

DATED 1ST APRIL 2014

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 Learning Disability
Service**

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

CONTENTS

CLAUSE

1.	DEFINITION AND INTERPRETATION	2
2.	NHS SUCCESSOR BODIES	9
3.	COMMENCEMENT AND DURATION	9
4.	EXTENDING THE INITIAL TERM	10
5.	PARTNERSHIP ARRANGEMENTS	10
6.	DELEGATION OF FUNCTIONS	11
7.	SERVICES	11
8.	ANNUAL WORK PROGRAMME	11
9.	PERFORMANCE MANAGEMENT	12
10.	FINANCIAL OBLIGATIONS	12
11.	CAPITAL EXPENDITURE	12
12.	SET UP COSTS	13
13.	PREMISES	13
14.	STAFFING (TUPE, SECONDMENT AND PENSIONS)	13
15.	GOVERNANCE	13
16.	QUARTERLY REVIEW AND REPORTING	14
17.	ANNUAL REVIEW	14
18.	VARIATIONS	14
19.	STANDARDS	15
20.	HEALTH AND SAFETY	15
21.	EQUALITY DUTIES	16
22.	FREEDOM OF INFORMATION	16
23.	DATA PROTECTION AND INFORMATION SHARING	16
24.	HEALTH AND SOCIAL CARE RECORDS	17
25.	CONFIDENTIALITY	18
26.	AUDIT	18
27.	INSURANCE	19
28.	INDEMNITIES	19
29.	LIABILITIES	20
30.	COMPLAINTS AND INVESTIGATIONS	20
31.	HEALTHWATCH	21
32.	DISPUTE RESOLUTION	22
33.	TERMINATION	23
34.	CONSEQUENCES OF TERMINATION	24
35.	PUBLICITY	25
36.	NO PARTNERSHIP	25
37.	THIRD PARTY RIGHTS	25
38.	NOTICES	25
39.	ASSIGNMENT AND SUBCONTRACTING	25
40.	SEVERABILITY	26
41.	WAIVER	26
42.	ENTIRE AGREEMENT	26

43.	GOVERNING LAW AND JURISDICTION	27
44.	FAIR DEALINGS	27
45.	CONFLICTS OF INTEREST.....	27
46.	COUNTERPARTS.....	27

SCHEDULE

SCHEDULE 1	AIMS AND OUTCOMES.....	29
SCHEDULE 2	TRUST FUNCTIONS	31
SCHEDULE 3	AUTHORITY FUNCTIONS.....	32
SCHEDULE 4	EXCLUDED FUNCTIONS.....	34
SCHEDULE 5	SERVICE SPECIFICATION	35
SCHEDULE 6	HUMAN RESOURCES	44
SCHEDULE 7 -	INFORMATION SHARING.....	57
SCHEDULE 8 -	GOVERNANCE ARRANGEMENTS	57
SCHEDULE 9 -	FINANCIAL ARRANGEMENTS.....	61

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.

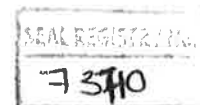
45. COUNTERPARTS

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

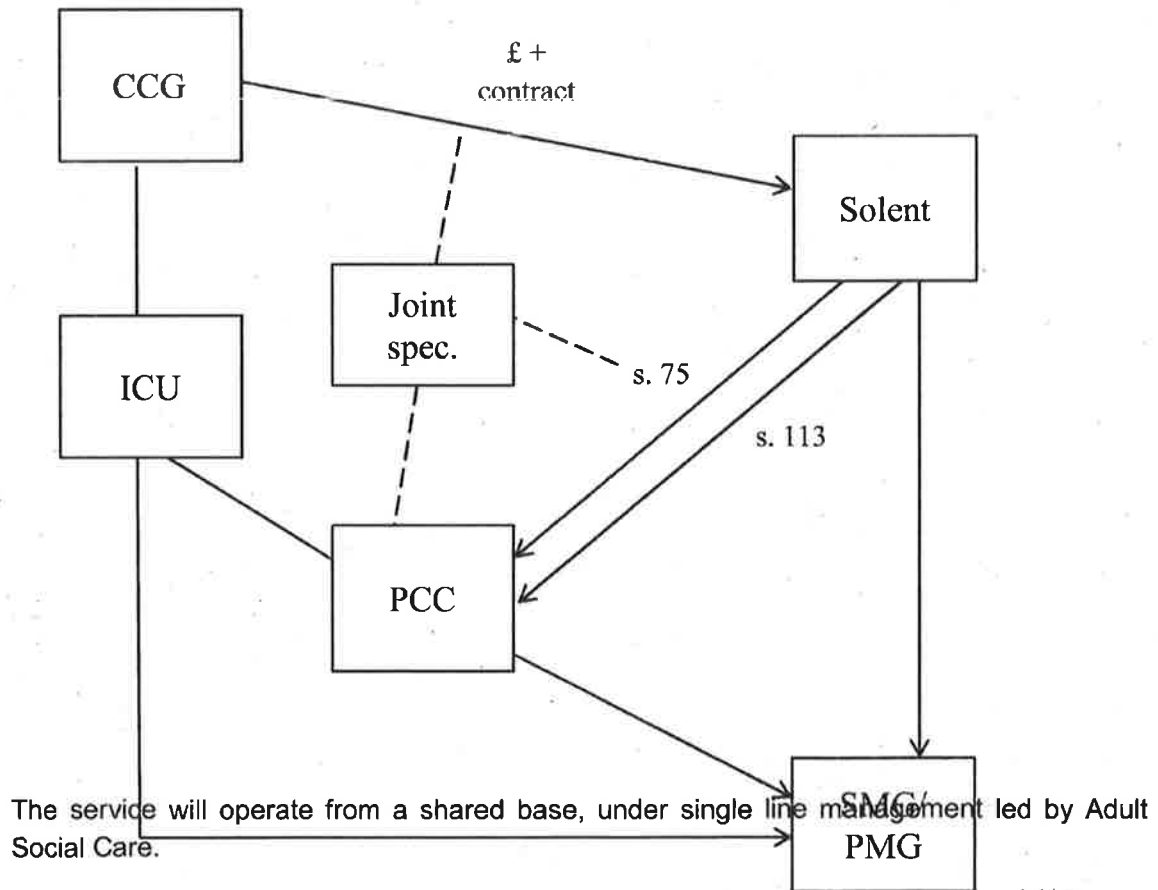
Date: 13th March 2014
Author: J Charlesworth

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"> • 100% of patients with whom they have contact have appropriate consent and admission forms and effective discharge plans • they contribute to LD awareness and bespoke training for PHT staff • they seek patient and carer feedback on their hospital experience 	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

Outcome Indicator	Measurement	Reporting
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

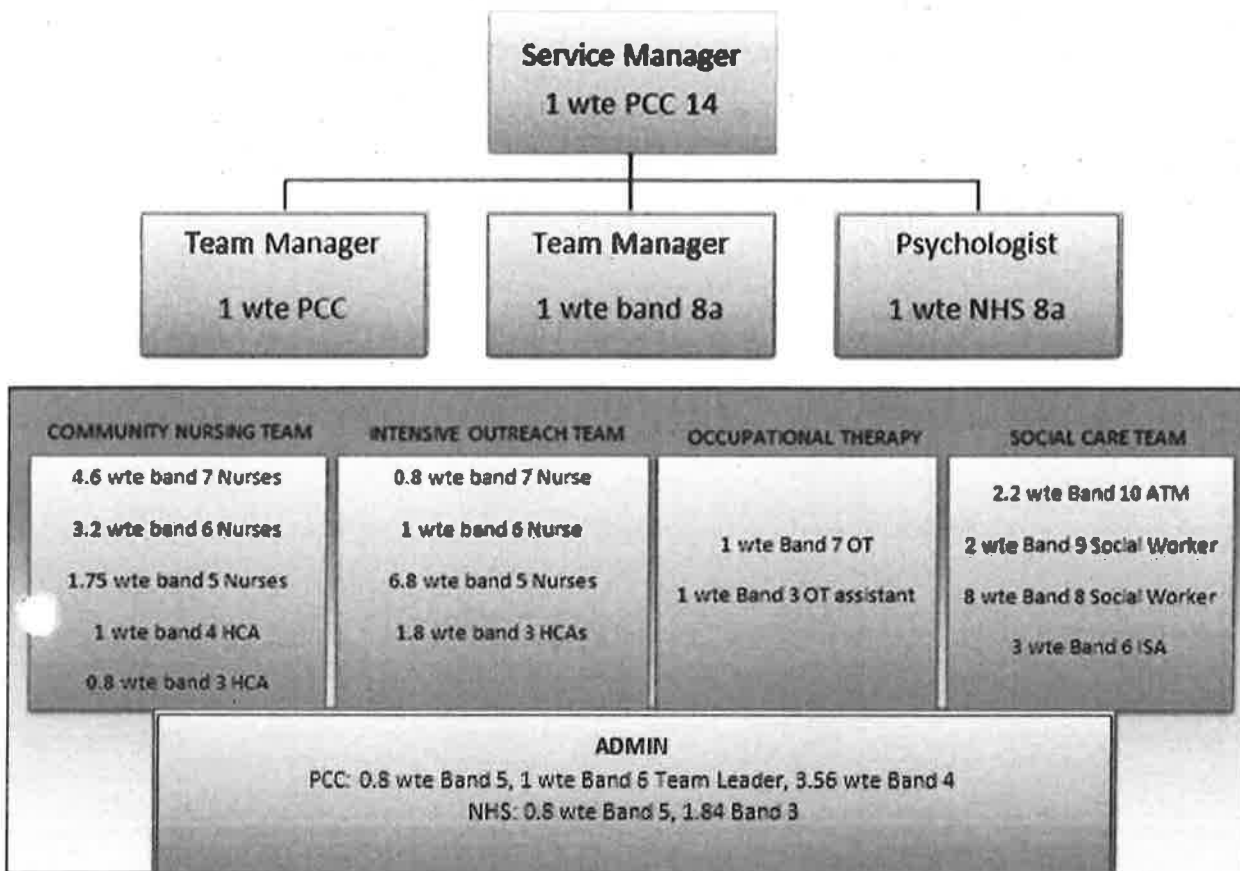
1. STAFF DETAILS

- 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 31st 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 1st 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 31st 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 1st 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 1st 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 31st 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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governance TOR (3).

[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

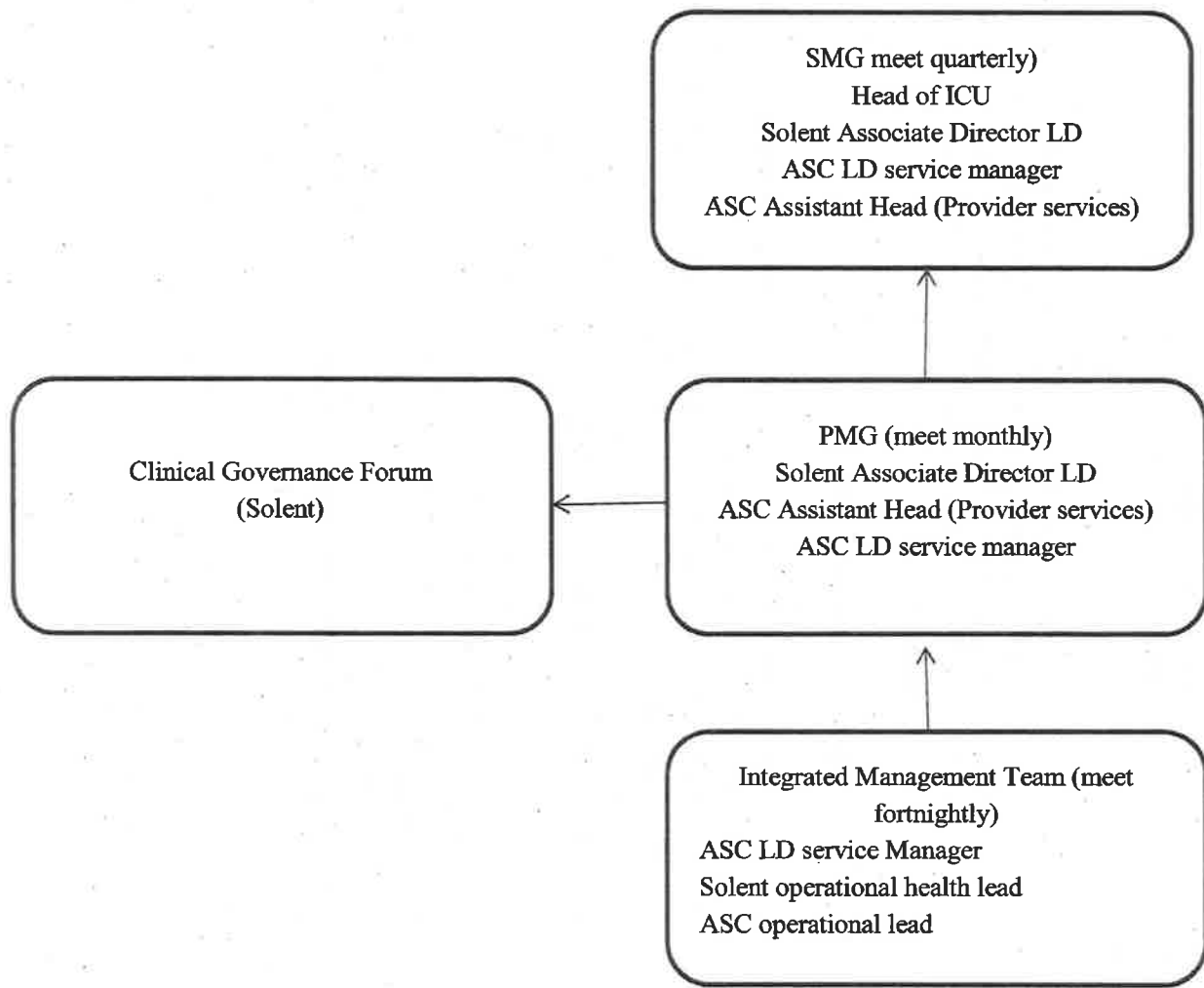
- Review the LD Local Risk Register on a monthly basis, providing feedback to the Adult and Older Persons Service Clinical Governance Group according to an agreed schedule.
- Ensure the appropriate investigation of all incidents within the LD Service and the identification and monitoring of resultant 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.

