

Dated: _____ **2020**

PORTSMOUTH CITY COUNCIL

and

THE HIVE PORTSMOUTH

MEMORANDUM OF UNDERSTANDING

**for the provision of support services to Voluntary, Community and Social Enterprise in
Portsmouth**

Legal Services
Portsmouth City Council
Civic Offices
Portsmouth
PO1 2AL
Ref: 508502

THIS MEMORANDUM OF UNDERSTANDING is made this day of 2020

BETWEEN:

- (1) **PORTSMOUTH CITY COUNCIL**, of Civic Offices, Guildhall Square, Portsmouth, Hampshire PO1 2PX (the “**PCC**”);

AND

- (2) **THE HIVE PORTSMOUTH** (Company no: 12064936 whose registered office is at Lower Ground Floor Central Library, Guildhall Square, Portsmouth, Hampshire, United Kingdom, PO1 2DX (the “**HIVE**”);

(“**the Participants**”)

RECITALS:

- A) This Memorandum of Understanding (“the **MOU**”) is supplemental to the Multispecialty Community Provider ('MCP') Partnership Agreement dated 01 December 2019 and agreed by all partners on 31 January 2020 for the provision of primary, community, social care and voluntary services in Portsmouth City Council.
- B) The purpose of the MOU is to record that the Participants are committed to working together to support the Voluntary, Community and Social Enterprise (“VCSE”) in Portsmouth to grow and develop within the City, to be resilient and robust and be able to respond to challenges and opportunities. In addition, the Participants are committed to providing and promoting choices for individuals, communities and professionals as alternatives to traditional approaches.
- C) The MOU sets out the working practices agreed between the Participants prior to the drafting of more detailed service level agreements.
- D) The terms of this document as a whole are not legally binding save for clauses 7 to 9 (inclusive).
- E) In this MOU, unless the context otherwise requires, the terms set out in Schedule A shall have the meanings ascribed to them in Schedule A.

IT IS HEREBY AGREED THAT:

1. This purpose of this MOU is to:

- a) Ensure effective relationships between PCC and the HIVE known as the partners.
- b) Ensure the effective engagement of the partners involved in the delivery of work funded by PCC (for the avoidance of doubt the specifics in terms of consideration and deliverable will be managed by way of individual legally binding service agreements).
- c) Provide a framework for the partners to work together to maximise their combined resources in order to bring about positive impact for the people of Portsmouth.
- d) Recognise that all partners have skills, experience and expertise that can be shared for the benefit of the people of Portsmouth.
- e) Define the relationship of the partners and recognize the mutual benefits of this partnership.

2. Term and termination

- a) The MOU commences on 1 April 2020 and will be reviewed annually by mutual agreement of the Participants in writing and approved by the Partnership Group as defined in clause 11 of the MOU.
- b) Any Participant may cease its participation in the MOU by giving at least 3 months' notice in writing to the other Participant to the address of the Participant referred to in the MOU or to another address which has been notified expressly in writing by that Participant to the other. In such circumstances, the Participants will agree a suitable exit management plan to manage the impact of any termination by one or more partners.
- c) Any demand, notice, or other communication shall be treated as validly served if:
 - i. served personally on the addressee;
 - ii. sent by pre-paid recorded post; or
 - iii. sent by facsimile transmission, subject to a receipt confirming delivery;
 - iv. or by email.

3. Variation

- a) This MOU may only be varied by the mutual agreement of the Participants in writing and approved by the agreed partnership representatives.
- b) At the time of signing of this MOU, the Participants acknowledge that there is likely to be a need to amend membership and focus in alignment with other emerging partnerships across the city.

4. Vision and Context

- a) The Participants are committed to continued joint working in a way that recognises and nurtures the strengths of individuals, families and communities and helps to build independence and self-reliance.
- b) Through this unique partnership the Participants will ensure the involvement of the city of Portsmouth's communities in designing better services; identify gaps and brokering innovative solutions to address them. The Participants will work with existing expertise, skill and experience in Portsmouth to benefit a wider range and number of people and in doing so share good practice and promote partnership working to make more efficient use of local resources and increase support to those that need it.

5. Status of this Agreement

- a) Nothing in this MOU supersedes existing service contracts; it works alongside and in conjunction with existing service contracts and sets out how the Participants will work together in a collaborative and integrated way to meet the objectives of the partnership.
- b) Whilst there will be co-operation as to the service design, this will not restrict commissioners obligations to comply with competition and procurement requirements, and does not preclude competition between Participants in respect of service provision.
- c) Any service changes agreed as a result of the partnership work will be actioned through the normal PCC commissioning process, which falls outside of this partnership agreement.

6. Objectives of the partnership

The Participants will:

- a) Work towards a shared vision to support the VCSE in Portsmouth to grow and develop within the city, to be resilient and robust and be able to respond to challenges and opportunities;
- b) promote choices for individuals, communities and professionals as alternatives to traditional approaches commit to delivery of system outcomes in terms of clinical matters, patient experience and achieving financial balance across the health system;
- c) commit to work together and to make decisions on a best to deliver holistic outcomes basis;
- d) always demonstrate the end user's best interests are at the heart of their activities;
- e) adopt an uncompromising commitment to trust, honesty, collaboration, innovation and mutual support;
- f) establish a collaborative environment to encourage open, honest and efficient sharing of information, subject to relevant legal compliance;
- g) collectively identify, manage and mitigate all risks in performing their respective obligations in this agreement; and

h) co-produce with others, especially those with lived experience, families and representative organisations, in designing and delivering the Service.

7. Confidentiality

7.1 Subject to clause 7.2, the Participants shall treat all confidential information they receive as confidential, safeguard it accordingly and not disclose it to any other person without the prior written consent of the disclosing Participant and not use or exploit the disclosing Participants Confidential Information in any way except for the purposes anticipated under the MOU.

7.2 Clause 7.1 shall not apply to any disclosure of information:

7.2.1 required by law, provided that clause 7.4 shall apply to any disclosures required under the Information Laws;

7.2.2 that is reasonably required by persons engaged by a Participant in the performance of such party's obligations under this MOU;

7.2.3 where a Participant can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 7.1;

7.2.4 by PCC of any document to which it is a party and which the Participants to this MOU have agreed contains no commercially sensitive information;

7.2.5 to enable a determination to be made if any dispute arises out of the MOU;

7.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

7.2.7 by PCC, to any department, office or agency of the Government; and

7.2.8 by PCC relating to this MOU and in respect of which the HIVE has given its prior written consent to disclosure;

7.2.9 On a confidential basis, to its professional advisors;

7.2.10 to the Serious Fraud Office where the Participant has reasonable grounds to believe that the other Participant is involved in activity that may constitute a criminal offence under the Bribery Act 2010.

7.3 On or before the expiry of the MOU the HIVE shall ensure that all documents and/or computer records in its possession, custody or control which contain information relating to any of the PCC's representatives or the locations at which the services are to be delivered, including any documents in the possession, custody or control of any sub-contractor, are delivered up to PCC or securely destroyed.

7.4 The Participants acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of FOIA and EIR, the content of the MOU is not confidential

information and the HIVE hereby gives its consent for PCC to publish the MOU in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA / EIR redacted) including any changes to the MOU agreed from time to time. PCC may consult with the HIVE to inform its decision in its absolute discretion regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the MOU is exempt from disclosure in accordance with the provisions of the FOIA / EIR.

7.5 The Participants shall not, and shall take reasonable steps to ensure that its staff shall not, make any press announcements in relation to the Partnership or publicise the MOU or any part of the MOU in any way, except with prior written consent of both the HIVE Board and PCC.

8. Freedom of Information

8.1 The HIVE acknowledges that the PCC is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Hive's expense) to enable PCC to comply with these information disclosure requirements.

8.2 The HIVE shall and shall procure that its sub-contractors shall:

8.2.1 transfer the Request for Information to PCC as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

8.2.2 provide PCC with a copy of all Information in its possession or power in the form that PCC requires within five (5) days (or such other period as PCC may specify) of PCC requesting that Information;

8.2.3 provide all necessary assistance as reasonably requested by PCC to enable PCC to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the EIR.

8.3 PCC shall be responsible for determining at its absolute discretion whether the Information:

8.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the EIR;

8.3.2 is to be disclosed in response to a Request for Information.

8.4 In no event shall the HIVE respond directly to a Request for Information unless expressly authorised to do so by PCC.

8.5 The HIVE acknowledges that PCC may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004), be obliged under FOIA or the EIR to disclose Information;

8.5.1 without consulting the HIVE; or

8.5.2 following consultation with the HIVE and having taken its views into account;

8.5.3 provided always that where clause 8.5.2 applies PCC shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the HIVE advanced notice, or failing that, to draw the disclosure to the HIVE's attention after any such disclosure.

8.6 The HIVE shall ensure that all Information produced in the course of the MOU or relating to the MOU is retained for disclosure and shall permit PCC to inspect such records as requested from time to time.

8.7 The HIVE acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that PCC may nevertheless be obliged to disclose Confidential Information in accordance with the 8.5.

9. Data Protection

- a) Both Participants shall respectively at their own expense comply with all relevant and applicable requirements of the Data Protection Requirements. The Participants acknowledge that for the purposes of the Data Protection Requirements, PCC is the Processor and the HIVE is the Controller. The Participant's specific obligations are set out in Schedule B of the MOU. For the avoidance of doubt, this clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Requirements.
- b) The Participants shall where applicable, take into account any guidance issued by the Information Commissioner's Office regarding Personal Data. PCC may on not less than thirty (30) Working Days' notice to the HIVE amend the MOU to ensure that it complies with any such guidance.

10. Principles of the partnership

This MOU advocates a set of professional principles, values and behaviours aimed at creating an environment in which the work undertaken by PCC and HIVE partnership can thrive and deliver the agreed outcomes for all.

The Participants have a responsibility to:

- a) Ensure that the level of partnership working required between PCC and HIVE Portsmouth is understood, valued and given sufficient attention to allow for the development of trusting and open relationships. These relationships will recognise and build upon this trust and strengths of each

partner to enable the partnership to grow.

- b) Ensure there is a mutual understanding of the pressures and demands placed on each partner, in particular around the different and sometimes contradictory drivers involved and ensure processes exist to manage outcomes that do not negatively impact on the work undertaken.
- c) Stimulate innovation and creativity to achieve outcomes through the creation of a safe and valuing environment underpinned by strong partnership working and understanding.
- d) Encourage partners to be reflective about their performance, delivery and commitment to working in partnership to ensure the development of the relationship is a shared responsibility.
- e) Support the development of a relationship that embodies the principles of a learning environment.
- f) Recognise their accountability to the other and to those who benefit from the work undertaken.
- g) Demonstrate accountability by taking appropriate and prompt actions where necessary.
- h) Jointly monitor and evaluate this MOU on a quarterly basis and jointly decide when and where amendments may be necessary.
- i) Share responsibility and engage positively with development and change.
- j) Role model excellent customer service and reflect on the impact of their own actions and adjust behaviours where necessary.
- k) Respect and value the expertise and experience of others.
- l) Represent both organisations in a professional and ambassadorial manner that demonstrates their professional ethos and values.

11. Partnership Consultancy group

- a) A Partnership consultancy group (referred to in this MOU as the "Partnership Group" or the "Group") will be established to bring together the partners for the purpose of delivering this partnership agreement and within that identified projects aimed at delivering the stated objectives.
- b) It will provide strategic direction, manage risk and steer the delivery of a programme of projects which aim to take forward the development of the Portsmouth Partnership arrangement, so that it achieves the objectives set for it.
- c) The Partnership Group will comprise of:
 - i. The member of Portsmouth City Council's Cabinet responsible for resources
 - ii. The member of Portsmouth City Council's Cabinet with responsibility for area of work being discussed at that time
 - iii. 2 x Members of the HIVE Board of Trustees

12. Responsibilities of the Partnership Group

The Group will:

- a) Set and monitor the overall objectives of the partnership and of the agreed partnership projects, and will keep these under review by means of quarterly meetings;
- b) promote and encourage commitment to the partnership principles and objectives amongst all staff in their relevant organisations;
- c) agree the allocation of the resources including relevant secondments;
- d) formulate, agree and ensure that implementation of strategies for achieving the partnership objectives ;
- e) discuss strategic issues and resolve challenges;
- f) agree and manage media protocols
- g) generally ensure the continued effectiveness of the partnership, including by managing relationships between the participants and between the partnership and its stakeholders;
- h) oversee the implementation of, and ensure the participants' compliance with, the partnership agreement.

13. Status and Authority of the Partnership Group

- a) The partnership is not a separate legal entity, and as such is unable to take decisions separately from the Participants or bind its Participants; nor can one or more participants 'overrule' any other Participant on any matter.
- b) The Group is unable in law to bind any Participant so it will function as a forum for discussion of issues with the aim of reaching consensus among the Participants.
- c) The Group will function through engagement between its members so that each participant makes a decision in respect of, and expresses its views about, each matter considered. The decisions of the board will, therefore, be the decisions of the participants, the mechanism for which shall be authority delegated by the participants to their representatives.

Signed for and on behalf of PCC by:-

Signed (Authorised Signatory)

Printed Name.....

Date

Signed for and on behalf of the HIVE by:-

Signed
Printed name

(Authorised Signatory)

Signed
Printed name
Date

(Witness)

SCHEDULE A – DEFINITIONS

In accordance with the Recitals in this MOU the following words shall have the meanings set out below:

"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which is (i) known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential;
"Controller"	takes the meaning given in the GDPR;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Contract and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"	takes the meaning given in the GDPR;
"Data Protection Requirements"	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Subject"	takes the meaning given in the GDPR;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Requirements to access their Personal Data;
"DPA 2018"	the Data Protection Act 2018;
"Environmental Liability"	all costs, expenses, liabilities, claims, damages, penalties or fines arising from any criminal or civil liability under any Law or any obligation under any Law to take, or to pay for, remedial action or to prevent pollution of the environment;
"GDPR"	the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>);
"Information"	Has the meaning given under section 84 of the Freedom of Information Act 2000
"Information Laws"	the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time;

"Intellectual Property Rights"	any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action;
"Law"	any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgment or determination with which the Council and/or the Contractor is bound to comply including the Council's rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time;
"LED"	the Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
"Persistent Breach"	a continuing breach or series of breaches which has recurred 6 or more times within a two month period after the Council has issued at least one Remediation Notice to the Contractor in respect of each continuing breach or series of breaches;
"Personal Data"	takes the meaning given in the GDPR;
"Personal Data Breach"	takes the meaning given in the GDPR;
"Processor"	takes the meaning given in the GDPR;
"Representative"	any employee, officer, director, worker, consultant, agent or contractor engaged by a Participant in connection with the Service including any sub-contractor;
"Request for Information"	has the meaning set out in the FOIA or the EIR as relevant (where the meaning set out for the term "request" shall apply);
"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Contractor and / or of any sub-contractor of the Contractor engaged in the performance of the Contractor's obligations under the Agreement;
"Working Days"	Monday to Friday inclusive of each week excluding Christmas Day, Good Friday and Bank Holidays in England
"Bribery Act"	The Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

SCHEDULE B – PROCESSING, PERSONAL DATA AND DATA SUBJECTS - THE HIVE IS THE CONTROLLER AND PCC IS THE PROCESSOR

1. Definitions and Background

1.1 In this Schedule:

"Controller"	shall take the meaning given in the GDPR;
"Data Loss Event"	shall mean any event that results or may result whether accidental or not, in unauthorised access to or processing of Personal Data and/or actual or potential unlawful loss, alteration, unauthorised disclosure and/or destruction of Personal Data;
"Data Subject"	shall take the meaning given in the GDPR;
"Processor"	shall take the meaning given in the GDPR;
"Protective Measures"	shall mean appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

1.2 The Participants acknowledge that for the purposes of the Data Protection Requirements, the HIVE is the Controller and PCC is the Processor.

2. Obligations

2.1 PCC shall, in relation to any Personal Data processed in connection with its obligations under the MOU:

- a) process said Personal Data in accordance with the table below in this Schedule B only (unless PCC is otherwise required to do by Law);
- b) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures.
- c) ensure that:
 - i. any Representative of PCC does not process Personal Data except in accordance with the MOU (and in particular the table below in Schedule B);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Representative of the HIVE who have access to the Personal Data;
 - iii. not transfer Personal Data outside of the UK or EU unless the prior written consent of the HIVE has been obtained and the following conditions are fulfilled:
 - (a) PCC or the HIVE has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37);
 - (b) the Data Subject has enforceable rights and effective legal remedies;

- (c) PCC complies with its obligations under the Data Protection Requirements by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the HIVE in meeting its obligations); and
 - (d) PCC complies with any reasonable instructions notified to it in advance by the HIVE with respect to the processing of Personal Data;
- iv. at the written direction of the HIVE, delete or return Personal Data (and any copies of it) to the HIVE on termination of the MOU unless PCC is required by Law to retain the Personal Data.

2.2 The HIVE consents to PCC appointing a third party to process Personal Data under this MOU, on the condition that PCC confirms that it will enter into a written agreement with the third party processor incorporating terms which are substantially similar to those set out in this MOU or a similar clause which will reflect the requirements of the Data Protection Requirements.

2.3 This table below sets out the full extent of the scope, nature and purpose of processing, the duration of processing and the types of Personal Data and categories of Data Subject, unless any changes are agreed by both Participants.

Description	Details
Type of Personal Data	Name, email, phone, DOB, restricting health conditions, medication, contact details, emergency contact, referees contacts, details of unspent criminal convictions, DBS checks, copies of passports, driving licences, NI number documentation, proof of residence. Optional - age, disability, gender, ethnicity.
Subject matter of the Processing	Personal details of the staff, volunteers, individuals and organisations involved with the provision of the services.
Duration of the Processing	01 March 2020 - 01 March 2022 unless extended until 01 March 2023 pursuant to clause 2 (a).
Nature and purpose of the Processing	Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means), etc).
Categories of Data Subject	Staff (including volunteers, agents and temporary workers), individuals, members of the public, users of the Participants' websites, organisations.
Plan for return and destruction of the Personal Data once the processing is complete unless requirement under union or member state law to preserve that type of data.	The data will be retained for a period of 6 years from the expiry/termination of the MOU and it will be returned or destroyed as agreed between the Participants.

