



  
**Cambridgeshire and Peterborough  
Clinical Commissioning Group**

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**Dated**

**2013**

**PETERBOROUGH CITY COUNCIL**

**NHS CAMBRIDGESHIRE & PETERBOROUGH  
CLINICAL COMMISSIONING GROUP**

**AGREEMENT**

for the delegation of functions and alignment of funding in  
respect of children's community health and disability services.

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<b>Agreement</b>	means this agreement including all Schedules
<b>Aligned Budget(s)</b>	means any aligned budget(s) in respect of the Services as may be agreed by the Partners from time to time in accordance with the provisions of Schedule 4 (Financial Matters)
<b>Best Value</b>	means the duty imposed on the Council by Section 3 of the Local Government Act 1999
<b>Clinical Governance</b>	a duty to continuously seek improvements to the quality of health services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish
<b>Commencement Date</b>	the date hereof
<b>Contract Procurement Requirements</b>	procurement guidelines or requirements, contract standing orders, financial requirements, scheme of delegation and other relevant requirements set out in the Council Constitution and/or procurement requirements required by Law and/or required by the CCG and any other requirements made known to persons letting contracts from time to time
<b>Contributions</b>	the Partners' contributions to the Aligned Budget(s), any Pooled Fund or Non Pooled Fund as may be made and agreed from time to time in accordance with Clause 10 (Pooled Fund, Aligned Budget(s) and Contributions).
<b>Council Constitution</b>	means the written constitution of the Council as the same may be changed from time to time
<b>Eligibility Criteria</b>	means the guidance set out in Schedule 6 providing guidance to (separately) the CCG and the Council about criteria to be met by Service Users in order to be eligible for the Services
<b>Employment Liabilities</b>	means without limitation any and all costs, claims, fines, liabilities or expenses however arising from: <ul style="list-style-type: none"> <li>(a) the employment of any persons including any claim made by any</li> </ul>

third party arising out of or in connection with or in respect of the employment or engagement of any of the aforesaid persons;

- (b) the termination of such employment;
- (c) the termination of any collective agreement;
- (d) the obligations which may arise with respect to the transfer of such employment under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") as amended from time to time and any other statute or statutory provision which may from time to time implement or purport to implement the Acquired Rights Directive (2001/23/EC) as the same may be amended from time to time;
- (e) any dispute whether or not the subject of litigation in any court or tribunal which relates to such employment or collective agreement or their termination;

insofar as not included above those matters referred to in (b) and (d) of "Liabilities"

**Existing Service Contract**

any contract in place before the Commencement Date with a Service Provider in respect of the Services entered into by an individual Partner

**Financial Year**

means 1st April in any year to 31st March in the subsequent year (inclusive) save for the First Financial Year which runs for the period referred to in the definition of that term

**First Financial Year**

means the period from the Commencement Date

**FOIA**

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation provided that such guidance shall not contravene such legislation

**Future Service Contract**

any contract entered into on or after the Commencement Date in respect of the Services entered into by the Council.

**Head of Joint Commissioning**

means the person responsible for day to day management of the Joint Commissioning Unit and for carrying out the role ascribed to it hereunder (and the role of the Head of Joint Commissioning is set out in Schedule 9 hereto) or such other agreement as may be agreed to replace or amend the aforementioned agreement from time to time, the Head of Joint Commissioning being, as at the date of this Agreement, xxxxxxxx.

**Host Partner**

the Council

**Joint Commissioning Unit**

has the description given to it in Schedule 7

**Lead Commissioner**

the Council

**Law**

means:

- (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, and any exercise of the Royal Prerogative, any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
- (b) any applicable guidance (including NHS Guidance and (where this is accepted by the Department of Health) BMA guidance), direction or determination with which the CCG or the Council is bound to comply to the extent that the same is published and publicly available or the existence or contents of them have been notified to the CCG or the Council (as relevant);
- (c) any applicable judgment of a relevant court of law which is binding precedent,

in each case in the United Kingdom

**Liabilities**

any costs, claims, liabilities, expenses and demands made against or suffered or incurred either directly or indirectly by any Partner including (but not limited to) the following matters:



- (a) public liability;
- (b) employer's liability;
- (c) professional indemnity (including but not limited to officers liability and clinical negligence);
- (d) employment claims including (but not limited to) claims for:
  - damages, costs and expenditure including (but not limited to) claims for wrongful and unfair dismissal and under TUPE;
  - damages, costs and expenditure in relation to sex, race or disability discrimination and equal pay claims;
  - other claims for breach of employment contract;
- (e) Ombudsman awards;
- (f) claims for breach of the Human Rights Act 1998 and claims in public law,

and "Liability" shall be construed accordingly

**Maladministration**

means the dishonest administration of the Pooled Fund and/or the Aligned Budget(s) and/or the Non Pooled Fund and/or the Services, or the administration of the Pooled Fund and/or the Aligned Budget(s) and/or the Non Pooled Fund and/or the Services and/or any other obligation hereunder otherwise than in accordance with the terms of this Agreement

**Management and Support Services**

such accommodation, communications, financial, property, transport, information technology, human resources, legal, administrative services and senior management oversight and similar services as are required to support the proper delivery of the Services and the effective and efficient management of Partnership Arrangements pursuant to this Agreement

**Non Pooled Funds**

means any financial contributions of the Partners to the Partnership which are not

	included in the Pooled Fund from time to time whether included in the Aligned Budget(s) or otherwise
<b>Partnership/Partnership Arrangements</b>	the arrangements detailed in this Agreement
<b>Partnership Board</b>	for the Council, the Service Director for People Commissioning, Head of Joint Commissioning; and for the CCG the Local Chief Officer and the Chief Finance Officer.
<b>Partnership Resources</b>	the Management and Support Services and the Service Contracts made available and entered into in accordance with the terms of this Agreement
<b>Pooled Fund? Remove</b>	any pooled fund established in respect of the Services as may be agreed by the Partners from time to time in accordance with the provisions of Clause 10 (Pooled Fund, Aligned Budget(s) and Contributions)
<b>Quarter</b>	means each of the following periods in any Financial Year: 1 <sup>st</sup> April to 30 <sup>th</sup> June 1 <sup>st</sup> July to 30 <sup>th</sup> September 1 <sup>st</sup> October to 31 <sup>st</sup> December 1 <sup>st</sup> January to 31 <sup>st</sup> March and "Quarterly" shall be construed accordingly
<b>Regulatory Bodies</b>	means those government departments and regulatory statutory or other entities committees or ombudsmen and bodies which whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate or investigate the Services or the operation of this Agreement
<b>Regulations</b>	the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (S1 2000/617) (as amended)? Check
<b>Relevant Functions</b>	the functions of NHS bodies and local authorities prescribed under section 75 of the 2006 Act which are set out in Part 1 of Schedule 2
<b>Service Specification</b>	the services specification set out at Schedule 3 for delivery of the Services, or any part, by reference to services carried out under Existing Service Contracts or a description of the relevant services or contracting arrangement, and any changes thereto as may be agreed from time to

time between the Partners in accordance with this Agreement.

**Services**

- (a) For the CCG children's community health services and CAMHs (to be confirmed)
- (b) For the Council those social services for children for Services in respect of emotional health and wellbeing and disability

and which fall within the definition of Relevant Functions together with such other services as may fall within the definition of Relevant Functions that the Partners may agree from time to time should be included as part of this Agreement under and pursuant to Clause 16 (Changes and Review).

**Service Contracts**

contracts with third parties for or in connection with the provision of the Services

**Service Provider(s)**

third parties providing goods or services under Service Contracts

**Service User**

an child who is assessed as eligible in accordance with Clause 11 of this Agreement for and/or provided with Services under this Agreement

**Staff**

the persons from time to time employed, contracted, engaged or seconded by either of the Partners to carry out the Services

**Standing Orders**

the Standing Orders, Contract Standing Orders, the Constitution and Financial Regulations of the Host Partner

**Term**

means the period from the Commencement Date until termination of this Agreement in accordance with Clause 3.1 (Duration) and Clause 21 (Termination)

1.2 References to any Act or Regulations include reference to any amendment or re-enactment thereof.

1.3 References to:

1.3.1 masculine include the feminine;

1.3.2 singular include the plural;

1.3.3 persons include companies and corporations,

1.3.4 and vice versa where the context so admits.

1.4 The headings of the Clauses of this Agreement are for reference only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate.

1.5 References made to Clauses Sub-clauses Schedules and Annexes are to clauses schedules and annexes of this Agreement.

1.6 Any decision or act or thing which any Partner is required or authorised to take or do under this Agreement may be taken or done by any person authorised generally or specially by the Partner to take or do that decision act or thing provided that each Partner shall provide any other with the name of any person so authorised upon receipt from any other Partner of a written request for the same.

1.7 The Schedules to this Agreement shall be deemed to be incorporated into the body of this Agreement and shall have full force and effect.

## **2 AIMS AND OUTCOMES OF THE PARTNERSHIP**

2.1 The aims and intended outcomes of this Agreement are set out in Schedule 1.

2.2 The Partners hereby agree that fulfilment of the aims and outcomes referred to in Clause 2.1 will lead to improvements in quality and cost and time efficiencies in relation to the way their Relevant Functions are provided.

2.3 The Partners hereby confirm that they are committed to co-operating with one another under the Partnership Arrangement and agree to keep one another informed, to liaise effectively and to work together in good faith and agree to act in such a way as to achieve the aims set out in Clause 2.1 wherever possible and are committed to the principles set out in this Agreement in relation to governance and financial management.

2.4 For the avoidance of doubt, the Partners shall act in accordance with Clause 2.3 in so far as it is reasonably practicable to do so, taking account of the best interests of Patients/Service Users, statutory obligations and availability of resources.

### **Standards of Conduct**

2.5 The Partners will:

2.5.1 comply with all relevant Law, any other national and local and other guidance on conduct and probity and good corporate governance (including the Council Constitution and the CCG Constitution) and each Partner shall be aware of the obligations affecting the other; and

2.5.2 Ensure that the personnel of each Partner responsible for the day to day management of the Services shall carry out their responsibilities in such a manner as to ensure fulfilment of the Relevant Functions and to ensure compliance with the Partner's obligations hereunder.

## **3 DURATION, LEGAL STATUS AND GOVERNANCE OF THE PARTNERSHIP AND DELIVERY OF FUNCTIONS**

### **Duration**

3.1 The Partners agree that the Partnership Arrangements and this Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with the provisions of Clause 21 (Termination).

## **Legal Status**

3.2 The Partnership is established by this Agreement pursuant to section 75 of the 2006 Act and the Regulations.

3.3 The Partners have agreed that the Partnership shall or may embrace the following flexibilities pursuant to section 75 of the 2006 Act:

3.3.1 the alignment of budgets in relation to commissioning of the Services and potentially the pooling of budgets as may be agreed by the Partners from time to time in accordance with the terms of this Agreement; and

3.3.2 lead commissioning by the Council of the Services in accordance with the terms of this Agreement.

and such other actions as are incidental or conducive to the achievement of the same.

3.4 Before the Commencement Date the Partners carried out the consultation required by Regulation 4(2) of the Regulations or any Consultation required pursuant to Section 242 of the 2006 Act and will continue to carry out any consultation that may be required (under Law) during the Term or upon termination of this Agreement for any reason.

3.5 The CCG hereby delegates to the Council at the commencement of the agreement any of the CCG's Relevant Functions in so far as the same are or shall be reasonably required, if any, and not further or otherwise, to enable the Council to fulfil its duties as Lead Commissioner and/or Host Partner as set out in this Agreement, and the CCG hereby further agrees that where any of its Relevant Functions are required to be delegated to enable the Council to fulfil its duties where changes are agreed hereunder from time to time, such Relevant Functions shall be deemed to be so delegated.

## **Governance and Partnership Arrangements**

3.6 The Partnership Arrangements comprise as at the date hereof (and the same may be subject to change from time to time):

3.6.1 the formalisation of lead commissioning arrangements so that the Services may be jointly planned and commissioned by the Partners so as to achieve the aims and objectives set out in Schedule 1 and in fulfilment of the Relevant Functions;

3.6.2 the Council taking the role of lead commissioner when the CCG decides it is ready to transfer these functions as outlined below and as such:

(i) the management of any Existing Service Contracts and Future Service Contracts on behalf of the relevant Partner (in accordance with the terms hereof); and

(ii) that any proposed Future Service Contract shall be entered into by the Council unless the Partners agree to act otherwise in connection with any specific contracts, based on the relevant facts;

3.6.3 the formalisation of the establishment of the Joint Commissioning Unit for Children's Services comprising officers and commissioning staff from the Council to commission and procure contracts in respect of the Services with CCG prior agreement..

- 3.6.4 the establishment and formalisation of the role of the Head of Joint Commissioning to head up the Joint Commissioning Unit and such other roles as shall be necessary for the satisfactory performance of the Relevant Functions hereunder.
- 3.7 The Partners shall comply with their relevant obligations and duties hereunder.
- 3.8 Without prejudice to the generality of Clause 3.4, the Partners agree to comply with the financial protocols set out in Schedule 4 and the governance and permitted delegation arrangements set out herein as the same may be changed from time to time in accordance with this Agreement.
- 3.9 The Partners agree to be jointly responsible for ensuring that any changes to the Partnership Arrangements or this Agreement are recorded accurately and in accordance with Clause 17 (Variation).
- 3.10 In the event that either Partner intends to or is required to change the way any Services in respect of its Relevant Functions are to be provided, and such change will affect the Partnership Arrangements, they shall inform and consult with the other as soon as reasonably practicable, so as to prevent disruption or costs being incurred unnecessarily.
- 3.11 The Partners shall notify each other wherever consultation is required from time to time in accordance with Law and for the avoidance of doubt neither Partner shall make any relevant decisions unless and until due consideration has been given to the outcome of such consultation process.

#### **Partners' liability to third parties**

- 3.12 The Partnership Arrangements under this Agreement shall not affect:
- 3.12.1 The liabilities of the Partners to any third parties for the exercise of their respective functions; or
- 3.12.2 Powers or duties to recover or set charges for the provision of any services in the exercise of any local authority functions.

#### **4 WORKFORCE ARRANGEMENTS**

- 4.1 Pursuant to Section 75 of the 2006 Act and Regulation 10(1) of the Regulations the Partners agree to resource the Partnership in accordance with Schedule 8 of this Agreement, and in addition will make available various staff resources in order to facilitate the Partnership as set out in Schedule 8.
- 4.2 The overall day to day management of the commissioning function hereunder will be carried out by the Head of Joint Commissioning.
- 4.3 The process of recruiting and appointing any replacement Head of Joint Commissioning and any changes to management of joint commissioning on a day to day basis shall be subject to the approval of both Partners.
- 4.4 Subject to clause 4.3, recruitment, changes to staff terms and conditions and any dismissal shall be in accordance with the Joint Protocol on Recruitment and Staffing set out in Schedule 8, provided always that:
- 4.4.1 the human resources policies and procedures of each Partner in force from time to time and all relevant Law shall be fully complied with; and

4.4.2 any significant increases in staffing levels in relation to the Partnership Arrangements shall be agreed in advance between the Partners.

## **5 ACCOMMODATION SERVICES AND GOODS**

5.1 Pursuant to Section 75 of the 2006 Act and Regulation 10(1) of the Regulations the Partners will from the Commencement Date provide in connection with the Partnership such accommodation and services as are referred to in Schedule 5 and such other Management and Support Services as are deemed necessary for the needs of the Partnership Arrangements.

5.2 The Partners will so far as is necessary and appropriate to the achievement of the purposes of the Partnership cooperate in respect of what is to be provided under Clause 5.1 and to utilise the accommodation goods and services in an integrated and cooperative manner.

5.3 The Partners will periodically review the needs of the Partnership and by agreement withdraw accommodation goods or services and/or make additional or substituted accommodation goods or services available.

5.4 The Partners will each provide or make available those Management and Support Services as are reasonably necessary to support the Partnership Arrangements.

5.5 For the avoidance of doubt, the Partners will continue to provide any corporate services in the same way as prior to the Commencement Date except where it has been agreed that the Partnership Arrangements will change the way in which these services will be provided.

5.6 As at the date hereof neither Partner will make any charge for the services referred to in this Clause 5.

5.7 Each partner shall record and report to the other as required the costs of providing any of the services referred to in this Clause 5.

5.8 Where either Partner seek to make changes to the services to be provided under this Clause 5 and such changes are deemed by the other to materially affect the Partnering Arrangements, then any such changes must be:

5.8.1 agreed by both Partners; and

5.8.2 the Partners may also seek an appropriate change to their financial contributions arising from such change.

## **6 COMMISSIONING AND CONTRACTING FRAMEWORK – BEST VALUE CLINICAL GOVERNANCE AND EQUAL OPPORTUNITIES**

6.1 All Services directly commissioned pursuant to this Agreement shall be subject to the requirements of Best Value principles and Clinical Governance.

6.2 The Contract Procurement Requirements shall be complied with in relation to any Service Contracts.

6.3 The Partners agree that pursuant to the Partnership Arrangements the Council may enter into Service Contracts pursuant to which there will be areas of service relating to clinical care for which the CCG will have statutory responsibility for discharging and areas of service relating to social care for which the Council will

have statutory responsibility for discharging ("**Mixed Care Service Contracts**") and the Partners have agreed the following so as to clarify so far as possible the responsibility of the Partners under Mixed Care Service Contracts:

- (a) As between the Council and the CCG under this Agreement, the CCG shall retain risk and responsibility for all aspects of clinical care, clinical practice, clinical risk (including professional negligence) and clinical governance for which it is statutorily responsible ("**Clinical Care**"), subject always to the other provisions of this Clause 6.3.
- (b) In relation to Mixed Care Service Contracts (in relation to which the CCG is not a contracting party but have responsibility as aforesaid in this Clause 6.3 above), the CCG shall:
  - (i) indemnify the Council against any claims, losses or damages in relation to Clinical Care (except for the avoidance of doubt to the extent that the same has been caused or contributed to by the Council failing to comply with or being in breach of its obligations in Clause 6.3(c) and to such extent the Council shall indemnify the CCG against any resulting claims, losses or damages) and PROVIDED ALWAYS THAT
    - (A) The liability of one Partner to indemnify the other Partner shall be determined on a just and equitable basis;
    - (B) Each Partner shall mitigate its losses;
    - (C) Neither Partner shall be entitled to recover indirect losses or loss of income; and
  - (ii) provide such monitoring, supervision or other controls in relation to Clinical Care being provided in accordance with the relevant terms of the relevant Mixed Care Service Contract(s) (in so far as such terms are relevant to the CCG's responsibilities under this Clause 6.3); and
  - (iii) in relation to commissioning, be responsible for checking the terms and conditions and the specification of the Mixed Care Service Contracts in so far as they relate to Clinical Care.
- (c) The Council shall:
  - (i) ensure and procure that its employees do not undertake any services which fall within the definition of Clinical Care;
  - (ii) ensure and procure that its employees do not (by act or omission) prevent the CCG from complying with its obligations under Clause 6.3(b);
  - (iii) enforce any relevant provisions of any Mixed Care Service Contract to which it is a party where necessary (and for the avoidance of doubt the CCG will inform the Council if it considers the same is necessary) if a Service Provider is preventing the CCG from complying with its obligations under this Clause 6.3;
  - (iv) authorise the CCG to take conduct of any issue where the Partners agree that the facts are such that matter would be more effectively managed by the CCG, and the provisions of clause 19 will apply;
  - (v) not enter into a Mixed Care Service Contract unless the CCG is aware of the same (and for the purposes of this clause 6.3(c)(v) the CCG shall be deemed to be aware of the same where the contract is being commissioned by the Joint Commissioning Unit (in



relation to which the Head of Joint Commissioning is responsible for reporting to both the LCG's Joint Commissioning Forum /CCG and the Council)); and

- (vi) where it is assessing a person's needs (whether or not potential eligibility for Clinical Care has been identified) and the assessment indicates a potential need which may constitute Clinical Care, it will invite the CCG to assist in making the assessment in accordance with section 47 of the National Health Service and Community Care Act 1990.
- (e) It is hereby stated that for the avoidance of doubt the Partners do not intend that the Council will be responsible for Clinical Care only as a result of entering into a Mixed Care Services Contract (but that the foregoing does not affect the obligations of the Council under any other provision herein) and/or only by virtue of being the lead commissioner under the terms of this Agreement (but again that the foregoing does not affect the obligations of the Council under any other provision herein).
- (f) If and to the extent that the Partner's respective responsibilities referred to in paragraph (a) change, then the Partners shall agree changes to this clause to reflect the change in responsibility.
- (g) Any liability arising pursuant to this Clause 6.3 shall also be considered in accordance with the liability provisions detailed in Clause 18.6.

6.4 The Partners agree that pursuant to the Partnership Arrangements the CCG may enter into Mixed Care Service Contracts (as defined in clause 6.3 above) and the Partners have agreed the following so as to clarify so far as possible the responsibility of the Partners under Mixed Care Service Contracts:

- (a) As between the Council and the CCG under this Agreement, the Council shall retain risk and responsibility for all aspects of social care for which it is statutorily responsible ("**Social Care**"), subject always to the other provisions of this Clause 6.4.
- (b) In relation to Mixed Care Service Contracts (in relation to which the Council is not a contracting party but have responsibility as aforesaid in this Clause 6.4 above), the Council shall:
  - (i) indemnify the CCG against any claims, losses or damages in relation to Social Care (except for the avoidance of doubt to the extent that the same has been caused or contributed to by the CCG failing to comply with or being in breach of its obligations in Clause 6.4(c) and to such extent the Council shall indemnify the CCG against any resulting claims, losses or damages) and PROVIDED ALWAYS THAT
    - (A) The liability of one Partner to indemnify the other Partner shall be determined on a just and equitable basis;
    - (B) Each Partner shall mitigate its losses;
    - (C) Neither Partner shall be entitled to recover indirect losses or loss of income; and
  - (ii) provide such monitoring, supervision or other controls in relation to Social Care being provided in accordance with the relevant terms of the relevant Mixed Care Service Contract(s) (in so far as such terms are relevant to the Council's responsibilities under this Clause 6.4); and

- (iii) in relation to commissioning, be responsible for checking the terms and conditions and the specification of the Mixed Care Service Contracts in so far as they relate to Social Care.
- (c) The CCG shall:
  - (i) ensure and procure that its employees do not undertake any services which fall within the definition of Social Care;
  - (ii) ensure and procure that its employees do not (by act or omission) prevent the Council from complying with its obligations under Clause 6.4(b);
  - (v) enforce any relevant provisions of any Mixed Care Service Contract to which it is a party where necessary (and for the avoidance of doubt the Council will inform the CCG if it considers the same is necessary) if a Service Provider is preventing the Council from complying with its obligations under this Clause 6.4;
  - (vi) authorise the Council to take conduct of any issue where the Partners agree that the facts are such that matter would be more effectively managed by the Council, and the provisions of clause 19 will apply;
  - (v) not enter into a Mixed Care Service Contract unless the Council is aware of the same (and for the purposes of this clause 6.4(c)(v) the Council shall be deemed to be aware of the same where the contract is being commissioned by the Joint Commissioning Unit (in relation to which the Head of Joint Commissioning is responsible for reporting to both the Council and the CCG); and
  - (vi) where it is assessing a person's needs (whether or not potential eligibility for Social Care has been identified) and the assessment indicates a potential need which may constitute Social Care, it will invite the Council to assist in making the assessment.
- (e) It is hereby stated that for the avoidance of doubt the Partners do not intend that the CCG will be responsible for Social Care only as a result of entering into a Mixed Care Services Contract (but that the foregoing does not affect the obligations of the CCG under any other provision herein).
- (f) If and to the extent that the Partner's respective responsibilities referred to in paragraph (a) change, then the Partners shall agree changes to this clause to reflect the change in responsibility.
- (g) Any liability arising pursuant to this Clause 6.3 shall also be considered in accordance with the liability provisions detailed in Clause 18.6.

6.5 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to the Services with the aim of developing a joint strategy for all elements of the Services.

7.0 **CONFIDENTIALITY AND DATA PROTECTION Amanda Holloway please check**

7.1 Except as required by Law, each Partner agrees at all times during the continuance of this Agreement and after its termination to keep confidential all documents or papers which it receives or otherwise acquires in connection with the other and which are marked "Confidential" or similar or information which a reasonable person would be expected to treat as confidential.

- 7.2 The Partners shall ensure that all Staff (including temporary employees), agents or contractors of the Partners working within the Partnership Arrangements observe the provisions of Clause 8.1; where Staff or an agent or contractor of a Partner discloses confidential information the relevant Partner shall take such action as is necessary and appropriate, and where possible, to the satisfaction of the Partner affected by such disclosure.
- 7.3 Each Partner shall comply with its statutory obligations under the Data Protection Acts.
- 7.4 The Council and the CCG shall in relation to information sharing between agencies, having proper regard to the principles of client confidentiality and the Data Protection Act 1998 and any policies or protocols that the Partners may agree from time to time should apply to the provision of information and sharing of data for the purposes of this Agreement.
- 7.5 Each Partner (the "**First Partner**") acknowledges that in responding to a request received by any Partner (the "**Other Partner**") under the FOIA or the Environmental Information Regulations 2004 (the "**EIR**") the Other Partner will be entitled to provide information held by it relating to this Agreement or which otherwise relates to the First Partner.
- 7.6 The Other Partner shall use reasonable endeavours to notify the First Partner of any request under the FOIA or the EIR and the intention to disclose the information within 10 Working Days (as defined in the FOIA) of receipt of such request. Before disclosing any information, the Other Partner shall consider any representations made by the First Partner within 4 Working Days (as defined in the FOIA) of notification from the Other Partner to the First Partner in accordance with this Clause 8.6.
- 7.7 The First Partner acknowledges that, if it does not revert to the Other Partner within the period set out in Clause 8.3, or if its representations do not alter the view of the Other Partner that the information should be disclosed, the Other Partner is under a duty to disclose such information provided that the Other Partner shall not disclose any information that is subject to an FOIA Exemption.
- 7.8 The First Partner shall co-operate with the Other Partner in connection with any request received by the Other Partner under the FOIA or the EIR and such co-operation shall be at no cost to the Other Partner.

## **8 THE LEAD COMMISSIONER**

- 8.1 The Partners agree that the Lead Commissioner will have the following responsibilities:
- 8.1.1 In exercising their functions under this Agreement the Partners shall have regard to other functions in respect of Service Users so as to ensure that services are provided effectively and efficiently.
- 8.1.2 In relation to Service Contracts entered into by the Council in respect of the Relevant Functions of the CCG, the Council does not guarantee that it will stay within relevant health service budgets due to placements being made based on assessed clinical need, but the Council agrees that (where it is in control of the same) it will regularly provide monthly accurate and up to date information to the LCG'S/CCG on such placements and shall put in place appropriate budgetary control and reporting measures where required and practicable as requested by the CCG.

- 8.2 To apply the relevant parts of the Standing Orders and other relevant regulations to the management of any Pooled Fund where the same is established in accordance with Clause 10 (Pooled Fund, Aligned Budget(s) and Contributions) as may be relevant to the Services, subject to Schedule 4;
- 8.3 To lead on the commissioning and implementation of the delivery of the Services in accordance with the terms of this Agreement (subject to the rights and responsibilities of each Partner set out hereunder) and utilise the Partnership Resources (where and to the extent the Lead Commissioner holds or controls the same) in the way best designed to promote the purposes of the Partnership efficiently and cost effectively;

provided always that this Clause 9 is subject to Clauses 6.3 and 6.4.

- 8.4 The role of the Lead Commissioner in relation to entering into Contracts will not diminish or transfer the CCG's statutory obligations and responsibilities in relation to health care services.
- 8.5 Each Partner shall use reasonable endeavours to ensure that any Future Service Contract in respect of Relevant Functions of both Partners are able to be freely assigned (without obligation on either Partner to take such assignment and/or without affecting any decision to novate).

## 9 **POOLED FUND, ALIGNED BUDGET(S) AND CONTRIBUTIONS**

9.1 The Partners agree that due to the nature of the Services included within the Partnership Arrangements it will be necessary for the Contributions of the Partners to be made on the basis of:

- 9.1.1 An Aligned Budget (being the arrangement agreed between the Partners as the Commencement Date); or
- 9.1.2 A Pooled Fund (which may be agreed between the Partners to apply to some or all of the Services from time to time); or
- 9.1.3 Such other contributions as the Partners may agree will form part of the Non Pooled Fund as the Partners may agree is relevant and should apply to the Services and their respective Contributions from time to time.

9.2 The Partners agree that the provisions of Schedule 4 shall be the financial protocols at the outset of this agreement, and any changes shall be made in accordance with Clause 16 (Changes and Review) and Clause 17 (Variation).

9.3 Any agreement between the Partners (following the procedures set out in the Agreement relating to change in Clause 16 (Changes and Review)) to establish a Pooled Fund or make changes in relation to the Aligned Budget or any Non Pooled Funds at any time are subject to compliance with:

- 9.3.1 Such consultation and notification to the Health and Social Care Joint Unit of the Department of Health as is required in relation to the exercise of the flexibilities under the 2006 Act and Regulations;
- 9.3.2 Compliance with audit commission recommendations; and
- 9.3.3 Any other applicable Law.

9.4 In relation to financial management, each Partner shall:

- 9.4.1 provide such information as any of the Partners may require to enable the effective management of the Services and the Pooled Fund, any Aligned Budget(s) and any Non Pooled Fund;
  - 9.4.2 where necessary take account of comply with each others audit requirements;
  - 9.4.3 operate effective audit arrangements which take account of relevant guidance from the Audit Commission retain responsibility for maintaining a clearly identifiable accounting structure to ensure effective monitoring and reporting of the Partnership;
  - 9.4.4 produce a report Monthly (or such other period as the Partners agree) and a memorandum of accounts at the end of each Financial Year showing income received, expenditure and any balance remaining in respect of finances within their responsibility;
  - 9.4.5 keep full and proper records in relation to accounting and financial matters and information will be supplied between the Partners on an "open book" basis; and
  - 9.4.6 comply with all HM Revenue and Customs directions and to have due regard to all guidance issued by HM Revenue and Customs regarding the VAT aspects of the Partnership.
- 9.5 It is agreed that the Pooled Fund, Aligned Budget(s) and Non Pooled Funds shall only be used for the procurement and commissioning of the Services and in accordance with this Agreement.
- 9.6 The Partners agree to make such payments to each other as are agreed to reflect their contributions in accordance with the provisions of Schedule 4 (Financial Matters).

#### **Capital Expenditure and other Flexibilities**

- 10.7 All capital expenditure shall be made by one of the Partners and where appropriate funding support may be transferred between the CCG and the Council under Sections 256 and 76 of the 2006 Act as appropriate, but the same shall not absolve either Partner from having to comply with their respective obligations pursuant to the 2006 Act, including entering into separate agreements and ensuring voucher returns and audit arrangements are in place as is appropriate or required by law.
- 10.8 The following matters shall be agreed in writing between the relevant partners before any Capital Expenditure is incurred in relation to the Partnership Arrangements:
- (a) The capital requirement
  - (b) The proportions in which it is to be met by the Partners
  - (c) Which of the Partners is to make the Capital expenditure
  - (d) The transfers of funding to made between the CCG and the Council using sections 256 and 76 of the 2006 Act as appropriate and both Partners shall ensure compliance with the aforementioned sections; and
  - (e) Ownership of any newly acquired asset and any arrangements for use by the Partners or third parties

- 10.9 Each partner shall give reasonable consideration to any proposals that it shall incur any Capital Expenditure but shall not be obliged to provide such funding

## **10 ASSESSMENT, ELIGIBILITY CRITERIA AND CONSULTATION**

- 10.1 The Council shall have the right and responsibility to determine the Service Users who are eligible to receive services hereunder relating to social care for which the Council has (from time to time) statutory responsibility for discharging and the CCG shall have the right and responsibility to determine the Services Users who are eligible to receive services hereunder relating to any clinical care for which the CCG has (from time to time) statutory responsibility for discharging; and any challenges made by any third party to this agreement in relation to decisions made and Services provided or to be provided shall be the responsibility of the Partner which made or should have made the decision as aforesaid.
- 10.2 The Partners shall have reference to the relevant Eligibility Criteria, without affecting the rights and responsibilities set out in clause 11.1.
- 10.3 For the avoidance of doubt, Service Users may fall into eligibility criteria for other services funded by the Partners, such as housing and generic health, in addition to the Services and nothing in this Agreement shall prevent any Service User from using such services if they meets the relevant criteria.
- 10.4 Any joint local policies that impact on this Agreement shall not be incorporated into this Agreement without the prior consent of both Partners.
- 10.5 Subject always to clause 11.1, no decision shall be made to make changes to the Services or the way in which they are delivered without prior consultation in accordance with the other Partner and with reference to the other Partner's statutory and other obligations.

## **11 CHARGES**

- 11.1 Nothing in this Agreement shall detract from the principle that NHS services are free at the point of delivery and may not be charged for.
- 11.2 The Council shall be at liberty to levy (and shall be responsible for levying) charges for such elements of the Services for which legislation requires or permits it to charge.
- 11.3 Where the distinction might be blurred between charged for and non-charged for services in Services Users' minds, whether through the operation of assessment arrangements or arrangements for the delivery of jointly commissioned Services under this Agreement, then the Lead Commissioner will be responsible for identifying the Partner levying the charges and the nature of the Services charged for making it clear to Service Users in respect of which element of the Services a charge is being levied (and the CCG shall provide such assistance to the Lead Commissioner as is required).

## **12 PERFORMANCE MANAGEMENT, REPORTS AND REPORTING**

- 12.1 The Partners shall ensure that full and proper records for accounting and all other purposes are kept in respect of the obligations under this Agreement.
- 12.2 Without prejudice to the generality of Clause 13.1, the Partners shall be responsible for auditing the areas pertaining to their individual organisation and will work together in areas where an overlap of interest occurs.

- 12.3 Each Partner shall be permitted full access to the other's internal audit reports and records at any time on an open book basis (in addition to the financial audit rights under Clause 10).
- 12.4 The Partners will supply all information reasonably required by:
- 12.4.1 persons exercising a statutory function in relation to either Partner including the external auditor of either Partner and/or any statutory agencies referred to at clause (b) below;
  - 12.4.2 other persons or bodies with an authorised monitoring or scrutiny function, including a Council Overview and Scrutiny Committee/CQC, having regard to the Partner's obligations of confidentiality, and such information sharing protocols as shall be agreed between the Partners from time to time;
  - 12.4.3 the CCG to comply with its duty of Clinical Governance,
  - 12.4.4 the Council to comply with its duty of Best Value.
- 12.5 The Head of Joint Commissioning shall at the end of each Quarter in each Financial Year (or such other times as the Partners agree) carry out a review of:
- 12.5.1 the Partnership Arrangements; and
  - 12.5.2 the statutory functions of each Partner which have been carried out by the other Partner using the flexibilities under the 2006 Act and the Regulations;
- After conferring with and procuring relevant information from such personnel of the Partners as shall be necessary, and shall within 10 days of the review report to the Partnership Board summarising the review. Individual members of the Partnership Board shall provide copies to the relevant persons and groups within their organisation as shall be appropriate. The Partnership Board may meet after such reviews to discuss any outcomes as they consider necessary.
- 12.6 The report referred to in Clause 13.5 shall include but not be limited to:
- 12.6.1 financial report(s) linked to performance against the anticipated expenditure for the relevant period;
  - 12.6.2 a service report linked to the objectives set out at Schedule 1 and the Services and the performance management framework and any agreed key performance indicators, strategic planning objectives and any statutory reporting requirements and quality standards;
  - 12.6.3 details of all Future Services Contracts entered into since the previous report (or the date of this Agreement in respect of the first report)
  - 12.6.4 any changes to the Partnership Arrangements and/or this Agreement pursuant to Clause 16 (Changes and Review); and
  - 12.6.5 such other information as shall be required by the Partners or the or the Partnership Board from time to time.
- 12.7 Without prejudice to the review and reporting requirements of Clauses 13.5 and 13.6, the reporting and other functions of the Head of Joint Commissioning in relation to the Partnership Arrangements are as set out in Schedule 9

- 12.8 The Partners shall carry out an annual review at the end of each Financial Year of the operation of this Agreement including:
- 12.8.1 a financial report linked to performance against the anticipated expenditure for that Financial Year;
  - 12.8.2 an evaluation of performance against agreed performance measures targets and priorities including objectives set out at Schedule 1, the Services and any agreed performance management framework and key performance indicators referred to at Clause 13.6 above and Clause 13.10 below;
  - 12.8.3 review of the targets and priorities for the forthcoming year;
  - 12.8.4 shared learning and apportionments for joint training;
  - 12.8.5 an evaluation of any statistics or information required to be kept by the Department of Health from time to time;
  - 12.8.6 the statutory functions of each Partner which have been carried out by the other Partner using the flexibilities in Section 75 of the 2006 Act and the Regulations;
  - 12.8.7 such other information as shall be required by the Partners or the Partnership Boards from time to time
- and within 6 weeks of the end of each Financial Year the Head of Joint Commissioning shall prepare and submit an annual report documenting the matters referred to and submit to the Partnership Board
- 12.9 The Partners will work to develop a performance management framework based upon the Services for the Partnership with relevant key performance indicators by reference to Best Value and Clinical Governance for measuring its effectiveness and shall review and update this as relevant.
- 12.10 In the event that either Partner shall have any concerns about the operation of the Partnership or the standards achieved in connection with the carrying out of the Functions it may convene a review with the other Partner with a view to agreeing a course of action to resolve such concerns at any time.

### **13 INSPECTION ARRANGEMENTS**

- 13.1 The Partners recognise the potential interest of the various agencies whose names appear below in inspecting different aspects of the Commissioning and Provision of Services and agree to cooperate with each other to facilitate any such inspections:
- 13.1.1 Care Quality Commission;
  - 13.1.2 The Department of Health;
  - 13.1.3 The Audit Commission;
  - 13.1.4 The Health and Safety Executive;
  - 13.1.5 Ofsted;
  - 13.1.6 Any other Regulatory Bodies;
  - 13.1.7 or their respective successors and similar statutory monitoring bodies.



- 13.2 Each Partner will report to the next due meeting of the Partnership Board the key findings of any inspection in respect of the Services to which it has been subject.

#### **14 COMPLAINTS**

- 14.1 Each Partner and all Service Providers will be required to maintain or adopt, as the case may be, complaints procedures internal to their organisation which enable Service Users to be heard in respect of any complaint concerning any element of the Services which are commissioned or provided by or on behalf of a particular Partner and in accordance with each Partner's statutory obligations in this regard.
- 14.2 Clause 15.1 is without prejudice to any complainant's right to use the Partners' respective statutory complaints procedures where applicable.
- 14.3 The Partners will co-operate with investigations undertaken by their respective Ombudsman.
- 14.4 The Partners will agree a protocol for resolving complaints where there are cross service issues.

#### **15 CHANGES AND REVIEW**

- 15.1 By agreement of both Partners and in accordance with Clause 17 (Variations) below any aspect of this Agreement may be changed by addition or otherwise including but not limited to:
- 15.1.1 the Services;
  - 15.1.2 the Partnership Arrangements;
  - 15.1.3 the financial arrangements detailed in Schedule 4 (Financial Matters); and
  - 15.1.4 the clinical governance arrangements, including the medical director and clinical director functions; and
  - 15.1.5 this Agreement and any ancillary documentation.
- 15.2 The Partners shall review the operation of the Partnership at appropriate intervals and not less than annually to ensure that this Agreement is operating in the most satisfactory manner.
- 15.3 **Changes in Legislation etc.**

The Partners shall in any event review the operation of the Partnership Arrangements and all or any procedures or requirements of this Agreement on the coming into force of any relevant statutory or other legislation, directions or guidance affecting the Partnership Arrangements and/or the delivery of the Services so as to ensure that the Partnership Arrangements comply with such legislation.

#### **16 VARIATION**

- 16.1 Changes and variations to this Agreement (whether made under Clause 16 (Changes and Review) or otherwise) shall be in writing and signed by both Partners.
- 16.2 The Partners agree that changes agreed via the reporting process or meeting arrangements under Clause 13 will be considered to be variations hereunder provided that the relevant report or meeting note is sufficiently certain (and includes

amendments to other terms of the Agreement where necessary to give effect to the agreed variation), and is signed by both Partners.

## **17 INDEMNITIES LIABILITY AND INSURANCE**

18.1 The following shall apply to insurance:

- (a) The Partners shall, so far as is possible at reasonable cost and allowable by law or guidance, agree and effect appropriate insurance arrangements in respect of all potential liabilities arising from the Partnership Arrangements.
- (b) In the case of the CCG it may effect, through the National Health Service Litigation Authority, alternative arrangements in respect of NHS schemes in lieu of commercial insurance including maintaining membership of the Liabilities to Third Parties Scheme or equivalent and the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to time by the National Health Service Litigation Authority.
- (c) In the case of the Council, the Council shall maintain such insurance as it considers appropriate, including self-insurance where applicable or relevant.
- (d) The obligations in this Clause shall apply to insurance (or equivalent) arrangements during the Term and after the date of determination of this Agreement in respect of any events acts or omissions arising prior to such determination.
- (e) The Partners in consultation with their insurers (or the National Health Service Litigation Authority as appropriate) may agree from time to time common policies and protocols for the handling of claims covered by the Partners' insurance arrangements (or equivalent) in respect of the Partnership Arrangements and in such event such policies and protocols shall be followed by the Partners.

### **Indemnities**

#### **Events prior to the Commencement Date:**

18.2 Each Partner ( the "**First Partner**") will notify the other in the event that they are or become aware of any potential Liabilities whether arising directly or indirectly from any events acts or omissions in relation to the First Partner's Relevant Functions or not, occurring prior to the Commencement Date.

#### **Events Post Commencement Date:**

18.4 Subject to Clause 18.8 and Clauses 6.3 and 6.4, and without prejudice to the primary liability of each Partner for its Relevant Functions, preserved by Section 75 (5)(a) and (b) of the 2006 Act, each Partner (the "Indemnifying Partner") hereby agrees to indemnify the other against any Liabilities and Employment Liabilities

arising as a result of any breach of contract, act or omission by the Indemnifying Partner or its/their employees, contractors or agents save to the extent that such liability shall arise out of any breach of contract act or omission of the other Partner or its employees, contractors or agents in accordance with the following provisions:

- (a) The liability of one Partner to indemnify the other Partner shall be determined on a just and equitable basis;
- (b) Each Partner shall mitigate its losses;
- (c) Neither Partner shall be entitled to recover indirect losses or loss of income.

18.5 The Partners may agree alternative insurance and indemnity arrangements from time to time in accordance with Clause 16 (Changes and Review) and Clause 17 (Variation).

### **Liability**

18.6 In this agreement, the Council shall be responsible for any act omission or breach by any employee, agent and/or contractor of the Council and the CCG shall be responsible for any act omission or breach by any employee, agent and/or contractor of the CCG, except where there is express wording or intention to the contrary and further subject to the provisions of clauses 6.3 and 6.4; and provided further that under clauses 6.3 and 6.4 the responsibility of the Council or the CCG for any act, omission or breach of any Service Provider (being a "contractor" for the purposes of this clause) appointed under a Mixed Care Service Contract, whether by the Council or the CCG, will be determined in accordance with the relevant facts, with regard to the statutory and contractual responsibilities of each of the Council and the CCG in relation to the carrying out their Relevant Functions and their obligations under this Agreement.

18.7 Where a liability arises as a result of Maladministration or negligence by one Partner, that liability shall in any event be met by that Partner.

18.8 For the avoidance of doubt, any claims arising in relation to the terms or operation of the Secondment Agreement shall be dealt with in accordance with the terms of the Secondment Agreement.

### **19. CONDUCT OF CLAIMS**

19.1 If the Council or the CCG (the "Indemnified Party") becomes aware of any matter that may give rise to a claim under clause 18 against the other (the "Indemnifying Party"), notice of that fact shall be given as soon as possible to the Indemnifying Party.

19.2 The Indemnified Party shall give the Indemnifying Party the opportunity to have conduct of any relevant claim, and accordingly to defend or enact settlement of any such claim avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third parties) in the name of and on behalf of the Indemnifying Party and to have the conduct of any related proceedings, negotiations or appeals, and in such circumstances it is agreed that no admission of liability shall be made by or on behalf of the Indemnified Party and any claim shall not be compromised, disposed of or settled without the consent of the Indemnifying Party. The Indemnifying Party may elect not to have conduct as aforesaid.

- 19.3 Without prejudice to the validity of the claim or alleged claim in question, and whether or not the Indemnifying Party has elected not to defend any such claim, each party shall allow the other 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 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 other party or its professional advisors may reasonably request PROVIDED THAT nothing in this clause 19.3 shall be construed as requiring either party to disclose any document or thing which is the subject of any privilege. The party receiving the same agrees to keep all such information confidential and only to use it for such purpose.

## **20 DISPUTE RESOLUTION**

- 20.1 Any dispute shall in the first instance be referred to the Partnership Board.
- 20.2 In relation to any dispute that the Partners jointly agree may be assisted by obtaining advice and guidance from and/or resolution by an independent expert (for example in relation to accounting disputes) then the Partners may jointly agree to obtain such advice and guidance from and/or resolution by an independent expert to enable them to agree how the dispute may be resolved, provided that neither Partner shall be bound by such advice, guidance or resolution.
- 20.3 Any dispute not able to be resolved under this Clause (or otherwise in the spirit of Partnership) may be referred to the courts of England and Wales.

## **21 STATUTORY COMPLIANCE**

- 21.1 The Partners shall comply with all Law relating to the Partnership Arrangements and the Services.
- 21.2 Each Partner in relation to its own Existing Service Contracts and the Host Partner in respect of Partnership Contracts and Future Service Contracts shall wherever applicable require the acceptance by Service Providers of their status as public authorities when exercising functions of a public nature and shall require such Service Providers to enter into appropriate indemnities in respect of any elements of any claims which arise under any provision of the Human Rights Act 1998.

## **22 TERMINATION**

- 22.1 This Agreement shall terminate (subject always to Clause 22.2):
- 22.1.1 Where one Partner gives at least twelve months' written notice to the other Partner (or such shorter period as the Partners may agree in writing) that they wish to terminate this Agreement such notice to expire on 31 March in the relevant Financial Year;
- 22.1.2 Within such timeframe as is reasonable, where any Partner considers that as a result of legislation or policy requirements of Central Government all or any of the terms of this Agreement are no longer tenable and the Partners have been unable to agree changes that would enable that Partner to fulfil its obligations hereunder and that Partner gives the other Partner reasonable written notice;
- 22.1.3 Where there has been service failure as a consequence of which the continuation of the Agreement would be detrimental to the Services, a Service User or a Partner and at least three month's written notice is given;

- 22.1.4 Where the Partners are unable to agree the resourcing of this Agreement either in respect of the Contributions or the Services or the accommodation services and goods made available under Clause 5 and/or if an overspend has arisen and the Partners are unable to agree a recovery plan and/or budget revisions in accordance with the terms of this Agreement. Where such a situation arises and on request by either Partner the Partners will fully discuss the implications and agree on a joint strategy for the dissolution of this Agreement. In the event that a joint strategy cannot be agreed within 28 days of such a request then either Partner may terminate this Agreement by giving at least three months written notice;
- 22.1.5 Immediately on written notice where a dispute remains unresolved despite the relevant Partners having followed the procedure in Clause 20 (Dispute Resolution);
- 22.1.6 Immediately on written notice if one Partner commits a material breach of any of the obligations under this Agreement which is not capable of remedy or which is capable of remedy but has not been remedied within the reasonable time specified in the written notice from the Partner serving notice requiring remedy of the breach;
- 22.1.7 Immediately on notice by either Partner if fulfilment of the obligations pursuant to this Agreement would be Ultra Vires;
- 22.1.8 In part in respect of a particular Service, immediately where the Partners jointly agree in writing, or in part where one Partner gives at least twelve months' written notice to the other Partner (or such shorter period as the Partners may agree in writing) that they wish to terminate this Agreement in respect of a particular Service.
- 22.2 Upon termination in whole or part for any reason, the Partners shall work together to:
- 22.2.1 Ensure relevant Services are decommissioned without harm to the remaining Services or the Service Users; and
- 22.2.2 Where appropriate (so as to avoid penalties or breakage costs or where of benefit to either Partner or Service Users) Service Contracts shall remain in place notwithstanding the termination, and the Partners shall agree the survival of or variations to any terms and conditions hereunder as are required to give efficacy to the foregoing; and
- 22.2.3 Ensure that there is an orderly transition to the arrangements that are to supersede this Agreement or the relevant Services.
- 22.3 In the event that any liabilities shall arise post-termination in relation to the Partnership or there are any contingent liabilities in the final reconciliation account which when crystallised have been over or under provided for in the reconciliation account and, had the Agreement still been in existence, would have been a charge on the Pooled Fund, the Aligned Budget(s) or Non Pooled Fund as may be relevant from time to time then the Partners shall revise the final reconciliation account to take account of the change within 30 days of becoming aware of that change.
- 22.4 The provisions of Schedule 4 (Financial Matters) as appropriate shall apply in respect of any overspends or underspends in the final reconciliation account. The Partners shall make such payments to each other as shall give effect to the final reconciliation account and/or to reflect such apportionment of liabilities as may be agreed or

determined within 30 days of receipt from the Council of the final reconciliation account or any revised version thereof.

- 22.5 The Partners shall act in good faith and in a reasonable manner in reaching agreement on the matters referred to in Clauses 22.2 and 22.4 and in default of agreement within the Partnership Board the Partners may refer the matter to be determined in accordance with the disputes procedure in Clause 20 (Dispute Resolution).
- 22.6 Any costs resulting from the termination of the Agreement or from the termination of any part of the Services may be paid for out of the Pooled Fund, Aligned Budget(s) or Non Pooled Funds as agreed by the Partners from time to time.
- 22.7 Ongoing costs which arise as a consequence of the termination of the Agreement and its replacement with new arrangements shall be borne separately by the Partners or as agreed between the Partners.
- 22.8 Termination of this Agreement shall be without prejudice to the Partners' rights in respect of any antecedent breach and survival of clauses as are required to give effect to this Clause.

### **23 ASSIGNMENT AND SUB-CONTRACTING**

- 23.1 This Agreement and all rights under it may not be assigned or transferred by any Partner without the prior written consent of the other Partners PROVIDED THAT no such consent shall be necessary for an assignment or novation by the CCG or the Council to a statutory successor in respect of their respective functions relevant to this Agreement.
- 23.2 Upon such assignment or transfer the assignor or transferor shall ensure that the assignee or transferee enters into a written undertaking to comply with the terms and conditions of this Agreement in consideration of which the other parties agree to release the assignor or transferor from further liability except in respect of liability accrued up to the date of such assignment or transfer.

### **24 CONFLICTS OF INTEREST**

- 24.1 The Partners shall be responsible for ensuring that its employees do not put themselves in a position whereby duty and private interest conflict.
- 24.2 Without prejudice to the generality of Clause 24.1, the Partners each have and shall comply with their own policies for identifying and managing conflicts of interest which include:
  - 24.2.1 any existing conflicts of interest or potential conflicts of interest;
  - 24.2.2 any conflict of interest or potential conflict of interest which may arise in the future;
  - 24.2.3 ensuring that additional employment (paid or voluntary) may not be undertaken by any staff working within the Partnership Arrangements which conflicts with or is detrimental to any of the Partners' interests, or which in any way weakens public confidence or affects the ability of the Partners to discharge their duties in or under the Partnership Arrangements;
  - 24.2.4 providing that in the event the Head of Joint Commissioning considers that a conflict of interest exists in relation to their own role or position in

connection with this Agreement they shall in the first instance request guidance from the Partnership Board; and

24.2.5 providing that each Partner shall require that any employee employed as part of the Partnership Arrangements considers that a conflict of interest exists in relation to their own role or position in connection with this Agreement they shall notify and request guidance initially from their line manager and ultimately from the Executive Director of Children and Young People Services (who shall inform the other members of Partnership Board where necessary).

24.3 The Partners shall ensure that their respective policies for managing and identifying conflicts of interest are maintained and, where possible, brought in to line with the highest ethical policy applying.

## **25 SEVERANCE**

If any Clause of this Agreement not being of a fundamental nature shall be held to be illegal or un-enforceable the remainder of this Agreement shall not thereby be affected.

## **26 NOTIFICATION TO THE DEPARTMENT OF HEALTH**

The Partners agree that they shall forthwith notify the Department of Health of the exercise of the flexibilities in Section 75 of the 2006 Act in this Agreement in accordance with the guidance issued by the Department of Health.

## **27 THIRD PARTY RIGHTS**

No rights hereunder may be enforced by third parties pursuant to the Contracts (Rights of Third Parties) Act 1997.

## **28 AGENCY AND PARTNERSHIP**

28.1 Unless agreed otherwise in writing no Partner can act as the agent of any other Partner.

28.2 The Partnership and arrangements hereunder has not created and is not intended to create a legal partnership for the purposes of the Partnership Acts but rather a statutory relationship between the Partners as provided for under the 2006 Act and the Regulations.

28.3 Notwithstanding the commissioning of Services to benefit both Partners, where any Existing Service Contract and/or Future Service Contract having been made by one Partner only hereunder shall be enforceable only by that Partner and no other Partner shall, unless otherwise provided for in a particular Existing Service Contract and/or Future Service Contract, have any right to enforce such a Existing Service Contract or Future Service Contract (as relevant), provided that this Clause shall not for the avoidance of doubt :

28.3.1 prevent reference being made to the Partnership in any Existing Service Contract and/or Future Service Contract; nor

28.3.2 affect a Partner's statutory obligations.

## **29 NOTICES**

29.1 Any notice or communication hereunder shall be in writing.

- 29.2 Any notice or communication to the Council hereunder shall be deemed effectively served if sent by registered post or delivered by hand to the Council at the address set out above and marked for the Executive Director of Community Services or to such other addressee and address notified from time to time by the Council to the other parties for service on the Council.
- 29.3 Any notice or communication to the CCG hereunder shall be deemed effectively served if sent by registered post or delivered by hand to the address set out above and marked for the attention of the Chief Clinical Officer or to such other addressee and address notified from time to time by the CCG to the parties for service on the CCG.
- 29.4 Any notice served by delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

### **30 GOVERNING LAW AND JURISDICTION**

- 30.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with the laws of England.
- 30.2 The Partners irrevocably agree that the courts of England have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.



IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and year first before written

The COMMON SEAL of **PETERBOROUGH CITY** )  
**COUNCIL** was affixed hereto in the presence of: )

Authorised Signatory: .....

EXECUTED AS A DEED by NHS **CAMBRIDGESHIRE &** )  
**PETERBOROUGH CLINICAL COMMISSIONING** )  
**GROUP** whose corporate Common Seal was )  
hereunto affixed in the presence of )

Authorised Signatory: .....

Authorised Signatory: .....

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## **SCHEDULE 1**

### **OBJECTIVES**

#### **Aims, Outcomes, Objectives and General Principle**

The aims, intended outcomes and objectives of the Partners in entering into this Agreement are to formalise and build on the significant track record of improving outcomes through joint working, Service User empowerment and innovation for children's health and social care services in Peterborough in order to further improve and develop local services and in particular to act so as to fulfil the Partners' respective statutory duties and to achieve:

- Improved service delivery resulting from more closely co-ordinated joint commissioning structures;
- More robust and flexible joint commissioning structures, better placed to respond to the personalisation agenda or other policy shifts;
- Improved financial decision making and possible operational efficiencies;
- More robust governance structures underpinned by firm legal frameworks;
- A firm and enduring foundation for partnership working between the CCG and the Council, by establishing a fit for purpose commissioning contracting and brokerage capacity which is well placed to respond to future challenges
- Improved Services, responding to expert professional opinion, such as from the GP community and delivering the strategic objectives of each party;
- Easier integration of preventative services with intermediate and high dependency care packages across the health and social care spectrum to provide a more seamless service to users;
- A clearly integrated point of contact for other health and social care professionals, in order that they can influence strategic commissioning decisions and future Service Specification;
- Greater local decision making about children's health and social care services;
- General health services which are provided closer to where people live;
- Improved access to health social care services;
- More innovative ways of providing services;EG. CCG Children's Procurement
- Ways of combating social exclusion, tackling inequalities and improving health and social wellbeing of local communities;
- Service users and their carers receiving coherent integrated packages of care so avoiding the anxiety of having to navigate a complicated bureaucracy;
- An ongoing local population needs assessment in accordance with Lewisham's Joint Strategic Needs Assessment
- The provision of high quality services which are safe, sound and comprehensive and supportive;

The aim is that the above will be achieved pursuant to this Agreement by:

- Using the statutory joint commissioning structure;
- Using the Partnership Arrangements as a basis for service planning and delivery and progressively model services to commission within and through them;
- Using evidence on the outcome for service users and Carers as the basis for improving standards and targeting resources;
- Considering the overall strategic direction of the Council and the CCG's;

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**SCHEDULE 2**  
**RELEVANT FUNCTIONS**

A. Council Functions

Any functions which are engaged in the delivery of the Services to the Service Users and which are conferred on or exercisable by the authority:

- as being emotional health and wellbeing and disability services which relate to children's services

B. CCG Functions

The function of providing or making arrangements for the provision of services:

As being Children's Community Health Services, LAC services and CAMH & Continuing Care (to be decided)

**SCHEDULE 3****SERVICES****CCG – LEAD COMMISSIONER CONTRACTS Not at this point in time**

<b>Brief description of contract</b>	<b>Children's Community Health Services</b> <ul style="list-style-type: none"> <li>- Paediatric Therapies Services (Speech &amp; Language Therapy, Occupational Therapy &amp; Physiotherapy)</li> <li>- Community Children's Nursing</li> <li>- Community Paediatrics</li> <li>- Special Needs Nursing</li> <li>- Equipment</li> </ul>
<b>Principal client group receiving services under the contract</b>	Children and Young People with universal, targeted and complex health needs
<b>Name of provider</b>	Cambridgeshire & Peterborough NHS Foundation Trust
<b>Who was the contract awarded by, PCC or CCG</b>	CCG
<b>Award date</b>	
<b>Annual contract value</b>	
<b>Expiry date of the contract</b>	
<b>Committed budget of PCC and the PCT</b>	

<b>Brief description of contract</b>	<b>LAC Health Team</b>
<b>Principal client group receiving services under the contract</b>	Looked After Children
<b>Name of provider</b>	CPFT
<b>Who was the contract awarded by, PCC or CCG</b>	CPFT
<b>Award date</b>	
<b>Annual contract value</b>	
<b>Expiry date of the contract</b>	
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>CAMHS</b>
<b>Principal client group receiving services under the contract</b>	Children and Young People 0-19 with mental health needs
<b>Name of provider</b>	CPFT

<b>Who was the contract awarded by, PCC or CCG</b>	CPFT
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<b>Brief description of contract</b>	<b>Continuing Care/OTTERS</b>
<b>Principal client group receiving services under the contract</b>	
<b>Name of provider</b>	
<b>Who was the contract awarded by, PCC or CCG</b>	
<b>Award date</b>	
<b>Annual contract value</b>	
<b>Expiry date of the contract</b>	
<b>Committed budget of PCC and the CCG</b>	

#### Peterborough City Council – LEAD COMMISSIONER CONTRACTS

<b>Brief description of contract</b>	<b>Short Breaks</b> – respite care for parents/carers of children and young people with disabilities. Includes after school and holiday clubs, specialist youth clubs, sports, play activities and activities for siblings.
<b>Principal client group receiving services under the contract</b>	Families of children and young people with disabilities aged 0-19, based on assessed needs.
<b>Name of provider</b>	Various – Phoenix School; Papworth Trust; Circles Network; Dial; Vivacity; KIDS
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	April 2013
<b>Annual contract value</b>	£277,297 total for combined contracts
<b>Expiry date of the contract</b>	Dial contract is one year to march '14. Other contracts to March '16
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>3T's Emotional Well-being</b> – brief 'talking therapy' interventions to young people with emotional well-being issues.
<b>Principal client group receiving services under the contract</b>	Young people 11-17 who are experiencing emotional well-being issues which are impacting on their behaviour and functioning but are not severe enough to reach the criteria for Child and Adolescent Mental Health Services.
<b>Name of provider</b>	Drinksense Social Enterprise
<b>Who was the contract awarded by, PCC or CCG</b>	PCC

<b>Award date</b>	April 2012
<b>Annual contract value</b>	£50,000 (2013/14)
<b>Expiry date of the contract</b>	March 2015

<b>Brief description of contract</b>	<b>School Nursing</b> – universal health service for children, young people and their parents which promotes health and mental health, delivers screening programmes to optimise health and promotes learning through well-being and inclusion.
<b>Principal client group receiving services under the contract</b>	Children and young people aged 5-19 and their parents who live in the Peterborough Local Authority area.
<b>Name of provider</b>	CPFT
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	April 2013
<b>Annual contract value</b>	£701,149
<b>Expiry date of the contract</b>	March 2014

<b>Brief description of contract</b>	<b>Looked After Children Psychology Service</b> – clinical psychology service for looked after children. Includes direct assessment and intervention work with children and families, and advice and training for carers and professionals.
<b>Principal client group receiving services under the contract</b>	Looked after children with emotional health and well-being issues, post adoption support and in exceptional circumstances Child in Need.
<b>Name of provider</b>	CPFT to Sept '13. Provision moving in-house to PCC by mutual agreement from Oct '13.
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	Sept 2010
<b>Annual contract value</b>	£105,000 (budget allotment for 13/14)
<b>Expiry date of the contract</b>	
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>Cherry Lodge Respite Care and Residential Care</b> – provides residential care, day care, after school care and outreach activities.
<b>Principal client group receiving services under the contract</b>	Children and young people with complex disabilities/severe learning disabilities aged

	0-19 and their families, based on assessed needs
<b>Name of provider</b>	PCC
<b>Who was the contract awarded by, PCC or CCG</b>	In-house provision
<b>Award date</b>	On-going
<b>Annual contract value</b>	£541,542 net Budget allotment in 13/14 (includes an income expectation of £506,350)
<b>Expiry date of the contract</b>	N/A
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>The Manor – Respite Care</b> – short breaks and activities for children and young people with disabilities
<b>Principal client group receiving services under the contract</b>	Children and young people with disabilities aged 0-19 and their families, based on assessed needs
<b>Name of provider</b>	PCC
<b>Who was the contract awarded by, PCC or CCG</b>	In-house provision
<b>Award date</b>	On-going
<b>Annual contract value</b>	£502,812 Budget allotment in 13/14
<b>Expiry date of the contract</b>	N/A
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>Home Support Services</b> – domiciliary care
<b>Principal client group receiving services under the contract</b>	Children and young people with complex disabilities/severe learning disabilities aged 0-19 and their families, based on assessed needs
<b>Name of provider</b>	Various – Sahara Care; Saga Homecare; Crossroads Care; Allied Healthcare; Independent Health Services
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	Spot purchased to meet assessed needs
<b>Annual contract value</b>	£115,100 actual spend for 2012/13. £97,314 allocated for 2013/14
<b>Expiry date of the contract</b>	N/A
<b>Committed budget of PCC and the CCG</b>	



<b>Brief description of contract</b>	<b>Direct Payments -</b>
<b>Principal client group receiving services under the contract</b>	Children and young people with disabilities aged 0-19 and their families, based on assessed needs
<b>Name of provider</b>	PCVS contracted to provide information, advice and support to families around direct payments. Payments made directly to families
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	April '13
<b>Annual contract value</b>	£121,693 (budget allotment in 13/14). Includes £7000 contract with PCVS
<b>Expiry date of the contract</b>	March '14
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>Occupational Therapy (Social Care) – OT</b> assessments and interventions around home based needs
<b>Principal client group receiving services under the contract</b>	Children and young people with disabilities aged 0-18 and their families, based on assessed needs
<b>Name of provider</b>	PCC Adult Social Care
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	April 2013
<b>Annual contract value</b>	£60,000
<b>Expiry date of the contract</b>	March 2014
<b>Committed budget of PCC and the CCG</b>	

<b>Brief description of contract</b>	<b>Equipment –</b> provision of specialist equipment following assessment of need
<b>Principal client group receiving services under the contract</b>	Children and young people with disabilities aged 0-19 and their families, based on assessed needs
<b>Name of provider</b>	Various
<b>Who was the contract awarded by, PCC or CCG</b>	PCC
<b>Award date</b>	on-going
<b>Annual contract value</b>	£103, 419 budget allotment for 2013/14
<b>Expiry date of the contract</b>	
<b>Committed budget of PCC and the CCG</b>	

**SCHEDULE 4**  
**FINANCIAL MATTERS**

This Schedule 4 contains protocols to cover the following areas:

1. How budgets will be set by either party for future years
2. How agreed budgets will be managed during any given year and how delegated authority will be exercisable to sign contracts and otherwise incur expenditure commitments
3. How financial transactions will be processed
4. Fees and charges

These protocols are based on the agreed budgets set for the 2014/15 financial year

**Setting budgets**

- 1.1 The Partners agree the following principles in relation to setting budgets for the Services:
  - 1.1.1 Each Partner retains the right and responsibility to set its own budget, having regard to its available resources, statutory obligations, locally determined priorities and such other factors as it may consider necessary;
  - 1.1.2 Each Partner recognises that the services that it provides or does not provide, and the level to which it provides them, can materially affect the financial position and obligations of the other Partner;
  - 1.1.3 In recognition of this and in the spirit of the partnership between the Partners, each Partner agrees to consult the other on its budgetary proposals, and to have regard to the responses provided (subject to paragraph 1.1.1 above); and
  - 1.1.4 Each Partner acknowledges that its budget setting process is dependent on many other factors, including in particular the allocation of resources from central government agencies, and that the timing of the announcement of such allocations can vary from year to year and outside of the direct control of either Partner. Each Partner therefore recognises that it cannot provide the other with certainty over the timing of final decisions (or even proposals) within its own budget setting process, and therefore agrees to act in the spirit of this Schedule 4 (which for the reasons set out above cannot be wholly prescriptive)
- 1.2
  - 1.2.1 Each Partner will increase (or decrease) their contribution by an agreed percentage linked to their central government funding. For the Council this will be the increase (or decrease) in its formula grant and for the CCG the increase (or decrease) in overall funding allocation from the Department of Health (referred to as "ring fenced funding streams").
  - 1.2.2 Contributions will then be adjusted to reflect changes to ring-fenced funding streams.
  - 1.2.3 In addition, new ring-fenced funding streams announced for either Partner will in principle be imported 100% to the jointly commissioned budget where they relate to the Services already pooled.
  - 1.2.4 The previous year's contributions, adjusted for Paragraphs 1.1.1 and 1.2.2, above, will form the baseline funding level for next year.

1.2.5 This baseline funding level will then need to be adjusted to reflect changes in need, for example to reflect demographic change, and to reflect the requirement for each Partner to be able to make efficiencies across its budgets.

1.2.6 Paragraphs 1.2.1 and 1.2.2 above are the mechanisms by which the Partners will arrive at the baseline funding level, from which decisions about changes to funding to reflect local priorities and resources need to be made. The example below sets out the form of calculations to be followed in arriving at this baseline level. The actual figures are illustrative only and not binding.

	<b>Council</b>	<b>CCG</b>
	<b>£m</b>	<b>£m</b>
Agreed xx budgets		
Date xx change in council formula grant		
Date xx change in CCG allocation		
Change in relevant ring-fenced grants/funding allocation		
Revised baseline allocation Date xxx		

- 2.3 In practice, for the reasons given above, the actual revised baseline allocations for future years may not be known until relatively late in the process, and too late to allow meaningful consultation between the Partners. The Partners will therefore prepare a statement in the above format early in each financial year (and by no later than 31 May) using estimated figures in order to inform one another of their current best estimates of the likely position, finalising the position as and when sufficient certainty on government funding is available (the long-stop date for this in principle being 28 February each year, but subject to this uncertainty).
- 2.4 Using the estimated baseline funding position and their own information about corporate budget priorities each Partner will inform the other (by simultaneous exchange or as otherwise agreed) of their best estimates of the likely actual resources they are able to contribute to the jointly commissioned services by 30 June each year, and hence the likely level of savings that they will be seeking to make within this area (or growth that they will be seeking to allocate).
- 2.5 Also by 30 June each year the Head of Joint Commissioning will provide each Partner with their best available estimate of the service pressures (e.g. arising from change in demographics, populations numbers, legislation, re-tendering of services etc) and opportunities (e.g. from efficiencies etc) within the total commissioned budget.
- 2.6 From this each Partner will formulate proposals as to the changes it considers it may wish to make to the Services and service provision in the following year (normally by 31 July each year, or other date by mutual consent). These proposals will tend to be greater than any net savings or growth assumed to be available within the budget, in order that regard can be had to meaningful consultation (otherwise there is no flexibility to withdraw, alter or amend proposals to fit the available resources in response to consultation).
- 2.7 Each Partner will respond formally to the others' proposals within at most two months of receipt, although the mutual intention is that responses should be provided much sooner whenever possible.

- 2.8 At this point, and subject to the uncertainties set out above, the Partners will seek to agree on a set of proposals, subject to either Partners' absolute right ultimately to determine its own budget
- 2.9 In default of agreement either Partner has the right to terminate this Agreement in accordance with clause 21.

## **2. Managing budgets during any given year**

### **2.1 General**

Whilst Services will be commissioned jointly, with the Council acting as lead commissioner, the practical reality on the Commencement Date will be that each Partner may retain responsibility for contracts for its own statutory areas of responsibility. Until such time as all budgets are pooled and all contracts are let by the Council as lead commissioner each Partner will therefore retain responsibility for provision of relevant financial information to the other in relation to its own expenditure (and where relevant, income).

The principles to be followed in applying the above are as follows:

- (a) Each Partner commits to share regular financial management information with the other on an "open book" basis. This will include such monthly or other financial monitoring information as is normally produced, and each Partner commits to acceding to the others' reasonable requests for additional information.
- (b) The overarching purpose of sharing such information will be to enable the Partners to view total expenditure across the entire range of jointly commissioned services, in order that reasonable and timely management decisions can be made to react to circumstances that were not foreseen, or could not have been foreseen, at the time the budget for the year was set (for example, to respond to a forecast overspend).
- (c) Each Partner recognises that the services that it provides or does not provide, and the level to which it provides them, can materially affect the financial position and obligations of the other Partner, and therefore commits to alert the other promptly to any material circumstance (e.g. a forecast overspend) that will require them to consider changes to their in-year level of service provision and to consult on those as may be reasonably practicable.
- (d) Each Partner commits to inform the other in advance of decisions (or proposed decisions) to commit significant sums of expenditure, for example in renewing major contracts. The Partners recognise that for these purposes "significant" is a term not capable of precise definition but could mean significant in financial amount or potential risk.
- (e) Notwithstanding that each Partner retains liability for its own areas of expenditure (in advance of any agreement formally to pool budgets) the Partners agree that in the event that there is an underspend in one budget area and an overspend in the other that they shall seek to offset the overspend with the underspend, subject to the absolute right of either Partner to reject this
- (f) Where the combined aligned budget is in total underspent in any given year the Partners agree that they will carry forward 50% of this underspend to the operation of the aligned budgets for the following year, returning the balance of those underspends to the respective organisations.

### **2.2 Letting contracts**

The following principles apply:

- 5.8.1 All Existing Service Contracts that are solely for social care will be let by the Council and all Existing Service Contracts that are solely for health care will be let by the CCG, and in

respect of such contracts payments will be made directly by the contracting organisation (see section 3 of this Schedule 4 for how these transactions will be processed)

- (a) Where contracts are for health and social care:
- (i) a decision will be made in each case by the Head of Joint Commissioning (or nominated member of staff) as to which Partner shall be the contracting Partner (subject to paragraph 2.2(b) below) ; and
  - (ii) in recognition of the proposed longer term move towards fully integrated lead commissioning by the Council, the default position shall normally be that Future Service Contracts are let by the Council, and the Partners agree only to move from this position where compelling evidence exists to the contrary; and
  - (iii) section 3 of this Schedule 4 covers how payments between the Partners for their respective share of such Existing Service Contracts and Future Service Contracts will be processed, and follows the principle that, where material, arrangements shall be such that neither Partner suffers (or gains) any material cash flow loss (or gain) on the timing of payments and reimbursements.
- (b) In letting contracts on behalf of the Council the Head of Joint Commissioning shall ensure that the Council's procurement guidelines, contract standing orders, scheme of delegation and other relevant requirements and documents shall be complied with at all times. At the date of this Agreement a key term in respect of the foregoing is that authority must be sought from the Cabinet for all contracts with a value over the full contract term of £500,000) exclusive of VAT.
- (c) In letting contracts on behalf of the CCG the Head of Joint Commissioning shall ensure that NHS procurement requirements shall be complied with at all times. At the date of this agreement, the key terms in respect of the foregoing is that the Head of Joint Commissioning will ensure that authority is sought from the CCG in accordance with its SFIs or SFO or any other stated procurement requirements that shall be in place from time to time and notified to the Council
- (d) As regards paragraph (c), above, there will be instances where the Head of Joint Commissioning has authority to award contracts for the CCG on her own authority that, were they Council contracts, would require authorisation from either the Service Director People Commissioning and Cabinet (Contracts). In relation to these contracts, notwithstanding the fact that the Service Director will be the line manager of the Head of Joint Commissioning the Partners agree that in such circumstances the CCG will retain liability for all such decisions.

### **3. How financial transactions will be processed**

- 3.1 Each Partner will retain responsibility for its own payments and income processes.
- 3.2 Each Partner will pay invoices for Existing Service Contracts for which it is the lead. Where one Partner has let contracts on behalf of the other (or on behalf of both Partners) it will pay the Service Provider and will raise invoices to the other Partner for its share of the payment. Invoices will be raised monthly (unless separately agreed). Where possible invoices should be raised on the basis of actual spend. If this is not available when a monthly invoice is raised then the following invoice should be adjusted for the difference between actual and invoiced sum for the preceding month.
- 3.3 The Partner receiving the invoice will pay the invoice within its normal terms but not later than 30 days after receipt.

### **4. Fees and Charges**

It is recognised that the CCG services are free at the point of use and accordingly fees and charges are not relevant for CCG services. Where the Council raises fees or charges for its services, the same will fall outside the ring fenced funding streams referred to in paragraph 1 above. Risk and benefit in connection with fees and charges raised by the Council in respect of the Services will rest with the Council.

**SCHEDULE 5**

**ACCOMMODATION AND OTHER NON FINANCIAL CONTRIBUTIONS**

The Partners shall make available to each other such rooms and hot desking facilities (including the use of desks, space, shelving, information technology and voice and data equipment and services and meeting rooms) as shall be reasonably required for the purposes of this Agreement at their respective premises as agreed by the Partners from time to time and the Partners hereby grant to each other non-exclusive licences for such purpose.

**SCHEDULE 6****ELIGIBILITY CRITERIA**

1. Guidance in relation to health and clinical care services for which the CCG is statutorily responsible, as the same may be applicable from time to time:
  - Responsible Commissioner Guidance from the Department of Health
  - CCG's Commissioning Policies
  - the Department of Health's Guidance "*Who Pays? Establishing the Responsible Commissioner?*" dated September 2007
  - NHS continuing Care Practice Guidance - Department of Health 2010
  - any of the CCG's Commissioning Policies or Commissioning Strategy Plan and any Ethical Frameworks
  - other continuing care and/or exceptional treatments guidance as may be issued from time to time
  - NICE guidance, at the discretion of the CCG
  
2. Guidance in relation to children's services for which the Council is statutorily responsible, as the same may be applicable from time to time:
  - Children Act 1989 (as amended)



## SCHEDULE 7

### GOVERNANCE STRUCTURE

#### 1. **General**

- (a) This Schedule will show how the Partners will retain proper influence and control over the joint commissioning function despite the Council assuming the lead commissioning role.
- (b) Governance will be in accordance with a framework, with boards made up of representatives of each Partners (as set out below) which together formulate proposals which eventually are put to each of the Council's and the CCG's decision making powers.
- (c) The decision making powers of the Council are vested in the Corporate Management Team and Cabinet, taking into account the Council's formal "scrutiny" process and where appropriate full Council.
- (d) The decision making powers of the CCG are set out in the CCG's Constitution, with ultimate decisions being taken by the CCG Governing Body.

#### 2. **Framework for decision making**

##### (a) The Children's Health Strategic Partnership ("CHSP")

This is a partnership body at the head of the framework. On the CHSP, The Council is represented by the Service Director People Commissioning and the CCG is represented by its Director of Quality, Safety & Patient Experience.

It will provide the overall framework and direction for partnership working in Peterborough. The CHSP will agree the outcome requirements to be satisfied by joint commissioning.

The CHSP is not a body with legal decision making powers. The relevant decision making powers are vested in the Council, the CCG and other statutory partners.

##### (b) Day to Day Management

###### Joint Commissioning Unit

The Joint Commissioning Unit is responsible for all joint commissioning arrangements. It is made up of staff from the Council, and is headed up by the Head of Joint Commissioning (see definition), the salary of which post is paid by the Council. The CCG makes a contribution to the salary costs of the Joint Commissioning Unit. The Head of Joint Commissioning has a key managing and reporting role as set out in this Agreement and as required by the post generally. The Head of Joint Commissioning and the other managers within the Joint Commissioning Unit be held accountable for their roles and the impact they have on spend against budgets. The managers will make decisions (within their limits of delegated authority – see below) and hold staff in different parts of the system to account for their actions, and the impact on budget.

The relevant managers within the Joint Commissioning Unit, including the Head of Joint Commissioning ensure compliance with clauses 6.3 and 6.4 of this Agreement.

###### Delegated Authority

The Head of Joint Commissioning reports (inter alia) to the Peterborough and Boarderline CCG's, and to the Service Director People Commissioning within the Council.

The Joint Commissioning Unit is able to take decisions to commission services and use budgets within delegated authority, and subject to the CCG and the Council's internal procedures existing

from time to time, and the other provisions of this Agreement. Issues beyond that authority would be escalated to the CHSP and if appropriate in from there to the Council and the CCG as per the above. This structure will enable managers to ensure that services and budgets can be flexible to respond to changing needs.

(g) CCG Governance in relation to Clinical Safety and Performance

The CCG has responsibility for providing assurance on the quality and safety of the health services it commissions to the Patient Safety and Quality Committee .

## SCHEDULE 8

### HEAD OF JOINT COMMISSIONING ROLE DESCRIPTION

#### **Purpose of Job**

1. To take a strategic lead in planning and commissioning services for Children's Services.
2. To support the Service Director People Commissioning and the Employer's Chief Executive in corporate management to deliver the Host Employer's and Employer's vision, goals and core values.

#### **Main Responsibilities**

##### **Corporate Roles**

3. In the Host Employer to contribute, through membership of the Directorate Management Team, attendance at Healthier Communities and children Scrutiny Committees.
4. Membership of the CHSP and CFJCB. Chair and contribute to tier 3 planning and partnership groups as required.
5. To represent the Host Employer's and Employer's interests at a senior level with partnership bodies and stakeholders to further the Host Employer's and Employer's strategic objectives aim of delivering excellent service.
6. To contribute to the delivery of the Sustainable Communities strategy, the Prevention and Early Intervention Strategy and the Peterborough and Boarderline Commissioning Strategy and QIPP plans.

##### **Functional Role**

7. To be responsible for the provision of a high quality commissioning team for the Host Employer and Employer and for developing a strategic approach to contracting activity management.
8. To plan and commission services within the resources available from the Host Employer and Employer and manage contracts and service level agreements within the commissioning budgets.
9. To develop contact specifications, involving service providers and other appropriate stakeholders in order to provide seamless services for individuals and ensure effective management and monitoring of the Host Employer's and Employer's contracts for children's services.

To represent the Host Employer and Employer and effectively and to build effective partnerships across a range of agencies and forums including the voluntary, community sectors, service users and carers.

10. To ensure that all Local Authority tendering and contracting process comply with the relevant the relevant contracting processes and ensure that all contracted services meet the requirements of the relevant regulatory bodies.
11. To be responsible for writing and presenting reports as required to Host Employer Cabinet Members, other members, relevant Overview and Scrutiny Committees, as required.
12. To lead for the Host Employer and Employer on the management of children's pooled and aligned client group budgets.

13. To specify service objectives for children's services and, and ensure good performance against government targets, Performance Assessment Framework and Healthcare self assessment standards.
14. To advise on policy directives as appropriate and ensure that the Host Employer and Employer is responsive to national and corporate requirements.
15. To undertake any other duties and responsibilities (including taking a lead responsibility for particular issues and projects) as may be required by the Host Employer or Employer.

### **Personnel and Management**

To head up the Joint Commissioning Unit for Children ("JCU") comprising officers and commissioning staff from the Employer.

16. To have full management responsibility for the Employer and Host Employer personnel within JCU, including undertaking recruitment, dismissal, grading, supervision and appraisal of staff and holding staff accountable for their performance and actions acting at all times in accordance with the relevant employment and personnel and other policies and procedures of the Employer (for employees of the Employer) and of the Host Employer (for employees of the Host Employer), and the relevant terms and conditions of any contract applying to any individual employee within the JCU.
17. Keep appropriate written records of all decisions and actions in relation to Personnel

### **Key Deliverables**

18. Deliver Employer and Children's commissioned services within agreed annual budgets for client group commissioning.
19. Support the agreement of levels of financial commitment for Host Employer and Employer in joint commissioning, functions and services including implementing plans for disinvestment where appropriate.
20. Support the integrated joint commissioning with Employer for client groups with robust financial governance arrangements.
21. Support the development of an integrated contracting function for joint client group health and social care functions.
22. Contribute to the delivery of Key Performance Indicator Targets for Host Employer, the Employer and Care Quality Commission requirements