



Portsmouth
Clinical Commissioning Group



Portsmouth
CITY COUNCIL

DATED 1ST APRIL 2013

PORTSMOUTH CITY COUNCIL

and

PORTSMOUTH CLINICAL COMMISSIONING GROUP

AGREEMENT

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

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

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THIS DEED is dated 1 April 2013

PARTNERS

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

BACKGROUND

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS Bodies to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (B) The Partners are committed to better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (C) This Agreement is further to the Previous Commissioning Agreement between the Authority and the PCT for the Term 1 April 2010 to 31 March 2013 and provides the framework within which the Partners will work together to achieve the Aims and Objectives.
- (D) In furtherance of the partnership working referred to in Recital (C) above the Partners have agreed that the CCG shall delegate certain of its functions to the Authority under a lead commissioning arrangement. For these purposes, the Partners shall establish and maintain a pooled fund with regard to:
 - (i) the funding of staff who will perform the commissioning and procurement role in regard to the CCG Functions and the Authority Functions, and
 - (ii) discrete budgets required for the exercise, provision and delivery of those Functions, being a range of health and social care services for vulnerable people as further described in this Agreement.
- (E) The Partners are satisfied that the arrangements contemplated by this Agreement are likely to lead to an improvement in the way that their functions are exercised.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

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

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

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

Annual Work Programme: has the meaning set out in clause 8.

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

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

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

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

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

Commencement Date: 1st April 2013.

Data Protection Legislation: this includes:

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

Dispute Resolution Procedure: the procedure set out in clause 32.

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

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

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

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

Financial Year: 1 April to 31 March.

First Financial Year: 1 April 2013 to 31 March 2014

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

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

Host Partner: the host partner for the Functions under this Agreement .

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

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

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

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

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

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

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

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

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

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

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

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

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

PCT: the Portsmouth City Teaching Primary Care Trust

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

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

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

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

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

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

Quarter: the following periods in each Financial Year:

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

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

Relevant Transfer: a relevant transfer under TUPE.

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

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

Service Provider: a third-party provider of any of the Services, as commissioned by the CCG, the PCT or the Authority before the Commencement Date or the Authority from the Commencement Date.

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

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

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

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

CCG's Authorised Officer: Chief Operating Officer

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

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

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

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

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.

- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2. COMMENCEMENT AND DURATION

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

3. EXTENDING THE INITIAL TERM

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

4. PARTNERSHIP ARRANGEMENTS

- 4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to commission integrated health and social care services to better meet the needs of the Service Users of Portsmouth than if the Partners were operating independently. The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.
- 4.2 The Partnership Arrangements shall comprise:
- (a) Lead Commissioning arrangements, whereby the CCG will delegate to the Authority the NHS Functions, so that the Authority may exercise the NHS Functions alongside the Authority Health-Related Functions and act as commissioner of the Services described in Schedule 5 on behalf of both Partners.
 - (b) the establishment of a Pooled Fund for commissioning and procurement of a range of health and social care services for vulnerable people as further described in this Agreement.

- 4.3 The Authority shall host and provide the financial administrative systems for the Pooled Fund.
- 4.4 The Authority shall appoint a Pooled Fund Manager, who shall be responsible for the functions detailed in Schedule 8 (Financial Contributions).
- 4.5 In accordance with Regulation 4(2) of the NHS Regulations 2000, the Partners have carried out a joint consultation on the proposed Partnership Arrangements with Service Users, and other individuals and groups who appear to them to be affected by the Partnership Arrangements.
- 4.6 The CCG is satisfied that the Partnership Arrangements fulfil the objectives set out in the QIPP Plan.
- 4.7 Nothing in this Agreement shall prejudice or affect:
- (a) the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
 - (b) the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
 - (c) the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

5. DELEGATION OF FUNCTIONS

- 5.1 For the purposes of the implementation of the Partnership Arrangements, the CCG hereby delegates the exercise of the NHS Functions to the Authority to exercise alongside the Authority's Health-Related Functions and act as lead commissioner of the health and social care services within the scope of this Agreement.;
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.
- 5.3 Notwithstanding clauses 5.1 and 5.2 in the case of any individual service or commissioning or procurement exercise the Partners may at any time during the Term by decision of the Integrated Commissioning Board decide that the CCG is to act as lead commissioner and in the event of such a decision being made:

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

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

6. SERVICES

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

7. ANNUAL WORK PROGRAMME

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

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

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

8. PERFORMANCE MANAGEMENT

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

9. FINANCIAL CONTRIBUTIONS

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

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

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

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

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

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

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

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

10. OVERSPENDS AND UNDERSPENDS

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

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

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

10.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend of either Partner's Financial Contribution for Pooled Funds, the Partners shall meet the overspend as detailed in Schedule 8

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

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

(a) in the Pooled Funds:

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

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

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

11. CAPITAL EXPENDITURE

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

12. SET UP COSTS

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

13. PREMISES

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

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

14. STAFFING (TUPE, SECONDMENT AND PENSIONS)

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

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

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

15. CONTRACTS

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

16. GOVERNANCE

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

17. QUARTERLY REVIEW AND REPORTING

- 17.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.
- 17.2 The Pooled Fund manager shall submit a quarterly report to the Integrated Commissioning Board setting out:
- (a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and
 - (b) any forecast overspend or underspend of the Financial Contributions.

18. ANNUAL REVIEW

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

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

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

19. VARIATIONS

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

20. STANDARDS

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

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

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

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

21. HEALTH AND SAFETY

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

- 21.2 The Authority shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the CCG on request.
- 21.3 The Authority shall notify the CCG if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury.

22. EQUALITY DUTIES

- 22.1 The Partners acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 22.2 The Authority agrees to adopt and apply policies in its carrying out of the Authority Health-Related Functions and NHS Functions, to ensure compliance with their equality duties.
- 22.3 The Authority shall take all reasonable steps to secure the observance of clause 22 by all servants, employees or agents of the Authority and all Service Providers employed in delivering the Services described in this Agreement.

23. FREEDOM OF INFORMATION

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

24. DATA PROTECTION AND INFORMATION SHARING

- 24.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 24.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working, in accordance with Schedule 12 (Information Sharing). The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

25. CONFIDENTIALITY

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

26. AUDIT

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

27. INSURANCE

- 27.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.
- 27.2 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements.

28. INDEMNITIES

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

29. LIABILITIES

- 29.1 Neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.
- 29.2 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

30. COMPLAINTS AND INVESTIGATIONS

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

31. HEALTHWATCH

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

32. DISPUTE RESOLUTION

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

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

33. TERMINATION

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

failed to remedy the breach within 28 days of receipt of notice from the First Partner (**Remediation Notice**) to do so;

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

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

34. CONSEQUENCES OF TERMINATION

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

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

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

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

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

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

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

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

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

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

35. PUBLICITY

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

36. NO PARTNERSHIP

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

37. THIRD PARTY RIGHTS

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

38. NOTICES

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

39. ASSIGNMENT AND SUBCONTRACTING

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

40. SEVERABILITY

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

41. WAIVER

- 41.1 The failure of either Partner to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Partner thereafter to enforce such provision.
- 41.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

42. ENTIRE AGREEMENT

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

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

43. GOVERNING LAW AND JURISDICTION

Subject to clause 32, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

44. FAIR DEALINGS

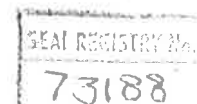
The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and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

45. CONFLICTS OF INTEREST

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

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

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



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

.....

Authorised Signatory

EXECUTED AS A DEED on behalf of the CCG

THE COMMON SEAL of PORTSMOUTH CLINICAL)

COMMISSIONING GROUP was affixed to this)

Deed in the presence of:-)

SCHEDULE 1

AIMS AND OBJECTIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARTNERSHIPS - Strong and effective partnerships are key to good commissioning

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

SCHEDULE 2

CCG FUNCTIONS

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

SCHEDULE 3

AUTHORITY FUNCTIONS

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

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

SCHEDULE 4

EXCLUDED FUNCTIONS

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

SCHEDULE 5

THE SERVICES

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

SCHEDULE 6

CONTRACTING PROCESS

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

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

SCHEDULE 7

INTEGRATED COMMISSIONING UNIT

1. STAFF DETAILS

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

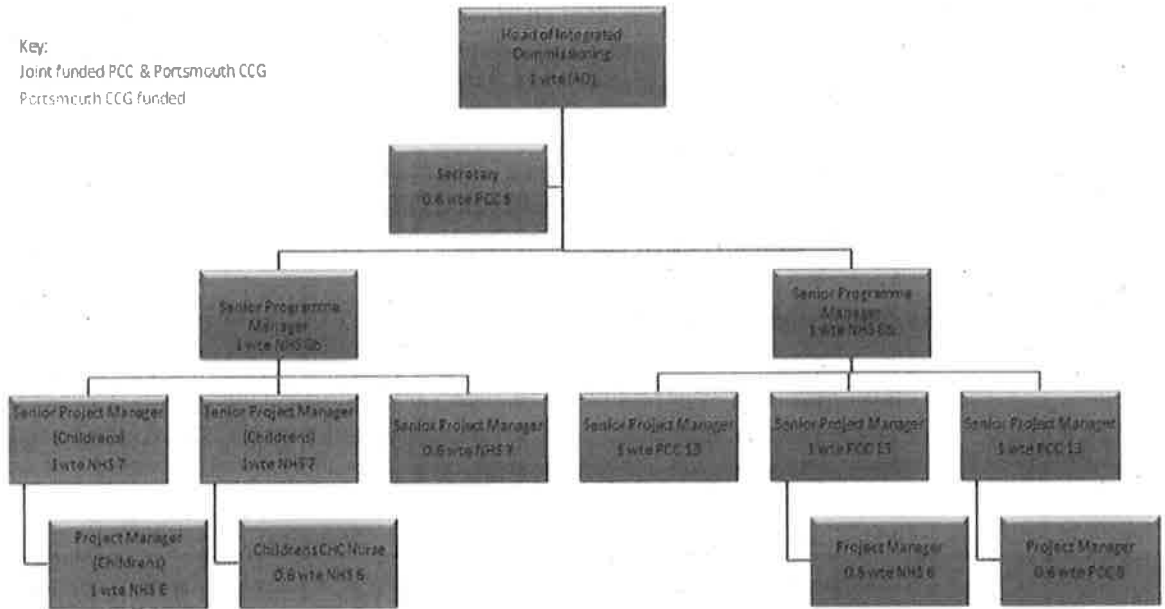
2. SECONDMENT ARRANGEMENTS

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

3. MANAGEMENT STRUCTURE

Key:

Joint funded PCC & Portsmouth CCG
 Portsmouth CCG funded



SECONDMENT AGREEMENT TO BE SIGNED BY STAFF MEMBER

Dear

CONFIRMATION OF SECONDMENT

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

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

1. DETAILS OF SECONDMENT

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

2. CONDITIONS OF SECONDMENT

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

3 LEAVE

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

4 HEALTH AND SAFETY

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

5. CONFLICTS OF INTEREST

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

6. RESPONSIBILITY FOR RESOURCES

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

7 PAYMENT OF SALARIES AND EXPENSES

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

8 HUMAN RESOURCES SERVICES

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

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

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

9. MANAGEMENT DURING THE SECONDMENT

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

10. PROFESSIONAL DEVELOPMENT

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

11. MANAGEMENT OF CHANGE

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

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

12. DATA PROTECTION

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

13. CONFIDENTIALITY

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

14. TERMINATION

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

ACCEPTANCE

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

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

Yours sincerely

SECONDMENT AGREEMENT

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

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

1. INTRODUCTION

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

2 SECONDMENT

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

3 CONDITIONS OF SECONDMENT

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

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

4 LIABILITY AND INDEMNITIES

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

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

5 CONDUCT OF CLAIMS

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

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

6 LEAVE

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

7 HEALTH AND SAFETY

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

8 CONFLICTS OF INTEREST

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

9 RESPONSIBILITY FOR RESOURCES

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

10. PAYMENT OF SALARIES AND EXPENSES

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

11 HUMAN RESOURCES SERVICES

11.1 Replacement of seconded staff

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

11.2 Employee Relations

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

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

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

11.3 Policies and Procedure

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

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

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

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

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

11.4 Workforce Information

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

12 MANAGEMENT DURING THE SECONDMENT

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

13 PROFESSIONAL DEVELOPMENT

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

14 MANAGEMENT OF CHANGE

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

15 DATA PROTECTION

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

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

16 CONFIDENTIALITY

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

17 TERMINATION

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

18 REVIEW AND VARIATION

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

19 GENERAL

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

SCHEDULE 8

ARRANGEMENTS FOR AGREEING CONTRIBUTIONS & OTHER FINANCIAL ARRANGEMENTS

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

2. FINANCIAL PLANNING AND BUDGET SETTING PROCESS

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

A: THE AUTHORITY

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

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

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

B: THE CCG

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

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

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

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

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

3. ADDITIONAL FUNDING

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

4. BUDGET PERFORMANCE

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

5 ACCESS TO FINANCIAL INFORMATION

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

6 CONSTRUCTION OF BUDGET AND CONTRIBUTIONS

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

7 BUDGET

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

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

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

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

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

8 PREMISES

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

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

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

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

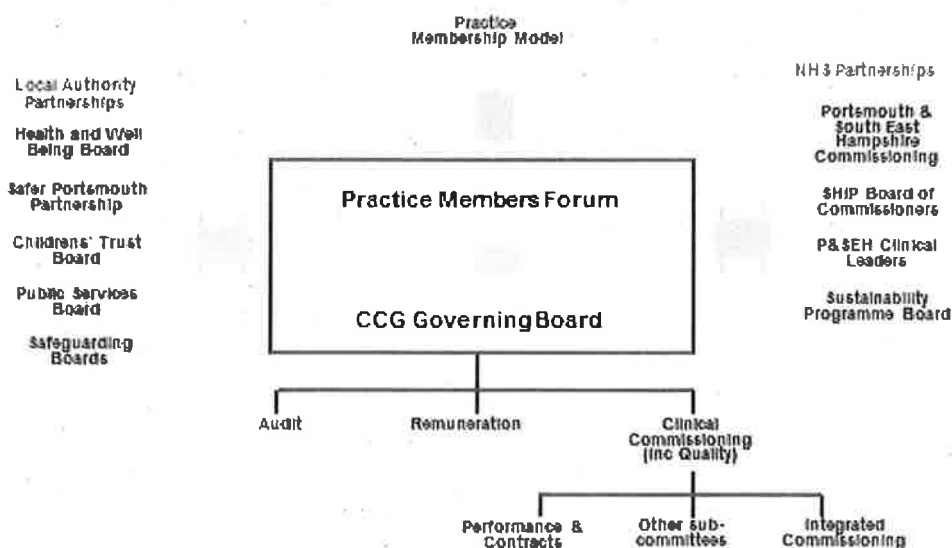
Trust Headquarters, St James' Hospital, Locksway Road, Milton, Portsmouth. PO4 8LD

SCHEDULE 9
GOVERNANCE

1. INTEGRATED COMMISSIONING BOARD

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

GOVERNANCE MODEL



SCHEDULE 10

JOINT WORKING AND OTHER AGENCIES

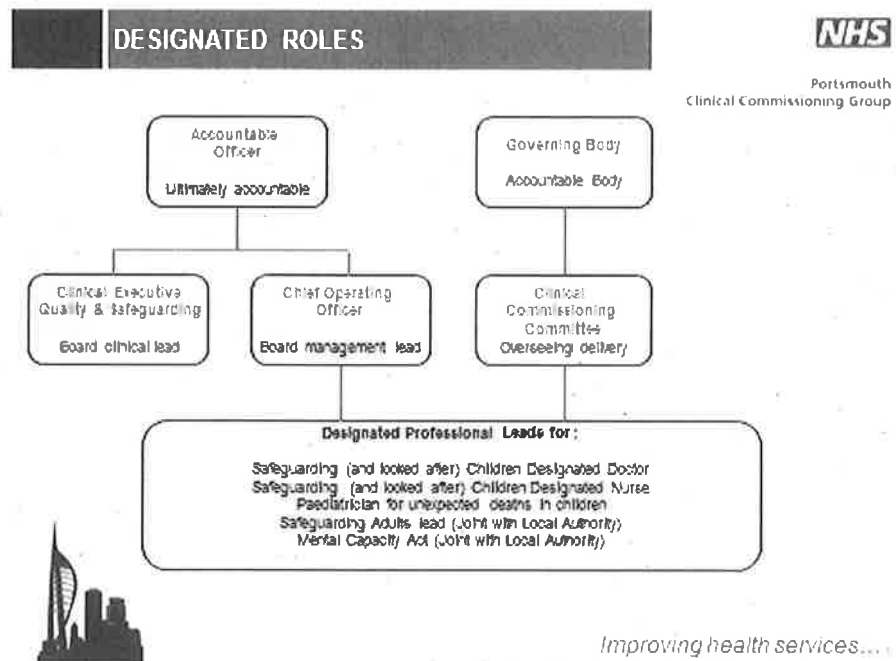
- 1.1 There are a number of boards and committees that have differing levels of accountability and/or responsibility for influencing commissioning decisions made by the CCG and Authority:
- Joint Health & Wellbeing Board
 - Children's Trust Board and its sub groups
 - The Learning Disability Partnership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

SCHEDULE 11

CLINICAL GOVERNANCE & SAFEGUARDING

1. ACCOUNTABILITY FOR THE OVERALL QUALITY OF CLINICAL CARE

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



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

2. SAFEGUARDING

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

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

SCHEDULE 12

INFORMATION SHARING

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

