

AGREEMENT UNDER SECTION 75  
OF THE NATIONAL HEALTH SERVICE ACT 2006

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PARTNERSHIP AGREEMENT for Learning  
Disabilities

between  
Lincolnshire County Council  
and  
Lincolnshire Clinical Commissioning Group

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**This Agreement is dated the**

**day of**

**2021**

**BETWEEN**

**(1)** Lincolnshire County Council of County Offices, Newland, Lincoln, LN1 1YL ("**Council**")

**(2)** Lincolnshire Clinical Commissioning Group of Bridge House, The Point, Lions Way, Sleaford NG34 8GG ("**CCG**")

(each a "Partner" and together "the Partners")

**BACKGROUND**

- (A) The Council is a Local Authority established under the Local Government Act 1972 (as amended); the Council is responsible inter alia for the provision of community care and accommodation for older people and other vulnerable adults who are residents of Lincolnshire.
- (B) The CCG has the responsibility for commissioning health services pursuant to the National Health Service Act 2006 ("the NHS Act") on behalf of the registered population of Lincolnshire.
- (C) The Council and the CCG have duties and powers to provide care to the population of Lincolnshire and Section 82 of the NHS Act requires both local authorities and NHS bodies, when exercising their respective functions, to cooperate to secure and advance health and welfare for the people of England and Wales. Furthermore, under relevant guidance, local authorities and NHS bodies are encouraged to consider partnership working, including through the use of certain flexibilities under the Act. Section 75 of the NHS Act 2016 gives powers to local authorities and clinical commissioning groups to exercise certain local authority and NHS functions for each other and to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of such prescribed local authority functions and prescribed NHS functions.
- (D) The Partners wish to establish such partnership arrangements and pursuant to Section 75 of the National Health Service Act 2006 and pursuant to the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (Statutory Instrument 2000 No. 617) and any amendments thereto and subsequent re-enactments thereof, enter into this Agreement in exercise of the powers referred to in Section 75 of the 2006 Act and/or Section 13Z(2) and 14Z(3) of the 2006 Act as applicable, to the extent that exercise of these powers is required for this Agreement.
- (E) The Partners have jointly carried out consultations on the proposals for this Agreement with persons likely to be affected by the arrangements. Additional consultations will be undertaken as necessary, and in line with each Partner's obligations regarding consultation with affected parties, in respect of any future proposals to vary the Individual Schemes. Following such consultations, the Partners are satisfied that the Partnership Arrangements will lead to an improvement in the way in which their Functions are exercised in relation to providing social care, and health services and the management of associated funds.

- (F) This Agreement does not affect the liability of the Council or the CCG for the exercise of their respective functions, or any power or duty to recover charges for the provision of any services in the exercise of any local authority function.
- (G) The purpose of this Agreement is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also means through which the Partners will pool funds and align budgets as agreed between the Partners.

## 1. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:

NHS Act	means the National Health Service Act 2006
Additional Services	means additional services or delegation of Functions in respect of those services that may be added to the Services during the life of the Agreement in accordance with Clause 18 (Variations and Change Control) of this Agreement
AdLD Services	means services for adults with learning disabilities
Agreement	means this Agreement between the Partners comprising these terms and conditions, together with all Appendices attached hereto
Aims and Objectives	means the agreed aims and objectives specified in Appendix 1.
Arrangements	has the meaning given to it at Clause 4.2 of this Agreement
Area	means the County of Lincolnshire
Authorised Officers	means the CCG's Authorised Officer and the Council's Authorised Officer
Assessment	The process of assessing the needs of a Service User in relation to the Services provided under this Agreement
Bank Holiday	means any day that is specified or proclaimed as a bank holiday in England and Wales pursuant to Section 1 of the Banks and Financial Dealings Act 1971
Best Value Duty	means the duty imposed on the Council by Section 3 of the Local Government Act 1999
Better Care Fund	means the Better Care Fund as described in NHS England Publications Gateway Ref No 00314 and NHS England Publications Gateway Ref No 00535 as relevant to the Partners
CCG Staff	Means any employee or employees or other persons engaged by the CCG to perform their obligations under this Agreement
CCG Statutory Duties	means the Duties of the CCG pursuant to Sections 14P to 14Z2 of the 2006 Act
Change in Law	means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England after the Commencement Date

Commencement Date	means 00:01 hrs on 1 April 2022.
Confidential Information	<p>means information, data and/or material of any nature which any Partner may receive or obtain in connection with the operation of this Agreement and the Services and:</p> <p>(a) which comprises Personal Data or Sensitive Personal Data or which relates to any patient or his treatment or medical history,</p> <p>(b) the release of which is likely to prejudice the commercial interests of a Partner or the interests of a Service User respectively; or</p> <p>(c) which is a trade secret.</p>
Council Functions	means those functions of the Council being health related functions for the purposes of Regulation 6(a) of the Regulations specified in Part 2 of Appendix 2.
Council Staff	means any employee or employees or other persons engaged by the Council to carry out the Functions
Council's Authorised Officer	means the individual representative of the Council who has the power to make decisions on behalf of the Council in respect of the Partnership Arrangements
DPA	means the Data Protection Act 2018
Data Protection Legislation	<p>means</p> <p>(i) the UK GDPR,</p> <p>(ii) the DPA to the extent that it relates to processing of personal data and privacy,</p> <p>(iii) all applicable Law about the processing of personal data and privacy.</p>
Eligibility Criteria	means the criteria set out in Appendix 3 which a Service User must satisfy in order to receive the Services
Equality Legislation	means the Equality Act 2010 and any other relevant Acts and Legislation which ensures, amongst others; equality of access to goods and services; Promotion of good relations between groups in society; The provision of Reasonable Adjustments for people with disabilities
Essential Services	means those services or parts of the services which are designated as being essential services under Appendix 4.
Event of Force Majeure	means an event or circumstance which is beyond the reasonable control of the Party claiming relief under Clause 27 (Force Majeure) including without limitation war, civil war, armed conflict, terrorism, strikes or lock outs, riot, fire, flood or earthquake and which directly cause that Party to be unable to comply with all or a material part of its obligations under this Agreement.

Excluded Functions	means such Functions contained in Part 3 of Appendix 2 and/or such Functions as the Partners may agree from time to time are excluded from the Arrangements, together with any exclusions set out in the Regulations
Financial Contributions	means the financial contributions made by each Partner to a Pooled Fund in any Financial Year as set out in Appendix 8 and payable into the fund in accordance with this Agreement.
Financial Year	means each financial year running from 1 April in any year to 31 March in the following calendar year.
Force Majeure Event	means one or more of the following:  (a) war, civil war (whether declared or undeclared), riot or armed conflict, (b) acts of terrorism, (c) acts of God, (d) fire or flood, (e) industrial action, (f) prevention from or hindrance in obtaining raw materials, energy or other supplies, (g) any form of contamination, pandemic or virus outbreak; and (h) any other event, in each case where such event is beyond the reasonable control of the Partner claiming relief
Function	means the Council Functions and the NHS Functions but excluding the Excluded Functions
Guidance	means the guidance on the Health Act 2006 Section 75 partnership arrangements published by the Department of Health
Host Partner	means the Council as the nominated partner to act as host of the Pooled Fund
Individual Scheme	means one of the schemes which has been agreed by the Partners to be included within this Agreement using the powers under Section 75 as documented in a Scheme Specification.
Initial Term	Means the period from the Commencement Date to the expiry of this Agreement as set out in Clause 3.2
Integrated Commissioning	means arrangements by which both Partners commission Services in relation to an individual Scheme on behalf of each other in exercise of both the NHS Functions and Council Functions through integrated structures.
Joint (Aligned) Commissioning	means a mechanism by which the Partners jointly commission a Service. For the avoidance of doubt, a joint (aligned) commissioning arrangement does not involve the delegation of any functions pursuant to Section 75.



Joint Commissioning Overview Group or JCOG	means the Joint Commissioning Overview Group described in this Agreement and more specifically in Appendix 5 to the Partnership Framework Agreement in fulfilment of its responsibility for monitoring and overseeing the implementation of the Partnership Arrangements relating to services covered within this Agreement as defined in Appendix 5 to this Agreement
Joint Delivery Board	means Adult Specialised Care Joint Delivery Board responsible for monitoring and overseeing the implementation of the Partnership Arrangements relating to services covered within this Agreement as defined in Appendix 5.
Lead Commissioner	means such Partner as shall be identified from time to time to exercise the Lead Commissioning Arrangements
Lead Commissioning Arrangements	means the Arrangements for the exercise by one of the Partners of the Lead Commissioning as set out in Clause 6.9 (Lead Commissioner Arrangements)
Lead Commissioning	means the mechanism by which the Lead Commissioner commissions services on behalf of the other Partners
Lead Partner	means the Partner responsible for commissioning an Individual Service under a Scheme Specification.
Law	means a statute, statutory provision or subordinate legislation
National Guidance	means any and all guidance in relation to the Scheme Specifications, as issued from time to time by NHS England, the Department of Communities and Local Government, the Department of Health, either collectively or separately, including but not limited to FAQ on Building the Right Support dated October 2015.
NHS Functions	means the functions of the CCG being functions specified in Regulation 5 of the Regulations specified in Part 1 of Appendix 2 excluding the Excluded Functions
Non-Recurrent Payments	means funding provided by a Partner to a Pooled Fund in addition to the Financial Contributions pursuant to arrangements agreed in accordance with Appendix 8.
Overspend	means any expenditure from a Pooled Fund in a Financial Year which exceeds the Financial Contributions for that Financial Year.
Partners	means the Council and CCG and "Partner" means either the Council or CCG the term includes the organisation(s), their employees, agents and sub-contractors
Partnership Arrangements	means the arrangements for the establishment of a pooled fund and exercise of the Functions and provision of the services as set out under this Agreement

Partnership Framework Agreement	means the partnership framework agreement entered into between the Partners on 31st March 2015 titled Partnership Framework Agreement Relating to the Commissioning of Health and Social Care Services and the Pooling of Funds for the Purposes of the Better Care Fund
Partnership Board Quarterly Reports	means the reports that the Pooled Fund Manager shall produce and provide to the Partnership Board on a Quarterly basis
Performance Measures	means those measures to be established managed and monitored by the Partners in respect of the Partnership Arrangements in accordance with Appendix 7.
Personal Health Budget	means an amount of money to support the identified healthcare and wellbeing needs of an individual, which is planned and agreed between the individual, or their representative, and the local clinical commissioning group
Pooled Fund	means the Pooled Fund as set out in Appendix 8, which is made up of contributions by the Partners and out of which payments may be made towards expenditure incurred in the exercise of the Functions, the responsibility and accountability for which is assigned to the Partners in accordance with the terms of this Agreement
Pooled Fund Arrangements	means the arrangements agreed by the Partners for establishing and maintaining the Pooled Fund for the purposes of Regulation 7 of the Regulations as set out in Appendix 8.
Pooled Fund Manager	means such officer of the Host Partner which includes a Section 113 Officer for the relevant Pooled Fund established under an Individual Scheme as is nominated by the Host Partner from time to time to manage the Pooled Fund in accordance with Clause 7.12.
Provider	means a provider of any Services commissioned under the arrangements set out in this Agreement [including the Council where the Council is a provider of any Services].
Quarter	means each of the following periods in the Financial Year: 1 April to 30 June, 1 July to 30 September, 1 October to 31 December, 1 January to 31 March, and "Quarterly" shall be construed accordingly
Regulations	means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (Statutory Instrument 2000 No. 617) and any amendments thereto and subsequent re-enactments thereof
Section 75	means Section 75 of the National Health Services Act 2006

Services	means the Services set out at Appendix 9 to this Agreement as the same may be amended from time to time in accordance with Clause 18 (Variation and Change Control)
Service Agreements	means any agreements for the Services entered into by the Host Partner with third party service providers in accordance with the provisions of this Agreement
Service Users	means any individual for whose benefit the Services are provided as further identified at Appendix 10.
Staff	means the Council Staff and/or the CCG Staff
Term	means the period described in Clause 4 (Duration of Agreement)
Transforming Care Partnership Board	means the board set up to implement the Transforming Care Plan for the area
Transforming Care Plan	the plan agreed by the Transforming Care Partnership to improve health and care services so that more people can live in the community, with the right support, and close to home.
TUPE	means The Transfer of Undertakings (Protection of Employment) Regulations 2006
UK GDPR	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4)).
Working Day	means any day other than Saturday, Sunday or public or Bank Holiday in England and Wales'.  means 8.00am to 6.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

## **2. INTERPRETATION**

2.1. In this Agreement (except where the context otherwise requires):

- 2.1.1. any reference to this Agreement includes the Appendices of or to this Agreement which form part of this Agreement and shall have effect as if set out in full in the body of this Agreement but not including the table of contents which is provided for convenience of reference only and shall not be construed as parts of this Agreement.
- 2.1.2. any reference to an Appendix is to an Appendix of or to this Agreement.
- 2.1.3. any reference to a Clause is to a provision of this Agreement that is uniquely identifiable by a preceding number and clauses may be nested so that a Clause may contain subordinate clauses each uniquely identifiable by a subordinate preceding number and any reference to a clause includes all other clauses nested within that clause.
- 2.1.4. any reference to a Paragraph is to a paragraph of an Appendix to this Agreement.
- 2.1.5. any reference to a statute, statutory provision or subordinate legislation (collectively referred to as "Legislation") shall be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation provided that, unless the Partners agree otherwise, as between the Partners, no such amendment or modification shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Partners.
- 2.1.6. any reference to a person or body shall not be restricted to natural persons and shall include natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states and foundations (in each case whether or not having separate legal personality).
- 2.1.7. clause headings of all kinds including those that stand above, run into or appear to the side of clauses are provided for convenience of reference only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the clauses to which they relate or in any other way affect the interpretation of this Agreement or include the unique identifying numbers that precede every clause.
- 2.1.8. where any conflict may arise between the provisions contained in the terms and conditions of this Agreement and Appendices or other documents referred to herein, the provisions of the terms and conditions of this Agreement shall prevail, except for any Legislation or other law or regulation which shall prevail over the provisions of this Agreement.
- 2.1.9. use of the singular shall include the plural and use of the plural shall include the singular.
- 2.1.10. use of any gender shall include the other genders.
- 2.1.11. any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### **3. DURATION OF AGREEMENT**

- 3.1. This Agreement shall come into force on the Commencement Date and shall continue until midnight on 31 March 2027 unless extended in accordance with clause 3.2 below or terminated earlier in accordance with the provisions of Clause 15 (Termination).
- 3.2. The Partners may extend this Agreement for a period and on varied terms as they agree, beyond the Initial Term, subject to the approval of the Partners' boards.
- 3.3. In the event that the Partners shall extend this Agreement in accordance with Clause 3.2, they shall do all things necessary to vary this agreement to reflect such extension.

### **4. GENERAL PRINCIPLES**

- 4.1. The Partners agree to:
  - 4.1.1. treat each other with respect and an equality of esteem,
  - 4.1.2. be open with information about the performance and financial status of each; and
  - 4.1.3. provide early information and notice about relevant issues.
- 4.2. The Partners have agreed to enter into this Agreement for the integrated exercise of the Functions as set out in this Agreement (the "Arrangements").
- 4.3. The Partnership Arrangements shall comprise:
  - (a) the delegation by the CCG to the Council Authority of the NHS Functions, so that it may exercise the NHS Functions alongside the Council Functions and act as commissioner of the Services; and
  - (b) the establishment of a Pooled Fund for the Services in accordance with Appendix 9.
- 4.4. For the purposes of the implementation of the Partnership Arrangements, the CCG hereby delegates the exercise of the NHS Functions identified in this Agreement to the Council acts as commissioner of the Services.
- 4.5. The primary objectives of the Partners in entering into this Agreement are the Aims and Objectives set out in Appendix 1.
- 4.6. The Services shall be subject to regular monitoring and assessment and a formal annual review in accordance with this Agreement. As a result of ongoing needs assessment and service review, changes may be made to the Services commissioned through these Partnering Arrangements, subject to any addition, deletion or amendment of services to this Agreement or amendments to the budgets for the Services being agreed by all Partners pursuant to Clause 18 of this Agreement.
- 4.7. The partners shall establish a pooled fund and the Pooled Fund Arrangements are as set out at Appendix 8 of this Agreement.
- 4.8. The Joint Commissioning Oversight Group shall be responsible for the monitoring of the Functions and the Services and management of the Pooled Fund and shall otherwise undertake the role set out in Appendix 7.

- 4.9. The Joint Commissioning Oversight Group shall be responsible for the monitoring of the impact of the exercise of Functions and the Services, and the management of the Pooled Fund on the Better Care Fund as a whole as described in Appendix 8.
- 4.10. The Partners hereby represent that they have obtained all necessary consents sufficient to ensure the delegation of Functions provided for by this Agreement as outlined in Appendix 2 of this Agreement.
- 4.11. Nothing in this Agreement shall prejudice or affect:
- (a) the rights and powers, duties and obligations of the Partners in the exercise of
  - (b) their functions as public bodies or in any other capacity,
  - (c) the liability of the Council to the Service Users in respect of the Council Functions; or
  - (d) the liability of the CCG to the Service Users in respect of the NHS Functions.

## **5. PARTNERSHIP FLEXIBILITIES**

- 5.1. The Partners may secure the provision of additional health and social care services in accordance with the terms of this Agreement and as such, this Agreement shall include such Functions as shall be agreed from time to time by the Partners as are necessary to commission the Individual Schemes in accordance with their obligations under this Agreement.
- 5.2. The Scheme Specifications for the Individual Schemes included as part of this Agreement at the Commencement Date are set out in Appendix 2.
- 5.3. Where the Partners add a new Individual Scheme to this Agreement a Scheme Specification for each Individual Scheme shall be completed and approved by each Partner in accordance with the variation procedure set out in Clause 18 (Variations). Each new Scheme Specification shall be substantially in the form set out in Appendix 9.
- 5.4. The Partners shall not enter into a Scheme Specification in respect of an Individual Scheme unless they are satisfied that the Individual Scheme in question will improve health and well-being in accordance with this Agreement.
- 5.5. The introduction of any Individual Scheme will be subject to business case approval by the Joint Commissioning Oversight Group (in accordance with the variation procedure set out in Clause 18 (Variations)).
- 5.6. This Agreement sets out the mechanism through which the Partners will work together to commission services. This may include one or more of the following commissioning mechanisms:
- i. Lead Commissioning Arrangements,
  - ii. Integrated Commissioning,
  - iii. Joint (Aligned) Commissioning,
  - iv. the establishment of one or more Pooled Funds in relation to Individual Schemes (the "Flexibilities")
- 5.7. Where there is a Lead Commissioning Arrangement and the Council is Lead Partner, the CCG delegates to the Council and the Council agrees to exercise on the CCG's behalf the NHS Functions to the extent necessary for the purpose of performing its obligations under this Agreement in conjunction with the health-Related Functions.

- 5.8. Where the powers of a Partner to delegate any of its statutory powers or functions are restricted, such limitations will automatically be deemed to apply to the relevant Scheme Specification and the Partners shall agree arrangements designed to achieve the greatest degree of delegation to the other Partner necessary for the purposes of this Agreement which is consistent with the statutory constraints.

## **6. COMMISSIONING ARRANGEMENTS**

### **General**

- 6.1. The Partners shall comply with the commissioning arrangements as set out in the relevant Scheme Specification and any such services in any additional Scheme Specification shall become the Services for the purposes of this Agreement.
- 6.2. The Partners shall comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned.
- 6.3. Each Partner shall keep the other Partner and the Partnership Board regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in a Pooled Fund.
- 6.4. Where there are Integrated Commissioning or Lead Commissioning Arrangements in respect of an Individual Scheme then prior to any new Services Contract being entered into the Partners shall agree in writing:
- i. How the new Individual Scheme shall benefit relevant Service Users and shall undertake any appropriate consultation in accordance with the NHS Act,
  - ii. how the liability under each Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme; and
  - iii. whether the Services Contract should give rights to third parties (and in particular if a Partner is not a party to the Services Contract to that Partner, the Partners shall consider whether or not the Partner that is not to be a party to the Services Contract should be afforded any rights to enforce any terms of the Services Contract under the Contracts (Rights of Third Parties) Act 1999 and if it is agreed that such rights should be afforded the Partner entering the Services Contract shall ensure as far as is reasonably possible that such rights that have been agreed are included in the Services Contract and shall establish how liability under the Services Contract shall be apportioned in the event of termination of the relevant Individual Scheme.);
  - iv. details of who shall be the Lead Partner of the Individual Scheme and how the services referred to therein shall be provided.

### **6.5. Integrated Commissioning**

- 6.6. Where there are Integrated Commissioning arrangements in respect of the Scheme:
- i. the Partners shall work in cooperation and shall endeavour to ensure that Services in fulfilment of the NHS Functions and Health Related Functions are commissioned with all due skill, care and attention.
  - ii. Both Partners shall work in cooperation and endeavour to ensure that the relevant Services as set out in each Scheme Specification are commissioned within each Partners Financial Contribution in respect of that particular Service in each Financial Year.

## **6.7. Appointment of a Lead Commissioner Partner**

- 6.8. Where there are Lead Commissioning Arrangements in respect of the Scheme the Lead Partner shall:
- i. exercise the NHS Functions in conjunction with the Health-Related Functions as identified in the Scheme Specification,
  - ii. endeavour to ensure that the NHS Functions and the Health-Related Functions are funded within the parameters of the Financial Contributions of each Partner in relation to each particular Service in each Financial Year,
  - iii. commission Services for individuals who meet the eligibility criteria set out in the Scheme Specification,
  - iv. contract with Provider(s) for the provision of the Services on terms agreed with the other Partner,
  - v. comply with all relevant legal duties and guidance of both Partners in relation to the Services being commissioned,
  - vi. undertake performance management and contract monitoring of all Service Contracts including (without limitation) the use of contract notices where Services fail to deliver contracted requirements,
  - vii. make payment of all sums due to a Provider pursuant to the terms of any Services Contract; and
  - viii. keep the other Partner and Partnership Board regularly informed of the effectiveness of the arrangements including any Overspend or Underspend in a Pooled Fund.

## **6.9. Lead Commissioner Arrangements**

- 6.10. The Partners agree that the Council shall act as Lead Commissioner to commission both health and social care in exercise of the Council Functions and NHS Functions in respect of AdLD, and that in respect of the exercise by the Council of the role of Lead Commissioner, the provisions of this Clause 6 will have effect.
- 6.11. The Council shall commission AdLD for and only for persons who meet the agreed Eligibility Criteria set out at Appendix 3 as the same may be amended from time to time in accordance with clause 18 of this Agreement.
- 6.12. The agreed Aims and Objectives of the Lead Commissioner Arrangements shall be the Aims and the Objectives as set out at Appendix 1.
- 6.13. The Council shall, in acting as Lead Commissioner in exercise of the Functions, comply with the requirements of this Agreement, the Guidance and any other relevant laws, regulations or other governmental guidance
- 6.14. The Council as Lead Commissioner shall, subject to any provisions relating to overspends and underspends set out at Appendix 8 only commission services using funds from the Pooled Fund.
- 6.15. Unless otherwise agreed between the Partners, the Council shall be responsible for tendering contracts for the Services with any appropriate providers on behalf of the Partners and all such contracts or service level agreements shall be entered into in the name of and executed by the Council unless agreed otherwise by all the Partners.
- 6.16. Partners will co-operate to ensure continuity of services to service users, and this shall be reflected in the winding down protocol arrangements in Appendix 14 of this agreement.



## **7. FUNDING ARRANGEMENTS**

- 7.1. The Partners will comply with their respective obligations set out at Appendix 8 to this Agreement.
- 7.2. Any overspends or underspends in respect of the Pooled Fund that may occur throughout the term of this Agreement shall be dealt with according to the provisions of Appendix 8 Annex C to this Agreement.
- 7.3. The Partners agree that their respective contributions shall be treated for VAT purposes in accordance with the provisions set out in Appendix 8 to this Agreement.

### **7.4. Establishment of a Pooled Fund**

- 7.5. In exercise of their respective powers under Section 75 of the 2006 Act, the Partners have agreed to establish and maintain such pooled funds for revenue expenditure as agreed by the Partners.
- 7.6. Each Pooled Fund shall be managed and maintained in accordance with the terms of this Agreement.
- 7.7. Subject to Clause 7.8, it is agreed that the monies held in a Pooled Fund may only be expended on the following:
  - i. the Contract Price,
  - ii. where the Council is to be the Provider, the Permitted Budget,
  - iii. Third Party Costs where these are set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board,
  - iv. Approved Expenditure as set out in the relevant Scheme Specification or as otherwise agreed in advance in writing by the Partnership Board

### **7.8. Permitted Expenditure**

- 7.9. The Partners may only depart from the definition of Permitted Expenditure to include or exclude other revenue expenditure with the express written agreement of each Partner [or Partnership Board].
- 7.10. For the avoidance of doubt, monies held in the Pooled Fund may not be expended on Default Liabilities unless this is agreed by all Partners in accordance with Clause 7.8.
- 7.11. Pursuant to this Agreement, the Partners agree to appoint a Host Partner for each of the Pooled Funds set out in the Scheme Specifications. The Host Partner shall be the Partner responsible for:
  - i. holding all monies contributed to the Pooled Fund on behalf of itself and the other Partners,
  - ii. providing the financial administrative systems for the Pooled Fund; and
  - iii. appointing the Pooled Fund Manager,
  - iv. ensuring that the Pooled Fund Manager complies with its obligations under this Agreement.

## **7.12. Pooled Fund Management**

7.13. The Pooled Fund Manager for each Pooled Fund shall have the following duties and responsibilities:

- i. the day-to-day operation and management of the Pooled Fund,
- ii. ensuring that all expenditure from the Pooled Fund is in accordance with the provisions of this Agreement and the relevant Scheme Specification,
- iii. maintaining an overview of all joint financial issues affecting the Partners in relation to the Services and the Pooled Fund,
- iv. ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund and liaising with internal and external auditors as necessary,
- v. reporting to the Partnership Board as required by this Agreement and by the Partnership Board,
- vi. ensuring action is taken to manage any projected under or overspends relating to the Pooled Fund in accordance with this Agreement,
- vii. preparing and submitting to the Partnership Board Quarterly Reports (or more frequent reports if required by the Partnership Board) and an annual return about the income and expenditure from the Pooled Fund together with such other information as may be required by the Partners and the Partnership Board to monitor the effectiveness of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met including (without limitation) comply with any reporting requirements as may be required by relevant National Guidance and as agreed between the Partners.

7.14. In carrying out their responsibilities as provided under Clause 7.13, the Pooled Fund Manager shall:

- i. have regard to the recommendations of the Partnership Board; and
- ii. be accountable to the Partners for delivery of those responsibilities.

7.15. The Partnership Board may agree to the viring of funds between Pooled Funds or amending the allocation of the Pooled Fund between Individual Schemes.

## **7.16. Financial Contributions**

7.17. The Financial Contribution of the CCG and the Council to any Pooled Fund for the first Financial Year of operation shall be as set out in Appendix 8.

7.18. The Financial Contribution of the CCG and the Council to any Pooled Fund for each subsequent Financial Year of operation shall be subject to review by the Partners.

7.19. Financial Contributions will be paid as set out in Appendix 8.

7.20. No provision of this Agreement shall preclude the Partners from making additional contributions of Non-Recurrent Payments to a Pooled Fund from time to time by mutual agreement. Any such additional contributions of Non-Recurrent Payments shall be explicitly recorded in Partnership Board minutes and recorded in the budget statement as a separate item.

#### **7.21. Non-Financial Contributions**

- 7.22. Unless set out in a Scheme Specification or otherwise agreed by the Partners, each Partner shall provide the non-financial contributions for any Service that they are Lead Partner or as required in order to comply with its obligations under this Agreement in respect of the commissioning of a particular Service. [These contributions shall be provided at no charge to the other Partners or to the Pooled Fund.]
- 7.23. Each Scheme Specification shall set out non-financial contributions of each Partner including staff (including the Pooled Fund Manager), premises, IT support and other non-financial resources necessary to perform its obligations pursuant to this Agreement (including, but not limited to, management of Services Contracts and the Pooled Fund).

#### **7.24. Risk share arrangements**

- 7.25. The Partners have agreed risk share arrangements as set out in Appendix 9, which provide for risk share arrangements arising within the commissioning of services from the Pooled Funds.

#### **7.26. Overspends in Pooled Fund**

- 7.27. Subject to Clause 7.2, the Host Partner for the relevant Pooled Fund shall manage expenditure from a Pooled Fund within the Financial Contributions and shall use reasonable endeavors to ensure that the expenditure is limited to Permitted Expenditure.
- 7.28. The Host Partner shall not be in breach of its obligations under this Agreement if an Overspend occurs PROVIDED THAT it has used reasonable endeavors to ensure that the only expenditure from a Pooled Fund has been in accordance with Permitted Expenditure.
- 7.29. In the event that the Pooled Fund Manager identifies an actual or projected Overspend the Pooled Fund Manager must ensure that the Partnership Board is informed as soon as reasonably possible, and the provisions of the relevant Scheme Specification and Appendix 9 shall apply.

#### **7.30. Underspend**

- 7.31. In the event that expenditure from any Pooled Fund or Non-Pooled Fund in any Financial Year is less than the aggregate value of the Financial Contributions made for that Financial Year or where the expenditure in relation to an Individual Scheme is less than the agreed allocation to that particular Individual Scheme the Partners shall agree how the monies shall be spent, carried forward and/or returned to the Partners and the provisions of Appendix 9 shall apply. Such arrangements shall be subject to the Law and the Standing Orders and Standing Financial Instructions (or equivalent) of the Partners.

### **8. CAPITAL EXPENDITURE**

- 8.1. Neither Pooled Funds nor Non-Pooled Funds shall normally be applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the Partners. If a need for capital expenditure is identified this must be agreed by the Partners. The Partners shall ensure that any arrangements for the sharing of capital expenditure shall be made separately and in accordance with Section 256 (or Section 76) of the NHS Act 2006 and directions made thereunder

## **9. AUDIT AND RIGHT OF ACCESS**

- 9.1. All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Pooled Fund.
- 9.2. The Host Partner shall keep and maintain until 12 years after the agreement has been completed, or as long a period as may be agreed between the parties, full and accurate records of the agreement including:
- i. the Services provided under it,
  - ii. all expenditure reimbursed by the Partners,
  - iii. all payments made by the Partners.
- 9.3. All internal and external auditors and all other persons authorised by all Partners will be given the right of access by them to any document, information or explanation they require from any employee or member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.
- 9.4. The Partners shall comply with relevant NHS and the Council's finance and accounting obligations as required by relevant Law.

## **10. CHARGING**

- 10.1. By virtue of Regulation 6(a) of the Regulations the Council retains the power to charge eligible Service Users for certain Council Functions and it is agreed that in accordance with the Guidance the income therefrom shall be paid to the Council, and the Council shall not account for such income in calculating its contribution to the Pooled Fund, which shall be paid by the Council gross.
- 10.2. The Council shall establish and maintain a Charging Policy and protocol to ensure that the delivery of health care through the performance of any of the NHS Functions pursuant to this Agreement shall remain free at the point of delivery whilst ensuring that effective procedures exist to facilitate the exercise by the Council of its charging function.
- 10.3. Where a package of services commissioned under the NHS Functions and services commissioned under the Council Functions are being provided to an eligible Service User and the services commissioned under the Council Functions are being charged, the care management team responsible for the care of the said eligible Service User shall ensure that it is explained to the eligible Service User as early as practically possible that the services commissioned under the NHS Functions continue to be provided free to avoid any misunderstanding that the services commissioned under the NHS Functions are being charged for.

## **11. SERVICE STANDARDS AND PERFORMANCE MANAGEMENT**

- 11.1. The Council shall in commissioning Services under this Agreement ensure that such Services must be carried out in accordance with the following:
- i. The Service Specification
  - ii. all applicable Law, national standards, local standards, policy or guidance that are set out in the Appendices of this Agreement applicable to the specific services,
  - iii. reasonable skill and care and any standards that apply to the Services that may be agreed by the JCOG or the Joint Delivery Board; and
  - iv. the Council's standing orders and standing financial instructions
  - v. required degree of care, skill and diligence in accordance with best practice in relation to performance of their duties under this Agreement and shall meet their obligations under this Agreement in accordance with the relevant laws, regulations and guidance.
- 11.2. The Services under this Agreement may be monitored by the Care Quality Commission.
- 11.3. Without prejudice to Clauses 11.1 and 11.2, the Council both as Host Partner and Lead Commissioner shall exercise its duties, obligations and the Functions arising out of or in relation to this Agreement effectively, efficiently, fairly and in good faith.
- 11.4. The Host Partner shall report to the Joint Delivery Board and JCOG monthly unless otherwise specified in Appendix 7, on the operation of the Arrangements (which, to avoid doubt, shall include but not be limited to, the operation of the Services and performance levels against agreed Performance Measures, targets and priorities), the management of the Pooled Fund and the exercise of the Functions by the Host Partner.
- 11.5. The Partners shall agree the format of, and the content to be included in, the reports to the Joint Delivery Board and JCOG referred to in Clause 11.4 above. Any disagreement as to the format of the content to be included in the reports may be referred to the Joint Delivery Board for its determination and/or instruction.
- 11.6. The Partners shall 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 Legislation or guidance affecting the Partnership Arrangements so as to ensure that the Partnership Arrangements comply with such Legislation.
- 11.7. As Host Partner and Lead Commissioner, the Council shall ensure that any requirements which the CCG reasonably require to meet their Best Use of Resources duties are incorporated and reflected in its delivery and performance of the Functions. For the avoidance of doubt, this may include efficiency savings or reconfiguration of services and the Partners shall undertake any appropriate consultation and where necessary formally vary the terms of this Agreement in accordance with Clause 11.8 prior to implementation
- 11.8. For the avoidance of doubt, this Agreement in no way releases any Partner from any requirement to comply with the general law or any internal standing order, regulation, directive, policy, financial procedure or decision of the Council & the CCG where to do so would not be inconsistent with this Agreement. The standing orders and standing financial instructions of the Host Partner as notified to the other Partners from time to time shall apply to the management of the Pooled Fund and the Lead Commissioning Arrangements.

- 11.9. Each Partner shall be entitled to make representations and recommendations to the other Partner relating to the other Partners' performance of its obligations under this Agreement. Each Partner shall in good faith give due regard to the other Partners' representations and recommendations, and shall promptly respond, in writing, giving reasons why such representations and/or recommendations were or were not followed.
- 11.10. Sub-standard performance by either Partner of its obligations under this Agreement shall be addressed through the Joint Commissioning Oversight Group.
- 11.11. The Joint Commissioning Board shall ensure that Service Users and their families fully participate in the Host Partner's work under these Arrangements and that an annual evaluation of the Host Partner takes place and includes outcomes which are qualitative as well as quantitative.
- 11.12. The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Pooled Fund is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.
- 11.13. The CCG is subject to the CCG Statutory Duties, and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Pooled Funds are therefore subject to ensuring compliance with the CCG Statutory Duties and clinical governance obligations.
- 11.14. Save where the Partnership Board agree alternative arrangements (including alternative frequencies) the Partners shall undertake an annual review ("**Annual Review**") of the operation of this Agreement and the provision of the Services within 3 Months of the end of each Financial Year.
- 11.15. Subject to any variations to this process required by the Partnership Board, Annual Reviews shall be conducted in good faith.
- 11.16. The Partners shall within 20 Working Days of the annual review prepare an Annual Report including but not limited to:
- i. the performance of the Partnership Arrangements against the Aims and Outcomes,
  - ii. the performance of the individual Services against the Service Levels and other targets contained in the relevant contracts,
  - iii. plans to address any underperformance in the Services,
  - iv. actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends,
  - v. evidence of implementing recommendations of the Transforming Care Partnership Board,
  - vi. review of plans and performance levels for the following year,
  - vii. plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements,
  - viii. a review of the non-financial contributions and whether to withdraw or substitute such non-financial contributions as agreed,
  - ix. review of targets and priorities for the forthcoming Financial Year.

- 11.17. The Host Partner shall prepare an annual report following the Annual Review for submission to each of the Partners respective Governing Bodies.

## **12. GOVERNANCE ARRANGEMENTS**

- 12.1. The operation of this Agreement will be overseen by the Joint Delivery Board and the Joint Commissioning Oversight Group who will undertake their respective responsibilities as set out at Appendix 5 of this Agreement.
- 12.2. The CCG is subject to a duty of clinical governance, which (for the purposes of this Agreement) shall be defined as *"a framework through which it is accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish"*.
- 12.3. The Council acknowledges that clinical governance (as described at Clause 12.2 above) applies to the treatment of NHS patients. Such patients are entitled to expect to receive services which are part of a clinical governance system irrespective of where they are treated.
- 12.4. The Arrangements will therefore be subject to clinical governance obligations and the Council shall use reasonable endeavors to co-operate with all reasonable requests from the CCG which the CCG considers necessary in order to fulfil its obligations.
- 12.5. The Host Partner shall comply with the principles and standards of corporate governance relevant to NHS bodies and local authorities.
- 12.6. Each Partner has secured internal reporting arrangements to ensure the standards of accountability and probity required by each Partner's own statutory duties and organisations are complied with.

## **13. COMPLAINTS**

- 13.1. A complainant has the right to use any of the Partners' statutory complaints procedures where applicable.
- 13.2. Where required partners will collaborate to address the complaint and provide necessary information to resolve the complaint as far as is practically possible
- 13.3. During the Term of this Agreement the Partners may develop and operate a joint complaints system if it is deemed by the Joint Delivery Board appropriate and of value to do so. The application of a joint complaints system shall be without prejudice to a complainant's right to use either of the Partners' statutory complaints procedures where applicable.

## **14. INFORMATION SHARING**

- 14.1. The Partners shall ensure that any processing of Personal Data is undertaken in accordance with Data Protection Legislation and that the Partnership Arrangements comply with all legislation, regulations and guidance on information sharing produced by the Government and shall be in line with Appendix 6 of the agreement.
- 14.2. The Partners shall establish and keep operational and ensure that there are kept operational:
- i. procedures (including forms) for handling service user access and consent

- ii. documentation for eligible service users which explains their rights of access, the relevance of their consent, rules and limits on confidentiality, and how information about them is treated; and
- iii. such additional policies procedures and documentation as shall be necessary in order to meet the purposes, guidance and requirements of Government and of all relevant data protection legislation as they apply to the Partners and the Partnership Arrangements.

14.3. The Information Sharing Protocol set out at Appendix 6 of this Agreement is the current code of confidentiality for sharing information that shall apply to the Partnership Arrangements and may be extended, revised and amended from time to time to facilitate information sharing, subject to such amendments being agreed between the Partners in accordance with Clause 18 (Variations and Change Control).

## 15. TERMINATION

15.1. Either Partner may terminate this Agreement for convenience by giving not less than twelve (12) months written notice to the other Partners to expire at the end of a Financial Year.

## 16. EFFECTS OF TERMINATION

16.1. Upon termination of this Agreement for any reason whatsoever, the following shall apply:

- i. each Partner shall (unless the Partners agree in writing otherwise) continue to perform its obligations under this Agreement throughout the relevant termination notice period,
- ii. the Partners shall co-operate in good faith in order to ensure that the winding down and desegregation of joint activities is carried out smoothly and with as little disruption as possible to Service Users, the Client, Group as a whole, Staff, the Partners and third parties in accordance with Appendix 14 (Winding Down Protocol) of this Agreement,
- iii. neither Partner shall be liable to make any payments to the other in respect of monies due to a third party until any losses suffered by that third party arising from the termination have been calculated and it is apparent that a sum is due,
- iv. where the Council is acting as the Lead Commissioner for the Services, the Council will procure, where possible and appropriate, the assignment or novation of any Services Agreements pursuant to Clause 15 above,
- v. any monies remaining in the Pooled Fund shall be dealt with in accordance with Appendix 8.

## 17. INDEMNITY AND LIMITATION OF LIABILITY

17.1. Nothing in this Agreement shall affect:

- i. the liability of the CCG to the Service Users in respect of the NHS Functions; or
- ii. the liability of the Council to the Service Users in respect of the Council Functions.

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



caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its Representatives.

- 17.3. The First Partner shall not be liable for any indirect losses suffered by the Second Partner whether such losses or the potential for such losses were made known to the First Partner or not and, other than in respect of death or personal injury, the limit of each Partner's liability to the other under this Agreement shall not exceed one million pounds (£1,000,000).
- 17.4. If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to an indemnity under these provisions, the Second Partner shall:
- i. as soon as reasonably practicable give written notice of that matter to the First Partner specifying in reasonable detail the nature of the relevant claim,
  - ii. not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the First Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
  - iii. give the First Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the First Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary, defending, the relevant claim.
- 17.5. For the avoidance of doubt, the Partners shall be under a duty to mitigate any loss in accordance with the principles of common law and the indemnity given by the First Partner shall not extend to losses, costs, expenses, damages, liabilities, actions, claims or proceedings incurred by reason of or in consequence of any negligent act or omission, misconduct or breach of this Agreement committed by the Second Partner.
- 17.6. Without prejudice to the Partners rights under this Agreement, the Host Partner shall in respect of the performance of its obligations under this Agreement effect and maintain the following insurances at the following indemnity levels with a reputable insurance company
- i. Public Liability insurance to a minimum of Five million pounds, (£5,000,000) and an indemnity to Principals Clause;
  - ii. Employers Liability insurance to a minimum of Ten million pounds (£10,000,000),
  - iii. Professional Indemnity insurance with an annual aggregate limit of Two million pounds (£2,000,000),
  - iv. Any other insurance as may be required by law

## **18. VARIATIONS AND CHANGE CONTROL**

- 18.1. No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners subject to approval by the Joint Commissioning Oversight Group as set out in this Clause.
- 18.2. Where the Partners agree that there will be:
- i. a new Pooled Fund;
  - ii. a new Individual Scheme; or
  - iii. an amendment to a current Individual Scheme,
  - iv. the Joint Commissioning Oversight Group shall agree the new or amended Individual Scheme and this must be signed by the Partners. A request to vary an

Individual Scheme, which may include (without limitation) a change in the level of Financial Contributions or other matters set out in the relevant Scheme Specification may be made by any Partner but will require agreement from all of the Partners in accordance with the process set out in Clause 18. The notice period for any variation unless otherwise agreed by the Partners shall be 3 Months or in line with the notice period for variations within the associated Service Contract(s), whichever is the shortest.

- 18.3. The following approach shall, unless otherwise agreed, be followed by the Joint Commissioning Oversight Group:
- i. on receipt of a request from one Partners to vary the Agreement including (without limitation) the introduction of a new Individual Scheme or amendments to an existing Individual Scheme, the Joint Delivery Board will first undertake an impact assessment and identify those Service Contracts likely to be affected,
  - ii. the Joint Commissioning Oversight Group will agree whether those Service Contracts affected by the proposed variation should continue, be varied or terminated, taking note of the Service Contract terms and conditions and ensuring that the Partners holding the Service Contract/s is not put in breach of contract, its statutory obligations or financially disadvantaged,
  - iii. wherever possible agreement will be reached to reduce the level of funding in the Service Contract(s) in line with any reduction in budget; and
  - iv. should this not be possible, and one Partner is left financially disadvantaged as a result of holding a Service Contract for which the budget has been reduced, then the financial risk will, unless otherwise agreed, be shared equally between the Partners.
- 18.4. If at any time during the Term of this Agreement:
- i. the Council or CCG requests in writing any change to the Services described or any matter relating to this Agreement generally; or
  - ii. If at any time during the Term a change to the manner in which the Services are provided/commissioned is required by operation of NHS or Local Government law through statutes, orders, regulations, instruments and directions made by the Secretaries of State for Health and Local Government respectively or others duly authorised pursuant to statute or other changes in the law which relate to the powers, duties and responsibilities of the Partner and which have to be complied with, implemented or otherwise observed by the Partners in connection with the Functions for the time being; then the provisions of this Clause 18 shall apply.
- 18.5. The Partners shall jointly investigate the likely impact of the required change on the Services and any other aspect of the Agreement and shall prepare a report in writing, setting out:
- i. the variation proposed,
  - ii. the date upon which it should take effect,
  - iii. a statement of whether the variation will result in an increase or decrease in contributions to the Pooled Fund by reference to the relevant component elements of the Service or Services that are the subject of the change,
  - iv. a statement on the individual responsibilities of the CCG and the Council for any implementation of the variation,
  - v. a timetable for implementation of the variation,
  - vi. a statement of any impact on, and any changes required to the Services,
  - vii. details of any proposed staff and employment implications; and viii. the date for expiry of the report.

18.6. Where the Partners are unable to agree on the terms of the variation then they may refer this matter to dispute resolution pursuant to Clause 25 The Partners shall confirm in writing their decision to proceed with the proposed variation and shall agree a formal variation. Where the Partners agree to vary the terms of this Agreement pursuant to this Clause 18, the variation must be signed in writing by all Partners' Authorised Officers.

18.7. The Partners shall comply with their respective duties to consult on any change in, or addition to, the Services in accordance with the Regulations.

## **19. HEALTHWATCH**

19.1. The Parties shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.

19.2. The Authority shall ensure the effective discharge of its obligations in the establishment of Local Healthwatch and, in the interim, with the Local Involvement Network.

19.3. The Authority shall ensure its contracts with Service Providers require co-operation with Local Healthwatch and, in the interim, the Local Involvement Network.

## **20. STAFF**

20.1. The Partners agree that services commissioned shall be facilitated by the Staff listed in Appendix 11 to this Agreement.

20.2. It is the Partner's view that TUPE will not apply on the commencement of this Agreement as all staff engaged in connection with the Service at the outset of this Agreement, however, where the Partners are of the view that TUPE will apply to any aspect of this Agreement or any action carried out under it, the Partners agree to comply in full with all obligations under TUPE including without limitation those under regulation 13 of TUPE.

20.3. In accordance with Fair Deal for Staff Pensions, the Council and/or each Sub-Contractor to which the employment of any Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHS Pension Scheme, must on or before the Transfer Date, each secure a Direction Letter to enable the Eligible Employees to retain either continuous active membership of or eligibility for, the NHS Pension Scheme, for so long as they remain employed in connection with the delivery of the Services under this Contract.

## **21. PREMISES**

21.1. The Partners shall operate out of their own respective premises in the performance of this Agreement, save as set out in Appendix 12 (Premises) to this Agreement.

21.2. The Partners shall comply with the obligations set out at Appendix 12 (Premises) to this Agreement in relation to the Premises.

## **22. EQUIPMENT AND OTHER RESOURCES**

22.1. The Partners will comply with the provisions of Appendix 13 (Equipment) to this Agreement.

## **23. DATA PROTECTION**

- 23.1. The Partners acknowledge their respective duties under the UK GDPR and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 23.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council and the CCG are Joint Controllers.
- 23.3. In acting as a Host Partner and Data Processor (as such term is defined in the DPA) on behalf of the CCG, the Council shall, in particular, but without limitation:
- i. only process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instruction given by the CCG under this Agreement; to the extent that such instruction is lawful and reasonable,
  - ii. put in place appropriate technical and organisational measures against any unauthorised or unlawful processing of such Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the specific requirements in Clause iii,
  - iii. below, the state of technical development and the level of damages that may be suffered by a Data Subject (as such term is defined in the DPA) whose Personal Data is affected by such unauthorised or unlawful processing or by its loss, damage or destruction,
  - iv. take reasonable steps to ensure the reliability of employees who will have access to such Personal Data and ensure that such employees are aware of and trained in the policies and procedures identified in Clauses 23.3., 23.3.5 and 23.3.6 below,
  - v. not cause or allow such Personal Data to be transferred outside the European Economic Area without the prior consent of all partners.
- 23.4. The Host Partner shall ensure that Personal Data is safeguarded at all times in accordance with the DPA and other relevant data protection legislation, which shall include without limitation the obligation to:
- i. perform an annual information governance self-assessment,
  - ii. have Information Governance Officers able to communicate with the JCB, who will take the lead for information governance and from whom the JCB shall receive regular reports on information governance matters including details of all data loss and confidentiality breaches,
  - iii. where transferred electronically only transfer essential data that is,
  - iv. necessary for performing this agreement, and
  - v. encrypted to the higher of the international data encryption standards for healthcare and the National Standards (this includes, but is not limited to, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes),
  - vi. have policies which are rigorously applied that describe individual personal responsibilities for handling Personal Data,
  - vii. have agreed protocols for sharing Personal Data with other NHS organisations and non-NHS organisations; and
  - viii. have a system in place and a policy for the recording of any telephone calls, where appropriate, in relation to this agreement, including the retention and disposal of such recordings.

## **24. FREEDOM OF INFORMATION ACT 2000**

- 24.1. Each Partner acknowledges that the other Partner are subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") or the Environmental Information Regulations (the "EIR") and each Partner shall assist and cooperate with the others (each at their own expense) to enable the other Partners to comply with these information disclosure obligations.
- 24.2. Where a Partner receives a "request for information" under either the FOIA or EIR (as defined under those Acts) in relation to information which it is holding on behalf of the other Partners or any of them, it shall (and shall procure that its sub-contractors shall):
- i. transfer the request for information to any relevant Partner as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
  - ii. provide the relevant Partner with a copy of all information in its possession or power in the form that the other Partner requires within five (5) Working Days (or such other period as may be agreed) of the other Partner requesting that information; and
  - iii. provide all necessary assistance as reasonably requested to enable the relevant Partner to respond to a request for information within the time for compliance set out in the EIR or section 10 of the FOIA, as relevant.
- 24.3. Where a Partner receives a request for information which relates to the Agreement, it shall inform the other Partners of the request for information as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information.
- 24.4. If any Partner determines that information must be disclosed pursuant to Clause 24.3, it shall notify the other Partners of that decision at least two (2) Working Days before disclosure.
- 24.5. Each Partner shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- 24.6. Each Partner acknowledges that the other Partners may be obliged under the FOIA to disclose Information:
- i. without consulting with the other Partners, or
  - ii. following consultation with the other Partners and having taken its views into account.

## **25. DISPUTE RESOLUTION**

- 25.1. The Partners shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement. If any dispute cannot be settled amicably through ordinary negotiations, then it shall be referred to the Partners' Authorised Officers for discussion and resolution. In the event that the Partners' Authorised Officers cannot resolve the dispute between themselves within ten (10) Working Days, or such other period of time that may be agreed in writing between the Partners, the Partners may refer the matter to the Chief Executive of the Council and the Accountable Officers of CCG; and thereafter to the Chair of the CCG and the Leader of the Council.

- 25.2. Each Partner shall use all reasonable endeavors to reach a negotiated resolution to the dispute through the above dispute resolution procedure. If the dispute is not resolved the Partners shall use every endeavor to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (the "Model Procedure").
- 25.3. To initiate the mediation a Partner must give notice in writing to the other Partner requesting mediation in accordance with Clause 25.2.
- 25.4. The procedure in the Model Procedure shall be amended to take account of:
- i. any relevant provisions in this Agreement; and
  - ii. any other agreement which the Partners may enter into in relation to the conduct of the mediation.
- 25.5. The costs of the mediation shall be met in equal shares by the Partners and shall not be paid from the Pooled Fund.
- 25.6. This clause 25.5 shall not prevent either Partner from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 25 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

## **26. CONFIDENTIALITY**

- 26.1. Except as required by law and specifically pursuant to Clause 26 (Freedom of Information Act 2000), each Partner agrees at all times during the continuance of this Agreement and after its termination to keep confidential any and all information, data and material of any nature which that Partner may receive or otherwise obtain in connection with the operation of this Agreement or otherwise relating in any way to the business, operations and activities of the other Partners, their employees, agents and/or any other person with whom they have dealings including any client of any Partner. For the avoidance of doubt this Clause shall not affect the rights of any workers under Section 43 A-L of the Employment Rights Act 1996.
- 26.2. Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.

## **27. FORCE MAJEURE**

- 27.1. Save for Essential Services where a Partner is (or claims to be) affected by an Event of Force Majeure in respect of any or all of the Services, it shall take all reasonable steps to mitigate the consequences of it, resume performance of its obligations as soon as practicable and use all reasonable efforts to remedy its failure to perform.
- 27.2. Subject to Clause 27.1, the Partner claiming relief shall be relieved from liability under this Agreement to the extent that because of the Event of Force Majeure it is not able to perform its obligations under this Agreement.
- 27.3. The Partner claiming relief shall serve initial written notice on the other Partners immediately upon becoming aware of the Event of Force Majeure. This initial notice shall give sufficient details to identify the particular event.

27.4. The Partner claiming relief shall then either:

- i. serve a detailed written notice within a further five (5) Working Days. This detailed notice shall contain all relevant available information relating to the failure to perform as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome it; or
- ii. in the event it reasonably believes that the effects of the Event of Force Majeure will make it impossible for the Partnership Arrangements to continue, serve notice of this to the other Partners and the Agreement will terminate forthwith on service of the notice

## **28. REGULATION AND INSPECTION**

28.1. The Partners shall cooperate with any investigation undertaken by the Care Quality Commission and/or the Audit Commission or any regulatory authority body.

## **29. AUTHORISED OFFICERS**

29.1. Each Partner will appoint an Authorised Officer in respect of this Agreement and shall notify the other Partner of the details of that Authorised Officer on commencement of this Agreement. For Lincolnshire County Council the Authorised Officer will be the Accountable Officer unless an alternative nominated officer is formally notified.

29.2. Where the identity of any Partner's Authorised Officer changes during the Term this shall be notified to the other Partners as soon as practicable in writing.

## **30. OTHER PROVISIONS**

30.1. Public Relations

The Partners shall co-operate and consult with each other in respect of matters involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The Partners may agree protocols for the handling of public relations from time to time.

30.2. No Partnership

- i. Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render any Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- ii. Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, no Partner shall have authority to, or hold itself out as having authority to:
  1. act as an agent of the others,
  2. make any representations or give any warranties to third parties on behalf of or in respect of the others; or
  3. bind the others in any way.

**31. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 31.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Partners to this Agreement do not intend that any third party should have any rights in respect of this Agreement by virtue of that Act.

**32. NOTICES**

- 32.1. Any notice to be given under this Agreement shall either be delivered personally or sent by facsimile or sent by first class post or electronic mail. A notice shall be deemed to have been served if:
- i. Any notice of communication hereunder shall be in writing by an authorised officer and signed by a Director or an Authorised Officer of the Partners.
  - ii. Any notice or communication from one Partner to another shall be deemed effectively served if:
  - iii. sent by registered post or delivered by hand to the other Partner or Partners to the address set out above and marked for the attention of the Authorised Officer, or any other address which may be notified to the other partners from time to time,
  - iv. sent by email to the email address for the Partners' Authorised Officer, or any other email address which may be notified to the other Partners from time to time.
  - v. Any notice served by hand delivery or email 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 forty eight (48) hours after the time it was posted.

**33. GOOD FAITH**

- 33.1. The Partners shall act and deal in good faith towards each other in respect of all matters the subject of this Agreement

**34. SEVERABILITY**

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

**35. ASSIGNMENT OR TRANSFER**

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

**36. WAIVER**

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



### **37. COSTS**

- 37.1. Each Partner shall be liable for their own respective costs in relation to this Agreement.

### **38. CONFLICTS OF INTEREST**

- 38.1. The Partners shall comply with the policy for identifying and managing conflicts of interest as agreed by the Partners from time to time.

### **39. SERIOUS INCIDENTS AND SAFEGUARDING**

- 39.1. A serious incident is defined as:
- i. The death of a Service User, excluding a death by natural causes,
  - ii. An occurrence where a Service User, member of staff or a member of the public is attacked, has sustained injuries, or has sustained harm in other ways (e.g. through drug overdose or self-harm), either on the Providers premises or during the delivery of this service;
- 39.2. Partners shall follow the agreed local protocols for the reporting of Serious Incidents and Safeguarding with reference to Appendix 15.
- 39.3. The Partners shall make the necessary arrangements to ensure compliance with all Laws relevant to the duty to safeguard and promote the welfare of children and vulnerable adults in the delivery of all aspects of the Service including but not limited to Section 11 of the Children Act 2004, the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) and The Mental Health Act 1983.
- 39.4. Each Partner, if it has responsibility for the management and control of Regulated Activity (as defined under the legislation identified below), shall make the necessary arrangements to ensure compliance with Section 11 of the Children Act 2004 (the duty to safeguard and promote the welfare of children in the delivery of all aspects of the Service) and the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- 39.5. The Parties shall make the necessary arrangements to ensure compliance with registration requirements with the Disclosure and Barring Service.
- 39.6. To fulfil the commitment to safeguard and promote the welfare of children and vulnerable adults, as appropriate, the Partners shall have:-
- (a) Clear priorities for safeguarding and promoting the welfare of children/vulnerable adults explicitly stated in strategic policy documents,
  - (b) A clear commitment by senior management to the importance of safeguarding and promoting children/vulnerable adults' welfare,
  - (c) A clear line of accountability within the organisation for work on safeguarding and promoting the welfare of children/vulnerable adults,
  - (d) Recruitment and human resources procedures in order to safeguard and promote the welfare of children/vulnerable adults,
  - (e) Procedures for dealing with allegations of abuse against members of Staff and volunteers,
  - (f) Arrangements to ensure all Staff undertake appropriate training and refresher training to enable them to carry out their responsibilities effectively,
  - (g) Policies for safeguarding and promoting the welfare of children/vulnerable adults and

procedures that are in accordance with guidance and locally agreed inter-agency procedures,

- (h) Arrangements to work effectively with other organisations to safeguard and promote the welfare of children/vulnerable adults including sharing of information,
- (i) A culture of listening to and engaging in dialogue with children/vulnerable adults; and
- (j) Appropriate whistle-blowing procedures.

39.7. The Parties shall immediately notify each other of any information it reasonably requests to enable it to be satisfied that the obligations in relation to this Clause 40 have been met.

#### **40. EQUAL OPPORTUNITIES**

- 40.1. All Partners shall observe the applicable provisions of Equality Legislation including, but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equality opportunities policy.
- 40.2. The Host Partner shall impose on any sub-contractor obligations substantially similar to those imposed on the Host Partner by this Clause 41.
- 40.3. All Partners shall publicise to its customers that it has an Equal Opportunities policy and provide customers with the opportunity to have a copy upon request and/or access a relevant complaints process aligned to this policy. Any substantiated complaint needs to be referred to the Authorised Officers.
- 40.4. 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 service provision, with the aim of developing a joint strategy for all elements of the service.

#### **41. ASSIGNMENT AND SUBCONTRACTING**

- 41.1. The Host Partner shall not sub-contract any part of the Service, except for the hiring of agency staff, without the prior written consent of the JCOG. Where such consent is given, the Host Partner shall be responsible for the acts and omissions of its sub- Service Providers as though they are its own.
- 41.2. Where sub-contracting part or all of the service takes place, the Host Partner is required to establish clear arrangements to monitor and to manage service delivery.

#### **42. OMBUDSMAN AND PROHIBITED ACTS**

- 42.1. The Partners will co-operate with any investigation undertaken by the Health Service Commissioner for England or the Local Government Commissioner for England (or both of them) in connection with this Agreement.
- 42.2. Neither Partner shall do any of the following:
  - i. offer, give, or agree to give the other Partner (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement or any other contract with the other Partner, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the other Partner; and

- ii. in connection with this Agreement, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Partner, (together **"Prohibited Acts"** for the purposes of Clauses 43.2 to 43.6).
- 42.3. If either Partner or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Partner in relation to this Agreement, the non-defaulting Partner shall be entitled:
  - i. to exercise its right to terminate under clause 15 and to recover from the defaulting Partner the amount of any loss resulting from the termination; and
  - ii. to recover from the defaulting Partner the amount or value of any gift, consideration or commission concerned; and
  - iii. to recover from the defaulting Partner any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- 42.4. Each Partner must provide the other Partner upon written request with all reasonable assistance to enable that Partner to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Partner request such assistance the Partner requesting assistance must pay the reasonable expenses of the other Partner arising as a result of such request.
- 42.5. The Partners must have in place an anti-bribery policy for the purposes of preventing any of their staff from committing a prohibited act under the Bribery Act 2010. If either Partner requests the other Partner's policies to be disclosed, then the Partners shall endeavor to do so within a reasonable timescale and in any event within 20 Working Days.
- 42.6. Should the Partners become aware of or suspect any breach of Clauses 43.2 to 43.5, it will notify the other Partner immediately. Following such notification, the Partner must respond promptly and fully to any enquiries of the other Partner, co-operate with any investigation undertaken by the Partner and allow the Partner to audit any books, records and other relevant documentation.

#### **43. EXCLUSION OF AGENCY**

- 43.1. Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:
  - 43.1.1. act as an agent of the other,
  - 43.1.2. make any representations or give any warranties to third parties on behalf of or in respect of the other; or
  - 43.1.3. bind the other in any way.

#### **44. ENTIRE AGREEMENT**

- 44.1. The terms herein contained together with the contents of the Appendixes constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on any Partner.

- 44.2. No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the parties.

#### **45. COUNTERPARTS**

- 45.1. This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes.

#### **46. GOVERNING LAW AND JURISDICTION**

- 46.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 46.2. Subject to Clause 25 (Dispute Resolution), the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

#### **47. CHANGE IN LAW**

- 47.1. The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.
- 47.2. On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.
- 47.3. In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), the Clause **Error! Reference source not found.5** (Dispute Resolution) shall apply.

**IN WITNESS WHEREOF** this Agreement has been executed by the Partners on the date of this Agreement<sup>1</sup>

THE CORPORATE SEAL of **THE** )  
**COUNCIL OF [ ]** )  
was hereunto affixed in the presence )  
of:

Signed for on behalf of [ ]  
**CLINICAL COMMISSIONING GROUP**

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_

## **APPENDIX 1 – AIMS AND OBJECTIVES**

### **1. INTRODUCTION**

- 1.1. The partners to this agreement have agreed the governance arrangements set out in Appendix 5.
- 1.2. Governance for this Agreement will be carried out through the Joint Delivery Board for Adult Specialised Services hereafter referred to as the Board in this Appendix. Through its meetings the Board will ensure that a co-ordinated approach is taken to commissioning and providing services in Lincolnshire for adults with specialised care needs which is adults with learning disabilities and/or autism whose care is commissioned from the pooled fund.
- 1.3. This Agreement specifically relates to adult learning disabilities as defined in Appendix 9.
- 1.4. The Board will also perform a function in terms of examining performance against key outputs and outcomes as identified within the Agreement.
- 1.5. In addition, the Board will ensure health and social care commissioners links to the following Boards which have service user representation to add an additional layer of governance and accountability: -
  - Learning Disability Partnership Board
  - All Age Partnership Board
- 1.6. The Adult Learning Disabilities (AdLD) services and functions listed in Appendix 9 are to be provided from the Commencement Date under Section 75 of the National Health Service Act 2006, Lead Commissioning and Pooled Fund arrangements with the Council acting as Lead Commissioner.
- 1.7. As Lead Commissioner and under these Partnership Arrangements, the Council will be responsible for commissioning services on behalf of the CCG in exercise of the NHS Functions. Funds to purchase services will be provided by the CCG to the Council to enable Lead Commissioning of services via a Pooled Fund arrangement as described in Appendix 8 to this Agreement. Expenditure will be subject to the requirements that these funds are spent in a way that reflects the financial contribution of each Partner as well as addressing locally assessed needs and ensuring that required outcomes and outputs are met.
- 1.8. In addition, this Agreement includes the arrangements for the local agreed transfer of social care funds by the CCG the Council as required by the Department of Health and any subsequent guidance. This is referred to herein as the Valuing People Now transfer (the "VPN transfer")
- 1.9. The AdLD services commissioned under this Agreement will be delivered under the terms of the appropriate form of the Council's standard conditions of contract.
- 1.10. Where the term Services is used it refers to both healthcare and social care services.
- 1.11. All contracting arrangements must reflect the healthcare and social care components and ensure robust monitoring processes in line with the performance framework at Appendix 7 to this agreement.

## **2. AIMS & OBJECTIVES OF THE AGREEMENT**

- 2.1. The Partners wish to use this Agreement to enable the Council to act on behalf of the Council and the CCG for the Lead Commissioning of the Services to the Service Users to be funded by a Pooled Fund Arrangement of which the Council shall be the Host Partner.
- 2.2. Service Users are not expected to be adversely affected or affected any differently because of the implementation of this Agreement. The way in which the Functions are exercised, and the Services are provided immediately prior to the commencement of this Agreement will not change in the sense that the Partnership Arrangements themselves already exist in the same form in terms of the extent of the Functions delegated and the Services delivered in exercise of those Functions. To the effect that changes to these Services are proposed under this Agreement these would be subject to separate consultation as appropriate.
- 2.3. Without prejudice to the other provisions of this Agreement, the primary objective of the Partners in entering into this Agreement is to improve the commissioning and provision of the Healthcare and social Care services for adults with Learning Disabilities by:
- analysing local needs, gaps in current service provision and capacity and demand issues, to ensure investment is targeted and cost effective; and
  - all partners working collaboratively to commission integrated services and seamless care pathways which will improve outcomes and Service User / carer experience of the Services, within resources available.
  - offering choice through the commitment to develop services that meet people's needs.
  - flexibility in the delivery of services with greater emphasis on them being locally accessible, responsive and provided in a range of settings.
  - synergising business planning, reporting procedures and other bureaucratic requirements between the Partners.
  - Pooling budgets to improve the efficiency and cost-effectiveness of Service provision/ commissioning.
  - delivering a cultural change which ensures that the benefits for integrated and person-centred care are realised.
  - establishing a meaningful outcome-based framework that maximises the opportunity for improved quality and efficiency of health and social care support services through joint commissioning, and the use of pooled funds.
  - improved team working and priority setting; and
  - higher level of accountability via the Joint Delivery Board and JCOG.
- 2.4. The Partners shared aims, the agreed Aims and Objectives of the commissioning arrangements for the purposes of Regulation 7(3) (a) of the Regulations, are to ensure that:
- the commissioning of services is based on an agreed model of needs rather than historical service configurations.
  - the commissioned services present good value for money and best value and seeks to operate within identified resources available for each partner and for each service area.
  - the Services seek to promote emotional and physical good health and work to overcome social exclusion.
  - services are culturally competent in meeting the needs of people from black and minority ethnic communities.
  - a holistic whole systems approach is taken to the commissioning and provision of services by preventing duplication of such services and to make more effective use of the current resources e.g. integrated care pathways;

- the way commissioned services are shaped and delivered have been influenced by people who use services.
- there is a robust framework for commissioning which supports ongoing financial stability for partner organisations.
- safeguarding must always be given the fullest consideration during the commissioning process.
- robust arrangements to collect performance management information are established and maintained and that the information is used to evaluate performance against targets, monitoring both the effectiveness of the commissioning process and the commissioned services and
- there is clear identification of the healthcare and the social care components of the service being commissioned provided at an individual service user level and service level, where this is possible and both organisations shall agree the exceptions and that these be noted within Appendix 5 Services: Scope of Service, Eligibility and Access.

2.5. Through these partnership arrangements, the key aims of the Council and the CCG are as follows:

- To perform better in priority areas, spend within allocated budget, and be more agile.
- To ensure innovative, appropriate, cost effective and quality opportunities are available from a market that people have helped to shape and deliver.
- To promote quality of life through effective, innovative, and caring learning disability social care and health care community services.
- To maximise people's independence

2.6. The Council shall ensure that the Care Act 2014, Transforming Care, Putting People First, Personalisation and self-directed support agendas are supported across social care within current legal frameworks and in consideration of the agreed level of pooled resources.



## APPENDIX 2 – FUNCTIONS

### 1. Introduction:

- 1.1. Section 75(2)(c) of the NHS Act 2006 enables the Trust and the Council to enter arrangements for the exercise of prescribed health related functions of the Council by the Trust in conjunction with the prescribed functions of the Trust where such arrangements would lead to an improvement in the way in which those functions are exercised. It is on this basis that the Parties have agreed to enter the Arrangements. The Agreement documents the terms on which the Trust agrees to exercise the delegated Health Related (ASC) Functions which are defined by reference to this Appendix 2 Part 3.

### 2. Part 1 - NHS Functions

- 2.1. The following NHS functions which LCC are expected to adhere to when commissioning or providing relevant services are noted below.
- 2.2. The following list is an indicative guide at a point in time and the list is illustrative and not exhaustive. It is noted that the NHS Act 2006 may have updated some of the references below.
- 2.3. The NHS Functions to be transferred relate solely to healthcare services for adults with learning disabilities as outlined within the service specification. The transferring of this function as enabled by S75 of the NHS Act 2006 requires the Council to work within the same legal framework 's that the CCG would be required to operate within if they were commissioning the services outlined in this agreement directly. This includes ensuring that directly commissioned healthcare service providers also act in a lawful way when providing the services. Specific Legislative Framework which is particularly relevant is but not exhaustive:
- NHS Act 2006 (replacing 1977 Act)
  - Mental Capacity Act 2005 (Amended MH Act 2007)
  - Mental Health Act 2007
  - NHS Act 2009
  - Mental health Act 1983 (amended MH Act 2007)
  - Care Act 2014
- 2.4. The NHS Functions are.
- 2.5. the function of providing, or planning for the provision of, services:
- under sections 2 and 3(1) of the 1977 Act, including rehabilitation services and services intended to avoid admission to hospital but excluding surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services: and
  - Appendix 1 to, the 1977 Act.
- 2.6. the functions under sections 25A, 25H, 117 and 130A of the Mental Health Act 1983.
- 2.7. the functions of making direct payments under:
- section 12A(1) of the National Health Service Act 2006 (direct payments for health care); and
  - regulation 2(7) of the National Health Service (Direct Payments) Regulations 2010; and
  - the functions under Appendix A1 of the Mental Capacity Act 2005.

### **3. Part 2 - Council Functions**

- 3.1. Such functions of the Council being health related functions for the purposes of Regulation 6(a) of the Regulations as relate to the provision of services to adults with a learning disability.

### **4. Part 3 - Excluded Functions**

- 4.1. The following service functions are also integral to the current pathway / customer journey; however, these responsibilities and/or decisions are not included within this agreement:
- People who do not meet the relevant eligibility criteria (see Appendix three).
  - People with Autism Spectrum Disorder but without a primary support reason of Learning Disability.
  - Secure Inpatient Care - Specialist Low, Medium or High Although joint working and interface will be a part of this agreement for those who are eligible under the terms of the section 75 and are working towards discharge.
  - The Care Programme Approach (CPA) care co-ordination of people who are in inpatient care due to their Learning Disability, Mental Health or Autism. (Commissioned via CCG's core NHS provider).
  - CCG commissioned inpatient care. Including: PICU - Psychiatric Intensive Care Unit, Locked
  - & Open Rehabilitation, Inpatient Acute Mental Health, ATU - Assessment & Treatment Unit (Inpatient Specialised LO), Specialist Inpatient Autism Beds.
  - Specific Specialist Learning Disability and Autism services commissioned by the CCG through LPFT which include Liaison Nursing (Mental Health, Autism, Physical Health), Specialist Community Health Hubs, Community Home Assessment and Treatment (CHAT), Allied health professionals (Occupational Therapy, Speech and Language Therapy, Psychology, Physiotherapy). Although joint working and interface will be a part of this agreement.
  - Specific Mainstream Mental Health services commissioned by the CCG through LPFT which include IAPT, recovery CMHT teams, Complex and Forensic Teams and CRHT teams and the inpatient acute care pathway. Although joint working and interface will be a part of this agreement.
  - Continuing Health Care (Responsible Commissioner) - The Responsible Commissioner Guidance will apply and where this guidance defines another NHS body as being the responsible commissioner or another County Council body as being the responsible commissioner then such activity and costs shall be excluded from this agreement.
  - Funded Nursing Care.
  - Local Authority and NHS Public Health Functions.
  - Wider Universal Services for example Cancer Care, GP Primary Care and Neighbourhood Teams.

## **APPENDIX 3 – ELIGIBILITY**

### **1. ELIGIBILITY**

1.1. This Partnership Agreement covers individuals aged over 18 years with a diagnosis of Learning Disability and any one of the following:

- Eligible for Adult Social Care as defined within the Care Act 2014 and statutory guidance issued under the Care Act,
- Continuing Health Care (CHC) health need that cannot be met by mainstream CHC due to the impact of the persons Learning Disability,
- Have a Health Care need that cannot be met by mainstream services due to the impact of the persons Learning Disability.

### **2. DEFINITION**

2.1. A learning disability is defined by the Department of Health as a "significant reduced ability to understand new or complex information, to learn new skills (impaired intelligence), with a reduced ability to cope independently (impaired social functioning), which started before adulthood". The absence of an IQ score should not in itself limit eligibility.

NOTE: On the commencement of the complex case section 75 arrangements the eligibility criteria in this Appendix will be updated.

#### **APPENDIX 4 – ESSENTIAL SERVICES**

1. Essential Services are those services which are deemed essential to be commissioned and or provided by partners in relation to this agreement. All services in relation to this agreement are deemed essential unless the Joint Commissioning Oversight Group deems otherwise.

## **APPENDIX 5 – GOVERNANCE**

### **1. INTRODUCTION**

1.1. The Joint Commissioning Oversight Group provides the overall strategic oversight of the pooled budget arrangement within this section 75 agreement and/ or monitoring performance against Appendix 7 and direction to the commissioning arrangements in Lincolnshire for services for adults with learning disabilities. The management of the pooled fund and related functions will operate within the Constitution of LCC. It is responsible for planning the way forward for integrated health and social care for adults with learning disabilities, autism and mental health. It will monitor the management by the Council as Host Partner of Pooled Fund for AdLD Services in accordance with Appendix 7 and 8 of this Agreement.

1.2. All relevant meetings will have appropriate Terms of Reference detailing aims and objectives and roles and responsibilities.

### **2. MEMBERSHIP**

2.1. The Board comprises senior representatives from all Partners to this Agreement and is also attended by other officers as required.

2.2. Membership of the Board shall be comprised of the following individuals:  
Representing Healthcare

- Chief Commissioning Manager, Lincolnshire CCG
- Deputy Chief Finance Officer, Lincolnshire CCG

2.3. Representing Lincolnshire County Council Director Adults Social Care LCC

- Assistant Director - Specialist Adult Services, Adult Care & Community Wellbeing
- Head of Finance Adults Services LC;
- County Manager (Learning Disability) LCC

2.4. The pooled Fund Manager and Commissioning Managers will report to the Adult Specialised Joint Delivery Board and will be observers to the Board and provide advice and support and attend in a non-voting capacity.

2.5. If positions or organisational structures change, the Board will ensure the balance of membership is maintained.

2.6. The quorum for meetings is a minimum of four members (or their appointed deputy) and at least two members from one or more CCG and two members from the Council present. Decisions must be unanimous. Where unanimous agreement is not reached the members will agree on the process to conclude a decision which shall involve the individual Partners. The matter will be escalated to a Director within each organisation in the first instance. Ultimately the disputes resolution process will apply.

2.7. Any changes to the finance contributions outlined in Appendix 8 Annex A require the written agreement of all partners by a variation to change as outlined in clause 18.

### **3. MEETINGS**

3.1. The Board will as a minimum meet formally on a quarterly basis. Meeting dates will aim to be agreed 12 months in advance.

3.2. The Host Partner will provide the Secretariat function to the formal Board meetings.

- 3.3. All Board meetings will be closed to the press and public.
- 3.4. Meetings of the Board will be chaired by either the Accountable Officer (Lincolnshire CCG) or the Director of Adult Care (the Council) or their nominated deputy. The chair will be appointed /nominated by the Board members and will chair for a period of six months unless an alternative time period is agreed by all partners.
- 3.5. The agenda and all reports will aim to be published five working days before the meeting and a minimum of two working days before the meeting. Minutes of meetings I a report of the decisions taken at meetings will be kept and circulated to officers within five working days of meetings.
- 3.6. Decisions can be taken virtually and recorded by email out with the formal meetings and in accordance with the quoracy in paragraph 3.2 above when pressing issues arise and will be retrospectively minuted within the next board meeting.
- 3.7. The Partners may agree in writing from time to time to modify, extend or restrict the remit of the Board.
- 3.8. The Board may decide to meet informally by mutual agreement
- 3.9. Individual Service areas may also wish to report annually to the service specific Partnership Boards on the delivery of the Aims and Objectives through the mechanism of this Agreement

#### 4. FUNCTIONS

- 4.1. The particular responsibilities of the Board are (without limitation) as follows:
- 4.2. be responsible for agreeing and monitoring the Annual Commissioning Plan including formalising the saving schemes which are required to achieve the savings identified in Appendix 8 Annex A to this Agreement and agreeing financial contributions from the CCG and the Council to the Pooled Fund.
- 4.3. To ensure there is a formally agreed work program with clear work streams which defines significant financial and service planning commitments across areas of joint commissioning responsibility for Pooled Fund provision. This should underpin the Annual Commissioning Plan including the saving schemes. The Board shall regularly review progress against this work program and take action as appropriate.
  - to review and agree commissioning strategies.
  - to receive feedback and reports from the Lead Commissioner on the Services commissioned /provided.
  - to monitor, advise and agree resource allocation and highlight cost pressures to the Partners through reporting lines to be agreed between the Partners.
  - to approve changes to the commissioning/ provision of the Services, within the terms of this Agreement.
  - to ensure the Partners comply with this Agreement.
  - to measure the performance and quality of the services outlined in Appendix 9;
  - to pursue the Aims and Objectives as specified in Appendix 9.
  - to maintain a risk register, review this quarterly and to agree actions arising from the reviews. To agree annually the risk assessment and risk sharing protocol.

## **APPENDIX 6 - JOINT INFORMATION SHARING PROTOCOL**

1. The Information Sharing Protocol is as defined in Appendix 6 of the Partnership Framework Agreement

## APPENDIX 7 – PERFORMANCE MANAGEMENT & MONITORING

### 1. Part 1 – General

#### 1.1. Purpose:

- This Appendix outlines the performance management and monitoring arrangements for this Agreement with respect to AdLD Services,
- The performance framework aims to ensure that the Partners are enabled to plan, deliver, review and act upon performance related information and to work towards improved outcomes for people with learning disabilities receiving support.

#### 1.2. The Partners shall adhere to the Performance Measures. The Performance Measures shall demonstrate:

- i. how far the aims of the Partnership Arrangements are being achieved
- ii. the extent to which the outputs including timescales and milestones are being met
- iii. the extent to which agreed Aims and Objectives are being fulfilled, and targets met
- iv. the financial inputs and outputs
- v. the extent to which the exercise of the flexibilities in Section 75 of the Act is the reason for improved performance, or a reduction in the performance of the service; and

### 2. Performance Management

#### 2.1. Performance Management is an essential part of monitoring how well the Agreement is working in achieving the Aims and Objectives of the Partners. Effective performance management enables relevant staff throughout the partnership to:

- Be clear about the outcomes expected to be delivered each year,
- Make informed decisions based on the facts regarding current performance and the agreed targets,
- Take action in a timely manner to ensure that targets and outcomes are met,
- Continuously improve overall performance thereby ensuring better quality services are delivered to local adults with learning disabilities.

#### 2.2. Through the Agreement, the Host Partner shall report on the performance indicators delivered by the Host Partner.

#### 2.3. The Host Partner shall have in place a system for monitoring the activities undertaken by the Council's Operational Team in exercise of the Functions of all Partners.

#### 2.4. The Partners shall have in place a system for capturing and monitoring all relevant statutory requirements, service user satisfaction and outcomes achieved by Service Users through the Service.

#### 2.5. During the term of this Agreement, representatives from all partners shall jointly review the performance metrics through the formal mechanism of the Joint Delivery Board and the Joint Commissioning Oversight Group. These meetings shall review operational reporting processes and procedures and shall enable each Partner to be promptly alerted to any difficulties related to performance and to respond to performance related issues proactively and in a timely manner.

#### 2.6. During the term of the Agreement, the Partners shall jointly review processes and mechanisms in operation to collect service activity data in order to ensure accurate information is reported and the most appropriate methods of data collation are utilised.



- 2.7. Where necessary, the Partners shall agree on specific performance improvement initiatives in the instances where performance is significantly under par.
3. Performance Framework
- 3.1. Performance shall be examined across a number of performance measures that enable the Host Partner to evidence and demonstrate performance against the following key areas (outlined in part 2 below)
- Personalisation
  - Operational performance
  - Interface with health
  - Customer Satisfaction
  - Maximising Independence
- 3.2. The performance framework shall enable the Partners to demonstrate and report on the achievement of national and local Performance Indicator (PI) targets relevant to Learning Disability Services. Responsibility for the collation of data relating to these PIs has been passed to the Host Partner under this Agreement. This responsibility also applies to any contracted arrangements exercised by the Council as Lead Commissioner through this Agreement.
- 3.3. Performance related data shall form part of information gathering processes applied by the Partners for the purposes of auditing the Services contained within this Agreement and to inform strategic planning, including decommissioning plans.
- 3.4. It is the responsibility of the Host Partner to report on the performance indicators contained within the performance framework on a quarterly basis within four weeks of the end of the quarter reporting period. Performance shall be monitored and reviewed by the partners through the Adult Specialised Services Joint Delivery Board.
- 3.5. The performance framework shall be subject to change through re-negotiation between all partners and in accordance with and in response to any subsequent changes to national directives and local priorities.
- 3.6. Key Indicators will be agreed on an annual basis via the Adult Specialised Services Joint Commissioning Oversight Group.
- 3.7. Statutory Returns
- 3.8. All Partners shall provide completed and validated statutory returns on relevant activity relating to learning disabilities as defined by the Department of Health and Care Quality Commission and any successor organisations.
- 3.9. All Partners shall provide the statutory returns in line with the relevant stated timeframe requirements.
- 3.10. The statutory returns on social care activity upon which the Host Partner shall report are detailed in the Statutory Performance Reporting matrix.

## PART 2 PERFORMANCE MEASURES TABLES

Indicator Type/ ASCOF Outcome	Indicator Description
Quality of Life	% of LD clients in receipt of long-term support who receive a direct payment (ASCOF 1C)
Quality of Life	% of LD clients in receipt of long-term support helped to be accommodated in the community (not in residential or nursing care)
Quality of Life	Permanent LD admissions to residential and nursing care homes - aged 18 to 64 (ASCOF 2A)
Quality of Life	Permanent LD admissions to residential and nursing care homes - aged 65+ (ASCOF 2A)
Quality of Life	% of LD clients, aged 18+ in paid employment or participating in volunteering
Quality of Life	% of LD clients, aged 18+ who live in their own homes or with family
Quality of Life	% of LD clients aged 18+ with a Personal Budget (Social Case and/or PHB)
Keeping people safe	% of LD clients in receipt of long-term support who have been reviewed
Keeping people safe	Number of clients whose Scheduled/ Unscheduled review is overdue
Keeping people safe	Number of clients who are Joint/ Fully Funded who are CHC Section whose Scheduled/Unscheduled review is overdue
Interface with Health	Number of people that are joint funded CHC
Interface with Health	The number of clients that are fully funded CHC
Interface with Health	The number of clients that are joint funded with outstanding review
Value for Money	Annual benchmark of gross unit cost with other Local Authorities
Value for Money	The number of people supported by the Section 75 Agreement each quarter
Positive experience	% of LD clients receiving services who have control over their daily life (ASCOF 1B)
Positive experience	% of Overall satisfaction of care and support for LD clients receiving services (ASCOF 3A)
Positive experience	% of LD clients receiving services who feel safe (ASCOF 4A)
Positive experience	% of Overall satisfaction of carers for LD clients within Adult Care (ASCOF 3B)
Positive experience	% of Carers who feel included/consulted in discussions regarding the LD client they care for (ASCOF3C)
Positive experience	Number of LD Complaints received during year (Cumulative)
Positive experience	% of LD Complaints annually that had an outcome of Substantiated/Partly Substantiated
Transforming Care	Numbers of admissions to in-patient beds for mental and/or behavioural healthcare that have learning disabilities and were supported via the Section 75 Agreement

## **APPENDIX 8 – POOLED FUND ARRANGEMENTS**

### **POOLED FUND ARRANGEMENTS**

1. The Partners' Contributions shall be managed by the Pooled Fund Manager, appointed by the Host Partner.
2. Each Partners' Contributions for the 2022-23 financial year i.e. 1 April 2022 until 31 March 2023 shall be set out in Annex A to this Appendix 8.
3. The process for setting future year contributions - that is 2023/24 onwards - is set out in Annex B to this Appendix 8. Any overspends and underspends shall be dealt with in accordance with the provisions of Annex C of Appendix 8.
4. The Host Partner will be responsible for the accounts and providing timely information to support the audit of the Pooled Fund.
5. The Pooled Fund Manager will be responsible for:
  - 5.1 managing the Pooled Fund on behalf of the Host Partner,
  - 5.2 submitting to the Partners timely financial reports, about the income of, and expenditure from, the Pooled Fund and other information by which the Partners can monitor the effectiveness of the Pooled Fund Arrangements through the Joint Delivery Board,
  - 5.3 providing the other Partners with the necessary information they require to meet their financial governance arrangements,
  - 5.4 transacting payments from the Pooled Fund; and
  - 5.5 ensuring that management arrangements and reporting for the Pooled Fund comply with audit requirements.
6. The Standing Orders and Standing Financial Instructions of the Host Partner as notified to the other Partners from time to time shall apply to the management of the Pooled Fund.
7. The Host Partner shall arrange for the audit of the accounts of the Pooled Fund Arrangements.
8. The Host Partner shall make available information to support the Year end Audit of Partner organisations' accounts. The memorandum of accounts shall be made available to Partner organisations on its completion.
9. The monies in the Pooled Fund:
  - 9.1 may be expended on the Functions in such proportions as the Partners shall agree is necessary to undertake the Functions and to procure or otherwise provide the Services,
  - 9.2 shall be spent in accordance with any restrictions agreed in writing between the Partners from time to time; and
  - 9.3 are specific to the Arrangements and shall not be used for any other purpose.

## Annex A: Contributions for the Financial Year 2022/23

1. The total Pooled Fund contributions by all partners for 2022/23 is £86,104,050 as detailed in table one below:

**Table 1 Learning Disabilities**

The opening Partner contributions for 2022-23 to the LD pooled fund Services are as follows:

	CCG Total	BCF	iBCF	LCC Total	Total
CCG Funded Care	17,922,492				17,922,492
LCC Funded Care		7,011,690	7,581,695	50,341,447	64,934,832
<b>Sub total</b>	<b>17,922,492</b>	<b>7,011,690</b>	<b>7,581,695</b>	<b>50,341,447</b>	<b>82,857,324</b>
Staffing	1,623,363			1,623,363	3,246,726
<b>Total</b>	<b>19,545,855</b>	<b>7,011,690</b>	<b>7,581,695</b>	<b>51,964,810</b>	<b>86,104,050</b>

2. The above table reflects the following principles
  - 2022-23 Provider rates to be paid from April 2022. These rates reflect the NMW/NLW as per the December 2021 Spending Review.
  - The financial position is built up from individual service users packages of care with the 2021-22 full year effect.
  - Net growth is built into the projections.
3. The Fund contributions for 2022-23 have been calculated by the Council's financial team and agreed with the Lincs CCG.
4. For 2022/23 the CCG direct contributions are projected to be £19,545,855 from CCG budgets.
5. Should the CCG costs exceed the direct contribution above a maximum additional contribution of £700,000 to CCG 2022-23 costs will be drawn down from Better Care Fund (iBCF) 2022-23. If the maximum contribution from BCF is not required it will not be drawn down.
6. Within the financial parameters of the table outlined above, the CCGs will fund:
  - 50% of the actual staffing costs incurred by the Council in performing its role under this Agreement up to a fixed upper value of £1,623,363
  - 100% of the actual cost of existing and new packages of care which are agreed fully funded through the CHC agreement process and;
  - 35% of the actual cost of existing and new packages of care which are agreed joint funded through the CHC agreement process.
7. In relation to cases within the pooled fund that have eligibility for S117 funding the CCG and LCC will apportion cost in line with the Section 117 Policy and related procedures and funding agreement.
8. The "CHC agreement process" referred to in the paragraph above is the process set out in paragraph 5.2 of Appendix 9 to this Agreement.
9. In relation to the CHC agreement process the fund manager will retain a record of when the review was sent for consideration, the CCG will record when the details have been received and when considered and also when the decision has been communicated to the fund manager. All decisions must be confirmed electronically to the fund manager.

The complex CCG must provide the fund manager with an accurate list of any cases still awaiting decision at the end of each month.

10. The Council will invoice the CCG on a monthly basis for 1/12 of each CCGs total contribution to the Pooled Fund. The CCG will pay its contribution within 20 working days of receipt of invoice.
11. The Pooled Fund Manager will present monthly financial information at organisational and expenditure type level for year to date and forecast expenditure against budget. The financial information will be underpinned with an anonymised service user dataset to enable data quality checks to be carried out. Through this process the Pooled Fund Manager will provide each organisation with a reconciliation of the CCG's 1/12th contribution against actual expenditure on each of the above categories noted in Table 1 above to inform the determination of any underspends/overspends by the CCG of its contributions. Any over or underspends determined to have been made by the CCG will be invoiced by the CCG to the Council or by the Council to the CCG on a monthly basis. Invoices shall be paid within 20 working days of receipt.
12. A finance report will also be provided on a monthly basis to the Adult Specialist Joint Delivery Board supported on an exceptional basis by an interim report should there be financial risks or deviations which are material.
13. The management of any overall over and underspends is defined in Appendix 8 Annex C and for 2022/23. Any overall underspends will be returned to the contributing organization in accordance with Annex C.
14. The process for setting future contributions from financial years 2023-24 is set out in Appendix 8 Annex B.
15. The Joint Delivery Board is expected as part of its work plan to consider effective use of resources and to consider opportunities for improving value for money.

## **Annex B: Agreement of Financial Contributions**

1. The 2022/23 Partner contributions are outlined in Annex A to this Appendix 8.
2. In establishing Partner contributions for 2023/24 and beyond, all Partners will collaborate to deliver against the agreed work programme included below to determine the scope of the S(75) pooled fund arrangements and to confirm a process for establishing contributions and for affirming the management of under/overspends.
3. To support continual strengthening of an integrated LD service for the Lincolnshire population, a work programme is being drafted to take this forward for 21/22. This is looking in part to assist our journey towards an Integrated Care System (ICS) and the further development of lead commissioner arrangements for Learning Disability, Mental Health and Transforming Care populations. The key components of the work programme are to:
  - Continue to progress the development a pooled budget and lead commissioner arrangements for people with complex needs,
  - Build the Section 256 agreement (and related schemes) between LCCG and LCC into monthly reporting,
  - Continue the joint work between LCC/LCCG and LPFT in relation to the continuous improvement of demand management for Adult Care and CHC with a particular focus on maximising people's independence,
  - Propose the development of a joint approach to the setting of provider rates for 2023+ taking into account the current market environment and the likely implications of the social care reforms.

## **ANNEX C: Overspends and Underspends**

1. The Host Partner shall make the other Partners aware of any actual or forecast variances of spend against the Pooled Fund or financial risks as soon as it becomes aware of this possibility. The Host Partner will highlight reasons for the variance both current and projected, and make recommendations for action to bring the over-spend into alignment with the budget.
2. For 2022/23 the CCG direct contribution of £19,545,855 will be used to fund CCG's related care costs. Should the level of total CCG related care costs be below £19,545,855 related underspend will be returned the CCG. There is however a financial risk that total costs will exceed £19,545,855.
3. For 2022/23 an additional contribution towards the cost of CCG related care up to a maximum of £700,000 will be funded from the BCF. Any of the £700,000 not utilised to fund CCG related care within the Section 75 agreement will not be drawn down from the Better Care fund.
4. Any overspend of CCG related care above the £19,545,855 plus the £700,000 CCG related contributions will be funded by the Lincolnshire CCG.
5. For 2022-23 the Council will fund any overspends relating to social care functions including 65% of joint funded packages. The Council will also retain any underspends relating to social care functions including 65% of joint funded packages.
6. Any underspends will be transferred to the contributing organisation through the monthly reconciliation and invoicing process. For clarity underspends will relate directly to the areas funded by the contributing organisation as described in the table in Appendix A.

## **ANNEX D: VAT Regime**

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

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## **APPENDIX 9 – SERVICE SPECIFICATION**

### **1. INTRODUCTION**

- 1.1. The following service specification describes the model of care and support to be commissioned by the Local Authority on behalf of the partners agencies subject to this agreement.
- 1.2. The Community Learning Disability Team in Lincolnshire provides integrated health and social care provision, this specification outlines the key functions and support to those people who are:
  - Eligible within the scope of this agreement and their access arrangements, and,
  - Outside the scope of the agreement i.e. not within pooled funding arrangements but within the "pathway" and commissioned by others
- 1.3. The Council as the lead commissioner will co-ordinate or directly commission the services for the people who meet the agreed "eligibility" criteria within Appendix 3 which may be amended from time to time in accordance with clause 18 of this Agreement.
- 1.4. The service specification will be reviewed annually in line with pooled fund contributions.

### **2. SCOPE OF THE SERVICE**

- 2.1. Individuals with a learning disability as defined by Department of Health Guidance and eligible within the scope of this agreement as detailed at Appendix Three.,
- 2.2. Exclusions to the Agreement are provided at **Appendix 2 Part 3.**

### **3. ELIGIBILITY**

- 3.1. Details of eligibility are provided in **Appendix 3**

### **4. PATHWAYS AND ACCESS**

- 4.1. The Learning Disability pathway in Lincolnshire describes a whole system that supports individual needs within an integrated health and social care economy. The support provided via this agreement forms an important part of this overall pathway where Adults with a Learning Disability have an eligible need.
- 4.2. The service can be accessed by referral to the Community Learning Disability Team hosted by the Council. Referrals will normally be made via the Councils Customer Services Centre (CSC). Following referral an assessment will be undertaken to establish eligibility.
- 4.3. The Council provides generic information and advice to the public and people who are referred for assessment and will signpost people as appropriate where they do not meet the threshold for social care. The system of wider prevention and early intervention offered via Health, Public Health and the voluntary sector however sits outside of this agreement.
- 4.4. Whilst the Community Learning Disability Team provided by the Council may input to Care Treatment Reviews (CTR's) the CCG are responsible for the implementation of the Care and Treatment Review policy.

- 4.5. Whilst the Community Learning Disability Team provided by the Council may input into the admission pathway the accountability for the decision to admit to inpatient care does not sit with the Community Learning Disability Team.
- 4.6. The services provided via the pooled fund are predominately for people when they are not in crisis but will be commissioned in a way that supports care that seeks to prevent points of crisis.
- 4.7. Adult Social Care, Health and associated Universal and Specialist services commissioned or provided to support those with a Learning Disability are expected to promote referral to the Community hubs for specialised therapy and specialist health service above that of this agreement and for Community Home Assessment and Treatment (CHAT) for those individuals at immediate risk of admission to hospital due to their learning disability, behaviours of concern or mental health needs and to promote discharge from inpatient provision in line with the national transforming care agenda.
- 4.8. The Community Learning Disability Team includes the agreed Learning Disability Nurse function as defined in this specification.
- 4.9. The Community Learning Disability Team provided by the Council will work closely with Children's services to manage the effective transition of eligible young adults with a Learning Disability to Adulthood.

## 5. **FUNCTIONS**

- 5.1. Under the s75 arrangements the Council retains all of its statutory duties in relation to people with disabilities.
- 5.2. Within the agreement CCG's transfer to LCC responsibility for assessment for Continuing Health Care and responsibility for macro and micro commissioning of services and provision against Continuing Health care funding. Decisions on whether cases will be joint funded or fully funded CHG will be supported by a panel hosted by Lincolnshire CCG's but must also include input to the decision by the Council.
- 5.3. The Council carries out Social Care and Health functions for adults with learning disabilities on behalf of the Council and the CCG under this Agreement. It is recognised that some functions will be core components of healthcare and so will also be functions of CCG commissioned services outside of this agreement.
- 5.4. Planning of intervention to meet identified need, to be formalised in a care & support plan. This may include planning on how the service will meet the need (for example low level anxiety) or referral to other agencies for a formal assessment (for example for an autism diagnostic assessment if the identified need is a potential autism spectrum disorder).
- 5.5. The Council will on confirmation of eligibility provide a Personal Budget to enable the individual to meet their identified outcomes as defined in their assessment. For those with a defined health care need under continuing health care they will be provided with a Personal Health budget to meet their identified outcomes as defined in their assessment.
- 5.6. The personal budget or personal health budget may be taken as a direct payment and managed by the person with the Learning Disability and/or by a third party and services directly commissioned to meet assessed needs and outcomes in line with the personal budget and personal health budget policy and procedures. Such direct payments will be

subject to financial audit and claw-back when the personal budget is not fully utilised or if it is used inappropriately.

- 5.7. The Council will also put in place specifications and contracts with third party providers to confirm the outcomes and objectives to be achieved. Where necessary these will also confirm specific activities requires to ensure providers operate in line with National and local standards and relevant legislation.

## **6. COMMISSIONING INTENTIONS**

- 6.1. The priority Outcomes for Specialist Adult Services including those for Adults with a Learning Disability will be confirmed within the Joint Commissioning Strategy for Specialist Adult Services. The Joint Commissioning Strategy for Specialist Adult Services will be developed via the Joint Commissioning Oversight Group and in consideration of the areas below:
- The Health and Wellbeing Strategy and related Joint Strategic Needs Assessment
  - The Lincolnshire Clinical Commissioning Groups operational Plans
  - The Councils Strategic Plans
  - Specialist Adult Services Needs Assessments
  - Input and feedback from key stakeholders and stakeholder groups
  - National policy, legislation and guidance including but not limited to Transforming Care.

## **7. SERVICE MODEL**

- 7.1. The Council shall provide an Integrated Assessment and Care Management function delivered within the Community Learning Disability Team that will respond to referrals for support, assessments of eligible need and where eligibility is confirmed co-produce Care and Support Plans and Personal Budgets to meet agreed needs. The team will also support regular reviews of care and support. Assessment and Care management will include CHC but exclude Funded Nursing Care.
- 7.2. The service model for Section 75 learning disabilities will be defined by the outcomes that have been identified to meet assessed health and social needs. Services will be commissioned in a way that seek to promote independence, choice, and control but also in consideration of available resources.
- 7.3. Residential and Nursing Care will be utilised where this will best meet assessed individual needs.
- 7.4. People may be supported in the community via several services including but not limited to Community Supported Living, External Day Care, and Personal Assistants.
- 7.5. Advocacy is not directly funded via the Section 75 agreement but there are separate arrangements in place (that will be funded by the Council and CCG's) to provide this support if it is needed.
- 7.6. Through the service review work jointly completed by the Council and Lincs CCG's it has been identified that there may be some gaps in the wider Learning Disability Pathways in Lincolnshire. The council and Lincs CCG's will work together through the Transforming Care Partnership (TCP) Board to clarify the wider pathways required and where necessary raise business cases via the Joint Commissioning Oversight Group to seek to address any gaps in provision confirmed.

8. **LD SECTION 75 Supplementary to Service Specification:**

**Agreement I Service Specific Functions "Included"**

8.1. The following provides both ASC and CCG functions undertaken as part of this agreement:

- a) Information and Advice.
- b) Adult Care Assessment, including social care, healthcare MH and Physical Health which then for eligible CHC cases informs Continuing Health Care.
- c) Care Plans/ Personal Plans.
- d) Care/ Case Management.
- e) Continuing Health Care (specific to the LD Section 75).
- f) Care Co-ordination (Including Care Programme Approach for those who meet criteria).
- g) Referral to hub teams through Single Point of Access (SPA) as appropriate.
- h) Reviews of assessment, care plan & risk (minimum of annual) social care and Continuing Health Care 6 monthly for Care Programme Approach.
- i) Health Promotion other than that commissioned via public health.
- j) Coordination and leading of Multi-Disciplinary Team processes and Professionals Meetings. Including the involvement of wider health care professionals as appropriate e.g. GP, District Nurse, Mental health worker etc.
- k) Safeguarding.
- l) Transition planning including health & social care preparing for adulthood.
- m) Professional Support.
- n) Micro commissioning, procurement & brokerage e.g. Community Supported Living (CSL), residential/nursing, Home support, short breaks, day opportunities.
- o) Personal budgets/personal health budgets, Integrated Personal Commissioning.
- p) Direct Payments as a delivery mechanism.
- q) Support process around Transforming Care: and reduced duration of Stay and reliance on use of inpatient admission.
- r) Co-Production.
- s) Financial assessments.
- t) Carer assessments.
- u) Awareness & promotion of assistive technology.
- v) Promoting awareness and uptake of Annual Health Check.
- w) Promoting awareness and uptake of Health Action Plan's through review of personal plans & contract management.
- x) Mental Capacity including DOL's & Best Interest process.
- y) Planning & Delivery of evidence based clinical interventions.
- z) LD Community Nursing see functions below.

DRAFT - **Supplementary** to Service Specification

Community Nurse Functions Delivered within the S75 LD Agreement:-

Task		Undertaken Yes/No
Assessment	Health needs including physical, mental, emotional and behavioural	Yes
	Regular on-going assessment for those with higher level needs	Yes
	Specific assessments or screening tools to enable referral or escalation to specialist intervention for example autism, ADHD, dementia, epilepsy, anxiety, depression screening or assessment to indicate further full assessment required. Or assessment of sleep difficulties to help inform the formulation or referral to other agencies by implementing sleep charts and then analysis of the charts in relation to key themes.	Yes
	Risk assessment and risk management plan including suicide and self- harm risk, risk of abuse and neglect	Yes
	Assessment of communication need (where specialist SALT input not required) which will lead to care plan and interventions as needed	Yes
Formulation	Including generating care plans	Yes
	To inform intervention	Yes
Advice and Guidance	To other health and social care professionals, families and carers and providers	Yes
	Sexual health advice and guidance	No
	Mental health promotion	Yes
	Physical health promotion	Yes
Intervention	Sleep hygiene	Yes
	All about me booklet	Yes
	Health passport	Yes
	Communication plan	Yes
	Psychosocial intervention	No
	Graded anxiety management	Partial
	Education around health needs in an accessible and meaningful format	No
	Training to family members, individual or support	No
	Person centred planning	Yes
	Administration of medication for example injections	No
	Development and implementation of crisis management	Yes

Task		Undertaken Yes/No
Coordination of care (either through CPA or as a CLOT)	CPA care coordination	Yes
	Making sure all care plans etc are accessible and meaningful and are delivered	Partially
	Being names point of contact for the individual and family	Yes
	Enhancing access to mainstream health care appointments or appointments associated with health and wellbeing through direct support to the individual (not to be confused with health liaison provision which is about ensuring services are reasonably adjusted and assisting with the service itself to provide the service to the person. This is about supporting the individual to access the services).	Yes
	Advocating for the individual (not as a formal advocate)	Yes
Monitoring of Prescribed medication	Efficacy of medication	Partially
	Symptom monitoring	Yes
	Side effect monitoring	Yes
	Height and weight if applicable	partially
	Blood pressure if applicable	No
Review	Care plan	Yes
	Interventions	Yes
	Treatment plans	Yes
	Risk assessment	Yes
	Crisis management plans	Yes
	Health action plan	No

## **APPENDIX 10 – SERVICE USERS**

1. Service Users are those eligible for the services as outlined in Appendix 3.

## **APPENDIX 11 – STAFFING**

1. All partners shall make available appropriate staff to deliver the service's needs who, as at the Commencement Date, carry out the Council/ CCG Functions.
2. Lincolnshire CCG shall make available the Learning Disabilities Complex Cases Team



## **APPENDIX 12 - PREMISES**

1. All partners acknowledge that there is further work to be undertaken to determine overarching principles in relation to estates and such principles shall be incorporated into this agreement in accordance with Section 15 once they have been confirmed.
2. The Council shall provide accommodation to the Learning Disabilities Complex Cases Team hosted by Lincolnshire CCG
3. The Host Partner shall ensure that the Premises are:
  - 3.1. suitable for the delivery of the Services.
  - 3.2. sufficient to meet the reasonable needs of Service Users; and
  - 3.3. where required by law, shall meet any and all regulatory standards (as appropriate) including but not limited to the Disability Discrimination Act 1995, the Care Standards Act 2000 and the Private and Voluntary Healthcare (England) Regulations 2001, together with any applicable NHS standards in force from time to time.

## **APPENDIX 13 – EQUIPMENT**

- 1.1. All Partners acknowledge that there is further work to be undertaken to determine overarching principles in relation to equipment and such principles shall be incorporated into this agreement in accordance with Section 15 once they have been confirmed. In the interim the following will apply:
- 1.2. The Host Partner shall ensure that any equipment being used for the provision of the Services is:
  - suitable for the delivery of the Services.
  - sufficient to meet the reasonable needs of Service Users.
  - where required by law, shall meet any and all regulatory standards (as appropriate) including but not limited to the Disability Discrimination Act 1995, the Care Standards Act 2000 and the Private and Voluntary Healthcare (England) Regulations 2001, together with any applicable NHS standards in force from time to time.
- 1.3. The Host Partner shall:
  - maintain in good and serviceable repair all equipment.
  - ensure that the equipment integrates properly with hardware, software, products, or services which interface with or are used in conjunction with the Services; and
  - not at any time introduce any computer virus or other contamination, whether knowingly or not onto any of the equipment.
- 1.4. Full legal, beneficial and equitable title to the Equipment shall remain with the Council at all times. Upon delivery of the NHS/Council equipment to the Host Partner at the Premises, risk in using the NHS/Council equipment will pass to the Host Partner and remain with the Host Partner until the NHS/Council equipment is returned to the NHS/Council on termination or expiry of this Agreement.
- 1.5. Whilst risk in the NHS/Council equipment remains with the Host, the Host Partner shall:
  - be solely and absolutely responsible for any loss or damage to the NHS/ Council equipment.
  - store and use the NHS/Council equipment at the Premises in a proper manner in conditions which adequately protect and preserve the NHS/Council equipment and shall not move it from the Premises without the NHS/Council's prior written consent.
  - ensure that the equipment is clearly identified as belonging to the NHS/ Council and is not tampered with.
  - use the NHS /Council equipment in a careful, safe and proper manner in accordance with any operating instructions provided to the Host Partner by the NHS /Council and all applicable statutes, regulations or codes of practice, and not for any purpose for which it was not designed or for any unlawful purpose.
  - ensure that the equipment is used only for the purpose of providing the Services.
  - immediately notify the NHS/Council of any breakdown or unsatisfactory working, loss, damage, theft, seizure or loss of possession of the NHS/ Council equipment.

## APPENDIX 14 – WINDING DOWN PROTOCOL

- 1.1. Where an Individual Funding Stream (as defined in Annex A to Appendix 8 of this Agreement) ("Affected Stream") is not continued from one financial year ("final Scheme year") into the next financial year ("first post-Scheme year") and the Partners are not obliged to continue with the services or other activities funded through the Affected Stream, the Partners agree that in the 6 months prior to the end of the final Scheme year and in the first 6 months of the first post-Scheme year, they will work together and co-operate to ensure that the winding down of the Individual Funding Stream is carried out smoothly and with as little disruption as possible to service users, employees, the Partners and third parties, so as to minimise costs and liabilities of each Partner in doing so.
- 1.2. In particular (without prejudice to the generality of Clause 1.1) where commissioning responsibility for the services covered by the Individual Funding Stream transfers from one Partner ("Affected Stream commissioner") to another Partner ("successor commissioner"),
  - 1.2.1. the Partners will co-operate to transfer, so far as possible, any continuing contracts for the provision of services to the successor commissioner, provided that the Affected Stream commissioner shall remain responsible for, and shall indemnify the successor commissioner against, all costs, claims and liability arising in respect of periods prior to the commencement of the first post-Scheme year,
  - 1.2.2. each of the Affected Stream commissioner and the successor commissioner will appoint a transition manager ("Transition Manager") and provide written notification of such appointment to the other party not less than 6 months prior to the end of the final Scheme year. The Affected Stream commissioner's Transition Manager will be responsible for ensuring that the Affected Stream commissioner and its employees, agents and sub-contractors comply with this Clause 1.2. The parties' Transition Managers will liaise with one another in relation to all issues relevant to the transfer of commissioning responsibility for the services and all matters connected with this Clause 1.2 and each party's compliance with it,
  - 1.2.3. on reasonable notice, the Affected Stream commissioner shall provide to the successor commissioner, the following material and information in order to facilitate the transfer of commissioning responsibility and/or the preparation by the successor commissioner of any invitation to tender:
    - (a) details of the transferring service(s) and the service users
    - (b) details of the contracts held by the Affected Stream commissioner in relation to the Affected Stream; and
    - (c) all information the successor commissioner reasonably requires relating to employees of the Affected Stream commissioner whose employment will or may transfer to the successor commissioner by operation of law ("Transferring Employees")
  - 1.2.4. in the 6 months prior to the end of the final Scheme year, the Affected Stream commissioner shall not alter the terms of employment or remuneration or benefits of any Transferring Employees or engage or assign any additional employees in connection with its role as Affected Stream commissioner (such that they would or might become Transferring Employees) without the agreement of the successor commissioner (such agreement not to be unreasonably withheld or delayed);

- 1.2.5. the Affected Stream commissioner shall indemnify the successor commissioner against all costs, claims and liability in relation to the Transferring Employees which relate to periods up to and including the end of the final Scheme year or arise from the acts or omissions of the Affected Stream commissioner during any such period and the successor commissioner shall indemnify the Affected Stream commissioner against all costs, claims and liability in relation to the Transferring Employees for which it is not entitled to indemnity from the Affected Stream commissioner; and
- 1.2.6. in addition to the indemnity in Clause 17, the Affected Stream commissioner shall indemnify the successor commissioner in respect of any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Affected Stream commissioner other than those who are either:
- (d) on a list of the anticipated Transferring Employees provided by the Affected Stream commissioner to the successor commissioner not less than 2 months prior to the end of the final Scheme year, or
  - (e) subsequently engaged by the Affected Stream commissioner with the agreement of the successor commissioner given under Clause 17 above.
- 1.2.7. An Exit Plan will be agreed for each Affected Stream within 4 months of the end of the final Scheme year, which shall set out the proposed methodology for achieving an orderly wind-down (where there is no successor commissioner, in which case the Exit Plan shall be agreed between the Partners) or transition (where there is a successor commissioner, in which case the Exit Plan shall be agreed between the Affected Stream commissioner and the successor commissioner).
- 1.2.8. The Exit Plan shall, as appropriate make provision for
- (a) the transfer of equipment and any other assets transferred from one Partner to another under the Arrangements 1.4.2 the continuation or termination of each Partners' rights of occupation of Premises owned or controlled by the other Partners shall cease insofar as applicable to the provision of the Services related to the Functions of that other Partner
  - (b) the retention or transfer of ownership of the records and information relating to the Functions and client files including any relevant records that were transferred to the other Partners as part of the Arrangements; and
  - (c) the management of debtors and creditors
- 1.2.9. All Partners agree that all such information as may be provided to the other may be passed on to any prospective or new service providers (in confidence) for the purposes of future provision of the Functions and obtaining advice only. Stream commissioner (such that they would or might become Transferring Employees) without the agreement of the successor commissioner (such agreement not to be unreasonably withheld or delayed)

- 1.2.10. the Affected Stream commissioner shall indemnify the successor commissioner against all costs, claims and liability in relation to the Transferring Employees which relate to periods up to and including the end of the final Scheme year or arise from the acts or omissions of the Affected Stream commissioner during any such period and the successor commissioner shall indemnify the Affected Stream commissioner against all costs, claims and liability in relation to the Transferring Employees for which it is not entitled to indemnity from the Affected Stream commissioner; and
- 1.2.11. in addition to the indemnity in Clause 17, the Affected Stream commissioner shall indemnify the successor commissioner in respect of any claim made by or in respect of any person employed or engaged or formerly employed or engaged by the Affected Stream commissioner other than those who are either:
- (d) on a list of the anticipated Transferring Employees provided by the Affected Stream commissioner to the successor commissioner not less than 2 months prior to the end of the final Scheme year, or
  - (e) subsequently engaged by the Affected Stream commissioner with the agreement of the successor commissioner given under Clause 17 above.
- 1.2.12. An Exit Plan will be agreed for each Affected Stream within 4 months of the end of the final Scheme year, which shall set out the proposed methodology for achieving an orderly wind-down (where there is no successor commissioner, in which case the Exit Plan shall be agreed between the Partners) or transition (where there is a successor commissioner, in which case the Exit Plan shall be agreed between the Affected Stream commissioner and the successor commissioner).
- 1.2.13. The Exit Plan shall, as appropriate make provision for
- (a) the transfer of equipment and any other assets transferred from one Partner to another under the Arrangements 1.4.2 the continuation or termination of each Partners' rights of occupation of Premises owned or controlled by the other Partners shall cease insofar as applicable to the provision of the Services related to the Functions of that other Partner.
  - (b) the retention or transfer of ownership of the records and information relating to the Functions and client files including any relevant records that were transferred to the other Partners as part of the Arrangements; and
  - (c) the management of debtors and creditors
  - (d) All Partners agree that all such information as may be provided to the other may be passed on to any prospective or new service providers (in confidence) for the purposes of future provision of the Functions and obtaining advice only.

## **APPENDIX 15 – SAFEGUARDING ADULTS SELF-ASSESSMENT & ASSURANCE FRAMEWORK**

1. Healthcare services and commissioners have a duty to safeguard patients who may be least able to protect themselves from harm.
2. The National Safeguarding Adults self-assessment and Assurance Framework (SAAF) for Health Care Services, or any subsequent framework agreed by the Lincolnshire Safeguarding Adults Board (LSAB), draws on existing standards and inspection frameworks including the Care Quality Commission (CQC) Essential Standards for Quality and Safety; Association of Directors of Adult Social Services (ADASS) standards for Adult Protection and the proposed NHS Outcomes Framework.
  - 2.1.1. The purpose of the SAAF is to support health organisations to effectively discharge their safeguarding responsibilities through:
  - 2.1.2. Safeguarding leadership at all levels
  - 2.1.3. Identification and appropriate actions of safeguarding issues Improved outcomes in terms of the prevention of harm occurring
  - 2.1.4. Deliver effective, patient centred responses where harm has occurred.
3. The SAAF aims to:
  - 3.1. Help services to review and benchmark their safeguarding adults' arrangements; Provide assurance and accountability for the organisation and to their commissioners, partners and patients.
  - 3.2. Assist organisations to develop action plans for improved outcomes; Identify evidence or gaps in provision that will be relevant in complying with Fundamental Standards of Care under the Health and Social Care Act 2008.
4. Identify and have processes in place in respect of vulnerable groups requiring proactive safeguarding, to include how people who cannot consent will be identified, what staff should do if uncertain about a patient 's ability to make a specific decision and that the experiences and views of those who lack capacity, and their families are specifically recorded and acted upon.
5. Support multi agency National, Regional and Local safeguarding adults' objectives, policies and procedures.
6. The safeguarding standards that the relevant organisation shall report to the designated Strategic Board in Lincolnshire, the Lincolnshire Safeguarding Adults Board, relate to measures that support good safeguarding. These reporting mechanisms include:
  - strategy,
  - systems,
  - workforce,
  - partnerships
  - intelligence
  - commissioning arrangements.
7. The Partners have agreed policies for safeguarding children and adults, and these may be found on the website link below. The host commissioner should ensure that providers of care should also be aware of the need to refer to guidance from both safeguarding boards, and their duty to keep themselves up to date by visiting the Lincolnshire Clinical Commissioning Group website and Safeguarding Boards websites regularly.

8. The website link for the safeguarding policies is :-
- Lincolnshire CCG: [Safeguarding – Lincolnshire CCG](#)
  - Lincolnshire County Council: [Safeguarding – Lincolnshire County Council](#)
  - Lincolnshire Safeguarding Adults Board: [Lincolnshire Safeguarding Adults Board – About the LSAB - Lincolnshire County Council](#)
  - Lincolnshire Safeguarding Children Partnership: [Lincolnshire Safeguarding Children Partnership – About the LSCP - Lincolnshire County Council](#)
9. Although this Agreement is for adults it is accepted by the Partners that some service users are in transition between childhood and adult hood, plus those with learning disability may remain within children's service into adulthood until their mid-twenties. and the appropriate safeguarding policy should be applied. In addition: -
10. For Children:
- 10.1. All service providers commissioned by the NHS and Local Authority are required to be compliant with Section 11 of Children Act 2004 regarding safeguarding children. The NHS requires compliance against the 'Markers of Good Practice' (MOGP) framework which demonstrates progress and compliance in support of this. The markers of good practice are assessed annually for both commissioning and provider organisations working to NHS contracts. The date of submission is before the 31 December each year.
- 10.2. In addition, Lincolnshire Safeguarding Children Partnership (LSCP) which has the statutory mandate to receive assurance regarding Partner organisations compliance regarding CA S11 have developed a toolkit for organisations to self-assess against Section 11 compliance which is assessed every 3 years.
11. All NHS contracts shall be based upon the level of compliance and demonstrable progress towards complete compliance made by each organisation. The LSCP CA S11 audit is now electronically based, organisational updating can be undertaken on a continual basis in preparation for the next formal audits, the timescale of which is under review. It is likely to be more frequent than 3 years.
12. In the year that LSCP S11 is completed there is no need to re undertake a MOGP as well. However, there is a need to submit before the end of each year the MOGP e.g. before 31 December 2022 then annually.
13. For adults in the interest of safeguarding adults a national framework has been established that requires all services commissioned through the NHS to demonstrate progress and compliance in support of adults at risk of harm.

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