



# NOTICE OF MEETING

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**CABINET MEMBER FOR HEALTH AND SOCIAL CARE**

**FRIDAY, 23 MARCH 2018 AT 2PM**

**THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL**

Telephone enquiries to Jane Di Dino 023 9283 4060  
Email: [jane.didino@portsmouthcc.gov.uk](mailto:jane.didino@portsmouthcc.gov.uk)

If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

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## **Membership**

Councillor Luke Stubbs (Cabinet Member)

Councillor Gerald Vernon-Jackson CBE

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(NB This agenda should be retained for future reference with the minutes of this meeting).

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## **AGENDA**

- 1 Apologies for Absence.**
- 2 Declarations of Members' Interests.**

**3 Learning disabilities section 75 agreement extension (Pages 5 - 92)**

Purpose.

To seek approval of the Cabinet Member for Health & Social Care to extend the section 75 agreement for the Integrated Learning Disability Service (LDS).

**RECOMMENDED that the Cabinet Member agrees to the extension of the current Learning Disability s75 agreement for a period of three years to 31 March 2021.**

**4 S75 partnership agreements between Portsmouth City Council and Portsmouth Clinical Commissioning Group (Pages 93 - 160)**

Purpose

To provide the rationale for an extension of the S75 agreement for integrated health and social care commissioning for vulnerable adults for a further-term of 3 years until 31 March 2021.

**RECOMMENDED that the Cabinet Member for Health & Social Care approve the deed of variation to extend the term of the S75 agreement for a period of 3 years until 31 March 2021.**

**5 Adult Mental Health Section 75 Extension (Pages 161 - 224)**

Purpose.

To seek approval of the Cabinet Member for Health & Social Care to extend the section 75 agreement for the Integrated Adult Mental Health Service (AMH).

**RECOMMENDED that the Cabinet Member agrees to the extension of the current AMH s75 Agreement for a period of one year, until 1 July 2019.**

**6 Better Care Fund Section 75 Agreement**

The report will follow.

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# Agenda Item 3



Portsmouth  
CITY COUNCIL

<b>Title of meeting:</b>	Cabinet Member for Health and Social Care
<b>Date of meeting:</b>	23 <sup>rd</sup> March 2018
<b>Subject:</b>	Learning Disabilities Section 75 Agreement Extension
<b>Report by:</b>	Andy Biddle, Deputy director Adult Services (Acting) Dominic Dew, Integrated commissioning Service
<b>Wards affected:</b>	All
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose of report

- 1.1 To seek approval of the Cabinet Member for Health and Social Care to extend the section 75 agreement for the Integrated Learning Disability Service (ILDS).

## 2. Recommendations

- 2.1 The Cabinet member agrees to the extension of the current Learning Disability s75 Agreement for a period of three years to 31 March 2021.

## 3. Background

- 3.1 The ILDS operates under a Section 75 Lead Provider arrangement with Portsmouth City Council (PCC) as the lead provider of both Health and Social Care to people with a learning disability (with or without Autism), with both services acting as a single integrated service hosted by PCC.
- 3.2 Under the partnership agreement PCC contract with Solent NHS Trust for an agreed staffing establishment and associated costs with clear outcomes. PCC are accountable as the lead provider for delivery of the ILDS service specification and the Health and Social Care outcomes measures.
- 3.3 The current agreement, which commenced April 2014, expires at the end of March 18 and a new contract is currently being drafted for the next 3 years following agreement by the Learning Disability Partnership Management Group. This was agreed on 8th December 2017 by this group chaired by the Assistant Director of Adult Social Services.
- 3.4 Portsmouth Clinical Commissioning Group (CCG) expenditure for the provision of the ILDS Health service is £1.657m per annum.

3.5 The s75 partnership agreement is overseen and monitored by the Integrated Commissioning Service (ICS).

#### **4. Reasons for recommendations**

4.1 It is estimated that approximately 4,594 people (across all age ranges) in Portsmouth have a learning disability. The ILDS service is actively involved with the care and support of around 700 of these individuals having a hugely positive impact on individuals' health and wellbeing, helping them to stay well cared for, healthy and as independent as possible.

4.2 The extension of the existing s75 agreement will ensure continuity to the current health and social care work programmes and staffing for adults with a learning disability.

4.3 The health element of the ILDS was rated as 'Outstanding' by CQC in November 2016.

#### **5. Equality impact assessment**

5.1 An assessment is not required as the decision will have no negative impact on the protected characteristics. This is an extension of an already existing service for people with learning disabilities.

5.2 There will be no change to the service therefore no change for the clients accessing the service this will just ensure continuity for clients with a learning disability.

#### **6. Legal implications**

6.1 Section 75 of the NHS Act 2006 allows local authorities and NHS bodies to enter into partnership arrangements to provide a joined service and pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised.

6.2 The current 75 Agreement allows the parties to agree in writing to extend it for whatever period they wish beyond the initial term of 3 years, subject to the approval of the Partner's board.

#### **7. Director of Finance's comments**

7.1 There are no additional financial implications arising from the recommendation contained within this report, as it seeks to continue the existing arrangements, as set out within the s.75 agreement.

.....

Signed by:

**Appendices:** 1) Section 75 Agreement dated 1st April 2014 between PCC and Solent NHS Trust, 2) Integrated Learning Disability Service Specification (revised Feb 2018)

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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DATED 1<sup>ST</sup> APRIL 2014

**PORTSMOUTH CITY COUNCIL**

and

**SOLENT NHS TRUST**

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**AGREEMENT**

**under s.75 National Health Service Act 2006  
in relation to the provision of an Integrated  
Health and Social Care Learning Disability  
Service**

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Legal Services  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2 PX  
CC2403

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PLEASE DO NOT DATE

DATE.....

#### **PARTIES**

- (1) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Square, Portsmouth, Hampshire, PO1 2PX ("the **Authority**").
- (2) **SOLENT NHS TRUST** whose offices are situated at Adelaide Health Centre, William MacLeod Way, Millbrook, Southampton SO16 4XE ("the **Trust**")

#### **BACKGROUND**

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS Bodies 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) The Trust enters into this Agreement as provider of the NHS Functions relating to learning disability services.
- (D) The Authority enters into this Agreement as provider of the Authority Health-Related Functions relating to learning disability services
- (E) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.
- (F) The aim of this Agreement is to enable the integration of the health and social care elements of learning disability services to deliver the Partners' statutory responsibilities towards people with learning disabilities and the requirements of the national Adult Social Care Outcomes Framework and the NHS Outcomes Framework.

#### **AGREED TERMS**

### **1. DEFINITION AND INTERPRETATION**

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

**Agreement:** this Agreement between the Trust 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 Work Programme:** has the meaning set out in clause 8.

**Authority Health-Related Functions:** the health related functions of the Authority listed in Regulation 6 of the NHS Regulations 2000 (and further described in Schedule 3 (Authority Functions) of this Agreement) in relation to the provision of, or making arrangements for the provision of, the Services but excluding the Excluded Functions

**Authority's Authorised Officer:** Justin Wallace-Cook, Assistant Head of Social Care

**Authority's Financial Obligations:** the Authority's financial obligations are set out in Schedule 9.

**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 that impacts on the Partnership Arrangements and comes into force after the Commencement Date.

**Commencement Date:** 1st April 2014

**Confidential Information:**

means all information, data and/or material of any nature which either Party may receive or obtain in connection with the operation of the Contract, including any information, data and/or material:

- (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998);
- (b) the release of which is likely to prejudice the commercial interests of either Party;
- (c) which is a trade secret; or
- (d) is identified at the time of disclosure as being confidential.

**Council's Service User Records:** means the records created and maintained by the Authority pursuant to clause 23.2.

**Data Protection Legislation:** this includes:

- (a) the Data Protection Act 1998 (**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.

**Direct Losses:** means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law, but, to avoid doubt, excluding Indirect Losses;

**Dispute Resolution Procedure:** the procedure set out in clause 31.

**EIR:** the Environmental Information Regulations 2004 (SI 2004/3391)

**Equality Legislation:** means the Equality Act 2010, Human Rights Act 1998 and any other relevant law which ensures, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of Reasonable Adjustments for people with disabilities (as defined in the Equality Act 2010); and equality in employment;

**Excluded Functions:** such Functions contained in Schedule 4 (Excluded Functions) of this Agreement and/or such Functions as the Partners may agree from time to time are excluded from the Arrangements, together with any exclusions set out in the NHS Regulations 2000.

**Financial Obligations:** the financial obligations of the Partners as set out in Schedule 9

**Financial Year:** 1 April to 31 March.

**First Financial Year:** 1 April 2014 to 31 March 2015.

**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.

**Indirect Losses:** means indirect loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of business revenue, loss of goodwill or any claim for consequential loss or for indirect loss of any nature.

**Individual Agreement:** the agreements made between each Post Holder, the Trust and the Authority describing the terms on which the Post Holder will be made available by the Trust to the Authority.

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

**Information Sharing Protocol:** the protocol describing how the Partners will share Information contained in a form approved by the partners under Schedule 7;

**Initial Term:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

**Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, any applicable judgement of a relevant court of law which is a binding precedent in England, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

**NHS Act 2006:** National Health Service Act 2006.

**NHS Body:** shall have the meaning set out in Regulation 3(1) of the NHS Regulations 2000.

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

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

**Ombudsman:** means the Health Service Ombudsman and the Local Government Ombudsman.

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

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

**Partnership Management Group:** the body of officers of the Trust and of the Authority appointed and with the powers and functions as more particularly described in Schedule 8 (Governance Arrangements).

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

**Post Holder:** the individuals identified in Schedule 6 and being the individuals who, as at the Commencement Date, are made available to the Authority by the Trust.

**Quarter:** 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 and/or the Trust

**Relevant Transfer:** a relevant transfer under TUPE.

**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 Trust or the Authority before the Commencement Date or the Authority (or a third party commissioned by the Authority in order to facilitate the delivery of any of the Services by the Authority on behalf of the Partners) from the Commencement Date.

**Service User:** individuals who are eligible to receive the Services, as more particularly described in Schedule 5.

**Services:** the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in clause 7 and Schedule 5.

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

- (a) any extensions to this Agreement that are agreed under clause 4; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**Third Party:** means any party other than the Authority or the Trust.

**Trust's Authorised Officer:** Debbie Clarke

**Trust's Financial Obligations:** the Trust's financial obligations are set out in Schedule 9.

**Trust's Premises:** The Kestrel Centre, St James' Hospital, Locksway Road, Portsmouth

**Trust's Service User Records:** has the meaning ascribed to the term in Clause 23.1

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**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".

**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. NHS SUCCESSOR BODIES**

- 2.1 The Partners acknowledge that the legal status, identity or constitution of the Trust as an NHS body may change during the Term including, without limitation, the Trust becoming a foundation trust pursuant to the NHS Act 2006.
- 2.2 Without prejudice to Clause 38.2, the Partners shall use all reasonable endeavours to ensure that this Agreement continues to have effect notwithstanding any such change as is referred to in clause 2.1 including but not limited to reasonable endeavours to secure the novation of this Agreement to any successor body of the Trust where both Parties, acting reasonably, consider this necessary.

## **3. COMMENCEMENT AND DURATION**

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

## **4. EXTENDING THE INITIAL TERM**

The Partners may, by agreement made in writing, extend this Agreement for a period and on varied terms as they agree, beyond the Initial Term, subject to approval of the Partners' boards.

## **5. PARTNERSHIP ARRANGEMENTS**

- 5.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to provide integrated health and social care services to better meet the needs of the Service Users of Portsmouth than if the Partners were operating independently.
- 5.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.
- 5.3 The Partnership Arrangements shall comprise
- (a) the delegation by the Trust to the Authority of the NHS Functions, so that it may exercise the NHS Functions alongside the Authority Health-Related Functions and act as integrated provider of the Services described in Schedule 5 on behalf of both Partners
  - (b) the establishment of an integrated learning disability service operating under a single line management structure.
- 5.4 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.
- 5.5 Not used
- 5.6 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.

## **6. DELEGATION OF FUNCTIONS**

- 6.1 For the purposes of the implementation of the Partnership Arrangements, the Trust hereby delegates the exercise of the NHS Functions to the Authority to exercise alongside the Authority's Health-Related Functions and act as integrated provider of the health and social care elements relating to learning disability services.
- 6.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.



- 6.3 The Trust has obtained consent to delegate the NHS Functions to the Authority from each CCG with which it has an NHS contract for the provision of Services for Service Users in respect of whom the Functions may be exercised.

## **7. SERVICES**

- 7.1 The Authority is the Host Partner for the Partnership Arrangements, and agrees to act as provider of the Services referred to in clause 6.1.
- 7.2 The Authority shall provide the Services or procure that they are provided and shall be accountable to the Trust for the NHS Functions for the benefit of Service Users:
- (a) to ensure the proper discharge of the Partners' Functions;
  - (b) with reasonable skill and care, and in accordance with best practice guidance;
  - (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement, and the Trust's applicable policies set out in Schedule 5;
  - (d) in accordance with its standing orders or other rules on contracting; and
  - (e) in accordance with all applicable Law.

## **8. ANNUAL WORK PROGRAMME**

- 8.1 The Partners shall prepare a programme for each of the Services at least four weeks before the start of each Financial Year, which shall:
- (a) set out the agreed Aims and Outcomes for the specific Services;
  - (b) describe any changes or development required for the specific Services;
  - (c) provide information on how changes in funding or resources may impact the specific Services; and
  - (d) include details of the estimated contributions due from each Partner for each Service,
- (the "Annual Work Programme").
- 8.2 Each Annual Work Programme shall be initiated on the first day of the Financial Year to which it relates. Each Annual Work Programme will remain in place for a period of 12 months.
- 8.3 The Annual Work Programme may be varied by written agreement between the Partners during any Financial Year. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the

Partners to make corresponding adjustments to the Trust's Financial Obligations and the Authority's Financial Obligations..

8.4 If the Partners cannot agree the contents of the Annual Work Programme, the matter shall be dealt with in accordance with clause 31. Pending the outcome of the dispute resolution process or termination of the Agreement under clause 32, the Partners shall make available amounts and, as the case may be, staff and other resources equivalent to the Financial Obligations for the previous Financial Year.

8.5 The Annual Work Programme will be a summary of the Partners' operational business plans and will facilitate the delivery of the aims and outcomes of this agreement (schedule 1) and the service specification (schedule 5)

## **9. PERFORMANCE MANAGEMENT**

9.1 The Partners shall adhere to the performance management framework set out in the governance arrangements (schedule 8) as agreed between the Partners.

9.2 Without prejudice to the implementation of the performance management framework referred to in clause 9.1, in the event that the Trust has any concerns on the operation of the Arrangements of the standards achieved in connection with the carrying out of the Functions, it may convene a review with the Authority with a view to agreeing a course of action to resolve such concerns. Nothing in this Clause shall prejudice the Trust's right to terminate this Agreement pursuant to clause 32.

## **10. FINANCIAL OBLIGATIONS**

The Partners' Financial Obligations in respect of the Partnership Arrangements shall be discharged in accordance with the arrangements set out in Schedule 9.

## **11. CAPITAL EXPENDITURE**

The Financial Obligations shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall be made separately and in accordance with section 256 (or section 76) of the NHS Act 2006.

## **12. SET UP COSTS**

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

### **13. PREMISES & EQUIPMENT**

- 12.1 The Trust shall make available the Trust's Premises to the Partnership Arrangements.
- 12.2 The Authority shall contribute the sums set out in Schedule 9 in relation to the Trust's Premises
- 12.3 Each Partner shall remain responsible for the maintenance and replacement of equipment which they own at the Commencement Date

### **13. STAFFING (TUPE, SECONDMENT AND PENSIONS)**

13.1 The Partners have agreed that pursuant to arrangements under Section 113 of the Local Government Act 1972 the Post Holders will be made available by the Trust to the Authority in accordance with the terms of the Section 113 Agreement and the Individual Agreements and the Partners agree that TUPE will not apply on the commencement of this Agreement, during the Agreement Term or on the expiry of this Agreement (in whole or in part). However, if during the Term, TUPE operates so as to transfer the employment of a Post Holder from one Partner ("the Transferor") to the other Partner ("the Transferee") the Partners shall comply with:

- (a) their legal obligations under TUPE
- (b) if applicable, the Statement of Practice

13.2 The Partners agree that the provisions of Schedule 6 shall apply to any:

- (a) Relevant Transfer of staff under this Agreement; and
- (b) secondments of Trust staff to the Authority under arrangements pursuant to Section 113 of the Local Government Act 1972.

### **14. GOVERNANCE**

- 14.1 The Partners agree that the arrangements specified in Schedule 8 shall have effect.
- 14.2 The Trust shall nominate the Trust's Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the Trust and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 14.3 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the Trust and shall be responsible for representing the Authority and liaising with the Trust's Authorised Officer in connection with the Partnership Arrangements.

## **15. QUARTERLY REVIEW AND REPORTING**

- 15.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter in accordance with this clause 15.
- 15.2 The Authority's Authorised Officer shall submit a quarterly report to the Partnership Management Group setting out:
- (a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and
  - (b) any issues of concern in respect of the Financial Obligations.

## **16. ANNUAL REVIEW**

- 16.1 The Partners agree to carry out a review of the Partnership Arrangements and progress against the Annual Work Programme (**Annual Review**) including:
- (a) the performance of the Partnership Arrangements against the Aims and Outcomes;
  - (b) the performance of the individual Services against the service levels and other targets contained in the relevant contracts;
  - (c) plans to address any underperformance in the Services;
  - (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.
  - (f) review of the governance arrangements
- 16.2 The Authority shall prepare an annual report following the Annual Review for submission to the Partners' respective boards.

## **17. VARIATIONS**

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

## **18. STANDARDS**

- 18.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:
- (a) the service standards set out in Schedule 5;
  - (b) the prevailing standards of clinical governance;
  - (c) the Authority's standing orders; and

(d) the requirements specified by the Care Quality Commission and any other relevant Regulatory Body.

18.2 The Partners shall develop operational guidance and procedures to reflect compliance with clause 18.

18.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **19. HEALTH AND SAFETY**

19.1 The Authority shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services and persons working on the Services.

19.2 The Authority shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the Trust on request.

19.3 The Authority shall notify the Trust if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury, and the Authority shall ensure that its Representatives:

- (a) comply with any guidance provided by the Trust as to the form in which any notifications are to be made and provide any further information which the Trust may require in relation to the incident or accident;
- (b) promptly notify the Trust and the Council of such incident or accident and, where relevant, outline what action has been taken by the relevant member of staff as a result of the incident or accident; and
- (c) at the discretion of the Trust, to be exercised reasonably, carry out an investigation into the incident or accident and its causes and make the results available to the Trust or permit the Trust to carry out such investigation and fully co-operate with such investigation.

## **20. EQUALITY DUTIES**

20.1 The Partners acknowledge their respective duties under Equality Legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

- 20.2 The Authority agrees to adopt and apply policies, in its carrying out of the Authority Health-Related Functions and NHS Functions, to ensure compliance with their equality duties under applicable provisions of Equality Legislation
- 20.3 The Authority shall take all reasonable steps to secure the observance of clause 20 by all servants, employees or agents of the Authority and all Service Providers employed in delivering the Services described in this Agreement.

## **21. 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.

## **22. DATA PROTECTION AND INFORMATION SHARING**

- 22.1 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, which shall include, without, limitation, ensuring that all Personal Data processed by its staff on behalf of and/or in the course of this Agreement, is processed in accordance with the provisions and principles of Data Protection Legislation.
- 22.2 Subject to applicable Law, the Partners shall share information about Service Users to improve the quality of care and enable integrated working.
- 22.3 The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement and the obligations referred to in Schedule 7 to this Agreement.

## **23. HEALTH AND SOCIAL CARE RECORDS**

- 23.1 The Trust shall provide access to the Authority to its current and archived Service User files from the Commencement Date upon receipt of reasonable written notice from the Authority (the "**Trust's Service User Records**").
- 23.2 The Authority shall hold, and be responsible for maintaining and the safekeeping of the Council's Service User Records for the Term, in accordance with Data Protection Legislation—and which shall consist of all information relating to the social care interventions in relation to a Service User pursuant to the Authority's obligations under this Agreement;

- 23.3 The Authority shall be responsible for facilitating Service Users in accessing their Personal Data under the DPA 1998.
- 23.4 Upon the expiry or early termination of the term of the Agreement, the Partners shall work in good faith and cooperation in reaching an agreement as to whether Clause 23.5(a) or 23.5(b) shall apply to the Council's Service User Records.
- 23.5 Subject to the agreement reached by the Partners pursuant to Clause 23.4, upon the expiry or early termination of the Agreement, the Authority shall either:
- (a) use its reasonable endeavours to provide copies (at the [Council's expense] of, and reasonable access to the Council's Service User Records on receiving reasonable notice from the Trust; or
  - (b) transfer the Council's Service User Records to the Trust or a replacement service provider designated by the Trust and the provisions of Clause 23.6 shall apply.
- 23.6 Where the Authority has complied with its obligations set out in Clause 23.5 (b), the Trust shall allow and procure that any new service provider allows the Authority access on reasonable notice to the Council's Service User Records. The Authority shall, in such circumstances comply with its obligations under Data Protection Legislation.
- 23.7 The Trust's Service User Records and the Council's Service User Records shall be treated as confidential between the Partners. No copy, extract or summary of the Trust's Service Records and the Council's Service User Records, any part of them or any comment on them shall be supplied to any Third Party (other than in compliance with Law or for the purposes of obtaining legal advice) without the prior written approval of the Partners.

## 24. CONFIDENTIALITY

- 24.1 In respect of any Confidential Information it may receive from the other Partner (the "**Discloser**") and subject always to the remainder of this Clause 24, each Partner (the "**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any Third Party, without the Discloser's prior written consent provided that:
- (a) the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement; and
  - (b) the provisions of this Clause 24 shall not apply to any Confidential Information which:

- (i) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
- (ii) is obtained by a Third Party who is lawfully authorised to disclose such information.

24.2 Nothing in this Clause 24 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

## **25. AUDIT**

25.1 The Authority shall arrange for the audit of the accounts of the Partnership Arrangements in accordance with its statutory audit requirements.

25.2 The Authority shall provide to the Trust any reports required concerning the NHS Functions on reasonable notice and free of charge.

25.3 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.

25.4 The Trust shall during the Term of this Agreement provide to the Authority on reasonable notice access to all information, books, receipts and other records which the Authority may reasonably require in order to audit or otherwise verify the sums invoiced to the Authority under the arrangements set out in Schedule 9.

25.5 The Authority shall keep and maintain until 12 years after the end of the Term, or as long a period as may be agreed between the Partners in accordance with the appropriate retention schedules, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Trust, and all payments made by the Trust. The Authority shall on request and at its own expense afford the Trust or the Trust's Representatives such access to those records as may be requested by the Trust in connection with the Agreement.

## **26. INSURANCE**

26.1 Each Partner 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, which shall include without limitation, appropriate insurance arrangements in respect of employer's liability, liability to Third Parties and all other potential liability under this Agreement. The obligations in this Clause shall include insurance (or equivalent) arrangements after the date of the determination



of this Agreement in respect of any events, acts or omissions prior to such determination.

- 26.2 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements.

## 27. INDEMNITIES

27.1 Nothing in this Agreement shall affect:

- (a) the liability of the Authority to the Service Users in respect of the Health-Related Functions; or
- (b) the liability of the Trust to Service Users in respect of the NHS Functions.

27.2 Each Partner (the "**Indemnifying Partner**") shall indemnify and keep indemnified the other Partner (the "**Indemnified Partner**") against all Losses, whether arising in tort (including negligent act, or omission), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence act, omission, wilful default, fraud or breach of statutory duty of itself or the Indemnifying Partner's Representatives—arising out of or in connection with this Agreement, except to the extent that the loss or claim is directly caused by or directly arises from the negligent act or commission, breach of this Agreement, or applicable Law by the Indemnified Partner or its Representatives.

27.3 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 an indemnity claim under these provisions, the Indemnified Partner shall:

- (a) as soon as reasonably practicable give written notice of that matter to the Indemnifying Partner specifying in reasonable detail the nature of the relevant claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
- (c) give the Indemnifying 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.

## **28. LIABILITIES**

- 28.1 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.
- 28.2 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.
- 28.3 Neither Partner will be liable for any Indirect Losses suffered by the other Party whether such losses or the potential for such losses were made known to the Party or not and, other than in respect of death or personal injury or fraudulent misrepresentation.

## **29. COMPLAINTS AND INVESTIGATIONS**

### **29.1**

All complaints received in connection with the Services or the exercise of the Functions by one Partner shall be reported to the other Partner. The Partner in receipt of the complaint shall provide the other Partners with such detail regarding the complaint as the other Partners may reasonably require (and insofar as it is lawfully able to do so);

- (a) where a complaint wholly or in part relates to one or more of the NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the Trust and the Trust will ensure that the Council is kept informed about the conduct of any complaint that it is managing, administering, investigating and defending pursuant to this Clause;
- (b) where a complaint wholly relates to one or more of the Authority's Health Related Functions, it shall be dealt with in accordance with the statutory complaints procedure of the Authority and the Authority will ensure that the Trust is kept informed about the conduct of any complaint that it is managing, administering, investigating and defending pursuant to this Clause;
- (c) where a complaint relates partly to one or more of the Authority's Health Related Functions and partly to one or more of the NHS Functions, then a joint response will be made to the complaint by the Authority and the Trust, in line with local joint protocol;

- (d) where a complaint cannot be handled in any way described above or relates to the operation of this Agreement, then the Partnership Management Group will set up a complaints group with equal representation from both Partners to examine the complaint and recommend remedies. All complaints shall be reported to the Authorised Officers.

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

29.3 During the Term:

- (a) the Council shall remain accountable (including (without limitation) and at the Council's own cost, responsibility for the management, administrative, investigation and defence) for any complaint arising out of or in connection with the provision of the Services prior the Commencement Date,; and
- (b) each Partner agrees not to act in a manner prejudicial to the reputation of the other Partner and the both Partner s agree to co-operate with each other in the performance of their respective obligations under this clause 29 in accordance always with their statutory obligations and applicable government guidance.

### **30. HEALTHWATCH**

30.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.

30.2 The Authority shall ensure the effective discharge of its obligations in the establishment of Local HealthWatch

### **31. DISPUTE RESOLUTION**

31.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the Partnership Management Group, setting out full details of the dispute.

31.2 The members of the Partnership Management Group shall meet as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to clause 31.1 at a meeting convened for the purpose of resolving the dispute and use its best endeavours to resolve the dispute.

31.3 If any dispute referred to the Partnership Management Group is not resolved within 15 Working Days of the dispute being referred to it, either Partner, by notice in writing to the other, may refer the dispute to the chief executives of the

Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within 20 Working Days of service of the notice.

- 31.4 If within the allotted time the processes set out in clauses 31.2 and 31.3 do not resolve such dispute to the satisfaction of both Partners either Partner may refer any dispute to an adjudicator.
- 31.5 If the Partners are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either Partner for such an appointment then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the Partners agree to accept such appointment.
- 31.6 Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the Dispute being referred to such adjudicator, and costs shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the parties in equal proportions PROVIDED ALWAYS that the Partners agree that no decision or determination of an adjudicator under this clause 31.5 shall be final and binding upon them.
- 31.7 This clause 31 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 31 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

## **32. TERMINATION**

- 32.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 32.2, 32.3 or 32.4, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner.
- 32.2 Subject to clause 32.3, either Partner may terminate this Agreement at any time by giving 6 months' written notice to the other Partner, if for budgetary reasons:
- (a) it is no longer able to meet its Financial Obligations or otherwise contribute sufficient resources to the Partnership Arrangements (or any part of them);  
or
  - (b) it is of the reasonable opinion that in light of the other's inability or failure to meet its Financial Obligations in whole or in part the Partnership Arrangements (or any part of them) are no longer viable.

32.3 Either Partner (for the purposes of this clause 32.3, the **First Partner**) may terminate this Agreement on one calendar month's written notice by the service of written notice on the other Partner (for the purposes of this clause 32.3, the **Second Partner**) in the following circumstances:

- (a) 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 32.3, 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;
- (b) there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or
- (c) following a failure to resolve a dispute under clauses 31.

32.4 .NOT USED

32.5 The provisions of clause 33 shall apply on termination of this Agreement.

32.6 For the avoidance of doubt, the termination of this Agreement and the Partnership Arrangements made under it shall not preclude the Partners from entering into alternative arrangements for the commissioning and provision of the NHS Functions relating to learning disability services.

### **33. CONSEQUENCES OF TERMINATION**

33.1 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 prepared by the Partnership Management Group;
- (b) premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;
- (c) assets purchased for use for the purposes of the Partnership Arrangements shall unless otherwise agreed by the Partners be returned to the Partner from whose financial contribution or other resource the purchase was made;
- (d) contracts entered into by the Authority concerning the NHS Functions shall be novated to the Trust and the Trust shall accept the novation; and
- (e) the Authority shall transfer to the Trust all records in its possession relating to the NHS Functions.

33.2 The expiry or termination of this Agreement shall be without prejudice to any of the rights or remedies that have accrued to whichever Partner under this Agreement and shall have no effect on the liability of either Partner to make

payment of any sums due under this Agreement, prior to the date upon which such termination takes effect.

33.3 Upon the expiry or termination of this Agreement, the Partners shall:

- (a) work together to wind down and disaggregate all arrangements made pursuant to this Agreement, and shall in so doing ensure a minimal disruption and impact on Service Users and the Partners; and
- (b) work together to ensure an orderly handover in relation to all aspects of the Functions and shall at all times act in such a manner as not to adversely affect the delivery of the Services.

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

- (a) Clause 21 "Freedom of Information"
- (b) Clause 22 "Data Protection and Information Sharing"
- (c) Clause 25; "Audit"
- (d) Clause 27; "Indemnities"
- (e) Clause 28; "Liabilities" and
- (f) Clause 33; "Consequences of Termination"

#### **34. 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.

#### **35. NO PARTNERSHIP**

35.1 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.

35.2 Neither Partner nor any of its employees or agents will have the power to make any representations or give any warranties to Third Parties on behalf or in respect of the other Partner, nor bind the other Partner in any way,

#### **36. THIRD PARTY RIGHTS**

36.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

## **37. NOTICES**

- 37.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the chief executive 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.
- 37.2 Notices may be sent by first class mail or facsimile transmission, provided that facsimile transmissions are confirmed within 24 hours by first class mailed confirmation of a copy. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

## **38. ASSIGNMENT AND SUBCONTRACTING**

- 38.1 Subject to clause 38.2, this Agreement and any right and conditions contained in it may not be assigned, sub contracted or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.
- 38.2 Pursuant to clause 2.2, the Partners recognise the upcoming changes to the structure of the NHS and agree that the Trust shall be entitled to novate, assign or transfer in whole or in part the benefit and burden under this Agreement to any other NHS organisation, statutory successor in title of all or part of its functions, property, rights and liabilities, or any other entity replacing the Trust or who has become responsible for the exercise of any or all of the NHS Functions and that consent shall not be required from the Authority for any such transfer (including an assignment or sub-contract). The Authority shall do all that is required to assist such transfer and/or enable it to come into effect.

## **39. 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.

## **40. WAIVER**

- 40.1 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.

40.2 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.

#### **41. 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.

#### **42. GOVERNING LAW AND JURISDICTION**

Subject to clause 31, this Agreement, any dispute or claim arising out of or in connection with it or its subject matter, and any non-contractual obligations arising out of or in connection with it, 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 (including non-contractual disputes or claims).

#### **43. 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.

#### **44. CONFLICTS OF INTEREST**

44.1 Each Partner shall perform their obligations under this Agreement in the best interests of the other Partner, and shall notify the other Partner of any conflicts of interests as they arise during the Term.

#### **45. COUNTERPARTS**

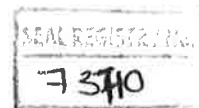
This Agreement may be executed in one (1) or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by both Parties shall constitute a full original of this Agreement for all purposes.



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

**EXECUTED AS A DEED** on behalf of the **Authority**

**THE COMMON SEAL of PORTSMOUTH** )  
**CITY COUNCIL** was hereunto affixed in )  
pursuance of a resolution of the Council )  
passed at a meeting duly convened and held:- )



...

Authorised Signatory

**EXECUTED AS A DEED** on behalf of the **Trust**

**THE COMMON SEAL of SOLENT NHS** )  
**TRUST** was affixed to this )  
Deed in the presence of:- )



.....

Authorised Signatory



## Schedule 1 Aims and Outcomes

### 1. BACKGROUND

1.1 The impetus for developing integrated health and social care services, in particular learning disability services, has been driven at a national level for a number of years through a variety of White Papers and policy documents, including:

- Valuing People, DoH 2001
- Valuing Health for All, DoH 2004
- Our Health, Our Care, Our Say DoH 2006
- Joint Investigation into the Provision of Services for People with Learning Disabilities at Cornwall Partnership NHS Trust, 2006
- Valuing People Now, DoH 2007
- Strong and Prosperous Communities, 2007
- Liberating the NHS DoH 2010
- Health & Social Care Act 2012
- Adult Social Care Outcomes Framework 2014/15
- NHS Outcomes Framework 2014/15

1.2 The Health & Social Care Act 2012 includes as a function of Health & Wellbeing Boards the duty to encourage integrated working via a range of directives including:

1.2.1 A Health and Wellbeing Board must, for the purpose of advancing the health and wellbeing of the people in its area, encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner.

1.2.2 A Health and Wellbeing Board must, in particular, provide such advice, assistance or other support as it thinks appropriate for the purpose of encouraging the making of arrangements under Section 75 of the National Health Service Act 2006 in connection with the provision of such services.

1.3 It is acknowledged on a national and local basis that whilst people with learning disabilities do have health needs, the overriding support they need is social in nature. All the available evidence supports a social care model of service as the most appropriate because of the benefits it brings to people with learning disabilities, in realising their potential, achieving a good quality of life and enabling integration in local communities.

1.4 In support of this thinking, the Department of Health mandated the transfer of commissioning responsibility and funding from health to social care for learning disability services during 2010 and the closure and reprovision of locally based hospital units to supported living homes. The remaining health commissioning

responsibilities relate to specialist health teams, continuing care, assessment and treatment services, and forensic services. Forensic commissioning responsibilities were transferred to Specialist Commissioning in October 2010.

- 1.5 Integrated learning disability services with a social care lead remains the most appropriate model of service to provide the best outcomes for people with a learning disability.

## **2. AIMS & OBJECTIVES**

- 2.1 The Partners have agreed to utilise S75 arrangements to deliver an Integrated Learning Disability Service. By bringing together resources operating under a single line management structure and working to a single service specification and set of key performance indicators, the Partners will deliver a high quality health and social care service which will provide improved outcomes for service users.
- 2.2 The Partners agree to provide the staffing establishment detailed in schedule 6 to deliver the service specification (schedule 5)
- 2.3 The learning disability health agenda will not be adversely impacted by the development of an integrated service.

## **3. OUTCOMES**

- 3.1 The expected outcomes of this agreement include:
  - Ensuring that organisations work together across the whole health and social care learning disability agenda
  - Delivering improved outcomes for service users
  - Promoting the development of high quality care
  - Providing a single gateway to health and social care resources
  - Providing a single assessment process
  - Removing duplication and ensuring value for money
  - Streamlining case management processes
  - Streamlining management functions thereby delivering efficiencies
  - Supporting the development of flexible and innovative services
  - Supporting the development of flexible teams and individual roles

## Schedule 2 Trust Functions

1. The provisions of this Schedule 2 are subject to the provisions of Schedule 5 (Service Specification).
2. The **Trust Functions** comprise the making of arrangements for the provision of the Services, but only to the extent that such functions are relevant to and promote the welfare of the Service Users, and excepting the Excluded Functions listed in Schedule 4, specifically: -
  - 2.1 functions under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1, to the NHS Act 2006, including rehabilitation services and services intended to avoid admission to hospital and including the functions of providing such services pursuant to arrangements made by a clinical commissioning group or the NHS Commissioning Board (NHS England);
  - 2.2 functions under section 117 of the Mental Health Act 1983 including the functions of providing services under that section pursuant to arrangements made by a clinical commissioning group or the NHS Commissioning Board (NHS England);
  - 2.3 functions under Schedule A1 of the Mental Capacity Act 2005;
  - 2.4 functions under section 12A(1) of the NHS Act 2006 (direct payments for health care) and;
  - 2.5 functions of making direct payments under the NHS (Direct Payments) Regulations 2013 and
  - 2.6 any such additional functions as may be:
    - 2.6.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 2 to the Authority; or
    - 2.6.2 agreed by the Parties from time to time to be Trust Functions for the purposes of this Agreement.
3. For the purposes of this Schedule 2, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions that may come into force from time to time whether prior to or following the Commencement Date.

### **Schedule 3 Authority Functions**

1. The provisions of this Schedule 3 are subject to the provisions of Schedule 5 (Service Specification).
2. The Authority Functions comprise the making of arrangements for the provision of the Services, to the extent that such functions are relevant to and promote the welfare of the Service Users, and excepting the Excluded Functions listed in Schedule 4, specifically:
  - 2.1 The functions specified in Schedule 1 to the Local Authority Social Services Act 1970;
  - 2.2 The functions under sections 7 or 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 except in so far as they assign functions to a local authority in their capacity of a local education authority;
  - 2.3 The functions of providing, or securing the provision of recreational facilities under section 19 of the Local Government (Miscellaneous Provisions) Act 1976;
  - 2.4 The functions of local authorities under the Education Acts as defined in section 578 of the Education Act 1996;
  - 2.5 The functions of local housing authorities under Part I of the Housing Grants, Construction and Regeneration Act 1996 and under Parts VI and VII of the Housing Act 1996;
  - 2.6 The functions of local authorities under section 126 of the Housing Grants, Construction and Regeneration Act 1996;
  - 2.7 The functions of waste collection or waste disposal under the Environmental Protection Act 1990;
  - 2.8 The functions of providing environmental health services under sections 180 and 181 of the Local Government Act 1972;
  - 2.9 The functions of local highway authorities under the Highways Act 1980 and section 39 of the Road Traffic Act 1988;
  - 2.10 The functions under section 63 (passenger transport) and section 93 (travel concession schemes) of the Transport Act 1985;

- 2.11 Where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of accommodation under sections 21 or 26 of the 1948 Act, the function of charging for that accommodation under section 22, 23(2) or 26 of that Act;
- 2.12 Where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of a service under any enactment mentioned in section 17(2)(a) to (c) of the 1983 Act, the function of charging for that service under that section;
- 2.13 the functions of local authorities under or by virtue of sections 2B or 6 (C) (1) of, or Schedule 1 to, the NHS Act 2006
- 2.14 Any such additional functions as may be:
- 2.14.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 3 to the Authority; or
- 2.14.2 agreed by the Parties from time to time to be Authority Functions for the purposes of this Agreement.
- 3 For the purposes of this Schedule 3, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions as may come into force from time to time whether prior to or following the Commencement Date.

#### **Schedule 4 Excluded Functions**

1. Excluded pursuant to the Regulations:
  - 1.1 The Trust Functions shall not include the following:
    - 1.1.1 surgery;
    - 1.1.2 radiotherapy;
    - 1.1.3 termination of pregnancies;
    - 1.1.4 endoscopy;
    - 1.1.5 the use of Class 4 laser treatments and other invasive treatments; and
    - 1.1.6 emergency ambulance services, and
  - 1.2 The Authority Functions shall not include any functions pursuant to the following:
    - 1.2.1 subject to Regulation 6(k) of the Regulations, sections 22, 23(3), 26(2) to (4), 43, 45 and 49 of the National Assistance Act 1948;
    - 1.2.2 section 6 of the Local Authority Social Services Act 1970;
    - 1.2.3 section 3 of the Adoption and Children Act 2002;
    - 1.2.4 sections 114 and 115 of the Mental Health Act 1983;
    - 1.2.5 section 17 of the 1983 Act; and
    - 1.2.6 Parts VII to IX and section 86 of the Children Act 1989,

or any other functions that are specified in the Regulations as amended from time to time as being excluded from section 75 arrangements.
2. To avoid doubt, all functions that are not specified as either Trust Functions in Schedule 2 or as Authority Functions in Schedule 3 of this Agreement shall be Excluded Functions.
3. For the purposes of this Schedule 4, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions as may come into force from time to time whether prior to or following the Commencement Date.



**Schedule 5 Service Specification**



**Portsmouth  
Clinical Commissioning Group**

**Service Specification**

**Integrated Health and Social Care Learning Disability Service**

**Date:** 13<sup>th</sup> March 2014  
**Author:** J Charlesworth

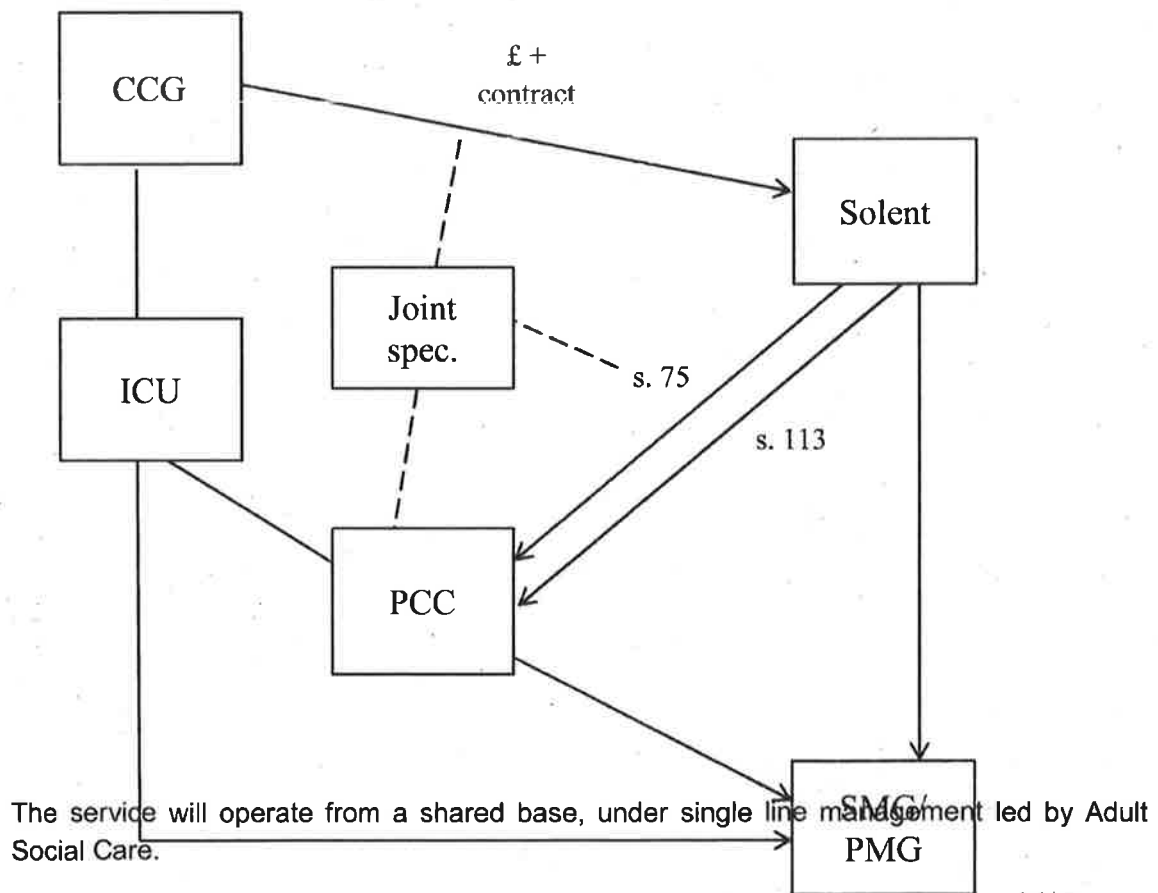
35 | Page

**Section 1: Integrated Social Care and Health Learning Disability Service**

**Model of Service**

The service will operate under a Section 75 Lead Provider arrangement with Portsmouth City Council as the lead provider. The funding and contractual flow of the service is detailed below:

- Portsmouth CCG and PCC commissioning budgets pooled using S75 Health Act flexibilities within the ICU S75 which currently exists
- Solent NHS Trust contracts with Portsmouth CCG to secure funding to support the NHS staffing establishment of the Learning Disability Team
- Solent NHS Trust and PCC enter a S75 Partnership Agreement (with Solent staff seconded to PCC) with no requirement for a pooled fund
- PCC accountable as lead provider for delivery of the integrated service specification and health and social care outcomes measures, facilitated by the S75 Partnership Agreement



The service will be supported by unified procedures and protocols within a Standard Operating Procedure (SOP) which will deliver the vision, principles and outcomes previously determined by people with learning disabilities.

The service will have a clear focus on the support and delivery of the health agenda; care and ongoing support for people with learning disabilities; development of life skills/habilitation/rehabilitation for adults with learning disabilities and/or autistic spectrum disorders, within a clear eligibility framework.

The service will support flexible working practices recognising people's skills, knowledge and expertise to provide case management by trusted assessors. The service will ensure equality of access and outcomes to health and social care services.

### **Vision**

People with learning disabilities who are members of the Learning Disability Partnership Board have set out their vision, what should be remembered when determining how to deliver the vision, and what differences they would like to see in their lives.

Their vision is that:

***“We should be treated equally and our views respected, and we should be helped to live the lives we choose. You need to make sure we are safe in services if we need support or care”***

### **Principles**

They said that when people think about what they need to do to make this vision a reality they need to remember these principles:

- We are treated equally and have the same rights and responsibilities as everyone else
- Our views are respected, and we are supported to make informed choices about our lives
- We are always at the centre of decisions about us, remember the motto “nothing about us without us”
- We should be safe in services, especially if we have to live outside of Portsmouth
- You should make sure you use the money in the best way and remember that sometimes “small things can make a bigger difference”
- Family carers who support people with learning disabilities are listened to, and given the information and support they need
- Organisations should make sure they work in a person centred way, and only share information about us when they need to

### **Outcomes**

They also said that these are the differences they want to see in their lives:

- Improved health and wellbeing – “we are helped to keep well, happy and safe”
- Making a positive contribution – “we are supported to speak up and say what we think”
- Improved quality of life – “we get the support we need to make our own decisions and are helped to do the things we want to do”

### **Service Population**

The service will be open to adults with learning disabilities who live within the geographic area covered by Portsmouth City Council and Portsmouth CCG

### **Components of service**

The components of the service are described below:

- Integrated community team (including health and social care staff, therapy staff and LD Consultant sessions)
- Intensive Outreach Team (new model of service incorporating the outreach element of Assessment & Treatment and intensive outreach nursing team)
- LD Liaison Nurse based at Queen Alexandra Hospital
- Residential Respite (including Russets)
- Residential Care (including Russets)
- Supported Living
- Carers support
- Meaningful daytime activities (including Portsmouth Day Services)
- Personal care and support

### **Functions**

The functions of the integrated service will be to:

- Promote independence, choice, rights and inclusion
- Improve health and well being
- Address locally and nationally identified health inequalities
- Improve the client experience
- Promote and develop mainstream inclusion in all services across the health and local authority agenda
- Support carers
- Implement key national and local directives/plans/guidance
- Provide services along a care pathway basis
- Ensure the safety of service users in services either directly provided or commissioned
- Deliver the safeguarding, quality and clinical governance agendas
- Complaints, legal and risk management
- Making best use of resources and budgets
- Involve users, carers, families and other stakeholders in the development, delivery and monitoring of services
- Manage the service under a Section 75 Lead Provider agreement

### **Organisational responsibilities**

The organisational responsibilities relate to:

- Trusted assessments
- Case management
- Care management
- Social work
- Specialist LD Nursing
- Specialist support in relation to escalating needs/crisis situations
- Other Statutory NHS LD services
- Other Statutory Adult Social Care LD services
- Co-ordination, assessment and case management of continuing health care and other NHS funded placements e.g. Extra Contractual Referrals, continuing care and joint packages under s117 responsibilities
- Delivery of Integrated LD Commissioning Plans
- Delivery of service in line with the SOP to meet the service specification and outcome measures
- Safeguarding

### **Interdependencies**

The service is interdependent with a range of other teams and services including:

- Local Authority services
- Registered Social Landlords and other housing providers
- Care and Support providers from the third, private and public sectors
- Primary Healthcare
- Secondary Healthcare
- Mental Health Services
- Virtual Wards (Solent NHS Trust)
- Older Peoples Services

## **Section 2: Performance and Quality Monitoring**

These outcomes were developed jointly with people with learning disabilities in Portsmouth. In some cases, where the performance against the outcome indicator is not known, data collection will be required in the first year in order to establish a base for the future.

### **Outcome 1**

**Improved health and wellbeing – “we are helped to keep well, safe and happy”**

We need to ensure that:

- People with learning disabilities have the same access to services as everyone else
- People get the right services, in the right place, at the right time
- People have their health needs assessed
- Family carers get the information and support they need
- Services are safe

Outcome Indicator	Measurement	Reporting
Health Action Plans	20% annual increase in numbers of all service users who have a current health action plan	Data collected through the Annual Statutory review process
Annual Health Checks	Contribute to the target of 75% of service users on health LD register have an annual health check carried out under the DES	collected through the Annual Statutory review process
Training	Annual report on performance against plan to provide LD training to primary, secondary and community services. Also, ad-hoc or issue based training requests as required.	Team record all training delivered
Liaison nurse service	Liaison nurses will ensure that: <ul style="list-style-type: none"> <li>• 100% of patients with whom they have contact have appropriate consent and admission forms and effective discharge plans</li> <li>• they contribute to LD awareness and bespoke training for PHT staff</li> <li>• they seek patient and carer feedback on their hospital experience</li> </ul>	Already collected for health KPI.
Intensive outreach support is available to those who need it	The level of intensive outreach support being provided by the IOS	Number of face to face contacts from both elements of the IOS.
Carers	100% of identified carers are offered a carers assessment	This will be recorded on AIS and collected through development of a new report.
Statutory Reviews	100% of service user reviews completed within a twelve month period	Already collected through existing reporting.

**Outcome 2**

**Making a positive contribution – “we are supported to speak up and say what we think”**

We need to ensure that:

- People are supported to speak up and say what they feel
- People are involved in planning and improving services
- People are supported to be part of the Learning Disability Partnership board and sub-groups
- The Council and the NHS can show how it listens to people and uses their ideas to make things better

<b>Outcome Indicator</b>	<b>Measurement</b>	<b>Reporting</b>
Annual service review	95% of people rate the service as satisfactory or above  At least 75% of people accessing services respond to a satisfaction questionnaire/survey  95% of people rate the service as satisfactory or above	To be collected through the development of a new report.  Annual report with data and themes
Advocacy	95% of service users are offered information about the availability of advocacy and self-advocacy	This will be recorded on AIS and collected through development of a new report.
Using service user feedback to plan, develop and improve services	Annual report on how feedback was obtained, what the key messages were and how this information has been used	Annual Report for S75 Board.

**Outcome 3**

Improved quality of life – *“we get the support we need to make our own decisions and are helped to do the things we want to do”*

We need to ensure that:

- People are supported to tell their family, social workers, healthcare professionals and other people about the life they want to live
- Young people know what support they get when they leave school
- People are given the right information so they can make decisions about their support
- People can choose where they want to live
- People are helped to have choice and control over their lives through self-directed support and use of direct payments/individual budgets
- People have a choice of meaningful daytime activities

Outcome Indicator	Measurement	Reporting
Accommodation and Support	95% of new service users offered supported living or shared lives as a first choice Current proportions of 48% Supported Living vs 52% Residential Care will become 60% Supported Living vs 40% Residential Care by 1/4/17.	Annual Report
Employment	10% annual increase in numbers of people in paid employment	To be collected through further development of existing employment reporting on AIS.
Person Centred Plans	75% of people have a Person Centred Plan that records meaningful outcomes regarding independence, social inclusion, relationships and choice.	To be collected through the statutory annual review process.
Transition	95% of those 14 and over known to be eligible for our services to have an education, health and social care plan.	Annual Report
Individual Budgets	20% annual increase in	Quarterly Report.



	people having an Individual Budget.	
Day Time Activity	A range of day services in place that deliver outcomes related to social inclusion and independence.	Annual Report
Keeping People Safe	95% of service users are offered information about how to report hate crime or abuse  Development of a strategy to keep people safe particularly those most at risk	Data collected through the annual statutory review process.
Benefits	75% of service users referred to the FAB team have had a benefits review within 12 months	To be collected through FAB team.
Information	Review of accessibility of core information to be carried out and plan to increase percentage put in place.	Development and implementation of plan.

### National Outcomes Frameworks

The local outcomes detailed above will support delivery of the following national outcomes which are shared or complimentary outcomes from the NHS, Public Health and Adult Social Care Outcomes Frameworks:

- Improving the wider determinants of health
- Health improvement
- Preventing people from dying prematurely
- Ensuring that people have a positive experience of care
- Treating and caring for people in a safe environment and protecting them from avoidable harm
- Enhancing the quality of life for people with care and support needs
- Ensuring that people have a positive experience of care and support
- Safeguarding adults who are vulnerable and protecting them from avoidable harm

## **Schedule 6 Human Resources**

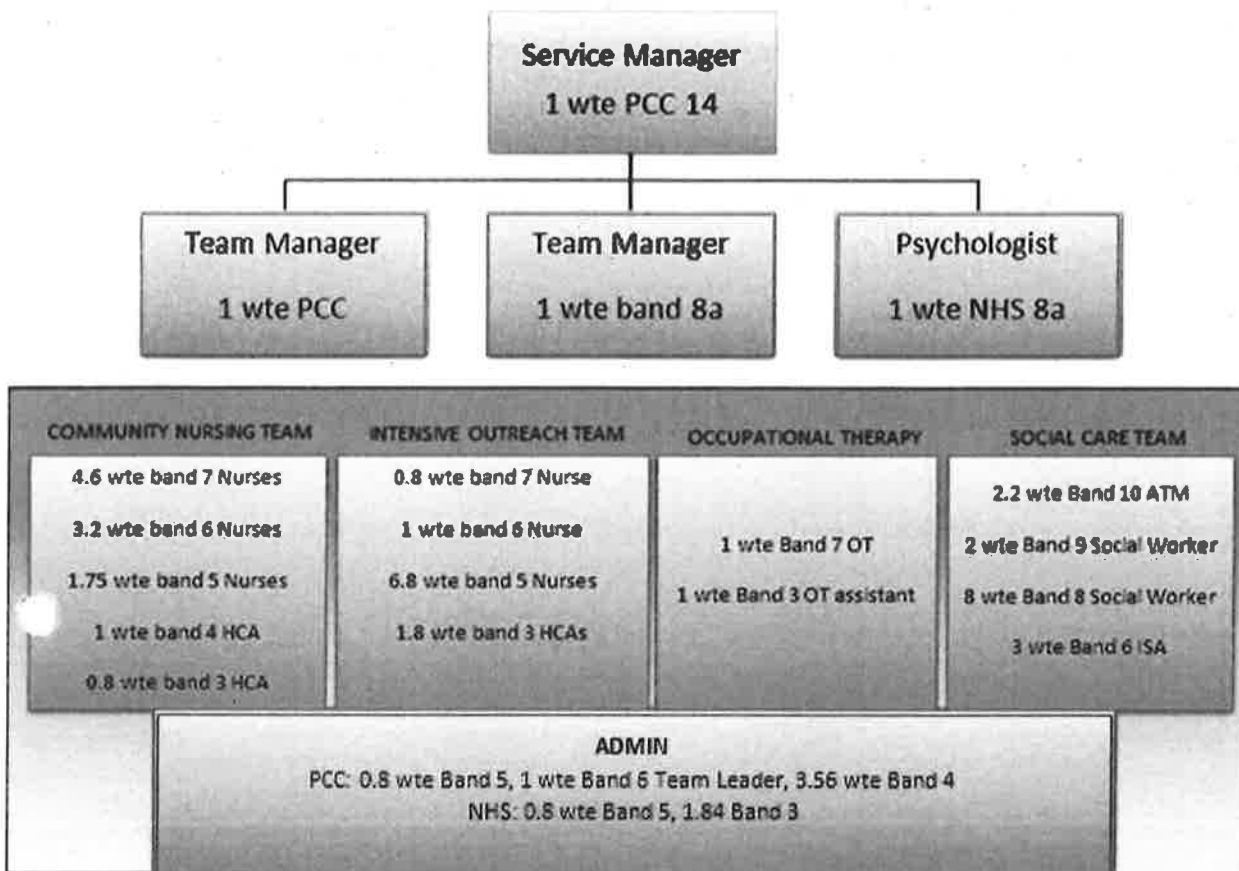
### **1. STAFF DETAILS**

- 1.1 A database exists which lists all of the seconded staff from the Trust to the Authority for it to manage and direct as a part of the arrangements. This database shall be held and updated by the HR Department of the Trust.
- 1.2 A database exists which lists all of the staff of the Authority for it to manage and direct as a part of the arrangements. This database shall be held and updated by the HR Department of the Authority.
- 1.3 The secondment agreement will be in place up to and including the 31<sup>st</sup> March 2017

### **2. SECONDMENT ARRANGEMENTS**

- 2.1 The seconded staff will have all seen and signed acceptance of the Secondment Agreement (Appendix 1).
- 2.2 The Authority will follow the employee organisation's policies and procedures for all seconded staff where those policies and procedures and any updates thereto have been notified to the Authority. Trust HR staff will provide support as necessary to execute these policies and the process of HR management.
- 2.3 The Authority will use its best endeavours to ensure that all managers of seconded staff attend management training and updates provided by the Trust especially in relation to the Trust's policies & procedures.
- 2.4 The Trust will ensure all seconded staff are kept informed and up-to-date with Trust policies and procedures applicable to them.

### **4. STAFF ROLES INCLUDED IN THE AGREEMENT**



## 5. STAFF ROLES EXCLUDED FROM THE AGREEMENT

- 5.1 Solent NHS Trust will provide appropriate levels of input to the Integrated Service from consultant psychiatrist and therapy staff.
- 5.2 Solent NHS Trust will provide 1 WTE psychiatrist (10 Pas per week) for the Integrated Service.
- 5.3 Speech and Language Therapy services for adults with learning disabilities are provided as part of the Adult Speech & Language block contract arrangements between NHS Portsmouth CCG and Solent NHS Trust. Support is provided for both communication and eating and drinking needs through the integrated SLT model which includes both specialist and mainstream provision, within hospital and community. The SLT service works to a 6 week referral to treatment standard for clients who are non-urgent and 10 working days for those who are urgent.

## 6. VARIATION TO THE STAFFING ESTABLISHMENT

- 6.1 The Partners may wish to vary the staffing establishment detailed in 4 from time to time.
- 6.2 Variations to the staffing establishment will be discussed and agreed by the Partnership Management Group and the Service Monitoring Group.

**DRAFT SECONDMENT AGREEMENT TO BE SIGNED BY STAFF MEMBER**

Dear

**CONFIRMATION OF SECONDMENT**

I am pleased to confirm the details of your secondment to the post of {job title} based in the Integrated Learning Disability Service at the Kestrel Centre, St James Hospital, Locksway Rd Portsmouth.

This Secondment is entered as a consequence of an Agreement between the Portsmouth City Council ("the Council") and Solent NHS Trust dated (1st April 2014) under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of learning disability services. Solent NHS Trust has agreed to second their Employees to the Council on the terms of this Agreement.

**1. DETAILS OF SECONDMENT**

1.1 With effect from 1<sup>st</sup> April 2014 Solent NHS shall second you to the Council on the terms of this Agreement. Subject to earlier termination as provided for in this Agreement, the secondment will continue until the 31<sup>st</sup> March 2017 during the period of the s75 Agreement provided that you remain employed by Solent NHS Trust.

1.2 During the Secondment, you shall be located at the Kestrel Centre where you shall act and perform the duties as set out in your contract of employment with Solent NHS Trust. However it is recognised that in order to meet changes in service provision this location and role may change over time. You will be consulted in relation to any proposed changes to either location or role.

**2. CONDITIONS OF SECONDMENT**

2.1 Your Terms and Conditions of Employment with Solent NHS Trust shall remain in force during the Secondment period.

2.2 Your existing Job Description, a copy of which is attached, applies at present. Any changes will be subject to consultation with you and the Trade Unions.

2.3 Solent NHS Trust and the Council agree that you shall remain an employee of Solent NHS Trust at all times and shall not be deemed to be an employee of the Council by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Council.

2.4 Your continuity of service with Solent NHS Trust will be preserved for both statutory and contractual purposes during the period of secondment

**3 LEAVE**

3.1 The Council will inform Solent NHS Trust of any absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is your responsibility to follow Solent NHS Trust's sickness absence reporting procedures at all times.

3.2 You shall be entitled to holiday during the period of secondment in accordance with your terms and conditions of employment with Solent NHS Trust.

#### **4 HEALTH AND SAFETY**

4.1 The Council shall ensure that you observe its health and safety policies and procedures and maintain a safe method of working. 4.2 As an employee, you are required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for your own Health and Safety and that of others who may be affected by your acts or omissions at work.

#### **CONFLICTS OF INTEREST**

5.1 You must declare and seek agreement from Solent NHS Trust and your line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

#### **RESPONSIBILITY FOR RESOURCES**

6.1 Where applicable: Where you are responsible for the management of Council's budgets and/or the procurement of equipment and services you should follow the Council's Financial Rules and associated procedures. You will need to ensure that you read and understand these fully prior to the secondment arrangements being implemented.

6.2 In undertaking such duties you should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money

#### **7 PAYMENT OF SALARIES AND EXPENSES**

7.1 You will continue to be paid by Solent NHS Trust in accordance with your terms and conditions of employment for the duration of the secondment.

7.2 It is agreed that Solent NHS Trust shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to you for the provision of services to Solent NHS Trust under this Agreement.

7.3 Any salary increments applicable to your substantive post with Solent NHS Trust will continue to apply.

#### **8 HUMAN RESOURCES SERVICES**

8.1 After 1<sup>st</sup> April 2014 Solent NHS Trust will continue to provide advice to you on Solent NHS Trust policies including but not limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service.

8.2 Solent NHS Trust will be responsible for ensuring you are kept updated with all changes to Solent NHS Trust policies and procedures, although this may be communicated to you through Council staff.

8.3 During the Secondment Period, the Council, in consultation with Solent NHS Trust's Human Resources Department shall implement Solent NHS Trust policies and procedures in respect of you as an employee, so far as they comply with current employment legislation.

8.4 Solent NHS Trust authorises the Council to take action in respect of you as an employee pursuant to the Solent NHS Trust Disciplinary Policy save for any action, which could result in your dismissal. In such circumstances Solent NHS Trust shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

8.5 The Council may, should it consider necessary to do so, place you on special precautionary leave in accordance with Solent NHS Trust Disciplinary Policy and in consultation with Solent NHS Trust's Human Resources Department provided that such action shall be notified to Solent NHS Trust no later than the following working day.

8.6 Solent NHS Trust authorise the Council to deal with any grievances raised by you against the Council in accordance with Solent NHS Trust's grievance policy. The Council will notify Solent NHS Trust of any grievances received by the Council including those against Solent NHS Trust within 3 working days or as soon as reasonably possible

8.7 For the avoidance of doubt, nothing in clause 8 shall be construed or have effect as construing any relationship of employer and employee between the Council and you.

#### **9. MANAGEMENT DURING THE SECONDMENT**

9.1 You shall be supervised by and directly accountable to [insert job title] during the secondment.

#### **10. PROFESSIONAL DEVELOPMENT**

10.1 Solent NHS Trust will work with the Council to ensure your professional and developmental needs are identified and met. Performance Development Review's, Performance Management and training will be undertaken by the Council.

#### **11. MANAGEMENT OF CHANGE**

11.1 It is recognised that Solent NHS Trust and the Council in delivering and developing integrated learning disability services will face organisational restructuring and changes in employment levels. In the event that you are affected by organisational change, Solent NHS Trust and the Council will ensure that changes happen following full consultation with you and your union representative and that changes comply with Solent NHS Trust's employment policies.

#### **12. DATA PROTECTION**

12.1 You and Solent NHS Trust consent to the Council holding, disclosing, using or otherwise processing any information which is provided to the Council or which the Council may acquire as a result of the Secondment.

12.2 Solent NHS Trust and the Council agree to protect any personal data held in relation to you in accordance with the Data Protection Act 1998.

#### **13. CONFIDENTIALITY**

13.1 In addition to the provisions regarding confidentiality in your Contract of Employment, you will not disclose during or after the secondment any confidential information to which you became privy during the course of the secondment, including but not limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups,

future business strategy, marketing, tenders, any price sensitive information, and any proprietary Council information.

#### **14. TERMINATION**

14.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate and your management will be transferred back to Solent NHS Trust.

14.2 You may terminate the Secondment by giving not less than (one) month notice in writing (or your contractual notice period if this is greater) to Solent NHS Trust and Portsmouth City Council. This will be taken as your intention to tender your resignation of your substantive post.

#### **ACCEPTANCE**

Please confirm your acceptance of the terms of the secondment set out above by completing and returning the acceptance form enclosed with this letter.

Yours sincerely



## Appendix 2

### **SECONDMENT AGREEMENT**

**THIS SECONDMENT AGREEMENT** is made on ..... between: -

(1) Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth PO1 2EP ("the Council")

(2) Solent NHS Trust Central Office, Adelaide Health Centre, William Macleod Way, Southampton SO16 4XE ("The Employer")

#### **1. INTRODUCTION**

1.1 This Secondment Agreement is entered into under section 113 of the Local Government Act 1972 as a consequence of an Agreement between the Employer and the Council dated (insert date) under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of learning disability services.

1.2 The Employer has agreed to second their Employees (as detailed in Appendix 1) to the Council on the terms of this Secondment Agreement.

#### **2 SECONDMENT**

2.1 With effect from 1<sup>st</sup> April 2014 the Employer shall second the Employees to the Council on the terms of this Secondment Agreement. Subject to earlier termination as provided for in this Secondment Agreement, the secondment will continue up to and including the 31<sup>st</sup> March 2017 ("the Secondment Period").

2.2 During the Secondment, the Employees shall be located at the Kestrel Centre, St James Hospital, Locksway Rd, Portsmouth where he/she shall act and perform the duties as set out in the Employee's contract of employment with the Employer. However it is recognised that in order to meet changes in service provision this location and role may change over time. The Employees will be consulted in relation to any proposed changes to either location or role.

#### **3 CONDITIONS OF SECONDMENT**

3.1 The Employee's Terms and Conditions of Employment with the Employer shall remain in force during the Secondment Period.

3.2 The Employees' existing Job Description applies at present. Any changes will be subject to consultation with the Employee and Trade Unions.

3.3 The Employees shall remain an employee of the Employer at all times and shall not be deemed to be an employee of the Council by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Council.

3.4 The Employees' continuity of service with the Employer will be preserved for both statutory and contractual purposes during the period of secondment.

#### **4 LIABILITY AND INDEMNITIES**

4.1 The Employer shall indemnify and keep indemnified, the Council in relation to any claims, charges or liabilities for (including but not limited to) any income tax, Employee National Insurance or similar contributions (including costs interests and penalties), or other statutory charges or remuneration or other compensation arising from or in relation to the services by the Employee under this Secondment Agreement or the Employee being found to be an Employee of the Council or otherwise. The Council agrees to notify the Employer of any such claims charges or liabilities received by the Council.

4.2 The Council shall not be liable for any act or omission on the part of the Employee during the Secondment and shall incur no liability for loss, damage or injury of whatever nature sustained by the Employee during the Secondment.

4.3 The Employer hereby indemnifies the Council against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages and demands arising out of or resulting from breach of this Secondment Agreement or any act or omission or default of the Employee including without limitation:

4.3.1 Any loss of or any damage to any property;

4.3.2 All financial loss;

4.3.3 Those resulting from any breach by the Employee of any intellectual property rights owned by the Employer or a third party;

4.3.4 Injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Employee, whether resulting in material or financial loss or damages or death or injury to persons or any other loss or damage whatsoever;

4.3.5 Any and all liability arising from any breach of the provisions of the Data Protection Act 1998 by the Employee.

4.4 The Employer hereby indemnifies the Council against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Employer which are attributable to any act or omission by the Employer any other person for whom the Employer are liable arising out of:-

4.4.1 The employment or termination of employment of the Employee during the Secondment; or

4.4.2 The engagement or termination of engagement of the Employee under the terms of this Secondment Agreement during the Secondment; or

4.4.3 Any breach by the Employer of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

4.5 The Council shall indemnify the Employer against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Employer which are attributable to any act or omission by the Council or any other person for whom the Council are liable arising out of:-

4.5.1 Any breach by the Council of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee  
4.5.2 Any breach by the Council of any disciplinary, grievance or other employee related rules and procedures during the Secondment including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy redeployment costs, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

## **5 CONDUCT OF CLAIMS**

5.1 If the Council becomes aware of any matter that may give rise to a claim against the Employee and/or the Employer, notice of that fact shall be given as soon as possible to the Employer.

5.2 Without prejudice to the validity of the claim or alleged claim in question, the Council shall allow the Employer and its professional advisors to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose, the Council shall give subject to being paid all reasonable costs and expenses, all such information and assistance, including access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents and records, as the Employer or its professional advisors may reasonably request provided that nothing in this clause shall be construed as requiring the Council to disclose any document or thing the subject of any privilege. The Employer agrees to keep all such information confidential and only to use it for such purpose.

5.3 No admission of liability shall be made by or on behalf of the Council and any such claim shall not be compromised, disposed of or settled without the consent of the Employer.

5.4 The Employer shall be entitled in its absolute discretion to take such action as it shall deem necessary to avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third parties) in the name of and on behalf of the Council and to have the conduct of any related proceedings, negotiations or appeals.

## **6 LEAVE**

6.1 The Council will inform the Employer of any Employee absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is the Employee's responsibility to follow the Employer's sickness absence reporting procedures at all times.

6.2 The Employee shall be entitled to holiday during the Secondment Period in accordance with the Employee's terms and conditions of employment with the Employer.

## **7 HEALTH AND SAFETY**

7.1 The Council shall ensure that the Employee observes its health and safety policies and procedures and maintains a safe method of working.

7.2 The Employee is required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for his/her own Health and Safety and that of others who may be affected by his/her acts or omissions at work.

## **8 CONFLICTS OF INTEREST**

8.1 The Employee must declare and seek agreement from the Employer and his/her line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

## **9 RESPONSIBILITY FOR RESOURCES**

9.1 **Where applicable:** Where the Employee is responsible for the management of Council budgets and/or the procurement of equipment and services the Employee should follow the Council's Financial Rules and associated procedures.

9.2 In undertaking such duties the Employee should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money

## **10. PAYMENT OF SALARIES AND EXPENSES**

10.1 The Employee will continue to be paid by the Employer in accordance with the Employee's terms and conditions of employment for the duration of the secondment.

10.2 It is agreed that the Employer shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to the Employee for the provision of services by the Employee to the Council under this Secondment Agreement.

10.3 Any salary increments applicable to the Employee's substantive post with the Employer will continue to be awarded by the Employer.

## **11 HUMAN RESOURCES SERVICES**

11.1 Replacement of seconded staff  
After 1 April 2014 the administrative services to support the recruitment and selection of seconded staff will continue to be undertaken by the Employer, supported by the Council as appropriate.

### **11.2 Employee Relations**

11.2.1 The Employer will continue to provide advice to the Employee on the Employer's policies including but not limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service.

11.2.2 The Employer will be responsible for ensuring the Employee is kept updated with all changes in the Employer's policies and procedures, although this may be communicated to the Employee through Council staff.

### 11.3 Policies and Procedure

11.3.1 During the Secondment Period, the Council, in consultation with the Employer's Human Resources Department shall implement the Employer's policies and procedures in respect of the Employees, so far as they comply with current employment legislation.

11.3.2 The Employer authorises the Council to take action in respect of the Employees pursuant to the Employer's Disciplinary Policy save for any action, which could result in the dismissal of an Employee. In such circumstances the Employer shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

11.3.3 The Council may, should it consider necessary to do so, suspend Employees from duty in accordance with the Employer's Disciplinary Policy and in consultation with the Employer's Human Resources Department provided that such a suspension shall be notified to the Employer no later than the following working day.

11.3.4 The Employer authorises the Council to deal with any grievances raised by the Employee against the Council in accordance with the Employer's grievance policy. The Council will notify the Employer of any grievances received by the Council including those against the Employer within 3 working days or as soon as reasonably possible

11.3.5 For the avoidance of doubt, nothing in clause 11 shall be construed or have effect as construing any relationship of Employer or Employee between the Council and the Employee.

### 11.4 Workforce Information

Workforce information regarding Employees will continue to be collected and retained by the Employer. However, it is recognised that the Council will require data concerning the Employees in order to support the planning and delivery of services. The Employer in accordance with the format and deadlines identified by the Council will provide this information as required.

## **12 MANAGEMENT DURING THE SECONDMENT**

12.1 The Employee shall be supervised by and directly accountable to a designated line manager in the Council's organisational structure during the secondment and the Employer (Operations Director and Nursing/Governance lead will provide professional support and supervision for qualified nurses.

## **13 PROFESSIONAL DEVELOPMENT**

13.1 The Employer will work with the Council to ensure the Employee's professional and developmental needs are identified and met. Performance Development

Review's, Performance Management processes, and training of the Employee will be undertaken by the Council.

#### **14 MANAGEMENT OF CHANGE**

14.1 It is recognised that the Council and the Employer in delivering and developing integrated continuing healthcare will face organisational restructuring and changes in employment levels. In the event that the Employees are affected by organisational change, the Council and the Employer will ensure that changes happen following full consultation with his/her union representative and that changes comply with the Employer's employment policies.

#### **15 DATA PROTECTION**

15.1 The Employee and the Employer consent to the Council holding, disclosing, using or otherwise processing any information about them which they provide to the Council or which the Council may acquire as a result of the Secondment.

15.2 The Employer and the Council agree to protect any personal data held in relation to the Employee in accordance with the Data Protection Act 1998.

#### **16 CONFIDENTIALITY**

16.1 In addition to the provisions regarding confidentiality in the Employee's Contract of Employment, the Employee will not disclose during or after the secondment any confidential information to which the Employee became privy during the course of the secondment, including but not limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups, future business strategy, marketing, tenders, any price sensitive information, and any proprietary Council information.

#### **17 TERMINATION**

17.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate

17.2 The Employee may terminate the Secondment by giving not less than (one) months' notice in writing (or the Employee's contractual notice period if this is greater) to the Council and the Employer. This will be taken as the Employee's intention to tender their resignation of their substantive post.

#### **18 REVIEW AND VARIATION**

18.1 This Secondment Agreement will remain the subject of periodic review and amendment as necessary in light of changing service needs and legislative developments.

18.2 The parties agree that any amendments or variations to this Secondment Agreement must be in writing and signed by authorised representatives of the parties

#### **19 GENERAL**

19.1 If any provision or term of this Secondment Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including without limitation, by reason of provisions of any legislation or by reason of any decision of any court or other body having jurisdiction over the parties, such terms or provisions shall be divisible from this Secondment Agreement and shall be deemed to be deleted in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis of this Secondment Agreement, the parties shall negotiate in good faith to amend and modify the provisions or terms of this Secondment Agreement as may be necessary or desirable in the circumstances.

19.2 This Secondment Agreement does not create any partnership or agency relationship between the Employer and the Council.

19.3 This Secondment Agreement shall be in substitution for any previous letters of appointment, agreements or arrangements, whether written, oral or implied, relating to the Secondment of the Employee.

19.4 This Secondment Agreement shall be governed by and construed in accordance with English law. The Employer and the Council agree that any dispute arising under this Secondment Agreement or in connection with it shall be decided in the English Courts, which shall have the sole jurisdiction in any such matter.

### **Schedule 7 - Information Sharing**

1. The Partners shall comply with the latest version of the Pan Hampshire Information Sharing Protocol at all times.
2. The Partners have developed an Operational Agreement based on the template found within the Pan Hampshire Information Sharing Protocol which details the day to day processes for information sharing and the control of new information. The Operational Agreement is signed off by the Caldicott Guardian from each Partner, and any variations to it shall be agreed in writing. This Operational Agreement will be subject to local approval and reviewed on an annual basis or sooner if appropriate by the Authority's and the Trust's Information Governance Leads.
3. The Partners have developed a Privacy Impact Assessment based on the template found within the Pan Hampshire Information Sharing Protocol in relation to the sharing of the information relating to the Service. It is agreed that:
  - The Trust will be the Data Controller for existing NHS data prior to the Commencement Date.
  - The Authority will be the Data Controller for existing social care data prior to the Commencement Date.
  - The Authority will be the Data Controller for new information collected by the new integrated team from the Commencement Date.
4. In the event of a breach of Data Protection Legislation by either of the Partners the relevant Partner responsible for the breach shall be liable for any fines imposed by the Information Commissioner's Office.



## **SCHEDULE 8 - GOVERNANCE ARRANGEMENTS**

### **1. ACCOUNTABILITIES**

- 1.1 Both Partners are equally accountable for the delivery of the Aims and Objectives (schedule 1) and the service specification and Key Performance Indicators (schedule 5)

### **2. PARTNERSHIP MANAGEMENT GROUP**

- 2.1 The Agreement will be actively monitored by a Partnership Management Group (PMG) to be chaired by ICU.
- 2.2 The Partners will agree Terms of Reference for the PMG which will be reviewed annually.
- 2.3 The PMG will meet 4 times a year with senior representation from both partners.
- 2.4 The PMG will oversee the Partnership arrangements to ensure that the Aims and Objectives (schedule 1) set out in this agreement are met.
- 2.5 In the event that either Partner has concerns about the partnership arrangements, these concerns shall be escalated, in the first instance, for the Council to the Head of Adult Social Care and for the Trust to their Divisional Governance Meeting.
- 2.6 In the event that these concerns cannot be resolved through these escalation routes in 2.5, clause 31 will apply.

### **3. SERVICE MONITORING GROUP**

- 3.1 The delivery of the service specification and key performance indicators (schedule 5) will be actively monitored by the Service Monitoring Group (SMG)
- 3.2 The SMG will consist of senior representatives of the Partners and the responsible commissioners
- 3.3 The SMG will agree terms of reference for the group which will be reviewed annually

### **4. CLINICAL GOVERNANCE FORUM**

- 4.1 In order to ensure safe governance for Solent NHS staff on secondment, a Healthcare Clinical Governance Forum will be in place.
- 4.2 This forum will ensure compliance with national/ local NHS staff personal professional practice standards and take a significant role in the assurance required from recommendations made in respect of the Winterbourne and Mid Staffordshire inquiries.
- 4.3 Meetings of the Forum will be monthly and will report to the Partnership Board through the Operations Director of Adult Services for Solent NHS Trust.



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[Embedded document to be set out in full in hard copy Agreement]

**Adult and Older Persons Services Division**  
**Learning Disabilities Clinical Governance Group**  
**Constitution and Terms of Reference**

**Introduction**

The LD service is under the contractual agreement Section 75 arrangement with Portsmouth City Council.

In order to ensure safe governance for Solent NHS staff on secondment, a Healthcare Clinical Governance forum will be in place.

The Learning Disabilities (LD) Clinical Governance Group is a multi-professional group reporting to and has accountability to Solent NHS Trust Adult and Older Persons Clinical Governance Group. The LD Clinical Governance Group also reports to the Solent Adults Division Governance meeting and Partnership Board through the Joint Senior Management Team Meeting.

This forum will ensure compliance to national/ local NHS staff personal professional practise standards and take a significant role in the assurance required from recommendations made in respect of the Winterbourne, Confidential Deaths Enquiry and Mid Staffs enquiries. Meetings will be monthly and will report to the Partnership Board through the Associate Director of Adult Services for Solent NHS Trust.

**Purpose**

The purpose of the LD Clinical Governance Group is to ensure continued commitment to providing in partnership with Portsmouth City Council, services which are safe and of a high quality. Key to this commitment is having effective mechanisms for ensuring the highest standards in clinical practice along with a dynamic approach to quality improvement and governance.

The primary function of the LD Clinical Governance Group is to:

- Ensure a clear steer and oversee the operational implementation of Governance and the quality governance framework throughout the LD Service.
- In association with PCC to deliver on the aims and objectives of Solent NHS Trust Quality Improvement Strategy and associated aims and objectives from PCC
- Prioritise resources to address Governance issues.
- In partnership with PCC to determine the information and key governance issues to be passed up to the Assurance Committee, through the Associate Director or where appropriate Trust Management Team.
- To ensure that the LD service remains integrated within the relevant professional and operational structure of Solent NHS Trust.

## **Constitution**

The LD Clinical Governance Group works to an integrated model of Governance, therefore the Group shall consider Governance issues relating to all aspects of the service's functions.

The membership of the LD Clinical Governance Group will comprise the following:

- Consultant Psychiatrist Clinical Lead (co-chair)
- Community Healthcare Team Manager (chair)
- Lead from PCC
- Representatives from each team including multi- disciplinary team members
- Associate Director for Adult and Older Persons Services
- Divisional Governance & Nursing Lead

In order to ensure robust decision processes are adhered to the quorum for the LD CGG will consist of:

- Consultant Psychiatrist Clinical Lead
- Community Healthcare Team Manager
- Divisional Governance & Nursing Lead/Associate Director
- Representation from three of the multi- disciplinary team

## **Administration and Format of Meetings**

- The meetings will be held monthly
- Formal minutes will be taken as a record for each meeting
- The minutes once approved will be presented to the Adult and Older Persons Clinical Governance Group

## **Monitoring**

- The effectiveness of Group and its Terms of Reference will be monitored annually by the Senior Management Team.

## **Terms of Reference**

The LD Clinical Governance Group will undertake the following duties.

- To ensure the LD Service's compliance with the Essential Standards of Quality and Safety (CQC), NHSLA standards and management of risks in order to be able to provide quality assurance for the Adult and Older Persons Clinical Governance Group and the Trust Assurance Committee
- To ensure the LD Service undertakes and achieves quality improvement on an on-going basis.
- To ensure that appropriate information on the status of quality is available in a timely manner for response to internal and external requests.
- Ensure that all action plans from SIRI, HRI, complaint and other areas are adequately progressed through to conclusion, through the subordinate and reporting groups

### **Strategic Capacity and Corporate Governance**

- Ensure that action plans relating to all Governance issues are implemented to resolve any identified shortfalls or achieve quality improvement and that Governance issues are fed into the Division's Clinical Governance Group. The group shall monitor progress and take appropriate actions in response.
- Ensure the communication of key messages on Governance issues down through the LD Service.
- Review clinical information and trends of incidents, complaints and claims to identify potential problem areas for resolution.
- Ensure all recommendations from external bodies, including the Care Quality Commissions, relating to the Division are implemented.
- Validate policies, procedures, guidelines and PGDs that are for use within the LD Service as per the Policy for Policies and in partnership with PCC
- Ensure that actions are taken within the LD Service to promote openness, honesty, probity and accountability
- Review Quality KPIs
- Review contractual performance targets

### **Patient Experience**

- Monitor and manage the LD Service's performance in relation to Complaints and incidents, to take appropriate management action and to ensure that lessons are learnt as a result of complaints.
- Monitor the quality (incl. privacy and dignity) of the Patient Care Environment and to oversee the implementation of improvements.
- Ensure that Patient Information produced, disseminated or used within the LD Service is provided in a timely manner, appropriate to the patient's needs, in line with Trust Policy / Guidance and PCC and of excellent quality. The group shall ensure that all patient information is reviewed and updated appropriately to meet best practice.
- To review Patient and Carer satisfaction surveys and to implement recommendations to service leads.

### **Information, Innovation and Effectiveness**

- Agree and participate in the Trust Clinical Audit programme annually that involves all multi-professional groups, and to assess progress on a biannual basis.
- In partnership, to participate in PCC audit programme and liaise results of any such audit with the Adult and Older Persons Services Clinical Governance Group.
- Monitor and ensure the implementation of NICE guidance across the Division, feeding actions into the Divisions Annual Planning Process as appropriate.
- Ensure the division is meeting information governance requirements including data quality, data protection and Freedom of Information

- Ensure that records management within the LD Service is effective in supporting the delivery of patient care and that records are available at appropriate times to clinicians.
- Agree the development and implementation of integrated working with PCC taking into account the effectiveness, risks and benefits to patient care.

### **Risk and Safety**

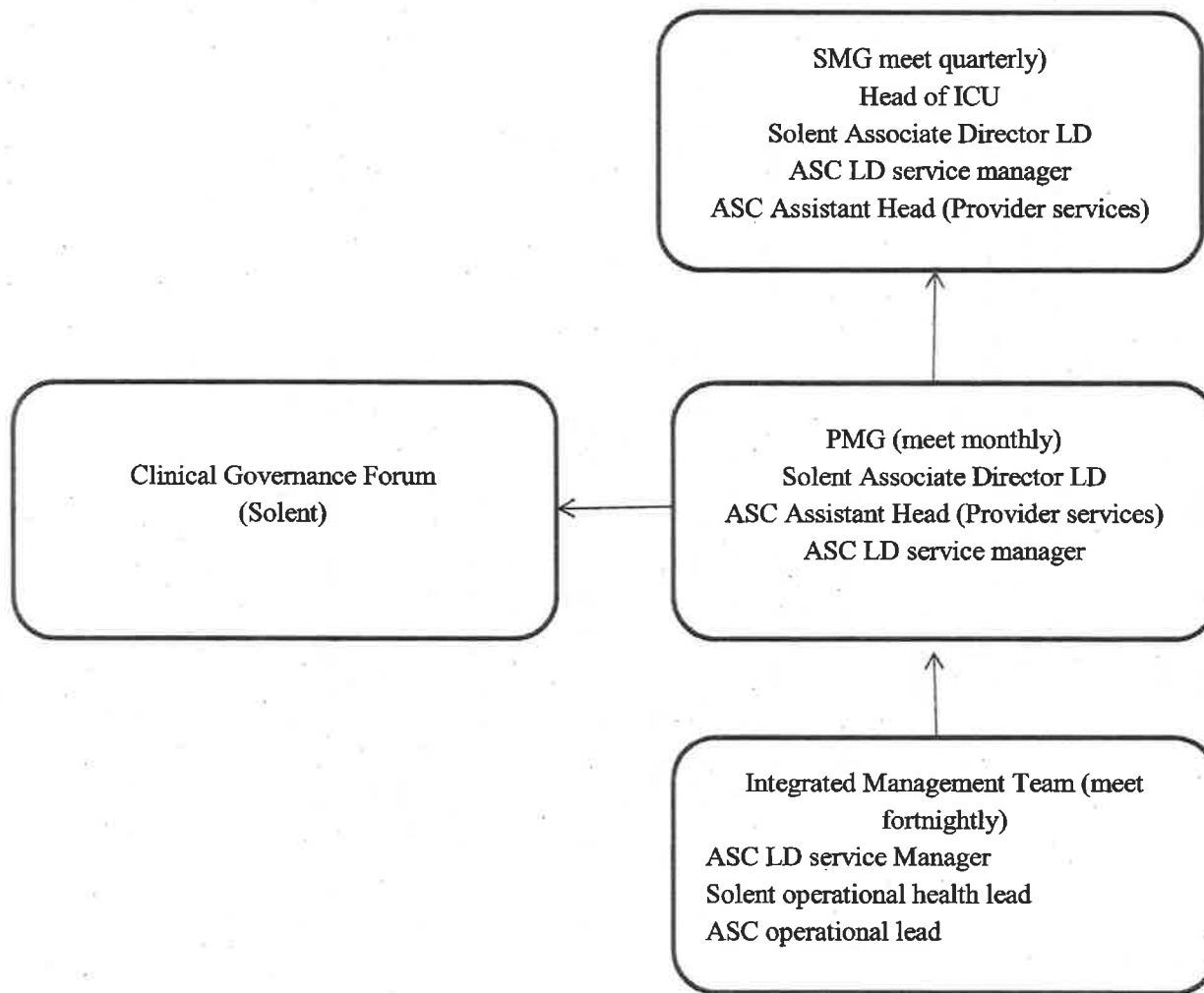
- Review the LD Local Risk Register on a monthly basis, providing feedback to the Adult and Older Persons Service Clinical Governance Group according to an agreed schedule.
- Ensure the appropriate investigation of all incidents within the LD Service and the identification and monitoring of resultant actions for example: Serious Incidents Requiring Investigation (SIRI), High Risk Incidents (HRI) and Incident Reports (IR).
  - To ensure that key learning and themes of incidents are clearly articulated and escalated to the Adult and Older Persons Service Clinical Governance Group to ensure organisational learning and sharing.
  - Ensure the environment for patients, staff and visitors is safe and secure
- Ensure the follow up and implementation of alerts from Central Alert System (CAS) in a timely manner. The group shall monitor progress and take appropriate actions in response.
- Ensure that adequate controls are in place in relation to Child Protection, safeguarding Vulnerable Adults, Medical Devices, Decontamination, Medicines, Waste and Emergency Planning e.g. evacuation processes, contingency etc.

### **Workforce, Education and Staff Experience**

- Review workforce change / reduction plans, identifying any Governance implications for the Adult and Older Persons Service Clinical Governance Group
- Review any applications for expanded practice within the LD Service in terms of risks / challenges and benefits.
- Ensure that adequate supervision and leadership is provided to staff within the LD Service.
- Ensure that adequate controls are in place relating to employment checks and that staff follow professional codes of practice.
- Ensure staff are appropriately trained, supported in their personal development, receive regular appraisals, and attend mandatory training

### **Partnership working**

- Ensure that in partnership with the Adult and Older Persons Service Clinical Governance Group and PCC are involved in LD Service business plans and projects and are appraised of service changes as necessary.
- Ensure personalised care is provided across the healthcare environment.
- Provide a forum to identify and monitor quality improvements to the ongoing development of patient pathways. To include both internal pathways and collaboration.



## **SCHEDULE 9 – FINANCIAL ARRANGEMENTS**

### **1. The Trust's Financial Obligations**

- 1.1 The Trust will in accordance with terms of the Secondment Agreement pay all salaries, expenses and other employment costs to and in respect of the Post Holders and any other and/or additional staff seconded to the Authority by the Trust from time to time for the purposes of the Partnership Arrangements in this Agreement (the "Seconded Staff Costs").
- 1.2 The Trust will pay to the Authority such sum as represents 50% of all expenditure incurred by the Authority in respect of the employment by the Authority of a Service Manager for the purposes of the Partnership Arrangements (the "Service Manager Costs")
- 1.2.1 The Authority shall send to the Trust an invoice at quarterly intervals specifying the Service Manager Costs recharged in respect of the preceding quarter and such invoices will be payable by the Trust within 30 days of receipt by the Trust of an acceptable invoice.

### **2. The Authority's Financial Obligations**

- 2.1 The Authority will pay to the Trust by equal quarterly instalments in advance the sum of £46,000 per annum as a contribution to accommodation costs at the Kestrel Centre, St James' Hospital, Locksway Road, Portsmouth ("the Accommodation Costs").
- 2.2 The Trust shall send to the Authority an invoice at quarterly intervals specifying the Accommodation Costs recharged in respect of the preceding quarter and such invoices will be payable by the Authority within 30 days of receipt by the Authority of an acceptable invoice.
- 2.3 All costs are subject to annual review, to be agreed 21 days prior to the anniversary date of the contract, in line with NHS pay awards and inflation.

### **3. Variation of the Trust's Financial Obligations and the Authority's Financial Obligations**

- 3.1 Variations to the Trust's Financial Obligations and the Authority's Financial Obligations will be discussed and agreed by the Partnership Management Group and the Service Monitoring Group



3.2 Where the Partners are unable to reach agreement as in paragraph 3.1 of this schedule 9 the matter will be dealt with under clause 31.



# **Service Specification**

## **Integrated Learning Disability Service**

**Updated:** February 2018

**Author:** Dominic Dew

**Version** 1.1

## Version Control

<b>Suggested Change</b>	<b>By whom</b>	<b>Added date</b>	<b>Version no.</b>
<b>Merging of current Section 75 and Solent Health Spec</b>	<b>Mark Paine</b>		<b>0.1</b>
<b>Add in Activity Boundaries</b>	<b>Ian Chalcraft</b>	<b>26.02.15</b>	<b>0.2</b>
<b>Outcome indicators &amp; measures amended on comments received as a result of invitations of key stakeholder to respond</b>	<b>Mark Paine</b>	<b>10.03.15</b>	<b>0.3</b>
<b>Addition of Quarterly performance monitoring template - Appendix A</b>	<b>Mark Paine</b>	<b>10.03.15</b>	<b>0.4</b>
<b>Clarification of the roles around case management and agreement of targets</b>	<b>Ian Chalcraft</b>	<b>30.07.15</b>	<b>0.5</b>
<b>Re-write of service aims and beliefs. Amendments to service delivery. Updated staffing and governance structures. Revised KPIs.</b>	<b>Dominic Dew/Ian Chalcraft</b>	<b>02.02.18</b>	<b>1.0</b>
<b>Agreed amendments to vers. 1.0</b>	<b>Dominic Dew/Ian Chalcraft</b>	<b>15.02.18</b>	<b>1.1</b>

## Section 1: Purpose

### 1.1 General Overview

Approximately 1.5 million people in the UK have a learning disability. It is estimated that in England in 2011, 1,191,000 people have a learning disability. This includes 905,000 adults aged 18+ (530,000 men and 375,000 women) (Source: People with Learning Disabilities in England 2011).

The above figures therefore equate to about 22 people in every thousand having a learning disability. Applying this estimate to the local population, the national Learning Disabilities Observatory estimates that 4,594 people (across all age ranges) in Portsmouth have a learning disability. It needs to be recognised that this figure will include people across the full range of learning difficulty and learning disability and that not everyone with a learning disability will need to access statutory services.

### 1.2 Vision

People with learning disabilities who are members of the Learning Disability Partnership Board have set out their vision that should be remembered when determining how to deliver services, and what differences they would like to see in their lives.

Their vision is that:

***“We should be treated equally and our views respected, and we should be helped to live the lives we choose. You need to make sure we are safe in services if we need support or care”***

### 1.3 Principles

They said that when people think about what they need to do to make this vision a reality they need to remember these principles:

- We are treated equally and have the same rights and responsibilities as everyone else
- Our views are respected, and we are supported to make informed choices about our lives
- We are always at the centre of decisions about us, remember the motto “nothing about us without us”
- We should be safe in services, especially if we have to live outside of Portsmouth
- You should make sure you use the money in the best way and remember that sometimes “small things can make a bigger difference”
- Family carers who support people with learning disabilities are listened to, and given the information and support they need
- Organisations should make sure they work in a person centred way, and only share information about us when they need to

## 1.4 Outcomes

They also said that these are the differences they want to see in their lives:

- Improved health and wellbeing – “we are helped to keep well, happy and safe”
- Making a positive contribution – “we are supported to speak up and say what we think”
- Improved quality of life – “we get the support we need to make our own decisions and are helped to do the things we want to do”

## 1.5 Service Aims

The Integrated Learning Disability Service (ILDS) have a number of overarching aims:

- To support people to have valued, meaningful and satisfying lives
- To ensure support provided achieves clear outcomes for the individual that promotes their independence, health, relationships and community participation
- That people should be active members of their communities, including the use of local services and facilities
- To provide support that is effective, efficient and personalised.

## 1.6 Service Core Beliefs

Underpinning these aims are Four guiding beliefs that influence our approach:

- **Co-production.** The service should actively demonstrate how services can develop with the input from its users.
- **Challenge.** The service should challenge its expectations of its users, its partner providers and itself.
- **Competence.** The service should seek to improve the competence of its users, its partner providers and itself.
- **Valued roles.** The service will ensure that the work it undertakes, the services it commissions, and, the way it behaves promotes valued roles for its users.

These beliefs will be expressed in a number of ways including:

- Care and support are outcome focussed and reflect the lives people want to live.
- Trusted relationships are central to effective service delivery.
- Focus should be on a person's assets and not their deficits.
- Risk is part of life and people have the right to take risks.
- People can change and grow.
- We need to help people “dare to dream”.
- People respond to the way we perceive them.
- Addressing people's needs holistically is essential.
- Integration of services gives us that opportunity.

## Section 2: Scope

### 2.1 Model of Service

The Integrated Learning Disability Service will operate under a Section 75 Lead Provider arrangement with Portsmouth City Council (PCC) as the lead provider. The funding and contractual flow of the service is detailed below:

- Learning Disability Health and Social Care service provision to act as a single integrated service.
- PCC to act as the lead commissioner.

- PCC to contract with Solent NHS Trust for agreed staffing establishment and associated costs with clear outcomes.
- Solent NHS Trust and PCC to enter a S75 Partnership Agreement (with Solent staff seconded to PCC) with no requirement for a pooled fund
- PCC accountable as lead provider for delivery of the integrated service specification and health and social care outcomes measures, facilitated by the S75 Partnership Agreement
- S75 partnership agreement to be overseen and monitored by the Integrated Commissioning Service (ICS).

The service will operate from a shared base, under single line management led by Adult Social Care.

The service will be supported by unified procedures and protocols within a Standard Operating Procedure (SOP) which will deliver the vision, principles and outcomes previously determined by people with learning disabilities.

The service will have a clear focus on the support and delivery of the:

- Health and wellbeing of people with learning disabilities\*
- Care and ongoing support for people with learning disabilities\*
- Development of life skills and rehabilitation for adults with learning disabilities, with or without autistic spectrum disorders (ASD), within a clear eligibility framework.

The service will support flexible working practices recognising people's skills, knowledge and expertise to provide case management by trusted assessors. The service will ensure equality of access and outcomes to health and social care services.

## **2.2 Service Population**

The service will be open to adults diagnosed with a learning disability who live within the geographic area covered by Portsmouth City Council and Portsmouth Clinical Commissioning Group (CCG), and certain cases to those living outside of the City but currently or formally with a Portsmouth GP.

## **2.3 Components of service**

The components of the service are described below:

- Integrated community team (including health and social care staff, therapy staff and LD Consultant sessions).
- Intensive Outreach Service.
- LD Liaison Nurse Service based at Queen Alexandra Hospital.

## **2.4 Functions**

The functions of the integrated service will be to:

- Promote independence, choice, rights and inclusion
- Improve health and well being
- Address locally and nationally identified health inequalities

- Improve the service user experience
- Promote and develop mainstream inclusion in all services across the health and local authority agenda
- Support carers
- Implement key national and local directives/plans/guidance, including meeting the local Transforming Care Partnership (TCP) strategic objectives
- Provide services along a care pathway basis
- Ensure the safety of service users in services either directly provided or commissioned
- Deliver the safeguarding, quality and clinical governance agendas
- Complaints, legal and risk management
- Make best use of resources and budgets
- Involve users, carers, families and other stakeholders in the development, delivery and monitoring of services
- Manage the service under a Section 75 Lead Provider agreement

## **2.5 Delivery Model**

The ILDS delivers its support by using the following systems/models:

- The provision of a 'named worker' to everyone eligible for support.
- Have an agreed eligibility criteria and process that includes trusted assessments
- The provision of an assessment of need and support plan
- Ensuring that every service user has an individual communication support plan where required
- The provision of health facilitation
- The screening of risks associated with asphyxia and/or choking
- The use of CPA for the co-ordination of complex support packages
- Positive risk taking strategies
- Skills teaching strategies
- The provision of link professional to our commissioned provider partners
- The Chairing and hosting of the Portsmouth LD Transforming Care Steering Group
- The maintenance of a “At Risk of Admission Register”
- Supporting the use of innovative support solutions, Personal Budgets and Personal Health Budgets where appropriate.

## **Section 3: Operational Delivery**

### **3.1 Service Structure**

The service comprises of Four teams that each work in partnership to deliver the identified outcomes for individuals that maximises both health benefits and resource efficiencies. Clinical and care pathways integrate all the service elements to deliver seamless care with the Service User at the centre of their support.

- **Community Multi-disciplinary Learning Disability Team**
- **Learning Disability Hospital Liaison Team**
- **Complex Healthcare Team (Intensive Outreach Service)**
- **Intensive Support Team (Intensive Outreach Service)**

### **3.2 Community Multi-Disciplinary Learning Disability Team**



The Community Multi-Disciplinary Learning Disability Team (CMLDT) is based at St James' Hospital and includes community nurses, social workers, associate practitioners, independence support assistants, a Consultant Psychiatrist, Clinical Psychologist, Speech and Language Therapist and Occupational Therapist's. The team directly supports adults with a learning disability and provides information, advice, education and support to carers and other health and social care professionals. Much of its work concerns commissioning and monitoring packages of support, promoting communication, advocacy, health promotion, mental health, psychological wellbeing and challenging behaviour, where these require specialist healthcare support. The team also provides support on other issues including anger management, continence, issues related to ageing, nutrition, relationships, sensory loss or impairment, sexuality and sexual health.

### **3.3 Learning Disability Hospital Liaison Team**

The Learning Disability Hospital Liaison Team (LDHLT) is made up of Learning Disability Nurses from Solent NHS Trust working in partnership with Portsmouth Hospitals NHS Trust. The hospital liaison nurses work in Queen Alexandra hospital and support patients with learning disabilities throughout their planned hospital admission journey, during outpatient's appointments, and, with pre-admission planning as well as during emergency admissions. The liaison nurse's role is to ensure patients with learning disabilities understand their diagnosis, treatment options and support investigations and treatment. The team can also offer support to carers of people with learning disabilities.

Other areas that the team can help with include; compliance with the Mental Capacity Act, Safeguarding Adults, desensitisation work, helping departments make "reasonable adjustments", and discharge planning.

### **3.4 Intensive Outreach Service**

The Intensive Outreach Service (IOS) is a specialist healthcare service that has two clinical elements – the Complex health team and the Intensive Support Team, with the aim to provide a proactive approach at a time when people's specialist health needs challenge the capacity of the existing team.

The complex health element operates as an intensive outreach service to meet the high level of complex health and nursing needs that exists within some settled accommodation and to provide healthcare to these services.

The intensive support team operates an intensive outreach service, where the combined intensity of intervention and the complexity of the presentation, creates significant difficulties, within the persons settled accommodation.

## **Section 4: Additional Healthcare Roles**

### **4.1 Co-ordination, assessment and case management of continuing health care and other NHS funded placements**

Solent's Learning Disability Services are tasked with monitoring placements, usually on behalf of NHS Portsmouth, where the package of care is funding wholly, or partly, by NHS Portsmouth via the Integrated Commissioning Service (ICS). This equates to Continuing Health Care (CHC) Placements, Extra-Contractual Referral (ECR) Placements - either in Specialist Hospitals, or as patients with Portsmouth funded 117 aftercare packages in Specialist Residential Care and increasingly in Specialist Supported Living.

Processes for monitoring each of the placement types differ according to the Commissioner's requirements but there are similarities across the groups. These are:-

- A registered learning disability nurse will provide the monitoring.
- The placement will be reviewed every 6 months as a minimum.
- The patient will be seen at every review, and where appropriate this will be within their accommodation area.
- Access to independent advocacy services will be offered and supported if required.
- Placement reviews will be recorded on TPP SystemOne.
- Commissioners will be alerted to significant events/changes in care needs, including the need for a Community Care and Treatment Review (CTR) to help prevent admission to a secure setting.
- The clinician will review the package of care being delivered, including risk management strategies, either via the CPA process or by reviewing care plans.
- The clinician will seek evidence of the in-patient units external accreditation process, such as those run by the Royal College of Psychiatrists or an equivalent. This may be completed at the point of commissioning the service.
- The clinician will seek to ensure that the views of family members are sought and heard.
- The clinician will monitor the placements CQC status.
- The clinician will seek to be assured that care practices within the commissioned environment reflect best practice guidance (e.g. in the use of physical interventions, etc).
- The clinician will actively support any safeguarding issues including where necessary raising alerts and attending Safeguarding Conferences for individuals.
- The clinician will support and represent at CTRs for those held in secure settings.
- The clinician will endeavour to seek the best value placement for individuals needing to be placed in specialist accommodation via the ECR process.
- The clinician will adhere to the ICS ECR guidance and methodology in applying for ECR funding.

A template for recording placement monitoring has been developed and will be used for all placement types. There are also some differences in how the placement types are monitored.

#### **4.2 Continuing Care**

- a. Receiving and acting upon referral for Continuing Care Assessments and ensuring appropriate consent is given.
- b. Seeking involvement of appropriate Multi Disciplinary Team (MDT) to complete Decision Support Tool (DST).
- c. Support MDT through the assessment/DST process.

- d. Support individual or their representative to play a full role in the process, ensuring access to advocacy if required.
- e. To take reasonable steps to complete the DST within 28 days of a checklist being completed and indicating that a full assessment is required. Where the 28 day target is not reached clear reasons for this for this will be provided.
- f. Ensure assessment / DST completed in accordance with the CHC Framework.
- g. Ensure MDT recommendation on eligibility is sent for approval to the ICS in a timely manner.
- h. Co-ordinator / MDT to present their cases to Integrated Learning Disability Team Funding Panel when required.
- i. Ensuring a suitable care plan is drawn up. All care plans and subsequent reviews should as a minimum contain:
  - Name of assigned case manager
  - Copy of last CPA review (where appropriate)
  - Detailed, accurate information in respect of background, current placement, goals, outcomes, progress
  - Details of revised/new goals and outcomes
  - Details of any personal budget/personal health budget (if applicable)
  - Changes to care plan
  - Changes to care package
  - Appropriateness of current placement and/or details of suitable local services
  - Expected discharge date (where appropriate)
  - Discharge plan (where appropriate)
- j. Ensuring that the care / support package meets individuals assessed needs and agreed outcomes.
- k. Identifying potentially appropriate community packages and/or residential placements.
- l. Ensuring the completion of draft Deprivation of Liberties (DoLs) applications, using Case Manager knowledge and providing any and all relevant information to aid appointed solicitors to lodge the applications with the Court of Protection, including the preparation of statements and appearances as witnesses as appropriate.
- m. Where the care plan includes access to non NHS services e.g. leisure, monitor that arrangements for these are in place and working effectively.
- n. Monitoring quality of care and support arrangements, responding to any difficulties / concerns about these in a timely manner.
- o. Acting as a link person to co-ordinate services for the individual ensuring that any changes in a person's needs are highlighted.
- p. Undertake reviews to consider whether the individual is still eligible for NHS continuing healthcare or other NHS funding and also the effectiveness and appropriateness of the care/support arrangements.

The role does not include:

- *Formally notifying patients or their advocates of the outcomes of continuing care processes. Though the ILDS will verbally inform service users/their families of the decisions of the LD funding panel.*
- *The ILDS will not make financial decisions on care interventions, but will identify the clinical needs and identify appropriate care packages and provision.*

- *The ILDS will not make independent decisions about changing providers, these will be made by the iLDS applying to the Integrated Learning Disability Funding Panel. The ILDS will provide routine liaison with providers to manage difficulties in care delivery. The lead commissioner within the ICS will be made aware of any significant concerns about providers.*
- *Acting as legal decision maker when making significant decisions about care packages on behalf of someone who lacks capacity when this results in legal applications needing to be made (e.g. to the Court of Protection). The ILDS will actively support the decision making process including preparing information for and being witness to formal applications within the DoLS framework. At all other times the ILDS will act as Decision Makers as it is understood within the MCA.*
- *Manage the resolution of formal disputes about eligibility decisions, care needs, and/or, resource allocation.*

All continuing care support packages will be evaluated, and if appropriate, agreed by the Integrated Learning Disability Service Funding Panel whose membership extends to the lead commissioner within the ICS.

#### **4.3 ECR Hospital Placements**

For low and medium secure accommodation the ILDS service will work alongside the allocated Forensic Care Manager (NHS England) in monitoring the placements and care delivery that are being commissioned for patients originating from Portsmouth. This will involve at least 6 monthly reviews (usually under CPA). The frequency of such meetings will increase at certain points in care (e.g. in planning discharge) or if the patient need requires more frequent review. Any change in needs or concerns around the placement or safeguarding will be highlighted to the Forensic Care Manager.

For non-secure placements (e.g. locked wards) we will provide the monitoring on behalf of Portsmouth CCG. Arrangements will be as above but reporting will be via the ICS who will be alerted to key changes in need or concerns around the placement or safeguarding. ICS will in turn be required to report to NHSE and the SHIP Transforming Care Partnership on inpatient numbers, discharge planning and CTR's and the ILDS will be required to help collate information from time to time.

#### **4.4 S117 Care packages**

Where Portsmouth CCG funds all or part packages of care the ILDS service will monitor the package of care on their behalf.

Reviews will normally be under the CPA process and occur every 6 months. Significant events/safeguarding alerts will be reported back to the ICS.

#### **4.5 Health Promotion Activity**

The ILDS is committed to the improvement of the health status of people with a learning disability. To support this it will:

- Offer a Health Action Plan and health facilitation to all its service users.

- Actively support the wider Learning Disability Service economy to engage in Health Action Planning and Health Facilitation through the provision of training and mentorship.
- Liaise with primary and secondary care services around individual service users.
- Provide a link nurse to all GP practices within its geographical boundaries.
- Facilitate a range of health promotion activities including delivering a health promotion group, health promotion road shows, health promotion courses and providing a healthy eating service.
- Improve the early identification of illness among people with learning disabilities by, for example, increasing uptake of annual health checks, and for women, cervical and breast screening.
- Enhance the health literacy of people with learning disabilities and of family carers and paid carers/supporters who play a critical role in promoting healthy lifestyles among many people with learning disabilities;
- Make 'reasonable adjustments' in all areas of health promotion and healthcare in light of the specific needs of people with learning disabilities and acting within the legal framework of the Mental Capacity Act 2005 (e.g., through providing more accessible information and longer appointment times);
- monitor progress towards the elimination of health inequalities faced by people with learning disabilities.

## **Section 5: Performance and Quality Monitoring**

These outcomes were developed jointly with people with learning disabilities in Portsmouth. The outcomes indicators and performance measures to demonstrate progress against these outcomes have been agreed jointly between the ICS and ILDS health and social care managers.

A Programme Management Group (PMG) consisting of a senior ICS and ILDS managers will meet quarterly to review progress against the agreed measures.

### **5.1 Integrated Performance Targets**

% of service users who have a named worker (target 90%)

% of reviews completed within 12 months (target 80% - s117 100%)

% of support plans completed within 12 months (target 80%)

% of people whose communication needs have been screened (target 80%)

% of support plans that are available in an appropriate format as suggested by their communication screen (target 90%)

% of people whose risk of choking has been screened (target 80%)

% of people who have a current Health Action Plan (target 80%)

% of referrals to the service that begin active support within 18 weeks (target 90%)

% of positive feedback from service users (target 80%)

% of people in supported living services compared to residential care (above 60%)

% of Service users are offered a personal budget as part of their review (90%).

For those KPIs where, as indicated in Appendix A, are to be provided as part of the Annual Report, this will be completed **during Apr/May** of each calendar year.

## **5.2 The Hospital Liaison Service has separate performance targets:**

i) % of hospital admission forms (e.g. passports) used for all patients who are known to have a learning disability (target 90%)

ii) % of patients with a learning disability and with whom the liaison nurse/s have contact have consent forms completed accurately which are supported by assessment of capacity and best interest forms in relation to their hospital treatment (target 90%)

iii) % of cases where the need for a discharge planning meeting is considered and when needed occurs in good time to facilitate effective discharge of all patients with a learning disability (target 90%)

## **5.3 The community health services have separate performance targets around activity levels:**

This is measured by the level of Face to Face activity across the service.

The combined annual target is for 8,400 face to face contacts per year (700 per month). This equates to:

CLDHT = 3,600 PA (300 per month)

CHT = 3,600 PA (300 per month)

IST = 1,200 PA (100 per month)

### ***Performance to be reported in Annual Report.***

## **5.4 Health Focused Quality Indicators**

- Quality Schedule compliance submissions where required
- Delivery of care within an 18 week referral to treatment schedule
- User and carer satisfaction data will be continually gathered and analysed. This will be summarised within an annual report.
- The ILDS will undertake patient facing activity reviews to monitor effectiveness.
- The ILDS will introduce PROMs across all teams

## **5.5 Activity Boundaries**

- Monitor 35 CC funded placements and 10 ECR"s within current resources.
- Provide 30 hrs per week input to QAH within current resources.
- Night cover from the CHT is not provided.
- Training to external agencies is not provided, e.g. within the CC role, at no cost.

## **5.6 National Outcomes Frameworks**

The local outcomes detailed above will support delivery of the following national outcomes which are shared or complimentary outcomes from NHSE, Public Health and Adult Social Care Outcomes Frameworks:

- Improving the wider determinants of health
- Health improvement
- Preventing people from dying prematurely
- Ensuring that people have a positive experience of care
- Treating and caring for people in a safe environment and protecting them from avoidable harm
- Enhancing the quality of life for people with care and support needs
- Ensuring that people have a positive experience of care and support
- Safeguarding adults who are vulnerable and protecting them from avoidable harm
- Avoiding inpatient admissions and length of stay

Appendix A: Quarterly Reporting Format to PMG (Performance Management Group)

KPI reporting format to be completed prior to each quarterly PMG meeting								
Performance Measure	Target	Baseline	Qtr1	Qtr2	Qtr3	Qtr4	Commentary	RAG
1. Services users are allocated a named worker	90%							
2. i) Service user statutory reviews completed within a twelve month period  ii) Of i), s117 reviews completed	80%*  100%*						*% by end 4 <sup>th</sup> Quarter	
3. Service users have clear support plans, completed within 12 months, with outcomes identified across the 5 key domains of: health, work, independence, communication and relationships	80%						<i>Annual Report required</i>	
4. Service users have had their communication needs screened  ii) Support plans are in an appropriate format in adherence with their communication screen	80%  90%						<i>Annual Report required</i>	
5. Service users offered a risk of choking screen by ILDS.	100%						<i>Annual Report required</i>	
6. Service users with an up to date Health Action Plan in place	80%							
7. Service users referred to the ILDS will have active input within 18 weeks.	90%							
8. People using the service have a positive experience	80%						<i>Annual Report required (case study examples of where feedback has improved services to be provided)</i>	



9. Current proportion of Supported Living based support vs Residential Care	Maintain above 60%	60%						
10. Service users are offered a personal budget as part of their review.	90%							
<b><i>Hospital Liaison service specific indicators</i></b>								
11. Hospital admission forms used for patients (known to have an LD)	90%							
12. Patients with an LD and with liaison nurse contact, have consent forms completed accurately which are supported by assessment of capacity and best interest forms in relation to their hospital treatment	90%							
13. Cases where there is a need for discharge, are considered and when needed occurs in good time to facilitate effective discharge of the patient	90%							

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# Agenda Item 4



**Portsmouth**  
CITY COUNCIL

**Title of meeting:** Health & Social Care Cabinet

**Date of meeting:** 23 March 2018

**Subject:** S75 Partnership Agreements between Portsmouth City Council and Portsmouth Clinical Commissioning Group

**Report by:** Suzannah Rosenberg

**Wards affected:** All

**Key decision:** No

**Full Council decision:** No

---

## 1. Purpose of report

- 1.1 To provide the rationale for an extension of the S75 agreement for integrated health and social care commissioning for vulnerable adults for a further term of 3 years until 31 March 2021.

## 2. Recommendations

- 2.1 The Cabinet Member for Health & Social Care approve the deed of variation to extend the term of the S75 agreement for a period of 3 years until 31 March 2021.

## 3. Background

- 3.1 Portsmouth City Council and Portsmouth CCG have been partners in a S75 agreement for integrated health and social care commissioning for vulnerable adults since 2013.
- 3.2 These arrangements take the form of a team of commissioning staff from both organisations under a single line management structure. The partners contribute equally to a pooled fund of £609k (18/19 values) supports the employment of these staff.
- 3.3 The agreement is governed by a Partnership Management Group which includes membership from senior finance leads from both organisations, PCC's Chief Executive and the PCCG's Chief Operating Officer.
- 3.4 The PMG has oversight of the pooled fund and the Integrated Commissioning Service's work programme.

## 4. Reasons for recommendations

4.1 The extension of integrated commissioning arrangements continues to support both partners' strategic objectives to commission high quality integrated services across health and care which provide value for money and effective deployment of commissioning staff.

**5. Equality impact assessment**

5.1 An EIA is not required as this is a business arrangement to commission services which has no disproportionate impact on people with protected characteristics. Any services commissioned as a result of this arrangement will be subject to an EIA.

**6. Legal implications**

6.1 Section 75 of the NHS Act 2006 (the "Act") allows local authorities and NHS bodies to enter into partnership arrangements to provide a more streamlined service and to pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised.

6.2 Section 75 of the Act permits the formation of a pooled budget made up of contributions by both parties out of which payments may be made towards expenditure incurred in the exercise of both prescribed functions of the NHS body and prescribed health-related functions of the local authority. The legislation precludes CCGs from delegating any functions relating to family health services, the commissioning of surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services. For local authorities, the services that can be included within section 75 arrangements are broad in scope although a detailed exclusions list is contained within Regulation 6 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.

6.3 The proposed extension of the established agreement between the parties in relation to health and social care commissioning is within the remit of the legislation.

**7. Finance comments**

7.1 There are no additional financial implications arising from the recommendation contained within this report, as it seeks to continue the existing arrangements, as set out within the s.75 agreement.

.....  
Signed by: Innes Richens Date: 14.3.2018

**Appendices:**

S75 Agreement dated 1 April 2013

Deed of Variation to extend S75 Agreement

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/  
rejected by ..... on .....

.....  
Signed by:



Dated: \_\_\_\_\_ 2018

**PORTSMOUTH CITY COUNCIL**

and

**PORTSMOUTH CLINICAL COMMISSIONING GROUP**

---

**DEED OF AGREEMENT:**

**THIRD EXTENSION OF AN AGREEMENT MADE UNDER SECTION 75 OF THE  
NHS ACT 2006**

---

THIS AGREEMENT is made this                      day of                      2018

**BETWEEN**

(1) **PORTSMOUTH CITY COUNCIL**, of Civic Offices, Guildhall Square, Portsmouth, Hampshire PO1 2AL (the "**Council**").

**AND**

(2) **PORTSMOUTH CLINICAL COMMISSIONING GROUP** of 4<sup>th</sup> Floor, 1 Guildhall Square, Portsmouth PO1 2GJ (the "**CCG**")

together referred to as the "**Parties**"

**WHEREAS:**

(A) This Deed of Agreement is made supplemental to:

- (i) an agreement under s.75 National Health Service Act 2006 dated 1st April 2013 and made between the Parties (the "**Agreement**") in respect of the commissioning and procurement of a range of health and social care services for vulnerable people, and
- (ii) a Deed of Agreement dated 8<sup>th</sup> June 2016 made between the Parties (the "**First Extension**") whereby it was agreed that the Term of the Agreement would be extended to expire on 30<sup>th</sup> September 2016 ( the "**First Extended Term**") and
- (iii) a Deed of Agreement dated 10<sup>th</sup> May 2017 made between the Parties (the "**Second Extension**") which:
  - (a) recorded the Parties' agreement that the Term of the Agreement was extended to expire on 31<sup>st</sup> March 2018 (the "**Second Extended Term**") and
  - (b) gave effect to the Additional Variations to the Agreement set out or referred to in that Deed.

(B) In accordance with the terms of the Agreement the Parties have agreed to extend further the Term of the Agreement so that the same will continue in force after the expiry of the Second Extended Term.

(C) The Parties now desire to execute this Deed in order to record their agreement for further extension as referred to in Recital (B).

**NOW THIS DEED WITNESSES as follows:**

**FURTHER EXTENSION OF AGREEMENT TERM**

1. In accordance with clause 3 of the Agreement the Parties agree and declare that the Term of the Agreement is extended for a period of thirty-six (36) months following the expiry of the Second Extended Term.



2. The Term of the Agreement will therefore expire on **31st March 2021** unless the Agreement is:
  - 2.1 terminated earlier in accordance with its terms, or
  - 2.2 further extended by further agreement between the Parties in accordance with clause 3 of the Agreement.
  
3. Save as expressly provided in this Deed and/or the First Extension and/or the Second Extension the Agreement shall continue in full force and effect in accordance with its original terms.
  
4. Words and phrases in this Deed shall have the same meanings as those ascribed to them in the Agreement or as the case may be the First Extension and/or the Second Extension.

**IN WITNESS** whereof the Council and the CCG have caused their respective Common Seals to be hereunto affixed the day and year first above written:

The **COMMON SEAL** of )  
**PORTSMOUTH CITY COUNCIL** )  
 was hereto affixed in pursuance )  
 of a resolution of the Council passed )  
 at a meeting duly convened and held )

Authorised signatory

**EXECUTED AS A DEED** on behalf of the **CCG**

**THE COMMON SEAL** of **PORTSMOUTH CLINICAL** )  
**COMMISSIONING GROUP** was affixed to this )  
 Deed in the presence of:- )

.....  
 Authorised Signatory

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Portsmouth  
Clinical Commissioning Group

---



Portsmouth  
CITY COUNCIL

DATED 1<sup>ST</sup> APRIL 2013

---

**PORTSMOUTH CITY COUNCIL**

and

**PORTSMOUTH CLINICAL COMMISSIONING GROUP**

---

**AGREEMENT**

**under s.75 National Health Service Act 2006  
for the commissioning and procurement of a range of health and social care  
services for vulnerable people**

---

Legal Services  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2 PX  
CC2281

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THIS DEED is dated 1 April 2013

#### **PARTNERS**

- (1) **PORTSMOUTH CLINICAL COMMISSIONING GROUP** of Trust Headquarters, St. James' Hospital, Locksway Road, Milton, Portsmouth, Hampshire, PO4 8LD ("the **CCG**").
- (2) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Square, Portsmouth, Hampshire, PO1 2PX ("the **Authority**").

#### **BACKGROUND**

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS Bodies 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 is further to the Previous Commissioning Agreement between the Authority and the PCT for the Term 1 April 2010 to 31 March 2013 and provides the framework within which the Partners will work together to achieve the Aims and Objectives.
- (D) In furtherance of the partnership working referred to in Recital (C) above the Partners have agreed that the CCG shall delegate certain of its functions to the Authority under a lead commissioning arrangement. For these purposes, the Partners shall establish and maintain a pooled fund with regard to:
  - (i) the funding of staff who will perform the commissioning and procurement role in regard to the CCG Functions and the Authority Functions, and
  - (ii) discrete budgets required for the exercise, provision and delivery of those Functions, being a range of health and social care services for vulnerable people as further described in this Agreement.
- (E) The Partners are satisfied that the arrangements contemplated by this Agreement are likely to lead to an improvement in the way that their functions are exercised.

#### **AGREED TERMS**

##### **1. DEFINITION AND INTERPRETATION**

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

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

**Aims and Objectives:** 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 Work Programme:** has the meaning set out in clause 8.

**Authority Health-Related Functions:** the health related functions of the Authority listed in Regulation 6 of the NHS Regulations 2000 (and further described in Schedule 3 (Authority Functions) of this Agreement) in relation to the provision of, or making arrangements for the provision of, the Services, but excluding the Excluded Functions.

**Authority Premises:** the Authority premises listed in paragraph 8.2 of Schedule 8.

**Authority's Authorised Officer:** Strategic Director of People's Services

**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 8.

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

**Commencement Date:** 1<sup>st</sup> April 2013.

**Data Protection Legislation:** this includes:

- (a) the Data Protection Act 1998 (**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 32.

**EIR:** the Environmental Information Regulations 2004 (*SI 2004/3391*)

**Excluded Functions:** such Functions contained in Schedule 4 (Excluded Functions) of this Agreement and/or such Functions as the Partners may agree from time to time



are excluded from the Arrangements, together with any exclusions set out in the NHS Regulations 2000.

**Financial Contributions:** the financial contributions of the Partners as set out in Schedule 8.

**Financial Year:** 1 April to 31 March.

**First Financial Year:** 1 April 2013 to 31 March 2014

**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 .

**Individual Agreement:** the agreements made between each Post Holder, the CCG and the Authority describing the terms on which the Post Holder will be made available by the CCG to the Authority

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

**Information Sharing Protocol:** the protocol describing how the Partners will share Information contained in a form approved by the partners under Schedule 12.

**Initial Term:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

**Integrated Commissioning Board:** the body of officers of the CCG and of the Authority appointed and with the powers and functions as more particularly described in Schedule 9 (Governance Arrangements).

**Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

**Lead Commissioning:** the commissioning of the Services by the Host Partner for both the Authority and the CCG as further detailed in Clause 6 (Services) of this Agreement.

**NHS Act 2006:** National Health Service Act 2006 (as amended by the Health and Social Care Act 2012).

**NHS Body:** shall have the meaning set out in Regulation 3(1) of the NHS Regulations 2000.

**NHS Functions:** those of the functions of the CCG set out in regulation 5 of the NHS Regulations 2000 (and further described in Schedule 2 (CCG Functions) of this Agreement) as are exercised in the provision of the Services, excluding the Excluded Functions.

**NHS Regulations 2000:** the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (*SI 2000/617*) (as amended by the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012 (*SI 2012/3094*)).

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

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

**PCT:** the Portsmouth City Teaching Primary Care Trust

**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 CCG's Financial Contribution for the Services designated in Schedule 5 and as further detailed in Schedule 8, out of which payments may be made by the Authority towards expenditure incurred in the exercise of the Functions.

**Pooled Fund Manager:** the Head of Integrated Commissioning as employed by the Authority responsible for managing the integrated unit, as notified to the CCG from time to time.

**Post Holder:** the individuals identified or referred to in Schedule 7 and being the individuals who, as at the Commencement Date, are made available to the Authority by the CCG.

**Previous Commissioning Agreement** means an agreement under section 75 of the NHS Act 2006 between the PCT and the Authority dated 01 April 2010 (as varied) for the commissioning of a range of health and social care services for vulnerable people.

**QIPP Plan:** the local NHS quality, innovation, performance and prevention plan which applies to the CCG and any other plan known to incorporate the Aims and Outcomes.

**Quarter:** 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 and/or the CCG.

**Relevant Transfer:** a relevant transfer under TUPE.

**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 CCG, the PCT or the Authority before the Commencement Date or the Authority from the Commencement Date.

**Service User:** individuals who are eligible to receive the Services, as more particularly described in Schedule 5.

**Services:** the services described in Clause 6 (Services) and Schedule 5 and which the Partners have agreed will come within the arrangements and which will (unless specified otherwise in this Agreement) be commissioned by the Host Partner from third party providers.

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

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

**CCG's Authorised Officer:** Chief Operating Officer

**CCG's Financial Contribution:** the CCG's financial contribution for the relevant Financial Year. The CCG's Financial Contribution for the First Financial Year is set out in Schedule 8.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**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".

**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, by agreement made in writing, extend this Agreement for a period and on varied terms as they agree, beyond the Initial Term, subject to approval 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 the Service Users of Portsmouth than if the Partners were operating independently. The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.
- 4.2 The Partnership Arrangements shall comprise:
- (a) Lead Commissioning arrangements, whereby the CCG will delegate to the Authority the NHS Functions, so that the Authority may exercise the NHS Functions alongside the Authority Health-Related Functions and act as commissioner of the Services described in Schedule 5 on behalf of both Partners.
  - (b) the establishment of a Pooled Fund for commissioning and procurement of a range of health and social care services for vulnerable people as further described in this Agreement.

- 4.3 The Authority shall host and provide the financial administrative systems for the Pooled Fund.
- 4.4 The Authority shall appoint a Pooled Fund Manager, who shall be responsible for the functions detailed in Schedule 8 (Financial Contributions).
- 4.5 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.
- 4.6 The CCG is satisfied that the Partnership Arrangements fulfil the objectives set out in the QIPP Plan.
- 4.7 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 CCG hereby delegates the exercise of the NHS Functions to the Authority to exercise alongside the Authority's Health-Related Functions and act as lead commissioner of the health and social care services within the scope of this Agreement.;
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.
- 5.3 Notwithstanding clauses 5.1 and 5.2 in the case of any individual service or commissioning or procurement exercise the Partners may at any time during the Term by decision of the Integrated Commissioning Board decide that the CCG is to act as lead commissioner and in the event of such a decision being made:

5.3.1 the Authority delegates the exercise of the Authority Functions to the CCG to exercise alongside the CCG's NHS Functions in relation to the service or commissioning or procurement exercise concerned, and

5.3.2 the Partners shall agree any necessary and reasonable adjustments to the Pooled Fund arrangements.

## **6. SERVICES**

- 6.1 The Authority is the Host Partner for the Partnership Arrangements, and agrees to act as lead commissioner of the Services referred to in clause 5.1..
- 6.2 The Authority shall ensure that the Services are provided and shall be accountable to the CCG for the NHS Functions for the benefit of Service Users:
- (a) to ensure the proper discharge of the Partners' Functions;
  - (b) with reasonable skill and care, and in accordance with best practice guidance;
  - (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement, and the CCG's applicable policies set out in Schedule 5;
  - (d) in accordance with its standing orders or other rules on contracting; and
  - (e) in accordance with all applicable Law.
- 6.3 Where functions are delegated by the Authority to the CCG in accordance with clause 5.3.1 the CCG shall have obligations to the Authority which are equivalent to the Authority's obligations to the CCG under clause 6.2

## **7. ANNUAL WORK PROGRAMME**

- 7.1 The Partners shall agree an Annual Work Programme for the Services at least four weeks before the start of the Financial Year. The Annual Work Programme shall:
- (a) set out the commissioning priorities for the coming year
  - (b) specify the milestones for the delivery of the commissioning priorities including the key decisions for the Partners
  - (c) provide information on the financial impact of the commissioning priorities for the Partners; and
  - (d) include details of the estimated contributions due from each Partner for each Service and its designation to the Pooled Fund.
- 7.2 Each Annual Work Programme shall be initiated on the first day of the Financial Year to which it relates. Each Annual Work Programme will remain in place for a period of 12 months.

7.3 The Annual Work Programme may be varied by written agreement between the Partners. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the Partners to make corresponding adjustments to the CCG's Financial Contribution and the Authority's Financial Contribution.

7.4 If the Partners cannot agree the contents of the Annual Work Programme, the matter shall be dealt with in accordance with clause 32. Pending the outcome of the dispute resolution process or termination of the Agreement under clause 33, the Partners shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **8. PERFORMANCE MANAGEMENT**

The Partners shall adhere to their constituent organisations' performance management frameworks.

## **9. FINANCIAL CONTRIBUTIONS**

9.1 The CCG shall pay the CCG's Financial Contribution to the Authority to allocate to the Pooled Fund and to manage in accordance with this Agreement and the Annual Work Programme.

9.2 The Authority shall contribute the Authority's Financial Contribution to the Pooled Fund and shall manage the Pooled Fund in accordance with this Agreement and the Annual Work Programme.

9.3 The CCG's Financial Contribution and the Authority's Financial Contribution for the First Financial Year are set out in Schedule 8.

9.4 The Partners shall pay the Financial Contributions into the Pooled Fund quarterly in advance.

9.5 The Partners shall agree the CCG's Financial Contribution and the Authority's Financial Contribution for the following Financial Year by 31 March.

9.6 The Authority's Financial Contribution is deemed to include the sums it may recover from the Service Users, irrespective of whether they are actually recovered.

9.7 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the relevant Pooled Fund.

9.8 The Partners agree to adopt "Partnership Structure (a)" as described in the VAT Guidance through which the Partners agree that goods and services will be purchased in accordance with the Authority's VAT regime and reimbursed from the Partners' Financial Contributions.

#### **10. OVERSPENDS AND UNDERSPENDS**

10.1 The Authority shall use all reasonable endeavours to arrange for the discharge of the Authority Health-Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.

10.2 The Authority shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.

10.3 The Authority shall make the CCG aware of any potential overspend as soon as it becomes aware of this possibility through the arrangements in Schedule 9. The Authority will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.

10.4 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 Partner's Financial Contribution for Pooled Funds, the Partners shall meet the overspend as detailed in Schedule 8

10.5 The Authority shall as far as possible make the CCG aware of any potential underspend in relation to Financial Contributions, prior to the end of the Financial Year and shall update any reports as soon as practicable following the end of the Financial Year. The Authority shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

10.6 The benefit of any underspend at the end of the Financial Year or on termination or expiry of this Agreement (whichever is appropriate) shall:

(a) in the Pooled Funds:

(i) if the Partners agree, be applied to the Services, as the Integrated Commissioning Board shall determine, in accordance with the Annual Work Programme;

(ii) if the Partners agree, utilise the underspend to support the development of schemes to create future efficiencies or improved services for patients;  
or



- (iii) if the Partners cannot agree, be returned to the Partners in proportion to their Financial Contribution for the Financial Year;

**11. CAPITAL EXPENDITURE**

Subject to the provisions in Schedule 8 (Financial Contributions) the Financial Contributions shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall be made separately and in accordance with section 256 (or section 76) of the NHS Act 2006.

**12. SET UP COSTS**

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

**13. PREMISES**

13.1 The Authority shall make available the Authority's Premises to the Partnership Arrangements for the Term as specified in Schedule 8 on such terms as may be agreed in writing between the Partners.

13.2 The CCG shall make the payments referred to in Schedule 8 for the purposes of securing the Authority Premises for the purposes of the Services.

**14. STAFFING (TUPE, SECONDMENT AND PENSIONS)**

14.1 The Partners have agreed that under arrangements under s.113 Local Government Act 1972 the Post Holders will be made available by the CCG to the Authority in accordance with the terms of the s.113 Agreement and the Individual Agreements and the Partners agree that TUPE will not apply on the commencement of this Agreement, during the Agreement Term or on the expiry of this Agreement (in whole or in part). However, if during the Term, TUPE operates so as to transfer the employment of a Post Holder from one Partner ("the Transferor") to the other Partner ("the Transferee") the Partners shall comply with:

- (a) their legal obligations under TUPE
- (b) if applicable, the Statement of Practice.

14.2 The Partners agree that the provisions of Schedule 7 shall apply to any secondments of CCG staff to the Authority under arrangements pursuant to Section 113 of the Local Government Act 1972.

## **15. CONTRACTS**

- 15.1 The Authority shall enter into such contracts with third parties as it sees fit for the purpose of facilitating the discharge of the Functions. The Authority shall ensure that all contracts entered into concerning the NHS Functions are capable of assignment or novation to the CCG and any successor body.
- 15.2 The Partners agree that the arrangements specified in Schedule 6 shall have effect

## **16. GOVERNANCE**

- 16.1 The Partners agree that the arrangements specified in Schedule 9 shall have effect.
- 16.2 The CCG shall nominate the CCG's Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the CCG and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 16.3 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the CCG and shall be responsible for representing the Authority and liaising with the CCG's Authorised Officer in connection with the Partnership Arrangements.

## **17. QUARTERLY REVIEW AND REPORTING**

- 17.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.
- 17.2 The Pooled Fund manager shall submit a quarterly report to the Integrated Commissioning 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.

## **18. ANNUAL REVIEW**

- 18.1 The Partners agree to carry out a review of the Partnership Arrangements and progress against the Annual Work Programme (**Annual Review**), including:
- (a) the performance of the Partnership Arrangements against the Aims and Outcomes;

- (b) the performance of the individual Services against the service levels and other targets contained in the relevant contracts;
- (c) plans to address any underperformance in the Services;
- (d) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
- (e) review of plans and performance levels for the following year; and
- (f) plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

18.2 The Authority shall prepare an annual report following the Annual Review for submission to the Partners' respective boards.

## **19. VARIATIONS**

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

## **20. STANDARDS**

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

- (a) the service standards set out in Schedule 5;
- (b) the prevailing standards of clinical governance;
- (c) the Authority's standing orders; and
- (d) the requirements specified by the Care Quality Commission and any other relevant external regulator.

20.2 The Partners shall develop operational guidance and procedures to reflect compliance with clause 20.

20.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **21. HEALTH AND SAFETY**

21.1 The Authority shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services and persons working on the Services.

21.2 The Authority shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the CCG on request.

21.3 The Authority shall notify the CCG if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury.

## **22. EQUALITY DUTIES**

22.1 The Partners acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

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

22.3 The Authority shall take all reasonable steps to secure the observance of clause 22 by all servants, employees or agents of the Authority and all Service Providers employed in delivering the Services described in this Agreement.

## **23. 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.

## **24. DATA PROTECTION AND INFORMATION SHARING**

24.1 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.

24.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working, in accordance with Schedule 12 (Information Sharing). The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

## **25. CONFIDENTIALITY**

- 25.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.
- 25.2 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.

## **26. AUDIT**

- 26.1 The Authority shall arrange for the audit of the accounts of the Pooled Fund in accordance with its statutory audit requirements.
- 26.2 The Authority shall provide to the CCG any reports required concerning the NHS Functions on reasonable notice.
- 26.3 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.

## **27. INSURANCE**

- 27.1 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.
- 27.2 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements.

## **28. 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.

## **29. LIABILITIES**

- 29.1 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.
- 29.2 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.

## **30. COMPLAINTS AND INVESTIGATIONS**

- 30.1 The Partners shall deal with all complaints received concerning the Services in the first instance through the Authority's complaints procedures.
- 30.2 The Partners shall endeavour to agree a joint complaints procedure within the first year of the Term.
- 30.3 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

## **31. HEALTHWATCH**

- 31.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.
- 31.2 The Authority shall ensure the effective discharge of its obligations in the establishment of Local HealthWatch and, in the interim, with the Local Involvement Network.
- 31.3 The Authority shall ensure its contracts with Service Providers require co-operation with Local HealthWatch and the Local Involvement Network.

## **32. DISPUTE RESOLUTION**

- 32.1 The members of the Integrated Commissioning Board shall use their best endeavours to resolve disputes arising out of this Agreement.
- 32.2 If any dispute referred to the Integrated Commissioning Board is not resolved within 15 Working Days, either Partner, by notice in writing to the other, may refer the dispute to the chief executives of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within 20 Working Days of service of the notice.

- 32.3 If within the allotted time the processes set out in clauses 32.1 and 32.2 do not resolve such dispute to the satisfaction of both Partners either Partner may refer any dispute to an adjudicator.
- 32.4 If the Partners are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either Partner for such an appointment then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the Partners agree to accept such appointment.
- 32.5 Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the dispute being referred to such adjudicator, and costs shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the Partners in equal proportions PROVIDED ALWAYS that the Partners agree that no decision or determination of an adjudicator under this clause 32.5 shall be final and binding upon them
- 32.6 This clause 32 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 32 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

### **33. TERMINATION**

- 33.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 33.2 or 33.3, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner.
- 33.2 Subject to clause 33.3, either Partner may terminate this Agreement at any time by giving 6 months' written notice to the other Partner, if for budgetary reasons it is of the reasonable opinion that in light of the other's proposed Financial Contribution the Partnership Arrangements (or any part of them) are no longer viable.
- 33.3 Either Partner (for the purposes of this clause 33.3, the **First Partner**) may terminate this Agreement on one calendar month's notice by the service of written notice on the other Partner (for the purposes of this clause 33.3, the **Second Partner**) in the following circumstances:
- (a) 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 33.3, 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;

- (b) there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or
- (c) following a failure to resolve a dispute under clauses 32.1-32.5.

33.4 The provisions of clause 34 shall apply on termination of this Agreement.

#### **34. CONSEQUENCES OF TERMINATION**

34.1 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 prepared by the Integrated Commissioning Board;
- (b) premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;
- (c) assets purchased from the Pooled Fund shall be disposed of by the Authority 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 the Authority;
- (d) assets purchased from the Pooled Fund may alternatively be disposed of by the Authority for a reasonable market value 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 the Authority.
- (e) assets purchased outside of the Pooled Funds shall be returned to the Partner from whose Financial Contribution the purchase was made;
- (f) contracts entered into by the Authority concerning the NHS Functions shall be novated to the CCG and the CCG shall accept the novation; and
- (g) the Authority shall transfer to the CCG all records in its possession relating to the NHS Functions.

34.2 Termination of this Agreement shall be without prejudice to any of the rights or remedies that have accrued to whichever Partner under this Agreement.

34.3 Upon termination, the Partners shall work together to wind down and disaggregate all arrangements made pursuant to this Agreement, and shall in so doing ensure a minimal service user impact.

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



34.5 Subject to clause 34.6, underspends on termination of the Agreement shall be dealt with in accordance with clause 10.6.

34.6 Subject to clause 29, the Authority shall be entitled to direct any underspends to the following purposes:

- (a) to meet obligations under existing contracts;
- (b) to defray the costs of making any alternative arrangements for Service Users; and
- (c) to meet the costs of any redundancies arising from the termination of the Partnership Arrangements.

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

- (a) Clause 23 "Freedom of Information";
- (b) Clause 24 "Data Protection and Information Sharing";
- (c) Clause 26 "Audit";
- (d) Clause 28 "Indemnities";
- (e) Clause 29 "Liabilities"; and
- (f) Clause 34 "Consequences of Termination".

### **35. 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.

### **36. 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.

### **37. THIRD PARTY RIGHTS**

37.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a Party to this Agreement any rights to enforce any provisions contained in this Agreement.

**38. NOTICES**

- 38.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the chief executive 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.
- 38.2 Notices may be sent by first class mail or facsimile transmission, provided that facsimile transmissions are confirmed within 24 hours by first class mailed confirmation of a copy. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

**39. ASSIGNMENT AND SUBCONTRACTING**

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.

**40. 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.

**41. WAIVER**

- 41.1 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.
- 41.2 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.

**42. ENTIRE AGREEMENT**

This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Partners relating to the

subject matter of it and supersede all prior agreements, arrangements and understandings between the Partners relating to that subject matter.

**43. GOVERNING LAW AND JURISDICTION**

Subject to clause 32, 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.

**44. FAIR DEALINGS**

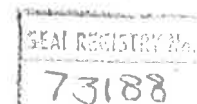
The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and 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.

**45. CONFLICTS OF INTEREST**

45.1 Each Partner shall perform their obligations under this Agreement in the best interests of the other Partner, and shall notify the other Partner of any conflicts of interests as they arise during the Term.

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

**EXECUTED AS A DEED** on behalf of the **Authority**



**THE COMMON SEAL** of **PORTSMOUTH** )  
**CITY COUNCIL** was hereunto affixed in )  
pursuance of a resolution of the Council )  
passed at a meeting duly convened and held:- )

.....  
Authorised Signatory

**EXECUTED AS A DEED** on behalf of the CCG

**THE COMMON SEAL of PORTSMOUTH CLINICAL )**

**COMMISSIONING GROUP** was affixed to this )

Deed in the presence of:- )

## SCHEDULE 1

### AIMS AND OBJECTIVES

- 1.1 The Partners agree that these Arrangements are the most efficient and effective way to deliver the Partners strategic commissioning intentions and enable them to:
- 1.1.1 Jointly commission integrated services
  - 1.1.2 Improve the quality of services
  - 1.1.3 Improve outcomes for the people of Portsmouth
  - 1.1.4 Consolidate and strengthen collaborative and lead commissioning arrangements to more effectively manage the local market
  - 1.1.5 Make the best use of resources against local and national priorities to provide value for money
  - 1.1.6 Meet the requirements of the NHS, Public Health and Social Care Outcomes Frameworks
- 1.2 The Partners will work to the following ten principles that express commitments and behaviours which describe their approach to commissioning

#### **OUTCOMES - Improving outcomes for Portsmouth residents will be at the heart of the commissioning process**

- We will use public money effectively to improve outcomes for people in the city
- Commissioning staff will work together and share responsibility for outcomes across the city.

#### **EQUALITY – Commissioning will seek to shape service delivery to reduce inequalities in the city**

- We will target resources to reduce inequalities in the city
- We will monitor the impact of all commissioning decisions on all parts of the community

#### **EVIDENCE - Commissioning decisions will be informed by evidence of what works**

- We will use our resources effectively based on the identified need of our residents
- Where possible and appropriate, we will commission evidenced-based services and practice. We will balance this with risk-managed innovation

- We will evaluate impact rigorously to further enhance our understanding of what works

**INTEGRATION - Commissioning will seek to integrate service delivery around the needs of individuals and families**

- We will commission services which are joined up and easy to access
- We will commission personalised services which offer choice so that people are empowered to take personal
- We will work with service providers and support them to develop services which meet the needs of our diverse population

**PREVENTION - Commissioning prevention and early intervention services will reduce dependency on public service delivery**

- We will design services and support that tackle the causes of poor outcomes
- We will seek to build resilience in people and communities

**PARTICIPATION - Residents will be active participants in the commissioning (and decommissioning) process**

- We will involve residents in the planning, design, monitoring and evaluation
- We will increase our use of co-production, developing and managing services with residents

**ACCOUNTABILITY - Resource allocation and commissioning decisions will be transparent, contestable and locally accountable**

- We will publish our priorities and commissioning intentions in good time
- We will ensure clear accountability for our commissioning decisions
- We will ensure there is clear accountability for service performance

**FAIRNESS - The commissioning process will ensure that no provider is given or gains an unfair advantage**

- We will adopt the same approach (e.g. to service specification and performance monitoring) to any provider – local authority, NHS, voluntary, community or private
- We will ensure there is a clear distinction between commissioner and provider functions regardless of whether they co-exist within an single organisation

**VALUE FOR MONEY - Commissioning decisions will be driven by the goal to achieve optimum quality, value for money and outcomes.**

- We will monitor value for money and use it to inform commissioning decisions
- We will decommission ineffective services

**PARTNERSHIPS - Strong and effective partnerships are key to good commissioning**

- We will continue to build on the effective partnership work in Portsmouth including strategic partnerships, partnerships with service users and commissioner-provider partnerships

## SCHEDULE 2

### CCG FUNCTIONS

- 1.1 The provisions of this Schedule 2 are subject to the provisions of Schedule 6 (Contracting Process).
- 1.2 The **CCG Functions** comprise the making of arrangements for the provision of the Services, but only to the extent that such functions are relevant to and promote the welfare of the Client Group, and excepting the Excluded Functions listed in Schedule 4, specifically: -
  - 1.2.1 functions under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1, to the NHS Act 2006, including rehabilitation services and services intended to avoid admission to hospital;
  - 1.2.2 functions under sections 117 and 130A of the Mental Health Act 1983;
  - 1.2.3 functions under Schedule A1 of the Mental Capacity Act 2005; and
  - 1.2.4 functions under section 12A(1) of the NHS Act 2006 (direct payments for health care) and;
  - 1.2.5 functions under regulation 2(7) of the National Health Service (direct Payments) Regulations 2010
- 1.3 any such additional functions as may be:
  - 1.3.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 2 to the Authority; or
  - 1.3.2 agreed by the Partners from time to time to be CCG Functions for the purposes of this Agreement.



### SCHEDULE 3

#### AUTHORITY FUNCTIONS

- 1.1 The provisions of this Schedule 3 are subject to the provisions of Schedule 6 (Contracting Process).
- 1.2 The **Authority Functions** comprise the making arrangements for the provision of the Services, to the extent that such functions are relevant to and promote the welfare of the Client Group, and excepting the Excluded Functions listed in Schedule 4, specifically:
  - 1.2.1 the functions specified in Schedule 1 to the Local Authority Social Services Act 1970;
  - 1.2.2 the functions under sections 7 or 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 except in so far as they assign functions to a local authority in their capacity of a local education authority;
  - 1.2.3 the functions of providing, or securing the provision of recreational facilities under section 19 of the Local Government (Miscellaneous Provisions) Act 1976;
- 1.3 The functions of local education authorities under the Education Acts as defined in section 578 of the Education Act 1996;
- 1.4 the functions of local housing authorities under Part I of the Housing Grants, Construction and Regeneration Act 1996 and under Parts VI and VII of the Housing Act 1996;
- 1.5 the functions of local authorities under section 126 of the Housing Grants, Construction and Regeneration Act 1996;
- 1.6 the functions of waste collection or waste disposal under the Environmental Protection Act 1990;
- 1.7 the functions of providing environmental health services under sections 180 and 181 of the Local Government Act 1972;
- 1.8 the functions of local highway authorities under the Highways Act 1980 and section 39 of the Road Traffic Act 1988;
- 1.9 the functions under section 63 (passenger transport) and section 93 (travel concession schemes) of the Transport Act 1985;

- 1.10 where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of accommodation under sections 21 or 26 of the 1948 Act, the function of charging for that accommodation under section 22, 23(2) or 26 of that Act;
- 1.11 where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of a service under any enactment mentioned in section 17(2)(a) to (c) of the 1983 Act, the function of charging for that service under that section;
- 1.12 the functions of local authorities under or by virtue of sections 2B or 6(C)(1) of, or Schedule 1 to, the NHS Act 2006, and;
- 1.13 any such additional functions as may be:
  - 1.13.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 3 to the Authority; or
  - 1.13.2 agreed by the Partners from time to time to be Authority Functions for the purposes of this Agreement.

## SCHEDULE 4

### EXCLUDED FUNCTIONS

1. Excluded pursuant to the Regulations
    - 1.1 the CCG Functions shall not include the following:
      - 1.1.1 surgery;
      - 1.1.2 radiotherapy;
      - 1.1.3 termination of pregnancies;
      - 1.1.4 endoscopy;
      - 1.1.5 the use of Class 4 laser treatments and other invasive treatments; and
      - 1.1.6 emergency ambulance services, and
    - 1.2 the Authority Functions shall not include any functions pursuant to the following:
      - 1.2.1 subject to Regulation 6(k) of the Regulations, sections 22, 23(3), 26(2) to (4), 43, 45 and 49 of the National Assistance Act 1948;
      - 1.2.2 section 6 of the Local Authority Social Services Act 1970;
      - 1.2.3 section 3 of the Adoption and Children Act 2002;
      - 1.2.4 sections 114 and 115 of the Mental Health Act 1983;
      - 1.2.5 section 17 of the 1983 Act;
      - 1.2.6 Parts VII to IX and section 86 of the Children Act 1989,or any other functions that are specified in the Regulations as amended from time to time as being excluded from section 75 arrangements.
2. To avoid doubt, all functions that are not specified as either CCG Functions in Schedule 2 or as Authority Functions in Schedule 3 of this Agreement shall be Excluded Functions.

## **SCHEDULE 5**

### **THE SERVICES**

- 1.1 The Services to be commissioned by the Authority on behalf of itself and the CCG shall be those relating to health and social care services including, but not limited to:
  - 1.1.1 Services for people with dementia
  - 1.1.2 Services for older people
  - 1.1.3 Learning disability services
  - 1.1.4 Mental health services
  - 1.1.5 Equipment services
  - 1.1.6 Services for veterans
  - 1.1.7 Neuro rehabilitation services
  - 1.1.8 Intermediate care services
  - 1.1.9 Health services for children
  - 1.1.10 Psychological therapy and counselling services
  - 1.1.11 Services for people with physical disabilities and long term conditions
  - 1.1.12 Services for carers
  - 1.1.13 Services for people with autism and ADHD conditions
  - 1.1.14 Extra contractual referrals
  - 1.1.15 Individual funding requests
- 1.2 The Services listed at paragraph 1 above shall be commissioned in accordance with the commissioning principles in Schedule 1 and the contracting processes in Schedule 6, and shall be subject to the Functions detailed at Schedules 2 (CCG Functions) and 3 (Authority Functions).
- 1.3 The Partners may agree to include other services in these arrangements

## SCHEDULE 6

### CONTRACTING PROCESS

- 1.1 It is intended that the Authority shall contract for the Services in accordance with all applicable law, including but not limited to the EU procurement rules, the Public Contracts Regulations 2006 and the EU Commission interpretive communication on the Community Law applicable to contract awards not fully subject to the provisions of the Public Procurement Directives (2006/C179/02) or any subsequent regulations, communications or guidance.
- 1.4 Where appropriate and in order to commission the Services, the Authority shall utilise other NHS procurement services commissioned by the CCG, such as Commissioning Support Unit to contract on their behalf. In these cases the Authority shall ensure that the procurement service provided by the third Partner complies with this Agreement and all applicable law more fully described in paragraph 1 above.
- 1.5 Subject to the EU procurement rules, the Authority shall procure the Services in accordance with its own standing orders (as may be revised from time to time) ensuring through competitive tendering, wherever possible, that best value for money is obtained.
- 1.6 It is accepted that, in appropriate circumstances (such as where there is only one specialist provider and no alternative or a short term pilot project, or any other grounds that fit within the EU procurement rules or the Public Contracts Regulations 2006), it may be appropriate to negotiate contracts with the providers on a single tender basis, provided any decision to negotiate contracts is made in accordance with the current public procurement rules and the Authority's current standing orders.
- 1.7 The Authority's staff and the staff seconded by the CCG to the Authority in accordance with the terms of this Agreement shall be, in the case of each of them, entitled to commission Services on behalf of both the CCG and the Authority, and for the avoidance of doubt, subject to paragraphs 6 and 7 below:
- 1.5.1 the CCG's staff seconded to the Authority shall not be required to request authorisation from the Authority to enter into a commissioning arrangement for Services pursuant to this Agreement on behalf of the CCG or on behalf of the Authority; and
- 1.5.2 the Authority's staff shall not be required to request authorisation from the CCG (or any member of CCG staff seconded to the Authority) to enter into a commissioning arrangement for Services pursuant to this Agreement on behalf of the Authority or on behalf of the CCG.

- 1.6 In the event that the Authority has any doubt as to whether it is commissioning a Service on behalf of the CCG in accordance with the CCG Functions, the Authority shall first contact the CCG for clarification and approval of the same.
- 1.7 The CCG reserves the right to notify the Authority, in writing, of any particular circumstance which it considers ought not to be exercised by the Authority, whereupon with effect from receipt of such notice, such matter shall be deemed removed from Schedule 2 (CCG Functions).

## SCHEDULE 7

### INTEGRATED COMMISSIONING UNIT

#### 1. STAFF DETAILS

- 1.1 A database exists which lists all of the Seconded Staff from the CCG to the Authority for it to manage and direct as a part the Arrangements. This database shall be held and updated by the HR Department of the CCG.
- 1.2 A database exists which lists all of the staff of the Authority for it to manage and direct as a part of the Arrangements. This database shall be held and updated by the HR Department of the Authority.

#### 2. SECONDMENT ARRANGEMENTS

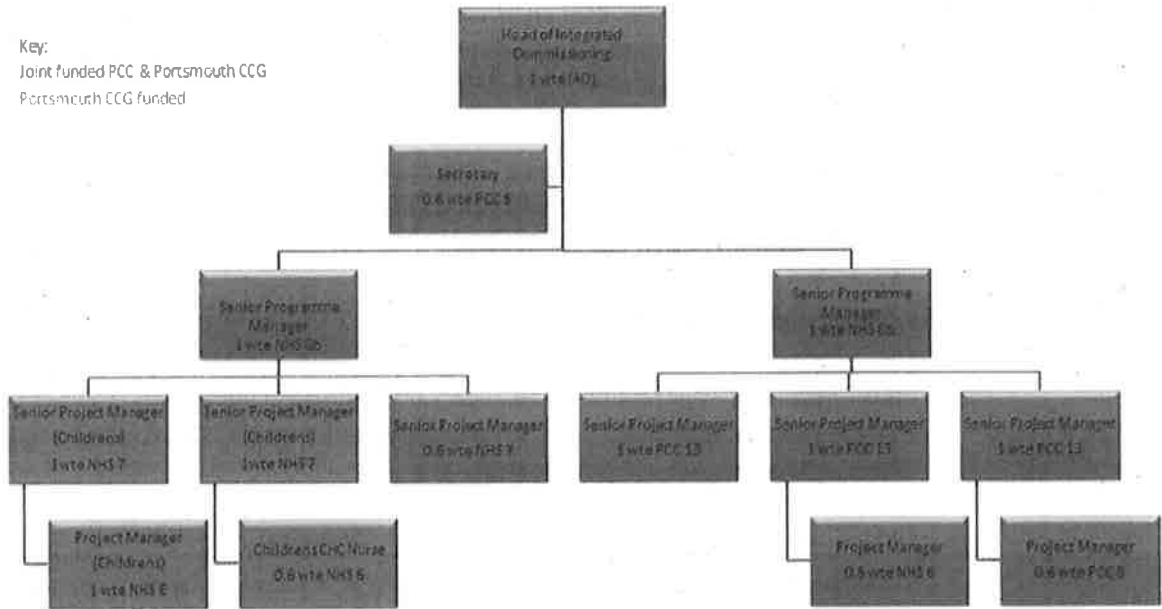
- 2.1 The Seconded Staff will have all seen and signed acceptance of the Secondment Agreement (Appendix 1). The Authority and the CCG will have signed the Secondment Agreement (Appendix 2).
- 2.2 The Authority will use its best endeavours to follow CCG HR Managers' policies and procedures for all Seconded Staff where those policies and procedures and any updates thereto have been notified to the Authority. CCG HR staff will provide support as necessary to execute these policies and the process of HR management.
- 2.3 The Authority will use its best endeavours to ensure that all managers of Seconded Staff attend management training and updates provided by the CCG especially in relation to the CCG's policies & procedures.
- 2.4 The CCG will ensure all Seconded Staff are kept informed and up-to-date with CCG policies and procedures applicable to them.

### 3. MANAGEMENT STRUCTURE

Key:

Joint funded PCC & Portsmouth CCG

Portsmouth CCG funded





**SECONDMENT AGREEMENT TO BE SIGNED BY STAFF MEMBER**

Dear

**CONFIRMATION OF SECONDMENT**

I am pleased to confirm the details of your secondment to the post of (job title) based in the (team) at (base).

This Secondment is entered as a consequence of an Agreement between the Portsmouth City Council ("the Council") and Portsmouth Clinical Commissioning Group ("the CCG") dated (insert date) under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of the commissioning health and social care services. Portsmouth Clinical Commissioning Group has agreed to second their Employees to the Council on the terms of this Agreement.

**1. DETAILS OF SECONDMENT**

- 1.1 With effect from (insert date) the CCG shall second you to the Council on the terms of this Agreement. Subject to earlier termination as provided for in this Agreement, the secondment will continue for the period of 3 years and is reviewable annually during the period of the s75 Agreement provided that you remain employed by the CCG.
- 1.2 During the Secondment, you shall be located at (insert base) where you shall act and perform the duties as set out in your contract of employment with the CCG. However it is recognised that in order to meet changes in service provision this location and role may change over time. You will be consulted in relation to any proposed changes to either location or role.

**2. CONDITIONS OF SECONDMENT**

- 2.1 Your Terms and Conditions of Employment with Portsmouth Clinical Commissioning Group shall remain in force during the Secondment period.
- 2.2 Your existing Job Description, a copy of which is attached, applies at present. Any changes will be subject to consultation with you and the Trade Unions.
- 2.3 Portsmouth Clinical Commissioning Group and the Council agree that you shall remain an employee of the CCG at all times and shall not be deemed to be an employee of the Council by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Council.
- 2.4 Your continuity of service with Portsmouth Clinical Commissioning Group will be preserved for both statutory and contractual purposes during the period of secondment

**3 LEAVE**

- 3.1 The Council will inform Portsmouth Clinical Commissioning Group of any absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is your responsibility to follow Portsmouth Clinical Commissioning Group sickness absence reporting procedures at all times.
- 3.2 You shall be entitled to holiday during the period of secondment in accordance with your terms and conditions of employment with Portsmouth Clinical Commissioning Group.

#### **4 HEALTH AND SAFETY**

- 4.1 The Council shall ensure that you observe its health and safety policies and procedures and maintain a safe method of working.
- 4.2 As an employee, you are required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for your own Health and Safety and that of others who may be affected by your acts or omissions at work.

#### **5. CONFLICTS OF INTEREST**

- 5.1 You must declare and seek agreement from Portsmouth Clinical Commissioning Group and your line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

#### **6. RESPONSIBILITY FOR RESOURCES**

- 6.1 Where applicable: Where you are responsible for the management of Council's budgets and/or the procurement of equipment and services you should follow the Council's Standing Financial Instructions and associated procedures.
- 6.2 In undertaking such duties you should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money

#### **7 PAYMENT OF SALARIES AND EXPENSES**

- 7.1 You will continue to be paid by Portsmouth Clinical Commissioning Group in accordance with your terms and conditions of employment for the duration of the secondment.
- 7.2 It is agreed that Portsmouth Clinical Commissioning Group shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to you for the provision of services to the CCG under this Agreement.
- 7.3 Any salary increments applicable to your substantive post with Portsmouth Clinical Commissioning Group will continue to apply.

#### **8 HUMAN RESOURCES SERVICES**

- 8.1 After (insert date) Portsmouth Clinical Commissioning Group will continue to provide advice to you on Portsmouth Clinical Commissioning Group policies including but not

limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service.

- 8.2 Portsmouth Clinical Commissioning Group will be responsible for ensuring you are kept updated with all changes to Portsmouth Clinical Commissioning Group policies and procedures, although this may be communicated to you through Council staff.
- 8.3 During the Secondment Period, the Council, in consultation with Portsmouth Clinical Commissioning Group Human Resources Department shall implement Portsmouth Clinical Commissioning Group policies and procedures in respect of you as an employee, so far as they comply with current employment legislation.
- 8.4 Portsmouth Clinical Commissioning Group authorises the Council to take action in respect of you as an employee pursuant to the Portsmouth Clinical Commissioning Group's Disciplinary Policy save for any action, which could result in your dismissal. In such circumstances Portsmouth Clinical Commissioning Group shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.
- 8.5 The Council may, should it consider necessary to do so, place you on special precautionary leave in accordance with Portsmouth Clinical Commissioning Group's Disciplinary Policy and in consultation with Portsmouth Clinical Commissioning Group's Human Resources Department provided that such action shall be notified to the CCG no later than the following working day.
- 8.6 Portsmouth Clinical Commissioning Group authorise the Council to deal with any grievances raised by you against the Council in accordance with Portsmouth Clinical Commissioning Group's grievance policy. The Council will notify Portsmouth Clinical Commissioning Group of any grievances received by the Council including those against Portsmouth Clinical Commissioning Group within 3 working days or as soon as reasonably possible
- 8.7 For the avoidance of doubt, nothing in clause 8 shall be construed or have effect as construing any relationship of employer and employee between the Council and you.

## **9. MANAGEMENT DURING THE SECONDMENT**

- 9.1 You shall be supervised by and directly accountable to [insert job title] during the secondment.

## **10. PROFESSIONAL DEVELOPMENT**

Portsmouth Clinical Commissioning Group will work with the Council to ensure your professional and developmental needs are identified and met. Performance Development Reviews, Performance Management and training will be undertaken by the Council.

## **11. MANAGEMENT OF CHANGE**

- 11.1 It is recognised that Portsmouth Clinical Commissioning Group and the Council in delivering and developing integrated commissioning will face organisational restructuring and changes in employment levels. In the event that you are affected by organisational change, Portsmouth Clinical Commissioning Group and the Council will ensure that changes happen following full consultation with you and your union

representative and that changes comply with Portsmouth Clinical Commissioning Group's employment policies.

**12. DATA PROTECTION**

- 12.1 You and Portsmouth Clinical Commissioning Group consent to the Council holding, disclosing, using or otherwise processing any information which is provided to the Council or which the Council may acquire as a result of the Secondment.
- 12.2 Portsmouth Clinical Commissioning Group and the Council agree to protect any personal data held in relation to you in accordance with the Data Protection Act 1998.

**13. CONFIDENTIALITY**

- 13.1 In addition to the provisions regarding confidentiality in your Contract of Employment, you will not disclose during or after the secondment any confidential information to which you became privy during the course of the secondment, including but not limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups, future business strategy, marketing, tenders, any price sensitive information, and any proprietary Council information.

**14. TERMINATION**

- 14.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate and your management will be transferred back to the CCG.
- 14.2 You may terminate the Secondment by giving not less than (one) month's notice in writing (or your contractual notice period if this is greater) to the CCG and Portsmouth City Council. This will be taken as your intention to tender your resignation of your substantive post.

**ACCEPTANCE**

Please confirm your acceptance of the terms of the secondment set out above by completing and returning the acceptance form enclosed with this letter.

The Section 75 agreement and its accompanying schedules can be made available should you require a copy.

Yours sincerely

## SECONDMENT AGREEMENT

**THIS SECONDMENT AGREEMENT** is made on [DATE] between: -

- (1) Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth PO1 2EP ("the Council")
- (2) Portsmouth Clinical Commissioning Group of Trust Headquarters, St James Hospital, Locksway Rd, Portsmouth, PO4 8LD ("The CCG")

### 1. INTRODUCTION

- 1.1 This Secondment Agreement is entered into under section 113 of the Local Government Act 1972 as a consequence of an Agreement between Portsmouth City Council ("the Council") and Portsmouth Clinical Commissioning Group ("the CCG") dated (insert date) under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of health and social care commissioning.
- 1.2 The CCG has agreed to second their Employees to the Council on the terms of this Agreement.

### 2 SECONDMENT

- 2.1 With effect from 1 April 2013 the CCG shall second the Employee to the Council on the terms of this Agreement. Subject to earlier termination as provided for in this Agreement, the secondment will continue for the period of 3 years and is reviewable annually during the period of the s75 Agreement provided that the Employee remains employed by the CCG
- 2.2 During the Secondment, the Employee shall be located at the Civic Offices where he/she shall act and perform the duties as set out in the Employee's contract of employment with the CCG. However it is recognised that in order to meet changes in service provision this location and role may change over time. The Employee will be consulted in relation to any proposed changes to either location or role.

### 3 CONDITIONS OF SECONDMENT

- 3.1 The Employee's Terms and Conditions of Employment with the CCG shall remain in force during the Secondment period.

- 3.2 The Employee's existing Job Description applies at present. Any changes will be subject to consultation with the Employee and Trade Unions.
- 3.3 Employee shall remain an employee of the CCG at all times and shall not be deemed to be an employee of the Council by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Council.
- 3.4 The Employee's continuity of service with the CCG will be preserved for both statutory and contractual purposes during the period of secondment.

#### **4 LIABILITY AND INDEMNITIES**

- 4.1 The CCG shall indemnify and keep indemnified, the Council in relation to any claims, charges or liabilities for (including but not limited to) any income tax, Employee National Insurance or similar contributions (including costs interests and penalties), or other statutory charges or remuneration or other compensation arising from or in relation to the services by the Employee under this Agreement or the Employee being found to be an Employee of the Council or otherwise. The Council agrees to notify the CCG of any such claims charges or liabilities received by the Council.
- 4.2 The Council shall not be liable for any act or omission on the part of the Employee during the Secondment and shall incur no liability for loss, damage or injury of whatever nature sustained by the Employee during the Secondment.
- 4.3 The CCG hereby indemnifies the Council against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages and demands arising out of or resulting from breach of this Agreement or any act or omission or default of the Employee including without limitation:
  - 4.3.1 Any loss of or any damage to any property;
  - 4.3.2 All financial loss;
  - 4.3.3 Those resulting from any breach by the Employee of any intellectual property rights owned by the CCG or a third Partner;
  - 4.3.4 Injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Employee, whether resulting in material or financial loss or damages or death or injury to persons or any other loss or damage whatsoever;
  - 4.3.5 Any and all liability arising from any breach of the provisions of the Data Protection Act 1998 by the Employee.

- 4.4 The CCG hereby indemnifies the Council against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the CCG which are attributable to any act or omission by the CCG any other person for whom the CCG are liable arising out of:-
- 4.4.1 The employment or termination of employment of the Employee during the Secondment; or
- 4.4.2 The engagement or termination of engagement of the Employee under the terms of this Agreement during the Secondment; or
- 4.4.3 Any breach by the CCG of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.
- 4.5 The Council shall indemnify the CCG against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the CCG which are attributable to any act or omission by the Council or any other person for whom the Council are liable arising out of:-
- 4.5.1 Any breach by the Council of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee
- 4.5.2 Any breach by the Council of any disciplinary, grievance or other employee related rules and procedures during the Secondment including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy redeployment costs, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

## **5 CONDUCT OF CLAIMS**

- 5.1 If the Council becomes aware of any matter that may give rise to a claim against the Employee and/or the CCG, notice of that fact shall be given as soon as possible to the CCG.

- 5.2 Without prejudice to the validity of the claim or alleged claim in question, the Council shall allow the CCG and its professional advisors to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose, the Council shall give subject to being paid all reasonable costs and expenses, all such information and assistance, including access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents and records, as the CCG or its professional advisors may reasonably request provided that nothing in this clause shall be construed as requiring the Council to disclose any document or thing the subject of any privilege. The CCG agrees to keep all such information confidential and only to use it for such purpose.
- 5.3 No admission of liability shall be made by or on behalf of the Council and any such claim shall not be compromised, disposed of or settled without the consent of the CCG.
- 5.4 The CCG shall be entitled in its absolute discretion to take such action as it shall deem necessary to avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third Partners) in the name of and on behalf of the Council and to have the conduct of any related proceedings, negotiations or appeals.

## **6 LEAVE**

- 6.1 The Council will inform the CCG of any absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is the Employee's responsibility to follow the CCG's sickness absence reporting procedures at all times.
- 6.2 The Employee shall be entitled to holiday during the period of secondment in accordance with the Employee's terms and conditions of employment with the CCG.

## **7 HEALTH AND SAFETY**

- 7.1 The Council shall ensure that the Employee observes its health and safety policies and procedures and maintains a safe method of working.
- 7.2 The Employee is required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for his/her own Health and Safety and that of others who may be affected by his/her acts or omissions at work.

## **8 CONFLICTS OF INTEREST**



- 8.1 The Employee must declare and seek agreement from the CCG and his/her line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

## **9 RESPONSIBILITY FOR RESOURCES**

- 9.1 **Where applicable:** Where the Employee is responsible for the management of Council budgets and/or the procurement of equipment and services the Employee should follow the Council's Standing Financial Instructions and associated procedures.
- 9.2 In undertaking such duties the Employee should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money

## **10. PAYMENT OF SALARIES AND EXPENSES**

- 10.1 The Employee will continue to be paid by the CCG in accordance with the Employee's terms and conditions of employment for the duration of the secondment.
- 10.2 It is agreed that the CCG shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to the Employee for the provision of services by the Employee to the Council under this Agreement.
- 10.3 Any salary increments applicable to the Employee's substantive post with the CCG will continue to.

## **11 HUMAN RESOURCES SERVICES**

- 11.1 Replacement of seconded staff

After 1 April 2013 the administrative services to support the recruitment and selection of seconded staff will continue to be undertaken by the CCG, supported by the Council as appropriate.

- 11.2 Employee Relations

11.2.1 After 1 April 2013 the CCG will continue to provide advice to the Employee on the CCG's policies including but not limited to disciplinary,

grievance, ill health, maternity leave and general terms and conditions of service.

11.2.2 The CCG will be responsible for ensuring the Employee is kept updated with all changes in the CCG's policies and procedures, although this may be communicated to the Employee through Council staff.

### 11.3 Policies and Procedure

11.3.1 During the Secondment Period, the Council, in consultation with the CCG's Human Resources Department shall implement the CCG's policies and procedures in respect of the Employees, so far as they comply with current employment legislation.

11.3.2 The CCG authorises the Council to take action in respect of the Employees pursuant to the CCG's Disciplinary Policy save for any action, which could result in the dismissal of an Employee. In such circumstances the CCG shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

11.3.3 The Council may, should it consider necessary to do so, suspend Employees from duty in accordance with the CCG's Disciplinary Policy and in consultation with the CCG's Human Resources Department provided that such a suspension shall be notified to the CCG no later than the following working day.

11.3.4 The CCG authorise the Council to deal with any grievances raised by the Employee against the Council in accordance with the CCG's grievance policy. The Council will notify the CCG of any grievances received by the Council including those against the CCG within 3 working days or as soon as reasonably possible

11.3.5 For the avoidance of doubt, nothing in clause 11 shall be construed or have effect as construing any relationship of Employer or Employee between the Council and the Employee.

### 11.4 Workforce Information

Workforce information regarding seconded staff will continue to be collected and retained by the CCG. However, it is recognised that the Council will require data concerning seconded staff in order to support the planning and delivery of services. The CCG in accordance with the format and deadlines identified by the Council will provide this information as required.

## 12 MANAGEMENT DURING THE SECONDMENT

12.1 The Employee shall be supervised by and directly accountable to a designated line manager in the Council's organisational structure during the secondment and the CCG will provide access to professional supervision for qualified social workers

### **13 PROFESSIONAL DEVELOPMENT**

13.1 The CCG will work with the Council to ensure the Employee's professional and developmental needs are identified and met. Performance Development Review's, Performance Management processes, and training of the Employee will be undertaken by the Council.

### **14 MANAGEMENT OF CHANGE**

14.1 It is recognised that the Council and the CCG in delivering and developing integrated commissioning will face organisational restructuring and changes in employment levels. In the event that the Employee is affected by organisational change, the Council and the CCG will ensure that changes happen following full consultation with his/her union representative and that changes comply with the CCG's employment policies.

### **15 DATA PROTECTION**

15.1 The Employee and the CCG consent to the Council holding, disclosing, using or otherwise processing any information about them which they provide to the Council or which the Council may acquire as a result of the Secondment.

15.2 The CCG and the Council agree to protect any personal data held in relation to the Employee in accordance with the Data Protection Act 1998.

### **16 CONFIDENTIALITY**

16.1 In addition to the provisions regarding confidentiality in the Employee's Contract of Employment, the Employee will not disclose during or after the secondment any confidential information to which the Employee became privy during the course of the secondment, including but not limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups, future business strategy, marketing, tenders, any price sensitive information, and any proprietary Council information.

### **17 TERMINATION**

- 17.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate
- 17.2 The Employee may terminate the Secondment by giving not less than (one) month's notice in writing (or the Employee's contractual notice period if this is greater) to the CCG and the Council. This will be taken as the Employee's intention to tender their resignation of their substantive post.

## **18 REVIEW AND VARIATION**

- 18.1 This secondment agreement will remain the subject of periodic review and amendment as necessary in light of changing service needs and legislative developments.
- 18.2 The Partners agree that any amendments or variations to this Agreement must be in writing and signed by authorised representatives of the Partners

## **19 GENERAL**

- 19.1 If any provision or term of this Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including without limitation, by reason of provisions of any legislation or by reason of any decision of any court or other body having jurisdiction over the Partners, such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement, the Partners shall negotiate in good faith to amend and modify the provisions or terms of this Agreement as may be necessary or desirable in the circumstances.
- 19.2 This Agreement does not create any partnership or agency relationship between the CCG and the Council.
- 19.3 This Agreement shall be in substitution for any previous letters of appointment, agreements or arrangements, whether written, oral or implied, relating to the Secondment of the Employee.
- 19.4 This Agreement shall be governed by and construed in accordance with English law. The CCG and the Council agree that any dispute arising under this Agreement or in connection with it shall be decided in the English Courts, which shall have the sole jurisdiction in any such matter.

## SCHEDULE 8

### ARRANGEMENTS FOR AGREEING CONTRIBUTIONS & OTHER FINANCIAL ARRANGEMENTS

1. **OPERATION OF FINANCIAL ARRANGEMENTS** The ICB will agree, in writing, by the 31st March each year, financial procedures and arrangements for the operation of this Agreement for the following Financial Year. This will act as a Revised Annual Finance Agreement which will set out the Contributions plus variation and shall also include:-
  - 1.1 Risk Sharing Arrangements – over/under spend arrangements, see paragraph 3 below;
  - 1.2 Invoice Arrangements – initially the Authority will issue an invoice to the CCG on the first day of each Quarter, due for payment by 15<sup>th</sup> of the month;
  - 1.3 Contribution Finance Flows; the Authority will invoice the CCG each quarter as above for the CCG's Contribution; the Authority will then reimburse the CCG within 15 days of receipt of an invoice for the standard and basic costs of employment of the Seconded Staff on the CCG's payroll;
  - 1.4 VAT procedures shall be in accordance with 'Partnership Structure (a)' within HM Customs & Excise regulations and as notified to HMRC; separate operational guidance will be agreed between the Partners regarding this;
  - 1.5 Use of specific grants and other income ;
  - 1.6 The costs of managing and administering the Pooled Fund itself;
  - 1.7 Audit checklists and other points raised by auditors;
  - 1.8 Monitoring information and formats (including contract monitoring);
  - 1.9 Monitoring timetable;
  - 1.10 Non-financial performance information;
  - 1.11 Information management systems & structures for collecting activity and finance information; and
  - 1.12 Accommodation arrangements for Services.
  - 1.13 The Budget at Paragraph 6 below (as at 2010/11 prices) will be updated on an annual basis to reflect the agreed contributions from the Partners to the Pooled Fund in line with Clause 9 of this Agreement. Each change to budgets agreed by the ICB will take into account the effect on other budgets and other financial flows involved with any of the Partners.

## **2. FINANCIAL PLANNING AND BUDGET SETTING PROCESS**

2.1 The Contributions will be reviewed in accordance with Clause 17 (Quarterly Review and Reporting). This shall take account of but not be limited to the following:-

### **A: THE AUTHORITY**

Planning assumptions of inflation allowances for pay and non-pay items together with proposed budget variations in respect of:-

- Demographic change;
- Service enhancement or reduction;
- Required efficiency / quality improvement;
- Income streams; and
- National Initiatives.

and will be considered in context of the overall Local Authority budget and shall be available no later than 28 February annually.

### **B: THE CCG**

Planning assumptions of inflation allowances for pay and non-pay items together with proposed budget variations in respect of:-

- Demographic change;
- Service enhancement or reduction;
- Required efficiency / quality improvement;
- Income streams; and
- National Initiatives.

2.2 The Pooled Fund Manager shall ensure that any matters relating to the Pooled Fund that might have a material impact on expenditure or income in future years are identified and reported to the ICB in time to be taken into account in the financial planning and budget setting process.

2.3 The CCG's Deputy Chief Finance Officer and the Authority's Finance Manager shall advise the appropriate deadline dates for the provision of such information through the Revised Annual Finance Agreement.

2.4 In respect of financial forecasting and budgets, the Partners shall provide explanations, analysis and documentation as necessary, within the limitations set out in Clause 24 of the Agreement for the other Partner to understand the basis of their planning assumptions and the contributions to the Pooled Fund. This information will be made available at the same time as the financial forecasts are shared with the other Partner and the contribution to the Pooled Fund is confirmed.

### **3. ADDITIONAL FUNDING**

- 3.1 For the avoidance of doubt, funding for the costs of servicing and maintaining any building, telephone rentals and IT network costs, or any other cost related to the performance of the Arrangements shall not be paid for from the Contributions, but shall be met by the Partners in accordance with existing arrangements.
- 3.2 The payments made by each Partner towards the costs listed at paragraph 3.1 above shall be recorded in a separate ledger.

### **4. BUDGET PERFORMANCE**

- 4.1 The Pooled Fund Manager shall report quarterly to the ICB. The Pooled Fund Manager shall ensure that action is taken to correct any projected variation from the Pooled Fund, reporting on the variation and the action taken or proposed to the ICB.
- 4.1 The process for addressing forecast overspends/underspends and taking appropriate action will be addressed by the ICB and the Partners in accordance with Clause 10 of this Agreement.

### **5 ACCESS TO FINANCIAL INFORMATION**

- 5.1 The CCG and the Authority shall make all relevant financial information and records available to the respective Partner subject to any constraints imposed by Clause 24 (Data Protection) of the Agreement and whilst respecting commercial confidentiality, and shall provide full explanations, exemplifications and advice in response to any reasonable question or request from any other Partner in respect of these records.
- 5.2 The Partners will assure the accuracy and completeness of financial information being presented under review through the ICB.

### **6 CONSTRUCTION OF BUDGET AND CONTRIBUTIONS**

The CCG will bear responsibility for all costs associated with Seconded Staff other than their standard and basic costs of employment and associated non pay costs which will be reimbursed from the Pooled Fund in accordance with paragraph 1 of this schedule.

### **7 BUDGET**

- 7.1 There will be two elements of the Pooled Fund
- 7.1 Staffing budgets for nominated staff under the single line management structure in schedule 7

7.2 Discrete service commissioning budgets. The Partners may agree to pool service commissioning budgets when assessed as appropriate and beneficial to deliver the aims and objectives in schedule 1. Service commissioning budgets may be included in the Pooled Fund with the agreement of both Partners either by a formal exchange of letters or as a minuted item at the Integrated Commissioning Board meeting

7.2.1 At the commencement of the Agreement there are no service commissioning budgets included in the pooled fund

<b>Summary of staff &amp; budgets transferred to the pooled fund by the CCG &amp; LA</b>						
	<b>WTE</b>	<b>Pay</b>	<b>Non Pay</b>	<b>Sub total</b>	<b>LA contribution</b>	<b>CCG contribution</b>
CCG employed staff	3.6	179,942	0	179,942	0	179,942
CCG employed staff (joint funded)	3.4	187,525	4,000	191,525	95,763	95,763
LA employed staff (joint funded)	5.24	257,542	4,000	261,542	130,771	130,771
<b>TOTALS</b>	<b>12.24</b>	<b>625009</b>	<b>8000</b>	<b>633,009</b>	<b>226,534</b>	<b>406,476</b>

7.3 For the avoidance of any doubt, **£406,476** is the CCG's contribution to the Pooled Fund at 2013/14 prices for the period 1 April 2013 to 31 March 2014 and **£226,534** is the Authority's contribution to the Pooled Fund at 2013/14 prices for the period 1 April 2013 to 31 March 2014

## **8 PREMISES**

8.1 The Authority and the CCG shall continue to provide or make available the premises, with the same support services and facilities management to those premises, that they provided before the Commencement Date and according to the lists set out at 8.2 and 8.3 below:-

8.2 The Authority shall ensure continued access to the premises currently used at the following addresses:-

Civic Offices, Guildhall Square, Portsmouth PO1 2EP  
Great Western House, Isambard Brunel Rd, Portsmouth PO1 2DR

8.3 The CCG shall ensure continued access to the premises currently used at the following address:-

Trust Headquarters, St James' Hospital, Locksway Road, Milton, Portsmouth. PO4 8LD

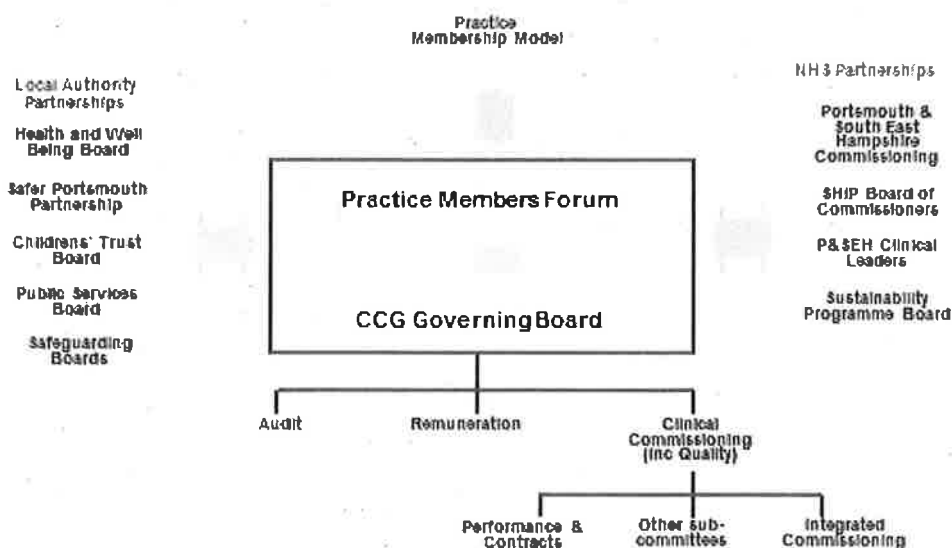


**SCHEDULE 9**  
**GOVERNANCE**

**1. INTEGRATED COMMISSIONING BOARD**

- 1.1 The Integrated Commissioning Board (ICB) will provide the oversight and governance of:
- the delivery of the Aims and Objectives of the Agreement (Schedule 1),
  - the Pooled Fund
  - the Partnership risk register
  - the Annual Work Programme
- 1.2 The ICB will be the escalation route for performance issues relating to service delivery by the Partners
- 1.3 The membership will be at Director / Executive level and representative of the Partners commissioning interests
- 1.4 The Terms of Reference for the ICB will be reviewed annually
- 1.5 The ICB will be a sub committee of the CCG's Clinical Commissioning Committee

**GOVERNANCE MODEL**



## SCHEDULE 10

### JOINT WORKING AND OTHER AGENCIES

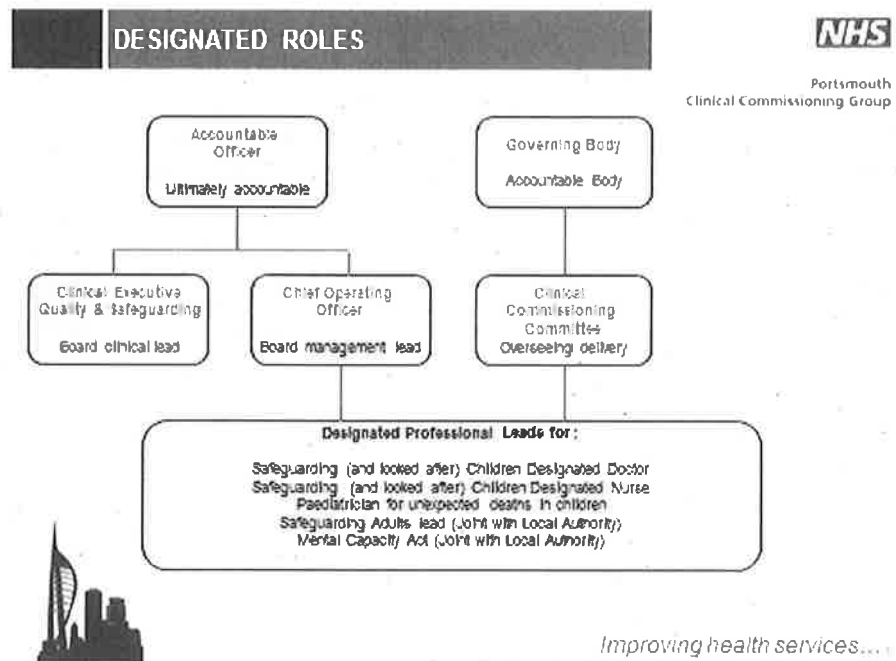
- 1.1 There are a number of boards and committees that have differing levels of accountability and/or responsibility for influencing commissioning decisions made by the CCG and Authority:
- Joint Health & Wellbeing Board
  - Children's Trust Board and its sub groups
  - The Learning Disability Partnership Board (LDPB) for learning disability services
  - Safer Portsmouth Partnership (SPP) and the Joint Commissioning Group (JCG) for substance misuse services
  - Health Overview & Scrutiny Panel (HOSP)
  - Healthwatch
- 1.2 The Integrated Commissioning Unit will work collaboratively with these boards / committees to ensure that the Partners responsibilities for joint working are discharged.
- 1.3 The Integrated Commissioning Unit will work closely with neighbouring Local Authorities and CCGs and where appropriate exploit opportunities for collaborative commissioning

## SCHEDULE 11

### CLINICAL GOVERNANCE & SAFEGUARDING

#### 1. ACCOUNTABILITY FOR THE OVERALL QUALITY OF CLINICAL CARE

- 1.1 The CCG Accountable Officer and Governing Body are accountable for the quality of commissioned clinical care via the Clinical Executive for Quality & Safeguarding lead and the Clinical Commissioning Committee.



- 1.2 The Integrated Commissioning Board is a sub-committee of the Clinical Commissioning Committee

#### 2. SAFEGUARDING

- 2.1 The Authority is the lead partner for safeguarding.
- 2.2 The CCG's safeguarding responsibilities will be discharged in accordance with the table above and below

<b>CCG Governing Body: Roles</b>		
<b>Clinical Leader ('Accountable Officer')</b>	<b>Chief Operating Officer</b>	<b>CCG Executive (Quality &amp; Safeguarding)</b>
Ultimate accountability for ensuring the CCG discharges in full its duties in relation to Safeguarding Adults	Responsibility for ensuring the CCG has in place procedures and capacity to fulfill its safeguarding duties	Ensures clinical overview and influence over all CCG safeguarding processes
Ensures Board level scrutiny of safeguarding	Ensures CCG participation in Local Safeguarding Adults Board and processes	Represents the CCG at Local Safeguarding Adults Board
	Ensures arrangements are in place to assure the CCG that all providers and contractors to the CCG are fulfilling their safeguarding duties	Provides very senior and clinical leadership for the CCG and acts as local champion and advocate for safeguarding adults in CCG business and, in particular, in primary care
		Reports to the CCG Governing Body on all aspects of safeguarding adults

## SCHEDULE 12

### INFORMATION SHARING

1. The Partners shall comply with the latest version of the Pan Hampshire Information Sharing Protocol at all times.
2. The Partners have developed an Operational Agreement based on the template found within the Pan Hampshire Information Sharing Protocol which details the day to day processes for information sharing and the control of new information. The Operational Agreement is signed off by the Caldicott Guardian from each Partner, and any variations to it shall be agreed in writing. This Operational Agreement will be subject to local approval and reviewed on an annual basis or sooner if appropriate by the Authority's and the CCG's Information Governance Leads.
3. The Partners have developed a Privacy Impact Assessment based on the template found within the Pan Hampshire Information Sharing Protocol in relation to the sharing of the information relating to the Service.
4. It is agreed that:
  - The CCG will be the Data Controller for existing NHS data prior to the Commencement Date.
  - The Authority will be the Data Controller for existing social care data prior to the Commencement Date.
  - The Authority will be the Data Controller for new information collected by the integrated team from the Commencement Date.
5. In the event of a breach of Data Protection Legislation by either of the Partners the relevant Partner responsible for the breach shall be liable for any fines imposed by the Information Commissioner's Office, and such fines shall not be met from the Pooled Budget.



# Agenda Item 5



Portsmouth  
CITY COUNCIL

<b>Title of meeting:</b>	Cabinet Member for Health and Social Care
<b>Date of meeting:</b>	23 <sup>rd</sup> March 2018
<b>Subject:</b>	Adult Mental Health Section 75 Extension
<b>Report by:</b>	Service Manager Mental Health, Safeguarding and Carers Services
<b>Wards affected:</b>	All
<b>Key decision:</b>	No
<b>Full Council decision:</b>	No

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## 1. Purpose of report

- 1.1 To seek approval of the Cabinet Member for Health and Social Care to extend the section 75 agreement for the Integrated Adult Mental Health Service (AMH)

## 2. Recommendations

- 2.1 The Cabinet member agrees to the extension of the current AMH s75 Agreement for a period of one year, until 1<sup>st</sup> July 2019.

## 3. Background

- 3.1 The AMH social work element of the integrated mental health service , operates under a Section 75 Lead Provider arrangement with Solent NHS Trust as the lead provider, delivering the requirements set out in the Care Act 2014 to people in Portsmouth whose primary needs are linked to their mental health. Solent NHS Trust have direct line management responsibility for PCC staff, and staff are co-located with their NHS colleagues and based at St Mary's Hospital in Portsmouth.
- 3.2 Under the partnership agreement PCC contract with Solent NHS Trust for an agreed staffing establishment and associated costs with clear outcomes. Solent NHS Trust have the delegated responsibility, as the lead provider for delivery of the social work element of AMH services. Quarterly meetings of the Partnership Management Group are held to monitor the effectiveness of the arrangements.
- 3.3 The current agreement, which commenced November 2013, was set to run for three years and expired in 2016. For 16/17 and for 17/18 it was agreed the current arrangements would be extended for those years. It is recognised that the agreement does not reflect the changes brought in with the Care Act 2014 and that it needs to be rewritten. It was agreed by the Deputy Director of Adult

Social Care that for 18/19 an addendum would be agreed to ensure the requirements of the care act were clearly articulated. Performance indicators and outcome measures would also be refreshed along with confirmation of the resource provided by PCC to Solent NHS to deliver the service. During 18/19 the agreement will be re-written along with the service specification to ensure it is fit for purpose, delivering the requirements of the Care Act, on behalf of PCC.

- 3.4 The s75 partnership agreement is overseen and monitored by Adult Social Care, through Partnership Management Group meetings.

#### **4. Reasons for recommendations**

- 4.1 Having an integrated service, made up of a range of professional s across different disciplines sitting under one line management structure allows for a coordinated multi-agency planning to meet the needs of people with mental health difficulties.

- 4.2 The extension of the existing s75 agreement will ensure continuity of service delivery, acknowledging that some amendments are required to ensure it complies with the requirements of the Care Act 2014.

#### **5. Equality impact assessment**

- 5.1 An assessment is not required as the decision will have no negative impact on the protected characteristics. This is an extension of an already existing service for people with mental health. There will be no change to the service therefore no change for the clients accessing the service this will just ensure continuity for clients with a mental health issue.

#### **6. Legal implications**

- 6.1 Section 75 of the NHS Act 2006 allows local authorities and NHS bodies to enter into partnership arrangements to provide a joined service and pool resources, if such arrangements are likely to lead to an improvement in the way their functions are exercised.
- 6.2 The arrangements permissible between the Council and NHS bodies under section 75 include the provision as well as the commissioning of integrated services.
- 6.3 As part of the arrangement, to enable Solent NHS Trust to provide the integrated services, PCC staff are made available to the Trust under section 113 of the Local Government Act 1972. These arrangements will continue during the extended term of the s75 Agreement.
- 6.4 The provisions of the original section 75 Agreement for AMH enable the parties to extend its duration by agreement between them and also to agree any varied or updated terms and conditions that may be required.



**7. Finance comments**

7.1 There are no additional financial implications arising from the recommendation contained within this report, as it seeks to continue the existing arrangements, as set out within the s.75 agreement.

.....  
Signed by:  
Andy Biddle, Acting Deputy Director Adult Services

**Appendices:** 1) Section 75 Agreement dated 15<sup>th</sup> November 2013 between PCC and Solent NHS Trust.

**Background list of documents: Section 100D of the Local Government Act 1972**

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by ..... on .....

.....  
Signed by:

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DATED 15<sup>th</sup> November

2013

**PORTSMOUTH CITY COUNCIL**

and

**SOLENT NHS TRUST**

---

**AGREEMENT**

**under s.75 National Health Service Act 2006  
in relation to the provision of an Integrated  
Health and Social Care Adult Mental Health  
Service**

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Legal Services  
Portsmouth City Council  
Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2 PX  
~~CC2403~~

CC2402

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DATE 15<sup>th</sup> November 2013

#### **PARTIES**

- (1) **PORTSMOUTH CITY COUNCIL** of Civic Offices, Guildhall Square, Portsmouth, Hampshire, PO1 2PX ("the **Authority**").
- (2) **SOLENT NHS TRUST** whose offices are situated at Adelaide Health Centre, William MacLeod Way, Millbrook, Southampton SO16 4XE ("the **Trust**")

#### **BACKGROUND**

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS Bodies 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) The Trust enters into this Agreement as provider of the NHS Functions relating to adult mental health services.
- (D) The Authority enters into this Agreement as provider of the Authority Health-Related Functions relating to adult mental health services.
- (E) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.
- (F) The aim of this Agreement is to enable the integration of the health and social care elements of learning disability services to deliver the Partners' statutory responsibilities towards people with mental health problems and the requirements of the national Adult Social Care Outcomes Framework and the NHS Outcomes Framework.

#### **AGREED TERMS**

##### **1. DEFINITION AND INTERPRETATION**

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

**Agreement:** this Agreement between the Trust 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 Work Programme:** has the meaning set out in clause 8.

**Authority Health-Related Functions:** the health related functions of the Authority listed in Regulation 6 of the NHS Regulations 2000 (and further described in

**Direct Losses:** means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law, but, to avoid doubt, excluding Indirect Losses;

**Dispute Resolution Procedure:** the procedure set out in clause 31.

**EIR:** the Environmental Information Regulations 2004 (SI 2004/3391)

**Equality Legislation:** means the Equality Act 2010, Human Rights Act 1998 and any other relevant law which ensures, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of Reasonable Adjustments for people with disabilities (as defined in the Equality Act 2010); and equality in employment;

**Excluded Functions:** such Functions contained in Schedule 4 (Excluded Functions) of this Agreement and/or such Functions as the Partners may agree from time to time are excluded from the Arrangements, together with any exclusions set out in the NHS Regulations 2000.

**Financial Obligations:** the financial obligations of the Partners as set out in Schedule 9

**Financial Year:** 1 April to 31 March.

**First Financial Year:** 1 April 2013 to 31 March 2014.

**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

**Indirect Losses:** means indirect loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, loss of business revenue, loss of goodwill or any claim for consequential loss or for indirect loss of any nature.

**Individual Agreement:** the agreements made between each Post Holder, the Trust and the Authority describing the terms on which the Post Holder will be made available by the Trust to the Authority.

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

**Information Sharing Protocol:** the protocol describing how the Partners will share Information contained in a form approved by the partners under Schedule 8;

**Initial Term:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

**Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, any applicable judgement of a relevant court of law which

Schedule 3 (Authority Functions) of this Agreement) in relation to the provision of, or making arrangements for the provision of, the Services but excluding the Excluded Functions

**Authority's Authorised Officer:** Angela Dryer, Assistant Head of Social Care

**Authority's Financial Obligations:** the Authority's financial obligations are set out in Schedule 9.

**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 that impacts on the Partnership Arrangements and comes into force after the Commencement Date

**Commencement Date:** 1 July 2013

**Confidential Information:**

means all information, data and/or material of any nature which either Party may receive or obtain in connection with the operation of the Contract, including any information, data and/or material:

- (a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998);
- (b) the release of which is likely to prejudice the commercial interests of either Party;
- (c) which is a trade secret; or
- (d) is identified at the time of disclosure as being confidential.

**Council's Service User Records:** means the records created and maintained by the Authority pursuant to clause 23.2.

**Data Protection Legislation:** this includes:

- (a) the Data Protection Act 1998 (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.



is a binding precedent in England, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

**NHS Act 2006:** National Health Service Act 2006.

**NHS Body:** shall have the meaning set out in Regulation 3(1) of the NHS Regulations 2000.

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

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

**Ombudsman:** means the Health Service Ombudsman and the Local Government Ombudsman.

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

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

**Partnership Management Group:** the body of officers of the Trust and of the Authority appointed and with the powers and functions as more particularly described in Schedule 8 (Governance Arrangements).

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

**Post Holder:** the individuals identified in Schedule 6 and being the individuals who, as at the Commencement Date, are made available to the Authority by the Trust.

**Quarter:** 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 and/or the Trust.

**Relevant Transfer:** a relevant transfer under TUPE.

**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 Trust or the Authority before the Commencement Date or the Authority (or a third party commissioned by the Authority in order to facilitate the delivery of any of the Services by the Authority on behalf of the Partners) from the Commencement Date.

**Service User:** individuals who are eligible to receive the Services, as more particularly described in Schedule 5.

**Services:** the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in clause 7 and Schedule 5.

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

- (a) any extensions to this Agreement that are agreed under clause 4; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**Third Party:** means any party other than the Authority or the Trust.

**Trust's Authorised Officer:** Matthew Hall Associate Director

**Trust's Financial Obligations:** the Trust's financial obligations are set out in Schedule 9.

**Trust's Premises:** St James' Hospital, Locksway Road, Portsmouth & Block A, St Marys Community Campus, Portsmouth

**Trust's Service User Records:** has the meaning ascribed to the term in Clause 23.1

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**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".

**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. NHS SUCCESSOR BODIES**

- 2.1 The Partners acknowledge that the legal status, identity or constitution of the Trust as an NHS body may change during the Term, including, without limitation, the Trust becoming a foundation trust pursuant to the NHS Act 2006.
- 2.2 Without prejudice to Clause 38.2, the Partners shall use all reasonable endeavours to ensure that this Agreement continues to have effect notwithstanding any such change as is referred to in clause 2.1 including but not limited to reasonable endeavours to secure the novation of this Agreement to any successor body of the Trust where both Parties, acting reasonably, consider this necessary.

## **3. COMMENCEMENT AND DURATION**

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

## **4. EXTENDING THE INITIAL TERM**

The Partners may, by agreement made in writing, extend this Agreement for a period and on varied terms as they agree, beyond the Initial Term, subject to approval of the Partners' boards.

## **5. PARTNERSHIP ARRANGEMENTS**

- 5.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to provide integrated health and social care services to better meet the needs of the Service Users of Portsmouth than if the Partners were operating independently.
- 5.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.

- 5.3 The Partnership Arrangements shall comprise
- (a) the delegation by the Authority to the Trust of the Authority Health-Related Functions, so that it may exercise the NHS Functions alongside the Authority Health-Related Functions and act as integrated provider of the Services described in Schedule 5 on behalf of both Partners
  - (b) the establishment of an integrated adult mental health service operating under a single line management structure.
- 5.4 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.
- 5.5 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.

## **6. DELEGATION OF FUNCTIONS**

- 6.1 For the purposes of the implementation of the Partnership Arrangements, the Authority hereby delegates the exercise of the Authority's Health-Related Functions to the Trust to exercise alongside the NHS Functions and act as integrated provider of the health and social care elements relating to adult mental services.
- 6.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.

## **7. SERVICES**

- 7.1 The Trust is the Host Partner for the Partnership Arrangements, and agrees to act as provider of the Services referred to in clause 6.1.
- 7.2 The Trust shall provide the Services or procure that they are provided and shall be accountable to the Authority for the Authority's Health-Related 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 Authority's applicable policies set out in Schedule 5;
- (d) in accordance with its standing orders or other rules on contracting; and
- (e) in accordance with all applicable Law.

## **8. ANNUAL WORK PROGRAMME**

- 8.1 The Partners shall prepare a programme for each of the Services at least four weeks before the start of each Financial Year, which shall:
- (a) set out the agreed Aims and Outcomes for the specific Services;
  - (b) describe any changes or development required for the specific Services;
  - (c) provide information on how changes in funding or resources may impact the specific Services; and
  - (d) include details of the estimated contributions due from each Partner for each Service,
- 8.2 Each Annual Work Programme shall be initiated on the first day of the Financial Year to which it relates. Each Annual Work Programme will remain in place for a period of 12 months.
- 8.3 The Annual Work Programme may be varied by written agreement between the Partners during any Financial Year. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the Partners to make corresponding adjustments to the Trust's Financial Obligations and the Authority's Financial Obligations.
- 8.4 If the Partners cannot agree the contents of the Annual Work Programme, the matter shall be dealt with in accordance with clause 32. Pending the outcome of the dispute resolution process or termination of the Agreement under clause 32, the Partners shall make available amounts and, as the case may be, staff and other resources equivalent to the Financial Obligations for the previous Financial Year.

## **9. PERFORMANCE MANAGEMENT**

- 9.1 The Partners shall adhere to the performance management framework set out in internal policy documents as agreed between the Partners.
- 9.2 Without prejudice to the implementation of the performance management framework referred to in clause 9.1, in the event that the Authority has any concerns on the operation of the Arrangements of the standards achieved in connection with the carrying out of the Functions, it may convene a review with the Trust with a view to agreeing a course of action to resolve such concerns.

Nothing in this Clause shall prejudice the Authority's right to terminate this Agreement pursuant to clause 32.

#### 10. FINANCIAL OBLIGATIONS

The Partners' Financial Obligations in respect of the Partnership Arrangements shall be discharged in accordance with the arrangements set out in Schedule 9.

#### 11. CAPITAL EXPENDITURE

The Financial Obligations shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall be made separately and in accordance with section 256 (or section 76) of the NHS Act 2006.

#### 12. SET UP COSTS &

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

#### 13. PREMISES

13.1 The Trust shall make available the Trust's Premises to the Partnership Arrangements.

#### 14. STAFFING (TUPE, SECONDMENT AND PENSIONS)

14.1 The Partners have agreed that pursuant to arrangements under Section 113 of the Local Government Act 1972 the Post Holders will be made available by the ~~Trust to the Authority~~ in accordance with the terms of the Section 113 Agreement and the Individual Agreements and the Partners agree that TUPE will not apply on the commencement of this Agreement, during the Agreement Term or on the expiry of this Agreement (in whole or in part). However, if during the Term, TUPE operates so as to transfer the employment of a Post Holder from one Partner ("the Transferor") to the other Partner ("the Transferee") the Partners shall comply with:

- (a) their legal obligations under TUPE
- (b) if applicable, the Statement of Practice

14.2 The Partners agree that the provisions of Schedule 6 shall apply to any:

- (a) Relevant Transfer of staff under this Agreement; and
- (b) secondments of ~~Trust~~ staff to the ~~Authority~~ under arrangements pursuant to Section 113 of the Local Government Act 1972.

Authority to the Trust

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## 15. GOVERNANCE

- 15.1 The Partners agree that the arrangements specified in Schedule 8 shall have effect.
- 15.2 The Trust shall nominate the Trust's Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the Trust and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 15.3 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the Trust and shall be responsible for representing the Authority and liaising with the Trust's Authorised Officer in connection with the Partnership Arrangements.

## 16. QUARTERLY REVIEW AND REPORTING

- 16.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter in accordance with this clause 16.
- 16.2 The Trust's Authorised Officer shall submit a quarterly report to the Partnership Management Group setting out:
- (a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and
  - (b) any issues of concern in respect of the Financial Obligations.

## 17. ANNUAL REVIEW

- 17.1 The Partners agree to carry out a review of the Partnership Arrangements and progress against the Annual Work Programme (**Annual Review**) including:
- (a) the performance of the Partnership Arrangements against the Aims and Outcomes;
  - (b) the performance of the individual Services against the service levels and other targets contained in the relevant contracts;
  - (c) plans to address any underperformance in the Services;
  - (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.
- 17.2 The Trust shall prepare an annual report following the Annual Review for submission to the Partners' respective boards.

## **18. VARIATIONS**

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

## **19. STANDARDS**

- 19.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:
- (a) the service standards set out in Schedule 5;
  - (b) the prevailing standards of clinical governance;
  - (c) the Authority's standing orders; and
  - (d) the requirements specified by the Care Quality Commission and any other relevant Regulatory Body.
- 19.2 The Partners shall develop operational guidance and procedures to reflect compliance with clause 19.
- 19.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **20. HEALTH AND SAFETY**

- 20.1 The Trust shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services and persons working on the Services.
- 20.2 The Trust shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the Authority on request.
- 20.3 The Trust shall notify the Authority if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury, and the Trust shall ensure that its Representatives:
- (a) comply with any guidance provided by the Authority as to the form in which any notifications are to be made and provide any further information which the Authority may require in relation to the incident or accident;
  - (b) promptly notify the Authority and the Trust of such incident or accident and, where relevant, outline what action has been taken by the relevant member of staff as a result of the incident or accident; and



- (c) at the discretion of the Authority, carry out an investigation into the incident or accident and its causes and make the results available to the Authority or permit the Authority to carry out such investigation and fully co-operate with such investigation.

## **21. EQUALITY DUTIES**

- 21.1 The Partners acknowledge their respective duties under Equality Legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 21.2 The Trust agrees to adopt and apply policies in its carrying out of the NHS Functions and Authority Health-Related Functions, to ensure compliance with their equality duties under applicable provisions of Equality Legislation
- 21.3 The Trust shall take all reasonable steps to secure the observance of clause 21 by all servants, employees or agents of the Trust and all Service Providers employed in delivering the Services described in this Agreement.

## **22. 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.

## **23. DATA PROTECTION AND INFORMATION SHARING**

- 23.1 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, which shall include, without, limitation, ensuring that all Personal Data processed by its staff on behalf of and/or in the course of this Agreement, is processed in accordance with the provisions and principles of Data Protection Legislation.
- 23.2 Subject to applicable Law, the Partners shall share information about Service Users to improve the quality of care and enable integrated working.
- 23.3 The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement and the obligations referred to in Schedule 7 to this Agreement.

## 24. HEALTH AND SOCIAL CARE RECORDS

- 24.1 The Trust shall hold, and be responsible for maintaining and the safekeeping of the Authority's Service User Records for the Term, in accordance with Data Protection Legislation and which shall consist of all information relating to the social care interventions in relation to a Service User pursuant to the Authority's obligations under this Agreement;
- 24.2 The Trust shall be responsible for facilitating Service Users in accessing their Personal Data under the DPA 1998.
- 24.3 Upon the expiry or early termination of the term of the Agreement, the Partners shall work in good faith and cooperation in reaching an agreement as to whether Clause 24.4(a) or 24.4(b) shall apply to the Trust's Service User Records.
- 24.4 Subject to the agreement reached by the Partners pursuant to Clause 24.3, upon the expiry or early termination of the Agreement, the Trust shall either:
- (a) use its reasonable endeavours to provide copies of, and reasonable access to the Trust's Service User Records on receiving reasonable notice from the Authority; or
  - (b) transfer the Trust's Service User Records to the Authority or a replacement service provider designated by the Authority and the provisions of Clause 24.5 shall apply.
- 24.5 Where the Trust has complied with its obligations set out in Clause 24.4 (b), the Authority shall allow and procure that any new service provider allows the Trust access on reasonable notice to the Trust's Service User Records. The Trust shall, in such circumstances comply with its obligations under Data Protection Legislation.
- 24.6 The Trust's Service User Records and the Council's Service User Records shall be treated as confidential between the Partners. No copy, extract or summary of the Trust's Service Records and the Council's Service User Records, any part of them or any comment on them shall be supplied to any Third Party (other than in compliance with Law or for the purposes of obtaining legal advice) without the prior written approval of the Partners.

## 25. CONFIDENTIALITY

- 25.1 In respect of any Confidential Information it may receive from the other 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:

- (a) the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement; and
- (b) the provisions of this Clause 25 shall not apply to any Confidential Information which:
  - (i) is in or enters the public domain other than by breach of the Agreement or other act or omission of the Recipient; or
  - (ii) 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 by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

## **26. AUDIT**

- 26.1 The Trust shall arrange for the audit of the accounts of the Partnership Arrangements in accordance with its statutory audit requirements.
- 26.2 The Trust shall provide to the Authority any reports required concerning the Authority Health-related functions on reasonable notice and free of charge.
- 26.3 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.
- 26.4 The Authority shall during the Term of this Agreement provide to the Trust on reasonable notice access to all information, books, receipts and other records which the Trust may reasonably require in order to audit or otherwise verify the sums invoiced to the Trust under the arrangements set out in Schedule 9.
- 26.5 The Trust shall keep and maintain until 12 years after the end of the Term, or as long a period as may be agreed between the Partners, full and accurate records of the Agreement including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Trust shall on request and at its own expense afford the Authority or the Authority's Representatives such access to those records as may be requested by the Authority in connection with the Agreement.

## **27. INSURANCE**

- 27.1 Each Partner 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, which shall include without limitation, appropriate insurance arrangements in respect of employer's liability, liability to Third Parties and all other potential liability under this Agreement. The obligations in this Clause shall include insurance (or equivalent) arrangements after the date of the determination of this Agreement in respect of any events, acts or omissions prior to such determination.

- 27.2 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements.

## 28. INDEMNITIES

28.1 Nothing in this Agreement shall affect:

- (a) the liability of the Authority to the Service Users in respect of the Health-Related Functions; or
- (b) the liability of the Trust to Service Users in respect of the NHS Functions.

28.2 Each Partner (the "**Indemnifying Partner**") shall indemnify and keep indemnified the other Partner (the "**Indemnified Partner**") against all Direct Losses, whether arising in tort (including negligent act, or omission), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence act, omission, wilful default fraud or breach of statutory duty of itself or the Indemnifying Partner's Representatives arising out of or in connection with this Agreement, except to the extent that the loss or claim is directly caused by or directly arises from the negligent act or commission, breach of this Agreement, or applicable Law by the Indemnified Partner or its Representatives.

28.3 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 an indemnity claim under these provisions, the Indemnified Partner shall:

- (a) as soon as reasonably practicable give written notice of that matter to the Indemnifying Partner specifying in reasonable detail the nature of the relevant claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Indemnifying Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
- (c) give the Indemnifying 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.

## **29. LIABILITIES**

- 29.1 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.
- 29.2 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.
- 29.3 Neither Partner will be liable for any Indirect Losses suffered by the other Party whether such losses or the potential for such losses were made known to the Party or not and, other than in respect of death or personal injury or fraudulent misrepresentation.

## **30. COMPLAINTS AND INVESTIGATIONS**

- 30.1 Subject to the requirements of the Law or any NHSLA schemes to which the Trust is a member, within twelve (12) months of the Commencement Date, the Partners will develop and operate a joint complaints system. The application of a joint complaints system will be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.
- 30.2 Prior to the development of a joint complaints system or after the failure or suspension of any such joint complaints system the following will apply:
  - (a) all complaints received in connection with the Services or the exercise of the Functions by one Partner shall be reported to the other Partner. The Partner in receipt of the complaint shall provide the other Partners with such detail regarding the complaint as the other Partners may reasonably require (and insofar as it is lawfully able to do so);
  - (b) where a complaint wholly [or in part] relates to one or more of the NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the Trust and the Trust will ensure that the Council is kept informed about the conduct of any complaint that it is managing, administering, investigating and defending pursuant to this Clause;
  - (c) where a complaint wholly relates to one or more of the Authority's Health Related Functions, it shall be dealt with in accordance with the statutory

complaints procedure of the Authority and the Authority will ensure that the Trust is kept informed about the conduct of any complaint that it is managing, administering, investigating and defending pursuant to this Clause;

- (d) where a complaint relates partly to one or more of the Authority's Health Related Functions and partly to one or more of the NHS Functions, then a joint response will be made to the complaint by the Authority and the Trust, in line with local joint protocol;
- (e) where a complaint cannot be handled in any way described above or relates to the operation of this Agreement, then the Partnership Management Group will set up a complaints group with equal representation from both Partners to examine the complaint and recommend remedies. All complaints shall be reported to the Authorised Officers.

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

30.4 During the Term:

- (a) the Trust shall remain accountable (including (without limitation) and at the Trust's own cost, responsibility for the management, administrative, investigation and defence) for any complaint arising out of or in connection with the provision of the Services prior the Commencement Date, and the joint protocol developed pursuant to clause 30.1 will include provision to deal with any such complaints that relate to the Services with which the Authority had involvement prior to the relevant Commencement Date; and
- (b) each Partner agrees not to act in a manner prejudicial to the reputation of the other Partner and the both Partners agree to co-operate with each other in the performance of their respective obligations under this clause 30 in accordance always with their statutory obligations and applicable government guidance.

## 31. HEALTHWATCH

31.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.

31.2 The Trust shall ensure the effective discharge of its obligations to HealthWatch

## **32. DISPUTE RESOLUTION**

- 32.1 In the event of a dispute between the Partners arising out of this Agreement, either Partner may serve written notice of the dispute on the Partnership Management Group, setting out full details of the dispute.
- 32.2 The members of the Partnership Management Group shall meet as soon as possible and in any event within seven (7) days of notice of the dispute being served pursuant to clause 32.1 at a meeting convened for the purpose of resolving the dispute and use its best endeavours to resolve dispute.
- 32.3 If any dispute referred to the Partnership Management Group is not resolved within 15 Working Days of the dispute being referred to it, either Partner, by notice in writing to the other, may refer the dispute to the chief executives of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within 20 Working Days of service of the notice.
- 32.4 If within the allotted time the processes set out in clauses 32.2 and 32.3 do not resolve such dispute to the satisfaction of both Partners either Partner may refer any dispute to an adjudicator.
- 32.5 If the Partners are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either Partner for such an appointment then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the Partners agree to accept such appointment.
- 32.6 Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the Dispute being referred to such adjudicator, and costs shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the parties in equal proportions PROVIDED ALWAYS that the Partners agree that no decision or determination of an adjudicator under this clause 32.5 shall be final and binding upon them.
- 32.7 This clause 32 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 32 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

## **33. TERMINATION**

- 33.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 33.2, 33.3 or 33.4, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner

- 33.2 Subject to clause 33.3, either Partner may terminate this Agreement at any time by giving 6 months' written notice to the other Partner, if for budgetary reasons:
- (a) it is no longer able to meet its Financial Obligations or otherwise contribute sufficient resources to the Partnership Arrangements (or any part of them); or
  - (b) it is of the reasonable opinion that in light of the other's inability or failure to meet its Financial Obligations in whole or in part the Partnership Arrangements (or any part of them) are no longer viable.
  - (c)
- 33.3 Either Partner (for the purposes of this clause 33.3, the **First Partner**) may terminate this Agreement on one calendar month's written notice by the service of written notice on the other Partner (for the purposes of this clause 33.3, the **Second Partner**) in the following circumstances:
- (a) 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 34.3, 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;
  - (b) there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or
  - (c) following a failure to resolve a dispute under clauses 32.
- 33.4 Unless the Partners otherwise agree, this Agreement will automatically expire or, as the case may be, terminate on the date of expiry.
- 33.5 The provisions of clause 33 shall apply on termination of this Agreement.
- 33.6 For the avoidance of doubt, the termination of this Agreement and the Partnership Arrangements made under it shall not preclude the Partners from entering into alternative arrangements for the commissioning and provision of the NHS Functions relating to learning disability services.

#### **34. CONSEQUENCES OF TERMINATION**

- 34.1 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 prepared by the Partnership Management Group;
  - (b) premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;



- (c) assets purchased for use for the purposes of the Partnership Arrangements shall unless otherwise agreed by the Partners be returned to the Partner from whose financial contribution or other resource the purchase was made;
- (d) contracts entered into by the Trust concerning the Authority Health-related Functions shall be novated to the Authority and the Authority shall accept the novation; and
- (e) the Trust shall transfer to the Authority all records in its possession relating to the Authority Health-related Functions.

34.2 The expiry or termination of this Agreement shall be without prejudice to any of the rights or remedies that have accrued to whichever Partner under this Agreement and shall have no effect on the liability of either Partner to make payment of any sums due under this Agreement, prior to the date upon which such termination takes effect.

34.3 Upon the expiry or termination of this Agreement, the Partners shall:

- (a) work together to wind down and disaggregate all arrangements made pursuant to this Agreement, and shall in so doing ensure a minimal disruption and impact on Service Users and the Partners; and
- (b) work together to ensure an orderly handover in relation to all aspects of the Functions and shall at all times act in such a manner as not to adversely affect the delivery of the Services

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

- (a) Clause 22 "Freedom of Information"
- (b) Clause 23 "Data Protection and Information Sharing"
- (c) Clause 26; "Audit"
- (d) Clause 28; "Indemnities"
- (e) Clause 29; "Liabilities" and
- (f) Clause 34; "Consequences of Termination"

## **35. 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.

### **36. NO PARTNERSHIP**

- 36.1 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.
- 36.2 Neither Partner nor any of its employees or agents will have the power to make any representations or give any warranties to Third Parties on behalf or in respect of the other Partner, nor bind the other Partner in any way.

### **37. THIRD PARTY RIGHTS**

- 37.1 It is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

### **38. NOTICES**

- 38.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the chief executive 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.
- 38.2 Notices may be sent by first class mail or facsimile transmission, provided that facsimile transmissions are confirmed within 24 hours by first class mailed confirmation of a copy. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

### **39. ASSIGNMENT AND SUBCONTRACTING**

- 39.1 Subject to clause 39.2, this Agreement and any right and conditions contained in it may not be assigned, sub contracted or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.
- 39.2 Pursuant to clause 2.2, the Partners recognise the changing landscape of the NHS and agree that the Trust shall be entitled to novate, assign or transfer in whole or in part the benefit and burden under this Agreement to any other NHS organisation, statutory successor in title of all or part of its functions, property, rights and liabilities, or any other entity replacing the Trust or who has become responsible for the exercise of any or all of the NHS Functions and that consent shall not be required from the Authority for any such transfer (including an

assignment or sub-contract). The Authority shall do all that is required to assist such transfer and/or enable it to come into effect.

**40. 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.

**41. WAIVER**

41.1 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.

41.2 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.

**42. 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.

**43. GOVERNING LAW AND JURISDICTION**

Subject to clause 32, this Agreement any dispute or claim arising out of or in connection with it or its subject matter, and any non-contractual obligations arising out of or in connection with it, 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 (including non-contractual disputes or claims).

**44. 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.

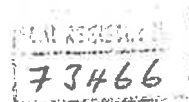
**45. CONFLICTS OF INTEREST**

45.1 Each Partner shall perform their obligations under this Agreement in the best interests of the other Partner, and shall notify the other Partner of any conflicts of interests as they arise during the Term.

**46. COUNTERPARTS**

This Agreement may be executed in one (1) or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by both Parties shall constitute a full original of this Agreement for all purposes.

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



**EXECUTED AS A DEED** on behalf of the Authority

**THE COMMON SEAL** of PORTSMOUTH )  
CITY COUNCIL was hereunto affixed in )  
pursuance of a resolution of the Council )  
passed at a meeting duly convened and held:- )

Authorised Signatory

**EXECUTED AS A DEED** on behalf of the Trust

**THE COMMON SEAL** of SOLENT NHS )  
TRUST was affixed to this )  
Deed in the presence of:- )



## **Schedule 6 Human Resources**

### **1. STAFF DETAILS**

- 1.1 A database exists which lists all of the seconded staff from the Authority to the Trust for it to manage and direct as a part of the arrangements. This database shall be held and updated by the HR Department of the Authority.
- 1.2 A database exists which lists all of the staff of the Trust for it to manage and direct as a part of the arrangements. This database shall be held and updated by the HR Department of the Trust.
- 1.3 The secondment agreement will be in place up to and including the 31<sup>st</sup> March 2016

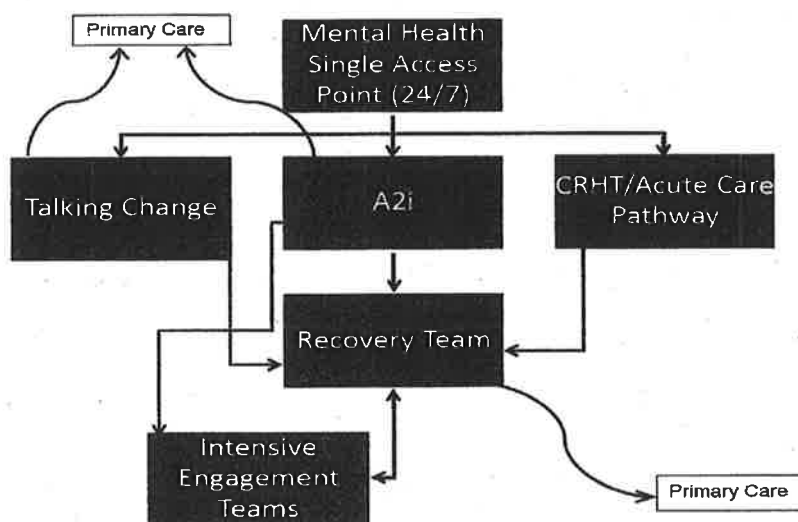
### **2. SECONDMENT ARRANGEMENTS**

- 2.1 The seconded staff will have all seen and signed acceptance of the Secondment Agreement (Appendix 1).
- 2.2 The Trust will follow the employee organisation's policies and procedures for all seconded staff where those policies and procedures and any updates thereto have been notified to the Trust. Authority HR staff will provide support as necessary to execute these policies and the process of HR management.
- 2.3 The Trust will use its best endeavours to ensure that all managers of seconded staff attend management training and updates provided by the Authority especially in relation to the Authority's policies & procedures.
- 2.4 The Authority will ensure all seconded staff are kept informed and up-to-date with Authority policies and procedures applicable to them.

### **3. STAFF ROLES INCLUDED IN THE AGREEMENT**

**3.1 Table of posts currently included in the agreement (either currently employed or vacancies to be recruited to)**

Access to services through Mental Health Single Point of Access



- Section 136 Place of Safety
- Care management of dual diagnosis (with substance misuse) clients

A full description of these services can be found in the Service Level Agreement which is subject to annual review.

2.5 The Services will be provided in a non-discriminatory manner, which is sensitive to the needs of, and accessible to, all sections of the local community, responsive to language and literacy difficulties and the cultural needs of the community.

2.6 The Services will be provided from a number of community bases as listed at paragraphs 7.1 and 7.2 of Schedule 5 and on an outreach basis

### **3. Access to Adult Mental Health Services**

3.1 Access to Adult Mental Health Services (see Appendix 1)



## Schedule 5 Service Specification

1. The Services will be provided for residents of Portsmouth City who are:-

- Ic  
NL
- Adults (aged 18 – 65 years) who meet the eligibility criteria for any of the services described in Section 2.1
    - For the Early Intervention in Psychosis Service, the age eligibility criteria is 14 – 35 yrs
    - Existing service users over 65 years of age will receive services that are most appropriate for their health and social care needs irrespective of their age.

People living outside Portsmouth City but within Portsmouth Clinical Commissioning Group's registered GP population will continue to be provided with a service at no additional cost to the Authority.

2. The Services to be provided comprise of:

- Primary care screening assessment & short term interventions (provision of information, advice and signposting)
- Secondary care assessment and short-term interventions (up to 6 months)
- Management of those service users with complex needs, or high risk levels, via the Care Programme Approach
- Medication clinics and symptom & side effect monitoring
- Consultant led Outpatient Clinics
- 24 hour Crisis Resolution and home treatment, as an alternative to hospital admission.
- Housing related support: securing and sustaining accommodation
- Approaches to treatment delivery for people requiring "Assertive outreach"
- Evidenced based care delivery (up to 3 years duration) for those people at risk of developing psychosis who are between the ages of 14 and 35 and have had two or fewer episodes.
- Assessment, ongoing support and joint case holding with other secondary care services of Mentally Disordered Offenders i.e. anyone arrested for an offence and believed to be suffering from any form of mental disorder including mental illness, learning disability, acquired brain injury and personality disorder
- Personal and spiritual support to Service Users, carers / family and Staff, provided by facilitating links with community faith organisations.
- Community development focussing on improving mental health commissioning, access and outcomes for all ethnic communities
- Oakdene: rehabilitative inpatient unit
- The Orchards: intensive care and acute inpatient units
- Day treatment
- Mental Health Act Administration
- Psychological therapies in both individual and group settings
- Occupational therapy as part of integrated multidisciplinary teams
- Professional leadership in each key discipline (including Social Care Leadership)

#### Schedule 4 Excluded Functions

1. Excluded pursuant to the Regulations:
    - 1.1 The Trust Functions shall not include the following:
      - 1.1.1 surgery;
      - 1.1.2 radiotherapy;
      - 1.1.3 termination of pregnancies;
      - 1.1.4 endoscopy;
      - 1.1.5 the use of Class 4 laser treatments and other invasive treatments; and
      - 1.1.6 emergency ambulance services, and
    - 1.2 The Authority Functions shall not include any functions pursuant to the following:
      - 1.2.1 subject to Regulation 6(k) of the Regulations, sections 22, 23(3), 26(2) to (4), 43, 45 and 49 of the National Assistance Act 1948;
      - 1.2.2 section 6 of the Local Authority Social Services Act 1970;
      - 1.2.3 section 3 of the Adoption and Children Act 2002;
      - 1.2.4 sections 114 and 115 of the Mental Health Act 1983;
      - 1.2.5 section 17 of the 1983 Act; and
      - 1.2.6 Parts VII to IX and section 86 of the Children Act 1989,
- or any other functions that are specified in the Regulations as amended from time to time as being excluded from section 75 arrangements.
2. To avoid doubt, all functions that are not specified as either Trust Functions in Schedule 2 or as Authority Functions in Schedule 3 of this Agreement shall be Excluded Functions.
  3. For the purposes of this Schedule 4, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions as may come into force from time to time whether prior to or following the Commencement Date.

2.12 Where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of a service under any enactment mentioned in section 17(2)(a) to (c) of the 1983 Act, the function of charging for that service under that section;

2.13 the functions of local authorities under or by virtue of sections 2B or 6 (C) (1) of, or Schedule 1 to, the NHS Act 2006

2.14 Any such additional functions as may be:

2.14.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 3 to the Authority; or

2.14.2 agreed by the Parties from time to time to be Authority Functions for the purposes of this Agreement.

3 For the purposes of this Schedule 3, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions as may come into force from time to time whether prior to or following the Commencement Date.

### **Schedule 3 Authority Functions**

1. The provisions of this Schedule 3 are subject to the provisions of Schedule 5 (Service Specification).
2. The Authority Functions comprise the making of arrangements for the provision of the Services, to the extent that such functions are relevant to and promote the welfare of the Service Users, and excepting the Excluded Functions listed in Schedule 4, specifically:
  - 2.1 The functions specified in Schedule 1 to the Local Authority Social Services Act 1970;
  - 2.2 The functions under sections 7 or 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 except in so far as they assign functions to a local authority in their capacity of a local education authority;
  - 2.3 The functions of providing, or securing the provision of recreational facilities under section 19 of the Local Government (Miscellaneous Provisions) Act 1976;
  - 2.4 The functions of local education authorities under the Education Acts as defined in section 578 of the Education Act 1996;
  - 2.5 The functions of local housing authorities under Part I of the Housing Grants, Construction and Regeneration Act 1996 and under Parts VI and VII of the Housing Act 1996;
  - 2.6 The functions of local authorities under section 126 of the Housing Grants, Construction and Regeneration Act 1996;
  - 2.7 The functions of waste collection or waste disposal under the Environmental Protection Act 1990;
  - 2.8 The functions of providing environmental health services under sections 180 and 181 of the Local Government Act 1972;
  - 2.9 The functions of local highway authorities under the Highways Act 1980 and section 39 of the Road Traffic Act 1988;
  - 2.10 The functions under section 63 (passenger transport) and section 93 (travel concession schemes) of the Transport Act 1985;
  - 2.11 Where partners enter into arrangements under regulation 7(1) or 8(1) in respect of the provision of accommodation under sections 21 or 26 of the 1948 Act, the function of charging for that accommodation under section 22, 23(2) or 26 of that Act;

## Schedule 2 Trust Functions

1. The provisions of this Schedule 2 are subject to the provisions of Schedule 5 (Service Specification).
2. The **Trust Functions** comprise the making of arrangements for the provision of the Services, but only to the extent that such functions are relevant to and promote the welfare of the Service Users; and excepting the Excluded Functions listed in Schedule 4, specifically: -
  - 2.1 functions under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1, to the NHS Act 2006, including rehabilitation services and services intended to avoid admission to hospital;
  - 2.2 functions under sections 117 and 130A of the Mental Health Act 1983;
  - 2.3 functions under Schedule A1 of the Mental Capacity Act 2005;
  - 2.4 functions under section 12A(1) of the NHS Act 2006 (direct payments for health care) and;
  - 2.5 functions under regulation 2(7) of the NHS (Direct Payments) Regulations 2010 and
  - 2.6 any such additional functions as may be:
    - 2.6.1 specified in the Directions from the Secretary of State for Health and subject to the Secretary of State approving the transfer of the Functions described in this Schedule 2 to the Authority; or
    - 2.6.2 agreed by the Parties from time to time to be Trust Functions for the purposes of this Agreement.
3. For the purposes of this Schedule 2, reference to legislation and provisions within such legislation mirrors the references contained in the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as at the Commencement Date, and shall be deemed to include any and all replacement and amending legislation and provisions that may come into force from time to time whether prior to or following the Commencement Date.

4.1 Key objectives for service improvement for Adult Mental Health shall include:

- Ensuring that service users with "lead professional" only involvement have a regular comprehensive assessment of their social care needs. (Audit sample size 50, bi-annually, compliance 90%)
- Care plans that include carers as partners in delivery should contain contingency plans that address the eventuality of carers being unable to provide this role. (Audit sample size 50, bi-annually, compliance 90%)
- Take up of direct payments and individual budgets to be raised to median ONS levels by April 2015.

## 5. Standards for Services

5.1 Standards for Services are as follows:-

- An agreed set of operational policies and procedures that will provide a robust framework for practice/service delivery
- All Staff will adhere to agreed clinical / practice policies. These will be agreed and implemented across both Partner organisations (where possible).
- Ensure the sustained delivery of "Essential Standards of Quality and Safety" (CQC 2010)
- To have a robust Clinical Governance framework to ensure the provision of high quality, safe Services.

## 6. Review

A strategic and financial annual review of these objectives will be coordinated by the s75 lead Manager in accordance with Clause 17 of this Agreement and incorporated in an Annual Report

### **3. Key Aims & Objectives**

3.1 A service level agreement will be entered into between the Council and the Trust which will contain detailed service specifications of the range and type of Services to be provided and set out the key performance targets and outcome measures to be delivered (the 'Service Level Agreement'). These performance targets summarised below are the key aims and objectives of this Agreement:

- **Assertive Outreach:** To provide proactive, intensive and persistent contact and follow-up for Service Users who have a history of disengagement with Adult Mental Health services. (Target caseload of 76)
- **Crisis Resolution and Home Treatment:** To provide an assessment and intensive home treatment service for Service Users in mental health crisis to prevent acute admission. (Target of 379 home treatment episodes per year)
- **Early Intervention in Psychosis:** To provide treatment and interventions for people between the ages of 14 and 35 with a first episode of psychosis or those at risk of developing psychosis. (Target of 23 new cases per year)
- 95% of Service Users discharged from inpatient care receive face to face or telephone contact within 7 days of discharge
- 70% of service users have a care plan that demonstrates their choice and control over the service provided.
- 15% of service users have a carer recorded as having a carers assessment, where the outcome recorded is "service provided" or "advice given".
- 60% of adults on CPA have "settled accommodation" (MHMDS definition)
- 3% of adults on CPA will be recorded as being "in employment" (MHMDS definition).
- Delayed transfers of care for adults receiving inpatient services will remain below 7.5%.

### **4. Service Improvement Objectives**

In addition to meeting all the requirements of the Service Level Agreement, the following service improvement objectives will be met. These will be reviewed and updated as part of the annual review process

- Ensure equality of access for all groups in the community, including socially excluded groups and black and minority ethnic communities
- To pro-actively encourage, facilitate and support the engagement and involvement of Service Users and carers in the planning, design and review of services
- To work in partnership with local agencies that provide:
  - ❖ Advocacy services
  - ❖ Employment, training and volunteering opportunities
- To work within a robust legal and governance framework to ensure the delivery of the key aims and objectives (listed in paragraph 3 of this schedule) and the service improvement objectives (listed in paragraph 4 of this schedule) of this Agreement

## **2. Principles and Approach to Delivery**

2.1 The Principles and Approach to Delivery shall address the need for:-

- Developing a range of high quality services that meet the health and social care needs of the local population, as commissioned by NHS Portsmouth Clinical Commissioning Group and Portsmouth City Council.
- Providing the Services in a more co-ordinated way by enabling Staff to work within a single management structure for each Service, and by arranging provision from a single statutory provider
- The development of person centred care pathways for mental health and substance misuse based on models of recovery and the promotion of independence
- Care and treatment should be evidence based and monitored through robust clinical governance arrangements to ensure the effectiveness and quality of Service provision
- Clarity of provision and ease of access to specialist services for Service Users and carers
- Operating an appropriate single process to assess the needs of Service Users, to manage and deliver Services, and to eliminate duplication and anomalies in provision
- Ensuring the most efficient and effective use of resources



## Schedule 1 Aims and Outcomes

### 1. Introduction: Description and Purpose of Agreement

#### 1.1 The overarching strategic aim of this Agreement is:-

To ensure the integrated provision of high quality, cost effective mental health which meet local health and social care needs, through the establishment of a single line management structure whereby each party contributes staff and shared costs; under Section 75 of the National Health Service Act 2006 from 1<sup>st</sup> July 2013

#### 1.2 This will enable both parties of this Agreement to:

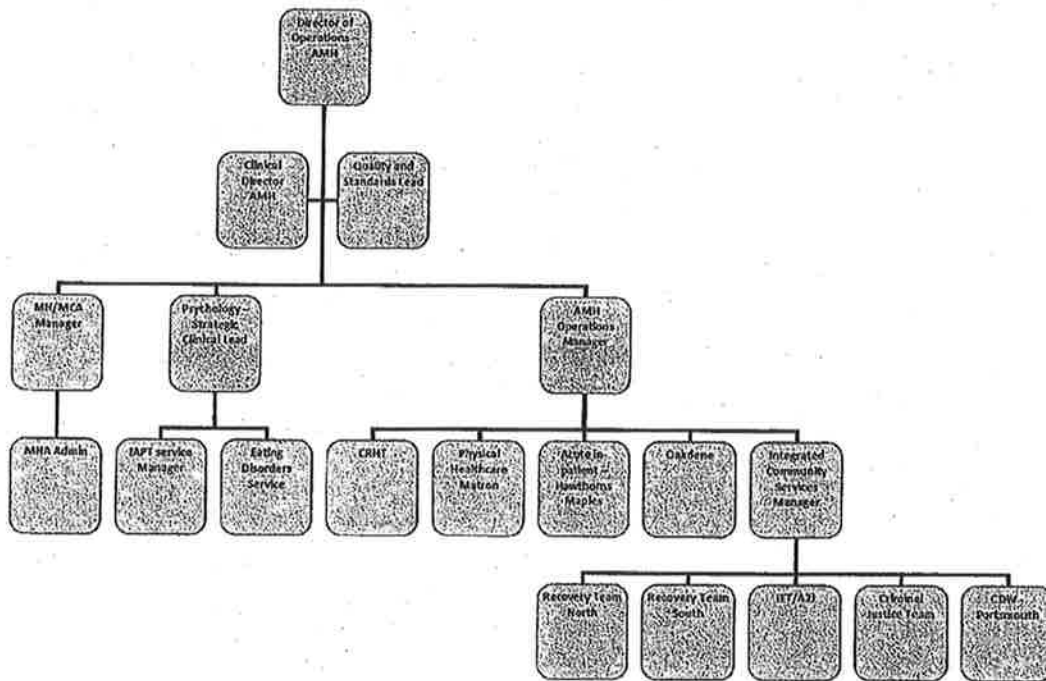
- Effectively assess, treat and support vulnerable adults with and mental health problems to improve their health, social and psychological functioning
- maximise the efficiency of mental health services for working age adults through integrated provision and the effective use of the resources committed by both parties under the terms of the Agreement
- To facilitate the delivery of "No Health without Mental Health" – Mental Health Outcomes Strategy, "Preventing Suicide in England", "The Adult Social Care Outcomes Framework", "Caring for our Future", "Think Local, Act Personal" and other national directives and policy as they emerge
- Improve the overall quality of Service provision in line with evidence based practice
- Ensure the provision of accessible Services, which are flexible and responsive to the needs of local Service Users
- Facilitate joint working and the seamless provision of Services through a single management structure
- Improve the strategic planning and delivery of Services in line with national and local policy, to meet commissioning priorities and deliver key performance targets
- Develop and deliver an integrated workforce strategy, and implement new ways of working in line with best practice
- To provide a comprehensive Staff training and development programme to ensure that Staff are appropriately trained and qualified to provide high quality, safe services, and have opportunities for continuous professional development and career progression.



<b>ROLE</b>	<b>FTE</b>	<b>GRADE</b>
<b>TRUST EMPLOYED STAFF</b>		
<b>OPERATIONS DIRECTOR</b>	<b>1.0</b>	<b>8D</b>
<b>HEAD OF SERVICE</b>	<b>1.0</b>	<b>8C</b>
<b>PSYCHOLOGICAL THERAPIES STRATEGIC LEAD</b>	<b>1.0</b>	<b>8C</b>
<b>QUALITY AND STANDARDS LEAD</b>	<b>1.0</b>	<b>8B</b>
<b>IAPT CLINICAL AND SERVICE LEAD</b>	<b>1.0</b>	<b>8B</b>
<b>PHYSICAL HEALTHCARE MATRON</b>	<b>1.0</b>	<b>8A</b>
<b>MODERN MATRON</b>	<b>2.0</b>	<b>8A</b>
<b>CRHT MANAGER</b>	<b>1.0</b>	<b>8A</b>
<b>MHA/MCA LEAD</b>	<b>1.0</b>	<b>8A</b>
<b>TEAM/WARD MANAGERS</b>	<b>7.0</b>	<b>7</b>
<b>MEDICAL STAFF</b>	<b>13.75</b>	
<b>PSYCHOLOGISTS</b>	<b>20</b>	<b>7/8A</b>
<b>IAPT THERAPISTS</b>	<b>28.39</b>	<b>6/7</b>
<b>NURSES</b>	<b>80.5</b>	<b>5/6</b>
<b>OCCUPATIONAL THERAPISTS/ OT SUPPORT STAFF</b>	<b>20.54</b>	<b>3/4/5/ 6/7</b>
<b>HCSW/STR</b>	<b>56.95</b>	<b>2/3</b>
<b>ADMINISTRATIVE STAFF</b>	<b>32.81</b>	<b>2/3/4</b>
<b>TOTAL TRUST ESTABLISHMENT</b>	<b>269.94</b>	

<b>SOCIAL CARE SECONDED STAFF</b>		
<b>INTEGRATED TEAM MANAGER</b>	<b>1.0</b>	
<b>COMMUNITY DEVELOPMENT WORKERS</b>	<b>3.09</b>	
<b>QUALIFIED SOCIAL WORKERS</b>	<b>17.98</b>	
<b>SOCIAL CARE SUPPORT STAFF</b>	<b>2.22</b>	
<b>ADMINISTRATIVE</b>	<b>2.77</b>	
<b>TOTAL SOCIAL CARE ESTABLISHMENT</b>	<b><u>27.06</u></b>	
<b>TOTAL S75 STAFF</b>	<b>297</b>	

### 3.2 Service Structure – s75



#### **4. STAFF ROLES EXCLUDED FROM THE AGREEMENT**

4.1 The delivery of the Approved Mental Health Practitioner (AMHP) role is specifically excluded from this agreement. Any practitioner employed or contracted by the council to undertake the AMHP role is not subject to secondment, nor included in the terms of this agreement for the periods of time that they are undertaking the AMHP function.

#### **5. VARIATION TO THE STAFFING ESTABLISHMENT**

5.1 The Partners may wish to vary the staffing establishment detailed in 4 from time to time.

5.2 Variations to the staffing establishment will be discussed and agreed by the Partnership Management Group and the Service Monitoring Group.

Appendix 1

## **DRAFT SECONDMENT AGREEMENT TO BE SIGNED BY STAFF MEMBER**

Dear

### **CONFIRMATION OF SECONDMENT**

I am pleased to confirm the details of your secondment to the post of {job title} based in the Integrated Adult Mental Health Service at the St Marys Community Campus / St James Hospital

This Secondment is entered as a consequence of an Agreement between the Portsmouth City Council ("the Council") and Solent NHS Trust dated 1 July 2013 under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of adult mental health services. Portsmouth City Council has agreed to second their Employees to the Trust on the terms of this Agreement.

#### **1. DETAILS OF SECONDMENT**

1.1 With effect from 1<sup>st</sup> July 2013 Council shall second you to the Trust on the terms of this Agreement. Subject to earlier termination as provided for in this Agreement, the secondment will continue until the 30 June 2016 during the period of the s75 Agreement provided that you remain employed by the Council.

1.2 During the Secondment, you shall be located at (insert base) where you shall act and perform the duties as set out in your contract of employment with the Council. However it is recognised that in order to meet changes in service provision this location and role may change over time. You will be consulted in relation to any proposed changes to either location or role.

#### **2. CONDITIONS OF SECONDMENT**

2.1 Your Terms and Conditions of Employment with the Council shall remain in force during the Secondment period.

2.2 Your existing Job Description, a copy of which is attached, applies at present. Any changes will be subject to consultation with you and the Trade Unions.

2.3 Solent NHS Trust and the Council agree that you shall remain an employee of the Council at all times and shall not be deemed to be an employee of the Trust by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Trust.

2.4 Your continuity of service with the Council will be preserved for both statutory and contractual purposes during the period of secondment

#### **3 LEAVE**

3.1 The Trust will inform the Council of any absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is your responsibility to follow the Council's sickness absence reporting procedures at all times.

3.2 You shall be entitled to holiday during the period of secondment in accordance with your terms and conditions of employment with the Council.

#### **4 HEALTH AND SAFETY**

Appendix 1

## **DRAFT SECONDMENT AGREEMENT TO BE SIGNED BY STAFF MEMBER**

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3.2 You shall be entitled to holiday during the period of secondment in accordance with your terms and conditions of employment with the Council

### **4 HEALTH AND SAFETY**



4.1 The Trust shall ensure that you observe its health and safety policies and procedures and maintain a safe method of working. 4.2 As an employee, you are required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for your own Health and Safety and that of others who may be affected by your acts or omissions at work.

#### **CONFLICTS OF INTEREST**

5.1 You must declare and seek agreement from the Council and your line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

#### **RESPONSIBILITY FOR RESOURCES**

6.1 Where applicable: Where you are responsible for the management of Trust's budgets and/or the procurement of equipment and services you should follow the Trust's Financial Rules and associated procedures. You will need to ensure that you read and understand these fully prior to the secondment arrangements being implemented.

6.2 In undertaking such duties you should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money.

#### **7 PAYMENT OF SALARIES AND EXPENSES**

7.1 You will continue to be paid by the Council in accordance with your terms and conditions of employment for the duration of the secondment.

7.2 It is agreed that the Council shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to you for the provision of services to the Council under this Agreement.

7.3 Any salary increments applicable to your substantive post with the Council will continue to apply.

#### **8 HUMAN RESOURCES SERVICES**

8.1 After 1<sup>st</sup> July 2013 the Council will continue to provide advice to you on Council policies including but not limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service.

8.2 The Council will be responsible for ensuring you are kept updated with all changes to Council policies and procedures, although this may be communicated to you through Trust staff.

8.3 During the Secondment Period, the Trust, in consultation with the Council's Human Resources Department shall implement the Council's policies and procedures in respect of you as an employee, so far as they comply with current employment legislation.

8.4 The Council authorises the Trust to take action in respect of you as an employee pursuant to the Council's Disciplinary Policy save for any action, which could result in your dismissal. In such circumstances the Council shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

8.5 The Trust may, should it consider necessary to do so, place you on special precautionary leave in accordance with the Council's Disciplinary Policy and in consultation

**ACCEPTANCE**

Please confirm your acceptance of the terms of the secondment set out above by completing and returning the acceptance form enclosed with this letter.

Yours sincerely

Appendix 2

## **SECONDMENT AGREEMENT**

**THIS SECONDMENT AGREEMENT** is made on ..... between: -

(1) Portsmouth City Council of Civic Offices, Guildhall Square, Portsmouth PO1 2EP ("The Employer")

(2) Solent NHS Trust Central Office, Adelaide Health Centre, William Macleod Way, Southampton SO16 4XE ("the Trust")

### **1. INTRODUCTION**

1.1 This Secondment Agreement is entered into under section 113 of the Local Government Act 1972 as a consequence of an Agreement between the Employer and the Trust dated 1 July 2013 under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the integration of adult mental health services.

1.2 The Employer has agreed to second their Employees (as detailed in Appendix 1) to the Trust on the terms of this Secondment Agreement.

### **2 SECONDMENT**

2.1 With effect from 1<sup>st</sup> July 2013 the Employer shall second the Employees to the Trust on the terms of this Secondment Agreement. Subject to earlier termination as provided for in this Secondment Agreement, the secondment will continue up to and including the 30 June 2016 ("the Secondment Period").

2.2 During the Secondment, the Employees shall be located at St James Hospital, Locksway Rd, or St Marys Community Campus, Portsmouth where he/she shall act and perform the duties as set out in the Employee's contract of employment with the Employer. However it is recognised that in order to meet changes in service provision this location and role may change over time. The Employees will be consulted in relation to any proposed changes to either location or role.

### **3 CONDITIONS OF SECONDMENT**

3.1 The Employee's Terms and Conditions of Employment with the Employer shall remain in force during the Secondment Period.

3.2 The Employees' existing Job Description applies at present. Any changes will be subject to consultation with the Employee and Trade Unions.

3.3 The Employees shall remain an employee of the Employer at all times and shall not be deemed to be an employee of the Trust by virtue of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Trust.

3.4 The Employees' continuity of service with the Employer will be preserved for both statutory and contractual purposes during the period of secondment.

### **4 LIABILITY AND INDEMNITIES**

4.1 The Employer shall indemnify and keep indemnified, the Trust in relation to any claims, charges or liabilities for (including but not limited to) any income tax, Employee National Insurance or similar contributions (including costs interests and penalties), or other statutory charges or remuneration or other compensation arising from or in relation to the services by

the Employee under this Secondment Agreement or the Employee being found to be an Employee of the Trust or otherwise. The Trust agrees to notify the Employer of any such claims charges or liabilities received by the Trust.

4.2 The Trust shall not be liable for any act or omission on the part of the Employee during the Secondment and shall incur no liability for loss, damage or injury of whatever nature sustained by the Employee during the Secondment.

4.3 The Employer hereby indemnifies the Trust against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages and demands arising out of or resulting from breach of this Secondment Agreement or any act or omission or default of the Employee including without limitation:

4.3.1 Any loss of or any damage to any property;

4.3.2 All financial loss;

4.3.3 Those resulting from any breach by the Employee of any intellectual property rights owned by the Employer or a third party;

4.3.4 Injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Employee, whether resulting in material or financial loss or damages or death or injury to persons or any other loss or damage whatsoever;

4.3.5 Any and all liability arising from any breach of the provisions of the Data Protection Act 1998 by the Employee.

4.4 The Employer hereby indemnifies the Trust against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Employer which are attributable to any act or omission by the Employer any other person for whom the Employer are liable arising out of:-

4.4.1 The employment or termination of employment of the Employee during the Secondment; or

4.4.2 The engagement or termination of engagement of the Employee under the terms of this Secondment Agreement during the Secondment; or

4.4.3 Any breach by the Employer of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

4.5 The Trust shall indemnify the Employer against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Employer which are attributable to any act or omission by the Council or any other person for whom the Trust are liable arising out of:-

4.5.1 Any breach by the Trust of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee

4.5.2 Any breach by the Trust of any disciplinary, grievance or other employee related rules and procedures during the Secondment including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy redeployment costs, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

## 5 CONDUCT OF CLAIMS

5.1 If the Trust becomes aware of any matter that may give rise to a claim against the Employee and/or the Employer, notice of that fact shall be given as soon as possible to the Employer.

5.2 Without prejudice to the validity of the claim or alleged claim in question, the Trust shall allow the Employer and its professional advisors to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose, the Trust shall give subject to being paid all reasonable costs and expenses, all such information and assistance, including access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents and records, as the Employer or its professional advisors may reasonably request provided that nothing in this clause shall be construed as requiring the Trust to disclose any document or thing the subject of any privilege. The Employer agrees to keep all such information confidential and only to use it for such purpose.

5.3 No admission of liability shall be made by or on behalf of the Trust and any such claim shall not be compromised, disposed of or settled without the consent of the Employer.

5.4 The Employer shall be entitled in its absolute discretion to take such action as it shall deem necessary to avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third parties) in the name of and on behalf of the Trust and to have the conduct of any related proceedings, negotiations or appeals.

## **6 LEAVE**

6.1 The Trust will inform the Employer of any Employee absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is the Employee's responsibility to follow the Employer's sickness absence reporting procedures at all times.

6.2 The Employee shall be entitled to holiday during the Secondment Period in accordance with the Employee's terms and conditions of employment with the Employer.

## **7 HEALTH AND SAFETY**

7.1 The Trust shall ensure that the Employee observes its health and safety policies and procedures and maintains a safe method of working.

7.2 The Employee is required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for his/her own Health and Safety and that of others who may be affected by his/her acts or omissions at work.

## **8 CONFLICTS OF INTEREST**

8.1 The Employee must declare and seek agreement from the Employer and his/her line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS or Council services.

## **9 RESPONSIBILITY FOR RESOURCES**

9.1 **Where applicable:** Where the Employee is responsible for the management of Trust budgets and/or the procurement of equipment and services the Employee should follow the Trust's Financial Rules and associated procedures.

9.2 In undertaking such duties the Employee should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money

## **10. PAYMENT OF SALARIES AND EXPENSES**

10.1 The Employee will continue to be paid by the Employer in accordance with the Employee's terms and conditions of employment for the duration of the secondment.

10.2 It is agreed that the Employer shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to the Employee for the provision of services by the Employee to the Trust under this Secondment Agreement.

10.3 Any salary increments applicable to the Employee's substantive post with the Employer will continue to be awarded by the Employer.

## **11 HUMAN RESOURCES SERVICES**

### **11.1 Replacement of seconded staff**

After 1 April 2013 the administrative services to support the recruitment and selection of seconded staff will continue to be undertaken by the Employer, supported by the Trust as appropriate.

### **11.2 Employee Relations**

11.2.1 The Employer will continue to provide advice to the Employee on the Employer's policies including but not limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service.

11.2.2 The Employer will be responsible for ensuring the Employee is kept updated with all changes in the Employer's policies and procedures, although this may be communicated to the Employee through Trust staff.

### **11.3 Policies and Procedure**

11.3.1 During the Secondment Period, the Trust, in consultation with the Employer's Human Resources Department shall implement the Employer's policies and procedures in respect of the Employees, so far as they comply with current employment legislation.

11.3.2 The Employer authorises the Trust to take action in respect of the Employees pursuant to the Employer's Disciplinary Policy save for any action, which could result in the dismissal of an Employee. In such circumstances the Employer shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

11.3.3 The Trust may, should it consider necessary to do so, suspend Employees from duty in accordance with the Employer's Disciplinary Policy and in consultation with the Employer's Human Resources Department provided that such a suspension shall be notified to the Employer no later than the following working day.

11.3.4 The Employer authorises the Trust to deal with any grievances raised by the Employee against the Trust in accordance with the Employer's grievance policy. The Trust will notify the Employer of any grievances received by the Trust including those against the Employer within 3 working days or as soon as reasonably possible

11.3.5 For the avoidance of doubt, nothing in clause 11 shall be construed or have effect as construing any relationship of Employer or Employee between the Trust and the Employee.

#### 11.4 Workforce Information

Workforce information regarding Employees will continue to be collected and retained by the Employer. However, it is recognised that the Trust will require data concerning the Employees in order to support the planning and delivery of services. The Employer in accordance with the format and deadlines identified by the Trust will provide this information as required.

### **12 MANAGEMENT DURING THE SECONDMENT**

12.1 The Employee shall be supervised by and directly accountable to a designated line manager in the Trust's organisational structure during the secondment and where needed the Employer will provide access to professional supervision for qualified social workers.

### **13 PROFESSIONAL DEVELOPMENT**

13.1 The Employer will work with the Trust to ensure the Employee's professional and developmental needs are identified and met. Performance Development Reviews, Performance Management processes, and training of the Employee will be undertaken by the Trust.

### **14 MANAGEMENT OF CHANGE**

14.1 It is recognised that the Trust and the Employer in delivering and developing integrated continuing healthcare will face organisational restructuring and changes in employment levels. In the event that the Employees are affected by organisational change, the Trust and the Employer will ensure that changes happen following full consultation with his/her union representative and that changes comply with the Employer's employment policies.

### **15 DATA PROTECTION**

15.1 The Employee and the Employer consent to the Trust holding, disclosing, using or otherwise processing any information about them which they provide to the Trust or which the Trust may acquire as a result of the Secondment.

15.2 The Employer and the Trust agree to protect any personal data held in relation to the Employee in accordance with the Data Protection Act 1998.

### **16 CONFIDENTIALITY**

16.1 In addition to the provisions regarding confidentiality in the Employee's Contract of Employment, the Employee will not disclose during or after the secondment any confidential information to which the Employee became privy during the course of the secondment, including but not limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups, future

business strategy, marketing, tenders, any price sensitive information, and any proprietary Council information.

## **17 TERMINATION**

17.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate

17.2 The Employee may terminate the Secondment by giving not less than (one) months' notice in writing (or the Employee's contractual notice period if this is greater) to the Trust and the Employer. This will be taken as the Employee's intention to tender their resignation of their substantive post.

## **18 REVIEW AND VARIATION**

18.1 This Secondment Agreement will remain the subject of periodic review and amendment as necessary in light of changing service needs and legislative developments.

18.2 The parties agree that any amendments or variations to this Secondment Agreement must be in writing and signed by authorised representatives of the parties

## **19 GENERAL**

19.1 If any provision or term of this Secondment Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including without limitation, by reason of provisions of any legislation or by reason of any decision of any court or other body having jurisdiction over the parties, such terms or provisions shall be divisible from this Secondment Agreement and shall be deemed to be deleted in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis of this Secondment Agreement, the parties shall negotiate in good faith to amend and modify the provisions or terms of this Secondment Agreement as may be necessary or desirable in the circumstances.

19.2 This Secondment Agreement does not create any partnership or agency relationship between the Employer and the Trust.

19.3 This Secondment Agreement shall be in substitution for any previous letters of appointment, agreements or arrangements, whether written, oral or implied, relating to the Secondment of the Employee.

19.4 This Secondment Agreement shall be governed by and construed in accordance with English law. The Employer and the Trust agree that any dispute arising under this Secondment Agreement or in connection with it shall be decided in the English Courts, which shall have the sole jurisdiction in any such matter.



### **Schedule 7 - Information Sharing**

1. The Partners shall comply with the latest version of the Pan Hampshire Information Sharing Protocol at all times.
2. The Partners have developed an Operational Agreement based on the template found within the Pan Hampshire Information Sharing Protocol which details the day to day processes for information sharing and the control of new information. The Operational Agreement is signed off by the Caldicott Guardian from each Partner, and any variations to it shall be agreed in writing. This Operational Agreement will be subject to local approval and reviewed on an annual basis or sooner if appropriate by the Authority's and the Trust's Information Governance Leads.
3. The Partners have developed a Privacy Impact Assessment based on the template found within the Pan Hampshire Information Sharing Protocol in relation to the sharing of the information relating to the Service.
4. It is agreed that:
  - The Trust will be the Data Controller for existing NHS data prior to the Commencement Date.
  - The Authority will be the Data Controller for existing social care data prior to the Commencement Date.
  - The Trust will be the Data Controller for new information collected by the new integrated team from the Commencement Date.
5. In the event of a breach of Data Protection Legislation by either of the Partners the relevant Partner responsible for the breach shall be liable for any fines imposed by the Information Commissioner's Office.

## **SCHEDULE 8 - GOVERNANCE ARRANGEMENTS**

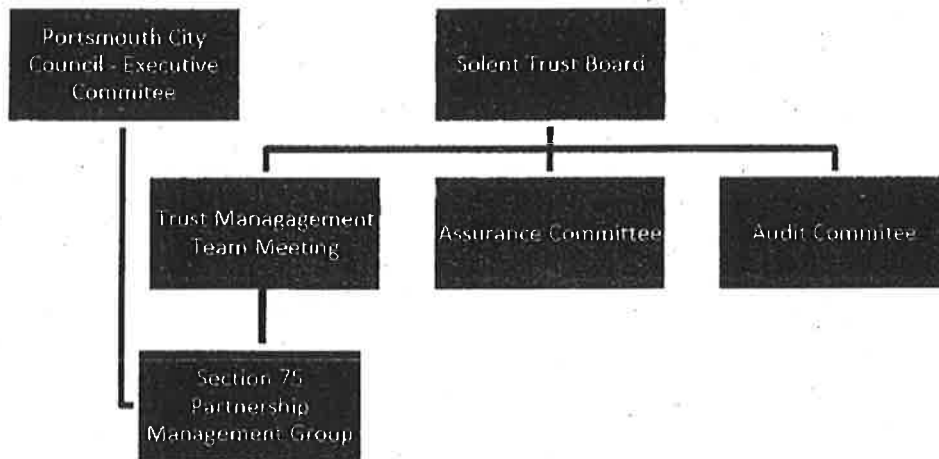
### **1. ACCOUNTABILITIES**

- 1.1 Both Partners are equally accountable for the delivery of the Aims and Objectives (schedule 1) and the service specification and Key Performance Indicators (schedule 5)

### **2. PARTNERSHIP MANAGEMENT GROUP**

- 2.1 The Agreement will be actively monitored by a Partnership Management Group (PMG).
- 2.2 The Partners will agree Terms of Reference for the PMG which will be reviewed annually.
- 2.3 The PMG will meet 4 times a year with senior representation from both partners.
- 2.4 The PMG will oversee the Partnership arrangements to ensure that the Aims and Objectives (schedule 1) set out in this agreement are met.
- 2.5 The delivery of the service specification and key performance indicators (schedule 5) will be actively monitored by the PMG
- 2.6 In the event that either Partner has concerns about the partnership arrangements, these concerns shall be escalated, in the first instance, for the Council to the Head of Adult Social Care and for the Trust to their Divisional Governance Meeting.
- 2.7 In the event that these concerns cannot be resolved through these escalation routes in 2.5, clause 31 will apply.

Section 75 Partnership Agreement Governance Arrangements



## **SCHEDULE 9 – FINANCIAL ARRANGEMENTS**

### **The Trust's Financial Obligations**

- 1.1 The Trust will pay within 30 days of receipt; all acceptable invoices issued by the Authority, with respect to costs incurred under section 2.1, 2.2 and 2.3 Schedule 9 of this agreement.

### **2. The Authority's Financial Obligations**

- 2.1 The Authority will in accordance with the terms of the Secondment Agreement pay all salaries, expenses and other employment costs to and in respect of the Post Holders and any other and/or additional staff seconded to the Trust by the Authority from time to time for the purposes of the Partnership Arrangements in this Agreement (the "Seconded Staff Costs").
- 2.2 The Authority will pay to the Trust such sum as represents 50% of all expenditure incurred by the Trust in respect of the employment by the Trust of a Service Manager for the purposes of the Partnership Arrangements (the "Service Manager Costs")
- 2.3 The Authority will pay the Trust an additional sum to cover the costs incurred by the Trust in respect of the employment by the Trust of staff for the purposes of the Partnership Arrangements. This sum will be reviewed annually by the Partnership Management Group
- 2.4 The Trust shall send to the Authority an invoice at quarterly intervals specifying the Service Manager costs recharged in respect of the preceding quarter and such invoices will be payable by the Authority within 30 days of receipt by the Authority of an acceptable invoice.

### **3. Variation of the Trust's Financial Obligations and the Authority's Financial Obligations**

- 3.1 Variations to the Trust's Financial Obligations and the Authority's Financial Obligations will be discussed and agreed by the Partnership Management Group and the Service Monitoring Group
- 3.2 Where the Partners are unable to reach agreement as in paragraph 3.1 of this schedule 9 the matter will be dealt with under clause 31



Portsmouth  
CITY COUNCIL

**Integrated Commissioning**

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Solent NHS Trust  
Adelaide Health Centre  
William Macleod Way  
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SO16 4XE

Civic Offices  
Great Western House  
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PO1 2EP

Phone: 023 9268 8315  
Fax: 023 9284 1185

3 June 2013

Dear Sarah

**S75 Pooled Fund: 13/14 Contribution**

As discussed the S75 pooled fund arrangements will end with effect from 1 July 2013. The integrated provision will continue with Solent as the lead provider (supported by the revised S75 agreement). PCC's contribution will be the agreed establishment of seconded staff plus a contribution to other key posts to be agreed.

For quarter 1, 2013/14 the pooled fund arrangements continue and I confirm that PCC's contribution for 13/14 full year effect is as follows.

	£
12/13	1,588,886.50
Less 6 Months AMHP	(226,986.00)
Less 13/14 Savings	(70,000.00) Full Year agreed between Rob & Matthew
Less Sub-Misuse Staff	(120,300.00) To be paid via PCC public health contract
<b>13/14 Full Year</b>	<b>1,171,600.50</b>

Yours sincerely

Suzannah Rosenberg  
Head of Integrated Commissioning

c.c. Matthew Hall, Kim Wratten, Rob Watt, Neil Carstairs, Angela Dwyer

