

SUMMARY OF PORTSMOUTH FRAMEWORK SECTION 75 PARTNERSHIP AGREEMENT

Summary

1 PURPOSE

- 1.1 The purpose of this Agreement is to establish a framework through which the Portsmouth Clinical Commissioning Group (the **PCCG**) and the Portsmouth City Council (the **Council**), together “the Parties”, can secure the provision of health and social care services within the terms of the Agreement.

2 STRUCTURE

- 2.1 The structure of the Agreement comprises of:
- 2.1.1 Overarching terms and conditions set out in Clauses 1 to 57 and Schedules 2 to 8 (exclusive of Schedule 3).
 - 2.1.2 The Arrangement of the secondment of staff as set out in Schedule 1.
 - 2.1.3 The individual Commissioning Schemes and their relevant Scheme Specifications as set out in Schedule 3.

3 TERM

- 3.1 The term of the Agreement begins on the Commencement Date (which is to be confirmed) and the Agreement continues until terminated (see below). Commissioning Schemes and Section 256 Schemes will continue for the term of the Agreement unless either their specifications state otherwise or they are terminate earlier (see below).

4 TERMINATION

- 4.1 Termination of the entire Agreement or Individual Commissioning for default:
- 4.1.1 Any dispute between the Parties under the Agreement must be referred to the Dispute Resolution Procedure, and the Dispute Resolution Procedure followed, prior to either Party being able to exercise termination rights.
 - 4.1.2 Either party can terminate the Agreement or a Commissioning Scheme upon giving not less than three months' notice to the other party if:
 - a) the other Party commits a material breach of this Agreement or an Commissioning Scheme and the other Party has refused to or failed to initiate appropriate steps or actions to remedy the material within one Month of the first Party being notified; and/or
 - b) a Remedial Action Plan has been agreed and the Party which has agreed the Remedial Action Plan fails to take appropriate actions in order to comply with the Plan within one month of the Plan being agreed; and/or
 - c) the Council fails to comply with the conditions of the Section 256 Payments as set out in Schedule 8 (Financial Contributions and Governance); and/or
 - d) the other Party, having in the first Party's reasonable opinion, so failed to provide the Commissioning Scheme Services or Section 256 Services adequately, as to place the health and welfare of any Service User and/or any employee of the first Party in jeopardy.

4.2 Voluntary termination of an individual Commissioning Scheme and a Section 256 Scheme:

4.2.1 Unless otherwise agreed in the relevant Scheme Specification or Section 256 Scheme, each Commissioning Scheme may be terminated by either Party giving at least 12 months' notice in writing, or such shorter notice period agreed between the Parties provided that:

- a) such termination is possible in accordance with the National Guidance and Law; and
- b) that the Parties ensure that the statutory Better Care Fund Requirements continue to be met,

the remaining Commissioning Schemes will then continue to operate.

4.3 Voluntary termination of the Entire Agreement:

4.3.1 The Agreement can be terminated by any Party giving at least 12 months' notice in writing provided that:

- a) termination will not take effect prior to the third anniversary of the Commencement Date or to the termination or expiry of all individual Commissioning Schemes; and
- b) the Better Care Fund Requirements will continue to be met.

4.4 Effects of termination:

4.4.1 The Parties must ensure a smooth transfer, and to minimise any disruption to ongoing Services and any risk to the health and safety of Service Users.

4.4.2 The Parties agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Parties is carried out smoothly, and in accordance with an Exit Plan agreed by the Parties.

4.4.3 Where either Party has entered into a Third Party Contract which continues after the termination of this Agreement, both Parties shall continue to contribute to the relevant contract price as agreed prior to termination and enter into all legal documentation relating to it;

4.4.4 The Lead Commissioning Scheme Manager shall make reasonable endeavours to amend or terminate a Third Party Contract where the other Party requests the same in writing;

4.4.5 Where a Third Party Contract held by a Lead Commissioning Scheme Manager relates to services which relate to the other Party's Functions, the other Party may request that the Lead Commissioning Scheme Manager assigns the Third Party Contract in whole or part upon the same terms as the original contract;

4.4.6 The Joint Commissioning Board (JCB) shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any commitments relating to the Agreement; and

4.4.7 Termination of this Agreement shall have no effect on the liability of any rights or remedies of either Party already accrued, prior to termination.

4.4.8 Where notice does not take immediate effect then the effects of termination (as stated above) shall apply during the period of notice; and

4.4.9 Termination shall be without prejudice to the Parties rights in respect of any previous breach of the provisions of this Agreement.

5 LIABILITY AND INDEMNITY, INSURANCE

5.1 If a Party incurs a loss arising out of or in connecting with this Agreement, as a result of the other Party's negligence, fraud or breach of contract, then the other Party shall be liable for that loss and shall indemnify the first Party.

5.2 Insurance:

5.2.1 The Parties shall agree appropriate insurance arrangements in respect of all potential liabilities arising from the Commissioning Schemes.

5.2.2 The Parties' insurers may agree common policies and protocols for the handling of claims covered by the Parties' insurance arrangements.

5.2.3 Each Party agrees to discuss with their insurers and request their agreement not to enforce any subrogated rights against the other Party arising out of any liability under the Commissioning Schemes to the extent that the sum claimed is not recoverable under the other Party's insurance arrangements.

5.3 Uninsured Liability Payments:

5.3.1 Where a Party makes an Uninsured Liability Payment, it may elect that the same be paid from any Pooled Budget, any Aligned Budget contributed by that Party, and/or other financial resources available to that Party.

5.4 Alternative Arrangements and Mitigation:

5.4.1 The Parties may agree alternative insurance and indemnity arrangements from time to time.

5.4.2 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss incurred.

5.5 Notification and Conduct of Claims:

5.5.1 If any third party makes a claim or intimates an intention to make a claim against any Party, the Party that may claim against the other indemnifying Party will:

- (a) as soon as reasonably practicable give written notice to the Other Party specifying details of the claim;
- (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Party;
- (c) give the Other Party and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control, for the purpose of assessing and defending the relevant claim.

5.6 Indemnities:

5.6.1 The indemnified Party shall give written notice to the indemnifying Party as soon as is practicable of the details of any claim brought or threatened against it, in respect of which a claim will or may be made under the relevant indemnity;

5.6.2 The indemnifying Party shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity. Where there is an impact upon the indemnified Party, the indemnifying Party shall consult with the indemnified Party shall keep the Indemnified Party informed of all material matters.

- 5.6.3 The indemnifying and Indemnified Party shall each give to the other all such cooperation as may reasonably be required in connection with any threatened or actual claim.

6 REVIEW

- 6.1 Meetings shall take place between the Authorised Officers, the format and timings for which are to be agreed between the Parties.
- 6.2 Quarterly Reviews:
- 6.2.1 The JCB shall conduct a Quarterly Review of the operation of the Agreement against the Overarching Aims and Outcomes.
- 6.2.2 The Performance Management Group (the PMG) shall carry out regular reviews of the operation of the Scheme Specifications during each Financial Year, and report any matters which either or both Parties consider require review by the JCB.
- 6.2.3 The Authorised Officers shall carry out regular reviews of the operation of the joint staffing arrangements set out in Schedule 1, and refer any matters which require review by the JCB.
- 6.3 Annual Review Process:
- 6.3.1 Each Partnership Management Group shall carry out a review of the operation of the Scheme Specifications for which it is responsible, and submit written reports to the JCB within three months of the end of each Financial Year.
- 6.3.2 The JCB shall carry out Annual Reviews of the operation of the arrangements set out within the Agreement at the meeting of the second Quarter of each Financial Year. Following an Annual Review the JCB shall submit to the Health & Wellbeing Board for the Council and the CCG's Governing Body an Annual Report setting out the items listed in clause 14.3.3.
- 6.4 Reviews may be held more frequently on the agreement of both Parties.

7 PERFORMANCE MANAGEMENT

- 7.1 Each PMG will recommend to the JCB the Outcomes to enable the JCB to adopt the performance management framework for the Agreement, prior to the commencement of the second Financial Year following the Commencement Date.
- 7.2 The intention is that the JCB will consider and agree before the commencement of each Financial Year a spreadsheet containing Outcomes for this Agreement, the Commissioning Schemes and the Section 256 Schemes.
- 7.3 If an additional Commissioning Scheme or Section 256 is added during a Financial Year, or a Commissioning Scheme or Section 256 Scheme is varied or terminated, the JCB will consider and make any amendments to the Outcomes.
- 7.4 The JCB will monitor the performance of the Commissioning Scheme Manager, and the Council as Provider.
- 7.5 The JCB will also monitor whether the Council is providing or procuring the Section 256 Services in accordance with agreed Outcomes.
- 7.6 Within 10 (ten) days of the Joint Commissioning Board's reasonable request, the Commissioning Scheme Manager or the Council as Provider shall send to the other Party, or the Council shall send the PCCG the results of any audit, evaluation, inspection, investigation or research in relation to the Services.

7.7 The JCB may issue a Deficiency Notice to the relevant Party describing a performance deficiency and requiring the rectification of the deficiency.

7.8 Where a Deficiency Notice is issued, the JCB and the relevant Party shall discuss and agree a Remedial Action Plan to be implemented by the Commissioning Scheme Manager or the Council as Provider.

8 GOVERNANCE

8.1 PCCG has formed the JCB which has delegated authority for commissioning on behalf of the PCCG.

8.2 The Council may nominate officer members of the JCB who shall hold delegated authority from the Council to take relevant Council decisions at the meetings of the JCB.

8.3 The Joint Commissioning Group has strategic responsibility for this Agreement, the Commissioning Schemes and the joint staffing arrangements set out in Schedule 1, together with any Section 256 Schemes that might be agreed by the Parties.

8.4 Each Scheme Specification shall have a Partnership Management Group, which shall have responsibility for managing, and monitoring a Scheme Specification as set out in the relevant Scheme Specification.

8.5 The PCCG is subject to a duty of clinical governance that is a framework through which the PCCG is accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish.

8.6 The JCB will be responsible for ensuring that suitable clinical governance arrangements and professional social service provider governance arrangements are put in place for each of the Commissioning Schemes, and the Commissioning Scheme Manager will comply with these arrangements.

8.7 The Council is subject to statutory duties in relation to the provision of social services to Service Users and the standards to which such services must be provided.

Bevan Brittan LLP
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