the addition of a Services Schedule, the Partners shall:
- (1) agree a Joint Policy Management Framework (which must reflect the broad principles outlined in the Council's Policy Management Framework);
  - (2) make a full assessment of the impact on practice standards and the Council's current standards/ competency frameworks should be used as the basis for the creation of any joint standards;
  - (3) work together to ensure that all policy development reflects Social Care and Health's priorities as outlined in its Service Plan.
- 16.7 With effect from the Commencement Date, the Partners agree to comply with the research governance arrangements which are set out in the Council's Research Governance Framework Application Process Flowchart .
- 16.8 The provisions of this clause 16 shall survive termination of this Agreement.

## **SECTION 17: VARIATION**

- 17.1 The variation provisions in this section 17 shall apply as a means of developing and refining the CCG's Functions and the Council's Functions and fulfilling the objectives of this Agreement.
- 17.2 If at any time during the Term, any Partner wishes to propose a variation to the CCG's Functions or the Council's Functions included in this Agreement, including any material change to the manner in which the Functions are delivered, or the terms of this Agreement and its Schedules, then:
- (1) the Partner in question shall serve notice of its proposed variation in writing on the other Partner, and;
  - (2) the Partners shall meet to discuss and determine agreement to the proposed variation within twenty-eight (28) days of service of the written notice under sub-paragraph 17.2(1), and;
  - (3) the Partners shall then report the variation to the Section 75 Strategic Management Board for consideration and approval.

- 17.3 Any variation which is approved by the Health and Wellbeing Board shall be implemented by the Host Partner or the Lead Commissioning Partner(as applicable) with effect from a date which shall be agreed by the Partners.
- 17.4 If any requested variation cannot be agreed, or the terms of its implementation cannot be agreed, then the variation shall not take place.
- 17.5 No variations pursuant to this Clause shall be permitted in the last 2 months of the Term of this Agreement

#### SECTION 18: COMPLAINTS

- 18.1 The Partners shall each handle complaints in accordance with The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and shall follow the procedures which are detailed in the Council's Complaints Handling Procedure .
- 18.2 Each Partner shall ensure that the other will be kept fully informed of the progress of any complaints related to their respective Functions and to the arrangements under this Agreement.
- 18.3 The Partners recognise the need and expediency of responding to a complaint as quickly as possible and shall therefore deal with any complaints as speedily as possible.
- 18.4 Prior to the issue of any press release or making any contact with the press on any issue attracting media attention, the Partners shall consult with each other to agree a joint strategy for the release and handling of the issue.
- 18.5 In the event of any potential legal action or complaint to the Local Government or Parliamentary and Health Service Ombudsman relating to the Partnership Arrangements, the Partner notified of the potential legal action or complaint shall notify the other immediately and if possible agree a joint strategy for dealing with the action.

## SECTION 19: MISCELLANEOUS PROVISIONS

### Notices

- 19.1 Any notice which is served by either of the Partners under this Agreement shall (subject to any contrary provision of this Agreement) be served by either first class post, or recorded delivery post, or facsimile transmission, or document exchange and any notice:
- (1) to the Council, shall be addressed to its Director of Adult Social Care, Health and Housing, Time Sq, Market Street, Bracknell RG12 1JD or to such other person/address as may from time to time be notified to the CCG by the Council in writing for the purposes of this sub-paragraph;
  - (2) to the CCG, shall be addressed to its Chairman, King Edward VII Hospital, St Leonards Road, Windsor, SL4 3BD or to such other place of business as may from time to time be notified to the Council by the CCG in writing for the purposes of this sub-paragraph.
- 19.2 If a notice is served by and behalf of any partner:
- (1) first class post, or recorded delivery post, it shall be deemed served on the second (2nd) working day after posting;
  - (2) facsimile transmission, then (provided that a hard copy of the facsimile in question is received by the addressee within one (1) working day of the transmission of the facsimile) the notice shall be deemed served on the day of transmission if received prior to 16:00 hours, or if the facsimile is received after this time then it shall be deemed served on the next working day;
  - (3) document exchange, it shall be deemed served on the next working day when the document exchange would normally be collected.

### Jurisdiction

- 19.3 For the avoidance of doubt, this Agreement shall be governed by and interpreted in accordance with English law and parties shall submit to the jurisdiction of the Courts of England (subject to section 11).

### Severance

- 19.4 If any provision of this Agreement is declared by any judicial or other competent authority to be invalid, unenforceable or illegal in any way, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement.
- Assignment
- 19.5 The Partners acknowledge that none of them shall have the right to assign either the whole or part of their rights or obligations under this Agreement unless permitted or required to do so by any statutory provision or by the Secretary of State for Health in consequence of any transfer of their respective Functions to another body or agency.

## **Legal Compliance**

- 19.6 In performing their respective obligations under this Agreement, the Partners shall comply with all applicable laws, statutory guidance and codes of practice.

## **Survival of Terms**

- 19.7 For the avoidance of doubt, no terms of this Agreement shall survive the expiry or earlier determination of this Agreement, unless expressly provided for within this Agreement.

## **Third Party Rights**

- 19.8 This Agreement does not confer (and is not intended to confer) any rights on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999, or otherwise.

## **Intellectual Property**

- 19.9 No Partner shall infringe or otherwise violate intellectual property right belonging to the other Partner or any third person, including but not limited to any such right deriving from any trademark, copyright, design or patent, or right in act trade secret or proprietary information, or any other intellectual property right.
- 19.10 In the absence of any express agreement in writing between the Partners to the contrary, all intellectual property rights in documents produced by either Partner for the purposes of or in connection with this Agreement shall belong to the Partner producing the same.

## **Force Majeure**

- 19.11 No Partner shall be liable to the other for any delay in or failure to perform in part or in whole their respective Functions under this Agreement as a result of any cause beyond its reasonable control, including but not limited to fire, natural disaster, flood, shortage or delay of power, fuel or transport, irresistible force or compulsion, or any overwhelming power, any national emergency, civil commotion, explosion, war, prohibitive act of Parliament, prohibitive governmental regulations or any other contingency (except strike action) beyond the reasonable control of either of the Partners.

## **No Partnership**

- 19.12 Nothing in this Agreement shall create, or be deemed to create, a legal partnership or the relationship of employer and employee between the Partners. Agreement to Remain in Force
- 19.13 Any failure or delay by either of the Partners to exercise their respective rights under this Agreement shall not be construed as a waiver by such Partner and this Agreement shall continue and remain in full force and effect notwithstanding any such failure or delay.

## **Whole Agreement**

19.14 This Agreement represents the whole agreement between the Partners and therefore supersedes all previous arrangements and representations which have been either agreed or exchanged between the Partners with regard to the Partnership Arrangements.

## **Equality and Equal Opportunities**

19.15 The Partners are committed to an approach to equality and equal opportunities which is represented in their respective policies. In operating the Partnership Arrangements, the Partners shall:

- (1) maintain and develop equality and equal opportunity policies and practices building on the best of their respective policies;
- (2) take account of the Human Rights Act 1998 and not do anything in breach of that Act;
- (3) take account of the Equality Act 2010 and not do anything in breach of that Act.

## **Business Continuity and Emergency Planning**

19.16 Each Partner shall provide mutual aid to the other Partner to meet their respective duties in the event of a major incident, including the mobilisation of resources where necessary.

19.17 The Partners shall ensure that business continuity/emergency plans are in place throughout the Term in relation to the Partnership Arrangements and the carrying out of each Partner's Functions and shall each identify a lead officer to take responsibility for emergency planning and business continuity.

## **Costs**

19.18 Each Partner shall be liable for their own respective costs in relation to the preparation of this Agreement.

## APPENDICES

### APPENDIX 1 – Finance and Governance checklist

#### Managing a pooled budget

- Who will be the partners?
- Who will be the host partner?
- Have the levels of contributions been agreed?
- How will changes to the levels of contributions be implemented?
- Have eligibility criteria been established?
- What are the rules about access to the pooled budget?
- Who will be the pooled budget manager(s)?
- Does the pooled budget manager require training?
- Have the pooled budget managers delegated powers been determined?
- Has a written partnership/agreement been drawn up?
- Who will draft the agreement?
- Is there a protocol for disputes?
- Has an agreement been approved by relevant bodies and signed?

#### Corporate Governance

- What is the scope of services included within the agreement?
- What form will the partnership take?
- How will balanced representation on the management board be ensured?
- Who will be responsible for the nomination rights?
- Who will be on the management board and how will they be selected?
- Who will decide budget allocations?
- Have standing orders, schemes of delegation and standing financial instructions been agreed?
- Are effective internal controls in place?
- Has a risk management strategy been drawn up?
- Have performance measures been set up?
- Who will monitor performance?
- Have the form and frequency of monitoring information been agreed?
- Who will provide the monitoring information? Who will receive it?
- What outcomes are expected from the partnership?
- What are the complaints procedures?
- What charging policies are to be applied?
- What is the exit strategy disputes termination arrangement?

## Financial Management

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

## Audit

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

## VAT

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

## Workforce

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

## Information Sharing

What are the information/data sharing arrangements?

How will charges be managed?

What data systems will be used?

## Communication

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

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