

Full name: Partnership agreement under section 75 of the National Health Service Act 2006.

**DATED** \_\_\_\_\_ **20**

**NHS DARTFORD GRAVESHAM AND SWANLEY CLINICAL COMMISSIONING  
GROUP (“DGS CCG”)**  
**NHS WEST KENT CLINICAL COMMISSIONING GROUP (“WEST KENT CCG”)**  
**NHS SWALE CLINICAL COMMISSIONING GROUP (“SWALE CCG”)**  
**NHS ASHFORD CLINICAL COMMISSIONING GROUP (“ASHFORD CCG”)**  
**NHS CANTERBURY AND COASTAL CLINICAL COMMISSIONING GROUP  
 (“CANTERBURY CCG”)**  
**NHS THANET CLINICAL COMMISSIONING GROUP (“THANET CCG”)**  
**NHS SOUTH KENT COAST CLINICAL COMMISSIONING GROUP (“SOUTH  
KENT COAST CCG”)**  
**(“NHS BODY”)**

**AND**

**THE KENT COUNTY COUNCIL (“AUTHORITY”)**

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**SECTION 75 AGREEMENT (NHS ACT 2006)  
FOR THE PROCUREMENT OF HEALTH AND  
SOCIAL CARE INTEGRATED COMMUNITY  
EQUIPMENT SERVICES (ICES) FOR ADULTS AND  
CHILDREN**

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**THIS DEED** is dated [DATE]

## **PARTIES**

- (1) **NHS DARTFORD GRAVESHAM AND SWANLEY CLINICAL COMMISSIONING GROUP** of Floor 2, Gravesham Civic Centre, Windmill Street, Gravesend, Kent DA12 1AU ("**DGS CCG**") and
- NHS WEST KENT CLINICAL COMMISSIONING GROUP** of Wharf House, Medway Wharf Road, Tonbridge, Kent TN9 1RE ("**West Kent CCG**") and
- NHS SWALE CLINICAL COMMISSIONING GROUP** of Bramblefield Clinic, Grovehurst Road, Kemsley, Sittingbourne, Kent ME10 2ST ("**NHS Swale CCG**") and
- NHS ASHFORD CLINICAL COMMISSIONING GROUP** of Inca House, Trinity Road, Ashford, Kent TN25 4AB ("**Ashford CCG**") and
- NHS CANTERBURY AND COASTAL CLINICAL COMMISSIONING GROUP** of Brook House, John Wilson Business Park, Reeves Way, Kent CT5 3DD ("**Canterbury CCG**") and
- NHS THANET CLINICAL COMMISSIONING GROUP** of Thanet District Council, Cecil Street, Margate, Kent CT9 1XZ ("**Thanet CCG**") and
- NHS SOUTH KENT COAST CLINICAL COMMISSIONING GROUP** of Council Offices, White Cliffs Business park, Whitfield CT16 3PJ ("**South Kent Coast CCG**")
- (each an "**NHS Body**"). The above being together referred to as "**NHS Bodies**"
- (2) **THE KENT COUNTY COUNCIL** of Sessions House, County Hall, Maidstone, Kent ME14 1XQ ("**Authority**").

## **BACKGROUND**

- (A) The Authority is a social services authority within the meaning of the Local Authorities Social Services Act 1970 and accordingly has statutory responsibility to make provision under its respective social services functions under The Chronically Sick and Disabled Persons Act 1970 in Kent.
- (B) Each NHS Body is an NHS commissioning body that has been created by the Health and Social Care Act 2012. Each NHS Body has statutory responsibilities to:-
- secure the improvement of peoples physical and mental health;
  - have regard to the need to safeguard and promote the welfare of children; and
  - provide nursing care services for children and young people resident in the registered area for which it has statutory responsibility.
- (C) In accordance with the NHS Regulations 2000 and NHS Act 2006, the Partners intend to establish and maintain a joint commissioning and pooled fund

arrangement (the “Partnership Arrangements”) relating to the procurement of an ICES to enhance and maintain the quality of life for adults and children with severe and complex health and social care needs. The Services are defined below.

- (D) The Partners have agreed that the Authority will be the Host Partner in respect of a pooled fund arrangement and will lead in respect of the procurement of ICES for adults and children. Both the Authority and the Lead Partner will jointly commission the procurement of ICES for adults and children. The Lead Partner will, however, have a supporting role in commissioning the procurement of ICES for adults and children.
- (E) The Partners are satisfied that these arrangements are likely to lead to an improvement in the way in that their Relevant Functions (defined below) are exercised.
- (F) The Partners confirm that they have jointly consulted the people likely to be affected by the Partnership Arrangements.
- (G) The Partnership arrangements are in accordance with the general duty laid out in each CCG’s constitution regarding integration and joint working arrangements between health and social care.
- (H) Section 75 of the NHS Act 2006 contains powers enabling NHS bodies (as defined in Section 275 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (I) The Partners are committed to better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (J) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.
- (K) The NHS Bodies agree that the Lead Partner shall be the lead NHS Body on behalf of all of the NHS Bodies in this Agreement.

## **AGREED TERMS**

### **1. DEFINITION AND INTERPRETATION**

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

**“Administrative Assets”** equipment, publications, information systems, software licences and other assets used in the procurement of Community Equipment.

**“Agreement”** this Agreement between the NHS Bodies and the Authority comprising these terms and conditions together with all schedules attached to it.

<b>“Annual Contribution”</b>	the annual contribution of the Partners to the Pooled Fund as calculated in accordance with clause 10.
<b>“Annual Development Plan”</b>	has the meaning set out in clause 7.
<b>“Aims and Outcomes”</b>	as set out in Schedule 1.
<b>“Authority’s Authorised Officer”</b>	Shall be the Director of Older People and Physical Disability from time to time or if no officer holds that appointment the person carrying out the duties of that appointment or such other suitably qualified person as the Council’s Corporate Director of Social Care, Health and Wellbeing may from time to time nominate.
<b>“Authority’s Financial Contribution”</b>	the Authority’s financial contribution for the relevant Financial Year. The Authority’s Financial Contribution for the First Financial Year is set out in Schedule 3.
<b>“Authority Health-Related Functions”</b>	shall have the same meaning as set out in Schedule 2
<b>“Best Value”</b>	the duty imposed on the Authority by Section 3 of the Local Government Act 1999
<b>“CCG”</b>	clinical commissioning group
<b>“Change in Law”</b>	a change in Law that impacts on the Partnership Arrangements, which comes into force after the Commencement Date.
<b>“Claim”</b>	any claim, demand, proceeding or liability.
<b>“Commencement Date”</b>	1 December 2015
<b>“Community Equipment”</b>	the ICES plays a crucial role in helping the most vulnerable people in Kent remain in their own home. Through the provision of equipment, people are either enabled to carry out everyday activities, whilst maximising their independence, or to be provided with equipment which supports them to be cared for at home.
<b>“Data Protection Legislation”</b>	this includes: <ul style="list-style-type: none"> <li>(a) the Data Protection Act 1998 (<b>DPA 1998</b>);</li> <li>(b) Directive 95/46/EC on the protection of individuals with regard to the</li> </ul>

processing of personal data and on the free movement of such data;

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

**“Dispute Resolution Procedure”**

the procedure set out in clause 26 .

**“Financial Contributions”**

the financial contributions of the Partners as set out in Schedule 3.

**“Financial Year”**

1 April to 31 March.

**“First Financial Year”**

1 April 2015 – 31 March 2016 which may be a part year.

**“FOIA”**

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

**“Functions”**

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

**“Host Partner”**

the host partner for the Functions under this Agreement or any of the Previous Section 31 Agreements, as appropriate.

<b>“ICES”</b>	Integrated Community Equipment Services
<b>“Information”</b>	has the meaning given under section 84 of FOIA.
<b>“Information Sharing Protocol”</b>	the protocol describing how the Partners will share Information contained in Schedule 4 .
<b>“Joint Health and Social Care Directorate Management Team/Accountable Officer Meeting”</b>	the joint monthly meeting of the Authority’s Health and Social Care Directorate Management Team and the CCG’s Accountable Officers.
<b>“Law”</b>	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.
<b>“Lead Partner”</b>	South Kent Coast CCG.
<b>“Local Healthwatch”</b>	has the meaning given by section 222 of the Local Government and Public Involvement in Health Act 2007.
<b>“Partnership Board”</b>	the management board which shall manage the joint commissioning arrangements.
<b>“NHS”</b>	National Health Service.
<b>“NHS Act 2006”</b>	National Health Service Act 2006.
<b>“NHS Body”</b>	shall have the meaning set out in Regulation 3(1) of the NHS Regulations 2000.
<b>“NHS Body’s Authorised Officer”</b>	Shall be the Accountable Officer of South Kent Coast CCG and Thanet CCG from time to time or if no officer holds that appointment the person carrying out the duties of that appointment or such other suitably qualified person as the Accountable Officers of the other five CCG’s may from time to time nominate .
<b>“NHS Bodies’ Financial Contribution”</b>	the NHS Body’s financial contribution for the relevant Financial Year. The NHS Body’s Financial Contribution for the First Financial Year is set out in Schedule 3.
<b>“NHS Functions”</b>	shall have the meaning set out in Schedule 2
<b>“NHS Regulations 2000”</b>	the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617).



<b>“Partner”</b>	either the NHS Bodies, or the Authority, and <b>“Partners”</b> shall be construed as the NHS bodies and the Authority accordingly.
<b>“Partnership Arrangements”</b>	the joint commissioning and pooled fund arrangements made between the Partners under this Agreement.
<b>“Personal Data”</b>	shall have the same meaning as set out in the DPA 1998.
<b>“Pooled Fund”</b>	a pooled fund comprising the Authority's Financial Contribution and the NHS Bodies Financial Contributions for the ICES, out of which payments may be made by the Authority towards expenditure incurred in the exercise of the Functions. For the avoidance of doubt, the Pooled Fund shall include both the integrated and aligned budgets.
<b>“Pooled Fund Manager”</b>	the officer of the Authority appointed to be the manager of the Pooled Fund pursuant to the NHS Regulations 2000.
<b>“Previous Section 31 Agreements”</b>	previous agreements entered into by the Partners under section 31 Health Act 1999.
<b>“Provisional Annual Contribution”</b>	the contributions proposed by the Pooled Fund Manager in accordance with clause 10.10.
<b>“Quarter”</b>	the following periods in each Financial Year: <ul style="list-style-type: none"> <li>(a) 1 April to 30 June;</li> <li>(b) 1 July to 30 September;</li> <li>(c) 1 October to 31 December; and</li> <li>(d) 1 January to 31 March.</li> </ul>
<b>“Representative”</b>	a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.
<b>“Section 75 Agreement Review”</b>	has the meaning given in clause 16
<b>“Service Charges”</b>	the administrative fees of the Authority for providing the Pooled Fund in relation to the Partnership Arrangements. Such Charges shall include, but not be limited to systems administration, procurement and obtaining licenses.

<b>“Service Provider”</b>	a third-party provider of any of the Services, as commissioned by the Authority.
<b>“Services”</b>	the services to be delivered by or on behalf of the Partners under this Agreement are the procurement of adult and children’s ICES as more particularly described in <b>Error! Reference source not found..</b>
<b>“Service User”</b>	individuals who are eligible to receive the Services, as more particularly described in <b>Error! Reference source not found..</b>
<b>“Term”</b>	the period from the Commencement Date until this Agreement is terminated in accordance with the provisions of clause 27.
<b>“VAT Guidance”</b>	the guidance published by the Department of Health entitled "VAT arrangements for Joint NHS and Local Authority Initiatives including Disability Equipment Stores and Welfare-Section 31 Health Act 1999".
<b>“Working Day”</b>	any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 References to clauses are to the clauses of this Agreement. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules and a reference to a paragraph is a reference to the paragraph in the Schedule containing such a reference.
- 1.4 Words in the singular include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to the word “including” are to be construed without limitation.

1.11 If there is any conflict between the contents of any Schedule and the main body of this Agreement, the provisions set out in the main body shall prevail.

1.12 This Agreement is intended to be binding on any successor body to any of the NHS Bodies or the Authority which is created during the Term by or under primary or secondary legislation, and the Partners shall ensure (so far as the law permits) that any successor body agrees to be bound by the terms of this Agreement.

## **2. COMMENCEMENT AND DURATION**

This Agreement shall take effect on the Commencement Date and shall continue until terminated in accordance with the provisions of clause 27.

## **3. PARTNERSHIP ARRANGEMENTS**

3.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to commission and provide integrated health and social care services to better meet the needs of the Service Users of Kent than if the Partners were operating independently.

3.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1. The Parties shall work together to ensure these Aims and Outcomes are met during the Term.

3.3 From the Commencement Date, the Previous Section 31 Agreements are replaced by the provisions of this Agreement.

3.4 The Partnership Arrangements shall:

3.4.1 Comprise the delegation by the NHS Bodies to the Authority of the NHS Functions, so that it may exercise the NHS Functions in part alongside the Authority Health-Related Functions;

3.4.2 Comprise the establishment and maintenance of Pooled Funds for the Services in accordance with the NHS Regulations 2000 and on the terms set out in this Agreement for the Term; and

3.4.3 establish integrated management and commissioning with regard to ICES.

3.5 The Authority shall host and provide the financial administrative systems for the Pooled Fund.

## **4. POOLED FUND MANAGER**

4.1 The Authority shall appoint a Pooled Fund Manager, who shall be responsible for:

4.1.1 managing the Pooled Fund on behalf of the Partners;

4.1.2 managing expenditure from the Pooled Fund within the budgets set by the Partners and in accordance with the Annual Development Plan;

- 4.1.3 submitting quarterly financial management reports and an annual return to the Partners, to enable them to monitor the success of the Partnership Arrangements;
- 4.1.4 preparing at the year-end a memorandum of accounts within the Authority's statement of accounts which shows:
- what has been received;
  - what has been spent;
  - what remains;
  - proposals relating to assets held; and
  - outstanding liabilities in respect of the Pooled Fund.
- 4.1.5 On or before 30th June of each Financial Year, providing to the Lead Partner it's memorandum of accounts for the previous Financial Year.
- 4.2 The Authority will retain records in relation to the Pooled Fund for at least six years.
- 4.3 The Pooled Fund Manager will authorise all payments from the Pooled Fund.
- 4.4 For the avoidance of doubt other than the Authority acting in accordance with this Agreement, no person shall be entitled to enter into any contract with any third party in respect of expenditure from the Pooled Fund save with the agreement of the Partnership Board.
- 4.5 In accordance with Regulation 4(2) of the NHS Regulations 2000, the Partners have carried out a joint consultation on the proposed Partnership Arrangements with Service Users, and other individuals and groups who appear to them to be affected by the Partnership Arrangements.
- 4.6 Nothing in this Agreement shall prejudice or affect:
- 4.6.1 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
- 4.6.2 the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
- 4.6.3 the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Care Act 2014.
- 4.7 The Partners agree that each has consulted as required under the NHS Regulations 2000 and otherwise confirm and acknowledge that each of them has the legal power and authority to enter into this Agreement.

### **Cooperation**

- 4.8 This Agreement is intended to be entered into in accordance with Section 75 of the NHS Act 2006 and the NHS Regulations 2000. If for any other reason this Agreement does not comply with Section 75 of the NHS Act 2006 or the NHS

Regulations 2000 the Parties agree to use reasonable endeavours to make such changes to the Partnership Arrangements so as to bring them into accordance with the NHS Act 2006 and the NHS Regulations 2000.

- 4.9 The Partners will, in relation to the Partnership Arrangements:
- 4.9.1 co-operate with each other and treat each other with respect;
  - 4.9.2 be open with information about the performance and financial status of the Partnership Arrangements and more generally,
    - (a) provide early information and notice relating to relevant problems;
    - (b) act and deal in good faith towards each other in respect of all matters the subject of this Agreement; and
    - (c) co-operate with each other in connection with any legal proceedings brought against any one of the Parties' in connection with the Partnership Arrangements.
- 4.10 The Parties shall co-operate together in all aspects of the Partnership Arrangements in order to make the most efficient use of all resources and obtain the best outcomes achievable.
- 4.11 In the event that any Partner has any concerns regarding the operation of the Partnership Arrangements or the standards achieved in connection with the carrying out of the Services it may convene a review with the other Partners with a view to agreeing a course of action to resolve such concerns.
- 4.12 If any issues are not resolved in accordance with a review convened in accordance with clause 4.11 above, the Partners shall resolve the issue in accordance with the Dispute Resolution Procedure set out in clause 26.

## **5. DELEGATION OF FUNCTIONS**

- 5.1 For the purposes of the implementation of the Partnership Arrangements, the NHS Bodies hereby delegates the exercise of the NHS Functions to the Authority to exercise alongside the Authority's Health-Related Functions and act as lead commissioner.
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement of the NHS Bodies and the Authority.

## **6. SERVICES**

- 6.1 The Authority is the Host Partner for the Partnership Arrangements.
- 6.2 The Authority shall procure Services and ensure that they are provided and shall be accountable to the Lead Partner for the NHS Functions for the benefit of Service Users:
- 6.2.1 to ensure the proper discharge of the Partners' Functions;

- 6.2.2 with reasonable skill and care, and in accordance with best practice guidance;
- 6.2.3 in all respects in accordance with the Aims and Outcomes, the provisions of this Agreement, and the Authority and the NHS Bodies' applicable policies set out in **Error! Reference source not found.**;
- 6.2.4 in accordance with the Authority's standing orders or other rules on contracting; and
- 6.2.5 in accordance with all applicable Law.

## **7. ANNUAL DEVELOPMENT PLAN**

- 7.1 The Partners shall prepare an Annual Development Plan for the Services at least twelve (12) weeks before the start of the Financial Year. The Annual Development Plan shall:
  - 7.1.1 set out the agreed aims and outcomes for the Services;
  - 7.1.2 describe any changes or development required for the Services;
  - 7.1.3 provide information on how changes in funding or resources may impact the Services; and
  - 7.1.4 include details of the estimated contributions due from each Partner for the Services and its designation to the Pooled Fund.
- 7.2 The Annual Development Plan shall commence on 1 April at the beginning of the Financial Year and shall continue for 12 months.
- 7.3 The Annual Development Plan may be varied by written agreement between the Lead Partner and the Authority. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the Partners to make corresponding adjustments to the NHS Bodies' Financial Contribution and the Authority's Financial Contribution.
- 7.4 If the Partners cannot agree the contents of the Annual Development Plan, the matter shall be dealt with in accordance with the Dispute Resolution Procedure. Pending the outcome of the Dispute Resolution Procedure or termination of the Agreement under clause 27, the Partners shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **8. FINANCIAL CONTRIBUTIONS**

- 8.1 The NHS Bodies shall pay the NHS Bodies' Financial Contribution to the Authority to allocate to the Pooled Fund and to manage in accordance with this Agreement and the Annual Development Plan.
- 8.2 The Authority shall contribute the Authority's Financial Contribution to the Pooled Fund and shall manage the Pooled Fund in accordance with this Agreement and the Annual Development Plan.
- 8.3 The NHS Bodies' Financial Contribution and the Authority's Financial Contribution for the First Financial Year are set out in Schedule 3.

- 8.4 The Partners shall pay the Financial Contributions into the Pooled Fund quarterly in advance.
- 8.5 The Partners shall agree the NHS Bodies' Financial Contribution and the Authority's Financial Contribution for the following Financial Year by 1 January.
- 8.6 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the Pooled Fund.
- 8.7 The Partners agree to adopt "Partnership Structure (a)" as described in the VAT Guidance through which the Partners agree that goods and services will be purchased in accordance with the Authority's VAT regime and reimbursed from the Partners' Financial Contributions.
- 8.7.1 The Authority will provide sufficient and complete documentation to the NHS Bodies to enable the NHS Bodies to satisfy the requirements of HM Revenue and Customs with respect to reclaiming any VAT.
- 8.7.2 Any sums invoiced pursuant to clause 8.7 which result from an HM Revenue and Customs inspection or legal or accounting advice agreed by the Partnership Board regarding VAT treatment will be paid by the NHS Bodies within fifteen Working Days of receipt of the invoice.

## **9. OBLIGATIONS OF THE PARTNERS**

- 9.1 As Host Partner, the Authority shall:
- 9.1.1 lead on the procurement/purchasing for the Kent ICES for Service Users;
- 9.1.2 provide financial and administrative and other relevant support and relevant information to enable effective and efficient management of the ICES and Pooled Fund;
- 9.1.3 be responsible for the accounts of the Partnership Arrangements (through the Pooled Fund Manager) and to integrate and maintain a clearly identifiable accounting structure to ensure effective monitoring and reporting of the Partnership Arrangements;
- 9.1.4 make arrangements to certify an annual return of the accounts pursuant to s.28(1)(d) of the Audit Commission Act 1998;
- 9.1.5 operate effective audit arrangements in accordance with the NHS Regulations 2000 which take account of relevant guidance from the Audit Commission;
- 9.1.6 operate the Pooled Fund in accordance with clause 10;
- 9.1.7 comply with all HM Revenue and Customs directions and have due regard to all guidance issued by HM Revenue and Customs regarding the VAT aspects of the Partnership;
- 9.1.8 Jointly with the NHS Bodies monitor the performance of the Services and report regularly to the Partnership Board in respect of such performance;
- 9.1.9 in respect of the Services comply, and ensure the Partnership Arrangements comply, with all statutory requirements national and local

and other guidance on conduct and probity and ensure that good corporate governance applies in respect of the Partnership Arrangements; and

- 9.1.10 ensure the Partnership Arrangements are carried out in such a manner as to ensure, as far as budget constraints allow, that the Services are provided to a high standard.
- 9.2 Where this Agreement states that the Pooled Fund Manager shall be responsible for any matters the Authority shall be under an obligation to ensure that the Pooled Fund Manager complies with any such responsibilities.

### **NHS Bodies' Obligations**

- 9.3 The Lead Partner undertakes on behalf of itself and all of the other NHS Bodies that it shall use all reasonable endeavours to ensure that none of the NHS Bodies do anything which they know would cause the Authority to be in breach of its agreements or arrangements with suppliers and Service Providers concerning the provision of the Services, nor act or omit to act in a manner that they know to be inconsistent with such agreements and arrangements.
- 9.4 Jointly with the Authority, the NHS Bodies shall monitor the performance of the Services and report regularly to the Partnership Board in respect of such performance.
- 9.5 The NHS Bodies shall:
  - 9.5.1 in respect of the Services comply, and ensure the Partnership Arrangements comply, with all statutory requirements, national and local and other guidance on conduct and probity and ensure that good corporate governance applies in respect of the Partnership Arrangements; and
  - 9.5.2 ensure the Partnership Arrangements are carried out in such a manner as to ensure, as far as budget constraints allow, the Services are provided to a high standard.

## **10. THE OPERATION OF THE POOLED FUND**

- 10.1 The Authority shall be authorised and entitled to pay any monies from the Pooled Fund:
  - 10.1.1 To any other third party or to reimburse itself in respect of any payments or reasonable and proper costs and losses incurred in respect of the Services. This will be monitored by financial management reports that will be provided to the Partners on a quarterly basis; and
  - 10.1.2 To pay itself a reasonable amount agreed and approved by the Partnership Board at the beginning of each Financial Year in respect of the agreed Service Charges including any audit costs;

provided that such payments are made in accordance with the terms of this Agreement.



- 10.2 The Partners agree that the Authority will host the Pooled Fund under and in accordance with the NHS Regulations 2000 and shall be responsible for the accounts and audit of the Pooled Fund as set out in this Agreement.
- 10.3 The Authority will provide the required financial systems to manage the Pooled Fund and will be accountable for audit and good practice in the administration of the Pooled Fund and the costs shall be borne through the Partners' contributions to the Pooled Fund and the Authority shall do all that is necessary to allow the NHS Bodies to comply with their own audit requirements.
- 10.4 The Pooled Fund is intended to cover the following expenditure in relation to the Service in order to meet the Aims and Outcomes set out in Schedule 1.
- 10.5 Payments shall only be made out of the Pooled Fund in accordance with the terms of this Agreement.

### **Annual Contributions**

- 10.6 The Partners shall each pay their respective Annual Contributions into the Pooled Fund in accordance with the provisions set out in this clause 10. For this purpose, the NHS Bodies shall make their respective payments to the Authority for payment into the Pooled Fund and the Pooled Fund Manager shall make the requisite accounting entry into the Pooled Fund which shall be deemed for the purposes of this Agreement to be a payment made by each of the NHS Bodies.
- 10.7 The overriding principle of the Pooled Fund is that the Services must be provided within the agreed Pooled Fund and that the Partners will use all reasonable endeavours to avoid overspends.
- 10.7.1 The Authority will invoice the NHS Bodies for its respective Annual Contribution to the Pooled Fund.
- 10.7.2 The NHS Bodies' initial Annual Contribution shall be a fixed sum in accordance with the amounts set out in Schedule 3 and any subsequent Annual Contributions payable by the NHS Bodies shall be agreed on an annual basis by the Authority and the Lead Partner.
- 10.8 The NHS Bodies will pay their Annual Contributions to the Authority within thirty (30) days of receipt of an invoice from the Authority for the same, provided that the Authority shall not issue such invoice until after 1st April of the relevant Financial Year.

### **Budget setting**

- 10.9 By 1st January of each Financial Year the Pooled Fund Manager shall
- 10.9.1 calculate, taking into account the previous year's financial spend in respect of each of the NHS Bodies, each NHS Body's Provisional Annual Contribution to the Pooled Fund for the following Financial Year and notify these figures to the Lead Partner and;
- 10.9.2 provide to the NHS Bodies details of the basis upon which the calculation was made.
- 10.10 Where estimated projections have been used to calculate under-spends or overspends the Pooled Fund Manager will adjust the calculation of the amounts of

the Provisional Annual Contributions to the Pooled Fund by using the actual under-spends or overspends as and when the information is available and shall notify the Lead Partner accordingly.

- 10.11 Where relevant, the Pooled Fund Manager will in agreement with the Lead Partner adjust the calculations to include annual inflationary uplifts and efficiency savings.
- 10.12 In calculating the Provisional Annual Contributions, the Pooled Fund Manager shall include a reasonable amount to reflect the Authority's Service Charge and shall include detail as to how such proposed Service Charges have been calculated. For the avoidance of doubt:
- 10.12.1 any such Service Charge shall be subject to prior approval and agreement by the Partnership Board; and
- 10.12.2 any Service Charge which is agreed by the Partnership Board as payable shall be paid out of Pooled Funds.
- 10.13 On receipt of the information set out in Clauses 10.10 – 10.13 above, and taking into account the Provisional Annual Contribution figures proposed by the Pooled Fund Manager, each Party shall agree its Annual Contribution for the following Financial Year.

## **11. OVERSPENDS AND UNDERSPENDS**

### **Overspends**

- 11.1 The Authority shall use all reasonable endeavours to arrange for the discharge of the Authority Health-Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.
- 11.2 The Authority shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.
- 11.3 The Pooled Fund Manager shall at all times keep the Lead Partner informed of any anticipated overspends and the Authority shall make the Lead Partner aware of any potential overspend as soon as it becomes aware of this possibility. The Authority will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.
- 11.4 Following the acceptance of the recommendations for action, the Pooled Fund Manager and the Lead Partner shall take such action as it considers appropriate in light of those recommendations to deal with the overspend.
- 11.5 If, at the end of the Financial Year or on termination of this Agreement, it becomes apparent that there has been an overspend of either the Authority's or any of the NHS Bodies' Financial Contributions the Authority and the NHS Bodies shall meet the overspend proportionately to their specific individual actual spend for the year provided that the Authority can identify spend to a specific Partner level. If this is not possible then overspends will be allocated proportionately to their respective Financial Contributions;

- 11.6 If at any time the Authority reasonably anticipates that (taking into account expected income and out-goings and any costs) the Pooled Fund shall have a negative balance at the end of the Financial Year the Authority shall notify the Lead Partner within 10 Working Days of the projection of an overspend. The Partners shall then prepare a joint plan for the management of the overspend, where possible within the limits of the Pooled Fund available for the relevant Financial Year.
- 11.7 If at the end of any Financial Year there is an overspend the Partners shall be liable to make additional payments into the Pooled Fund on the following basis proportionate to the projected actual spend for each Partner provided that the Authority can identify spend to a specific Partner level. If this is not possible then overspends will be allocated proportionately to their respective Financial Contributions in the relevant Financial Year.
- 11.7.1 Overspends will be allocated to the relevant Partners for payment following a full analysis by the Pooled Fund Manager and the Health Lead Partner/(Representative) of the reasons for the overspend and the Partners shall be entitled to go to the Dispute Resolution Procedure if they dispute the conclusions.
- 11.7.2 At the end of the Financial Year in which any payments under clause 10.1 have been made, the relevant accounts shall be reconciled and any necessary adjustments shall be made to the Authority's Annual Contributions for the following Financial Year.
- 11.7.3 In the event that there is a dispute regarding the conclusions resulting from the full analysis and reasons for the overspend referred to in clause 11.7.1 above, then the Partners shall work together to continue to provide the Services whilst such dispute is being resolved in accordance with the Dispute Resolution Procedure.

### **Underspends**

- 11.8 The Pooled Fund Manager shall at all times keep the Partners informed of any anticipated under-spend. In the event of an anticipated under-spend the Partners may agree to the redeployment of that under-spend or that the money shall be retained as a contingency in the Pooled Fund. In the event that agreement cannot be reached the money shall be retained as an under-spend.
- 11.9 If at the end of any Financial Year there is an under-spend in relation to the Pooled Fund the Pooled Fund Manager shall identify the reasons for the under-spend and identify any part of that underspend which is already contractually committed. The under-spend shall be apportioned in a just and equitable manner, based on the actual spend in that year provided that the Authority can identify spend to a specific Partner level. If this is not possible then under-spend will be allocated proportionately to their respective Financial Contributions, taking into account the circumstances of and the reasons for the under-spend.
- 11.10 Without prejudice to clauses 11.8 and 11.9 the Partners may agree to carry forward any under-spend in relation to the Pooled Fund provided that such carry forward is in accordance with any relevant statutory or other legal requirement or guidance.
- 11.11 The benefit of any underspend at the end of the Financial Year or on termination of this Agreement (whichever is appropriate) shall in relation to the Pooled Fund:

- 11.11.1 if the Partners agree, be applied to the Services, as the Partnership Board shall determine;
- 11.11.2 if the Partners agree, be deducted proportionately from the Partners' Financial Contributions on the basis of actual spend for that year for the following Financial Year; or
- 11.11.3 if the Partners cannot agree, be returned to the Partners in proportion to their Financial Contribution for the Financial Year; or
- 11.11.4 be repaid in full to the Partner to whose Financial Contribution the underspend relates, unless otherwise agreed. If the Partners are unable to agree then such disagreement shall be referred to the Partnership Board whose decision shall be final and binding.

## **12. CAPITAL AND REVENUE EXPENDITURE**

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

## **13. SET UP COSTS**

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

## **14. GOVERNANCE**

- 14.1 The NHS Bodies shall nominate the NHS Bodies' Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the NHS Bodies and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 14.2 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the NHS Bodies and shall be responsible for representing the Authority and liaising with the NHS Bodies' Authorised Officer in connection with the Partnership Arrangements.
- 14.3 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to their respective boards.
- 14.4 The Partners shall each appoint officers to the Partnership Board. The terms of reference of the Partnership Board are to be decided in agreement by the Partners.

## **15. QUARTERLY REVIEW AND REPORTING**

- 15.1 The Partners shall carry out a quarterly review of the Partnership Arrangements by the end of each Quarter.

- 15.2 The Pooled Fund Manager shall prepare and submit a quarterly report to the Partnership Board setting out any forecast overspend or underspend of the Financial Contributions.

## **16. ANNUAL REVIEW & REVIEW OF THE AGREEMENT**

- 16.1 The Partners agree to carry out a review of the Partnership Arrangements within three months of the end of each Financial Year (**Annual Review**), including:
- 16.1.1 the performance of the Partnership Arrangements against the Aims and Outcomes;
  - 16.1.2 the performance of the individual Services against the service levels and other targets contained in the relevant contracts;
  - 16.1.3 plans to address any underperformance in the Services;
  - 16.1.4 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
  - 16.1.5 review of plans and performance levels for the following year; and
  - 16.1.6 plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.
- 16.2 The Authority shall with the co-operation of the NHS Bodies and the Service Provider prepare an annual report following the Annual Review for submission to the Partners' respective boards.
- 16.3 The Partners shall hold a meeting (or series of meetings) to carry out a review of this Agreement (a "Section 75 Agreement Review") within 3 months of the end of the Financial Year. At this meeting the Partners shall consider the future of arrangements between the Partners and the matters set out below.
- 16.4 Once the Partners have carried out a Section 75 Agreement Review, the Partners shall decide what action (if any) to take. No amendment to this Agreement shall be made without the written agreement of the Partners.
- 16.5 The Partners should consider in the course of the Section 75 Agreement Review the occurrence of issues such as the following:
- 16.5.1 where the need for service changes arise, such as changes in customer preferences;
  - 16.5.2 reviews for the purposes of Best Value;
  - 16.5.3 recommendations following statutory and/or non-statutory changes;
  - 16.5.4 where it is clear to the Partners that the aims and objectives of this Agreement are not being fulfilled;
  - 16.5.5 in circumstances where the Partners wish to extend or decrease the scope of this Agreement; and
  - 16.5.6 whether any changes to this Agreement are required,

and the Partners shall instigate any changes as are agreed necessary and such changes shall be recorded in a written memorandum signed by each Party and attached to this Agreement.

## **17. VARIATIONS**

- 17.1 The Partners may agree to vary this Agreement from time to time in accordance with this clause 17.
- 17.2 This Agreement may be varied by the Partners at any time by agreement in writing in accordance with the Partners' internal decision-making processes.
- 17.3 If any Partner proposes a variation to any of the terms of this Agreement, the Partners shall use reasonable endeavours to agree the variation. The Partners agree to work together in good faith to agree any variations that may be required to this Agreement and as a result of any changes in Law. In the event of any disagreement in relation to the variation any Partner may refer the matter to the Dispute Resolution Procedure detailed in clause 26.
- 17.4 Variations, including to the Services, will only be effective if consulted upon and agreed by all Partners and, if agreed, will be evidenced by a document confirming the details of the variation signed on behalf of each Partner.
- 17.5 The Partners agree that as they have been unable to finalise the Specification prior to execution of this Agreement, they will enter into a Deed of Variation in accordance with the terms of this clause, once the Specification has been finalised and in any event no later than 1 March 2015.
- 17.6 The Partners agree that they have, for the purposes of being able to execute this Agreement, included the figures in Schedule 3, which are the best available to the NHS Bodies. The Partners agree that they will enter into a Deed of Variation in accordance with the terms of this clause once the NHS Bodies have been able to ascertain more accurate figures and in any event shall supply more accurate figures by no later than 1 April 2015.
- 17.7 The Partners agree that they have, for the purposes of being able to execute this Agreement, included the Information Sharing Protocol, which is not a definitive document. The Partners agree that they will enter into a Deed of Variation in accordance with the terms of this clause once they have been able to agree alternative wording for the Information Sharing Protocol. Such Information Sharing Protocol shall be agreed by no later than 1 December 2015.

## **18. FREEDOM OF INFORMATION**

- 18.1 The Partners acknowledge that each is subject to the requirements of FOIA and the Environmental Information Regulations 2004 ("EIR"), and shall assist and cooperate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.
- 18.1.1 Each partner ("the First Partner") acknowledges that in responding to a request received by any Partner ("the Other Partner") under the FOIA or the EIR the Other Partner will be entitled to provide information held by it relating to this Agreement or which otherwise relates to the First Partner;

- 18.1.2 The Other Partner shall use reasonable endeavours to notify the First Partner of any request under the FOIA or the EIR and the intention to disclose the information within 10 Working Days (as defined in the FOIA) of receipt of such request. Before disclosing any information, the Other Partner shall consider any representations made by the First Partner within 4 Working Days (as defined in the FOIA) of notification from the Other Partner to the First Partner in accordance with this clause 18.1.2;
- 18.1.3 The First Partner acknowledges that if it does not revert to the Other Partner within the period set out in clause 18.1.2 or if its representations do not alter the view of the Other Partner that the information should be disclosed, the Other Partner is under a duty to disclose such information;
- 18.1.4 The First partner shall co-operate with the Other Partner in connection with any request received by the Other Partner under the FOIA or the EIR and such co-operation shall be at no cost to the Other Partner;
- 18.1.5 Subject to the Data Protection Legislation, the Parties agree throughout the Term to co-operate with each other in the provision to each other of information reasonably required to enable each Party to account for the funds contributed to the Pooled Fund or otherwise under this Agreement, report on its statutory obligations and plan overall strategies to meet statutory obligations.

## **19. DATA PROTECTION AND INFORMATION SHARING**

- 19.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Each Partner shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 19.2 The Partners shall share information about the Services to improve the quality of care and enable integrated working.
- 19.3 Subject to the Data Protection Legislation, the Parties agree throughout the Term to co-operate with each other in the provision to each other of information reasonably required to enable each Party to account for the funds contributed to the Pooled Fund or otherwise under this Agreement, report on its statutory obligations and plan overall strategies to meet statutory obligations.

## **20. CONFIDENTIALITY**

- 20.1 The Partners agree to keep confidential all documents relating to or received from the other Partners under this Agreement that are labelled as confidential.
- 20.2 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.
- 20.3 Subject to any overriding obligations under the FOIA, policies, and all other relevant legislation each Party shall at all times during the continuance of this Agreement and after its termination keep confidential all information relevant to clients, patients and carers.

20.4 Subject to the terms of the DPA 1998, and in accordance with the Partners Information Sharing Protocol, each Partner shall at all times during the continuance of this Agreement and after its termination keep confidential the medical condition, treatment received or other Personal Data of any person.

## **21. AUDIT**

21.1 The Authority shall arrange for the audit of the accounts of the Pooled Fund in accordance with its statutory audit requirements.

21.2 The Authority shall provide to the NHS Bodies any reports required concerning the NHS Functions on reasonable notice.

21.3 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

## **22. INDEMNITIES**

22.1 References in this section to damages claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution process.

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

### **Conduct of Claims**

22.3 In respect of any claim by or against any Partner that in any way relates to the Services and/or a Service User including without limitation the performance by the Partners of their obligations under this Agreement, each Partner agrees:

22.3.1 to notify the other Partners in a timely manner of the details of any such Claims;

22.3.2 to consult with the other Partners and keep the other Partners fully informed of the progress and details of the Claim;

22.3.3 that where the Claim relates to more than one Partner not to compromise, dispose of or settle the Claim without the other Partner's prior written consent (not to be unreasonably withheld or delayed);

22.3.4 that where the Claim relates solely to any one Partner (the "First Partner") and:



- (a) has been made against another Partner; or
- (b) where the First Partner may be entitled to an indemnity from the other Partner under clause 22.2 above;

- 22.3.5 the Partners shall seek to agree which Partner shall have conduct of the Claim having regard to the requirements of each relevant Partner's insurers (or equivalent) and no Partner shall compromise, dispose of or settle the Claim without the prior written consent of the other Partners (not to be unreasonably withheld or delayed).
- 22.4 Each Partner agrees to co-operate and provide all such advice, assistance and information to the other Partners as may be reasonably required in respect of any such Claim or the conduct of any such Claim in a timely manner.

### **23. LIABILITIES**

- 23.1 Subject to clause 23.2, none of the Partners shall be liable to the other Partners for claims by third parties arising from any acts or omissions of the other Partners in connection with the Services before the Commencement Date.
- 23.2 Liabilities arising from Services provided or commissioned under the Previous Section 31 Agreements shall remain with the Partner specified under the relevant agreement and indemnified in accordance with the provisions set out above.
- 23.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partners under this Agreement.

### **24. COMPLAINTS AND INVESTIGATIONS**

- 24.1 The Partners agree that where a complaint is made to any of the Partners, the complaint shall be dealt with in accordance with the procedures of the receiving Partner and insofar as is reasonable to do so in consultation with the other Partners.
- 24.2 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

### **25. SERVICE USER PATIENT PUBLIC INVOLVEMENT**

- 25.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.
- 25.2 Nothing in this Agreement shall prejudice or affect:
- 25.2.1 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
  - 25.2.2 the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or

25.2.3 the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Care Act 2014.

## **26. DISPUTE RESOLUTION**

26.1 In the event of a dispute between the Partners arising out of or in connection with the terms of this Agreement, any Partner shall submit details of the dispute in writing to the other Partner(s) within 5 Working Days of such dispute arising.

26.2 Following receipt by the Partner(s) of the details of the dispute in writing, the Partners shall use their reasonable endeavours to resolve such dispute within 20 Working Days of the dispute arising (notice submitted pursuant to clause 26.1).

26.3 If such dispute cannot be resolved in accordance with clause 26.2 above, then such dispute shall be referred in writing to the Partnership Board.

26.3.1 Such referrals shall include any notes of any progress made with a view to resolution of the dispute by the Partners to the dispute.

26.3.2 Such notes shall be taken into consideration by the Partnership Board in coming to and making their decision. For the avoidance of doubt, the Partnership Board shall not be bound by any wording/argument expressed in such notes in coming to and making its decision.

26.4 If such a dispute cannot be resolved by the Partnership Board in accordance with clause 26.3 above, or, if any of the Partners in dispute or the relevant Partner alleged to be in default are dissatisfied with the decision made by the Partnership Board in accordance with clause 26.3 above, then any of the Partners in dispute or the relevant Partner alleged to be in default shall refer the dispute in writing to the Joint Health and Social Care Directorate Management Team/Accountable Officer Meeting together with written information regarding the steps taken to resolve the dispute so far. Such information shall not be binding on the Joint Health and Social Care Directorate Management Team/Accountable Officer Meeting and the decision of the Joint Health and Social Care Directorate Management Team/Accountable Officer Meeting shall be final and binding.

## **27. TERMINATION**

27.1 This Agreement may not be terminated by any Partner except as provided for under the provisions of clauses 27.2 to 27.4 below.

### **Early Termination**

27.2 Early termination of this Agreement shall require twelve (12) months written notice by any one of the Partners to all of the other Partners. Any notice served in accordance with this clause shall expire at the end of a Financial Year. Following such notice period this Agreement shall terminate.

27.3 In the event of a dispute or disagreement relating to the terms and conditions of this Agreement which cannot be resolved under clause 26 of this Agreement, then a Partner may serve twelve 12 months' notice in writing upon the other Partners, following such notice period, this Agreement shall terminate. Such notice to expire at the end of the Financial Year.

- 27.4 Notwithstanding clause 27.3 any Partner may, at any time, by giving immediate notice in writing to the other Partners terminate the Agreement on the happening of one of the following:
- 27.4.1 One partner commits a material breach of any of its obligations under the Agreement which is not capable of remedy; or
  - 27.4.2 A Partner commits a material breach of its obligations under the Agreement, which is capable of remedy.
  - 27.4.3 Any Partner wishing to terminate this Agreement in accordance with the provisions of this clause 27.4 shall first serve a notice on the Partner committing a material breach of its obligations under this Agreement.  
  
Such notice shall:
    - (a) specify the nature of the breach;
    - (b) require such breach to be remedied; and
    - (c) allow the Partner in default 30 days to remedy the breach.If such breach has not been remedied within thirty (30) days after the receipt of written notice from the terminating Partner serving a notice on the Partner in default requiring remedy of the breach; or
  - 27.4.4 As a result of any Change in Law or legislation the Partners are unable to fulfil their obligations under this Agreement; or
  - 27.4.5 The fulfilment of any Partners' obligations under this Agreement would be in contravention of any guidance from the Secretary of State issued after the Commencement Date of this Agreement.

then the provisions of clause 28 shall apply on termination of this Agreement.

## **28. CONSEQUENCES OF TERMINATION AND WINDING DOWN ARRANGEMENTS**

- 28.1 In the event that this Agreement is terminated the Partners agree to co-operate with each other in order to ensure an orderly wind down of joint activities as set out in the Agreement and to avoid or minimise the disruption of the Services to Clients and the Service Users. In winding down the Services, the Partners agree to co-operate with any new provider of the Services until such time as the Services are being undertaken by the new provider in accordance with the Service standard prevailing at the time that the new provider takes over provision of the Services.
- 28.2 In the event that there is early termination of this Agreement, the Partners agree that any balance of the Pooled Funds will be split pro-rata on the basis of Partners' contributions received in the last financial year in which such termination occurs. Such balance will be adjusted for unpaid activities taking into account the Authority's legal liabilities to suppliers.
- 28.3 In the event of termination the Partners shall value and take into account any Administrative Assets and any interests in such assets acquired for the purposes

of this Agreement in order to distribute such assets to the Partners. Such distribution shall take into account the legal ownership of and any interest in such assets which shall be returned to their legal owner. If no legal owner can be identified after six months the relevant assets shall be distributed among the Partners as the Partnership Board may consider appropriate.

- 28.4 Any press release to be issued on behalf of the Partnership Board in relation to the Partners ceasing to provide the Services shall first be presented to the Partnership Board in order to allow the Partnership Board to comment on the contents of the press release.
- 28.5 Any such comments made by the Partnership Board shall be taken into consideration by the chair of the Partnership Board.
- 28.6 Following the presentation and receipt of any comments the chair of the Partnership Board shall be entitled to make a decision regarding the content of the press release.

## **29. SURVIVAL OF TERMINATION**

- 29.1 The provisions of the following clauses shall survive termination of this Agreement however caused and shall continue in full force and effect:
  - 29.1.1 Clause 18 Freedom of Information;
  - 29.1.2 Clause 19 Data Protection and Information Sharing;
  - 29.1.3 Clause 20 Confidentiality;
  - 29.1.4 Clause 21 Audit;
  - 29.1.5 Clause 22 Indemnities;
  - 29.1.6 Clause 23 Liabilities; and
  - 29.1.7 Clause 28 Consequences of Termination and Winding Down Arrangements.

## **30. PUBLICITY**

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

## **31. NO PARTNERSHIP**

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

## **32. THIRD PARTY RIGHTS**

- 32.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.
- 32.2 It is agreed that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## **33. NOTICES**

- 33.1 Notices shall be in writing and shall be sent to the Authority, and the Lead Partner marked for the attention of the chief executive (or equivalent) or another person duly notified by the Authority, or the Lead Partner for the purposes of serving notices on the Authority, or that Lead Partner, at the postal or email address set out for the Authority, or the Lead Partner in this Agreement.

The Authority's email address: [anne.tidmarsh@kent.gov.uk](mailto:anne.tidmarsh@kent.gov.uk)

The Lead Partner's email address: [southkentcoast.ccg@nhs.net](mailto:southkentcoast.ccg@nhs.net)

- 33.2 Notices may be sent by first class mail or email, provided that read receipts are attached to the email sent. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed emails shall be deemed to have been received, provided a read receipt has been received by the sender.

## **34. ASSIGNMENT AND SUBCONTRACTING**

- 34.1 Subject to clause 34.2, 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.
- 34.2 The Partners recognise the recent changes to the structure of the NHS and agree that, where necessary, the NHS Bodies shall be entitled to novate, assign in whole or in part any right or condition under this Agreement to any other NHS organisation or any other entity replacing the NHS Bodies or who has become responsible for the exercise of any or all of the NHS Functions.

## **35. SEVERABILITY**

- 35.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, illegal, unlawful or unenforceable to any extent and for any reason by any court or competent jurisdiction, such term, condition or provision shall be severed and shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement, which shall continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.
- 35.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

**36. WAIVER**

36.1 The failure of either Partner to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Partner thereafter to enforce such provision.

36.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

**37. ENTIRE AGREEMENT**

37.1 This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Partners relating to the subject matter of it and supersede all prior communications, representations, agreements, arrangements and understandings between the Partners relating to that subject matter.

37.2 Any prior communications, representations, agreements, arrangements, understandings, promises or conditions not incorporated in this Agreement shall not be binding on any of the Partners.

**38. GOVERNING LAW AND JURISDICTION**

Subject to clause 26, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

**39. FAIR DEALINGS**

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

**40. COUNTERPARTS**

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.

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

THE COMMON SEAL of )  
THE KENT COUNTY COUNCIL )  
was hereunto affixed in the presence of: )

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory )  
of )  
NHS DARTFORD GRAVESHAM AND )  
SWANLEY CLINICAL COMMISSIONING )  
GROUP )  
in the presence of: )

Authorised Signatory

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory )  
of )  
NHS WEST KENT CLINICAL )  
COMMISSIONING GROUP )  
in the presence of: )

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory of )  
NHS SWALE CLINICAL )  
COMMISSIONING GROUP )  
in the presence of: )

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory of )  
NHS ASHFORD CLINICAL )  
COMMISSIONING GROUP )  
in the presence of: )

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory of )  
NHS CANTERBURY AND COASTAL )  
CLINICAL COMMISSIONING GROUP )  
in the presence of:

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory of )  
NHS THANET CLINICAL )  
COMMISSIONING GROUP )  
in the presence of:

Authorised Signatory

EXECUTED as a DEED )  
by the signature of the Authorised )  
Signatory of )  
NHS SOUTH KENT COAST CLINICAL )  
COMMISSIONING GROUP )  
in the presence of:

Authorised Signatory



## **SCHEDULE 1 - Aims and Outcomes**

Kent County Council, in partnership with NHS commissioning organisations in Kent, is seeking to establish a more singular ICES solution for the people and stakeholders of Kent (please note the exclusion of Medway Council and Medway Clinical Commissioning Group).

The population of the Kent County Council (KCC) area is projected to increase by an additional 153,800 people up by 10.5% over the next ten years bringing the population of Kent to 1,620,200. In addition to this Kent's older people population (65+) is projected to increase from 262,900 in 2011 to 335,700 in 2021 an increase of 26.7%.

In Kent there is a complex landscape of equipment, goods and community services provision across the health and social care economy.

The ICES plays a crucial role in helping the most vulnerable people in Kent remain in their own home. Through the provision of equipment, people are either enabled to carry out everyday activities, whilst maximising their independence, or to be provided with equipment which supports them to be cared for at home. Children and young people are given the best opportunity to be as independent as possible, including accessing the curriculum in education, and their parents/carers supported to care for them. The effect of this is to increase the opportunity to be educated in a local school, increase educational attainments, reduce care home/foster care and hospital admissions and to assist in timely discharge from hospital.



## **SCHEDULE 2 - The NHS Functions and the Authority Health-Related Functions**

### **THE NHS FUNCTIONS AND THE AUTHORITY HEALTH-RELATED FUNCTIONS THE EXERCISE OF WHICH ARE THE SUBJECT OF THIS AGREEMENT**

#### **NHS Functions**

means as much of those functions of the Kent CCGs mentioned in paragraph 5 of the NHS Regulations 2000 as may be necessary to provide the Section 75 Services

#### **Regulations by which Clinical Commissioning Groups deliver their Functions**

- Corporate Manslaughter Act 2007
- Health and Safety at Work Act etc. 1974
- Management of Health and Safety at Work Regulations 1999
- The Health and Safety (Offences) Act 2008
- Common Law of Negligence
- Consumer Protection Act 1987 (Part 1)
- General Product Safety Regulations 2005
- Manual Handling Operations Regulations 1992
- Medical Devices Regulations 2002 (Amended 2003)
- Sale and Supply of Goods Act 1994
- Managing Medical Devices April 2014
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Provision and Use of Work Equipment Regulations 1998 (PUWER)
- The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulation 2009 (SI 2009/1348)
- Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR)
- Equality Act 2010
- Gender Recognition Act 2004

#### **Authority Health-Related Functions**

The functions of the Authority exercisable under the Partnership Arrangements (“Authority Health-Related Functions”) under this Agreement are as follows the functions specified in

Schedule 1 to the Local Authorities Social Services Act 1970. Assessment of needs for community services under The National Health Service and Community Care Act 1990 (part in force)

Making of assessments and payments to individuals for purchasing community care services under Health and Social Care Act 2001

Assessment of Ability of Carers to provide care under Care Act 2014,

Identifying the need for, and publishing information about welfare services, provision of certain services, and providing certain information to the Secretary of State under the Chronically Sick and Disabled Act 1970 (part in force),

Representation and assessment of disabled persons under 1986 Act,

The promotion of welfare of old people

### **Relevant and Necessary Legislation**

- The UN Convention on the Rights of Disabled People
- The UN Convention on the Rights of the Child
- Human Rights Act 1998 (European Convention on Human Rights)
- The Equality Act 2010
- NHS Act 1977 (supplanted by the NHS Act 2006 in England)
- Health and Social Care Act 2008
- Education Act 1996
- Children Act 1989
- Fair Access to Care services
- Carers (Recognition and Services Act) 1995; and Carers (Equal Opportunities) Act 2004
- Care Act 2014

Part in force:

- Chronically Sick and Disabled Persons Act 1970
- NHS and Community Care Act 1990
- Health Services and Public Health Act 1968
- National Assistance Act 1948
- Carers and Disabled Children Act 2000

- Adhere to the Commissioner's procedures, protocols and guidance on Adult Protection.
- Embed learning from Serious Untoward Incidents into internal procedures and protocols.
- Adhere to the requirements of the Mental Capacity Act 2005 (amended 2007).



## SCHEDULE 3 – Contributions

### 1. FINANCIAL CONTRIBUTIONS: Pooled Fund (Integrated)

The integrated portion of the Pooled Fund relates to joint equipment which could be commissioned by either the NHS Bodies or the Authority. The Partners contribute to the integrated Pooled Fund.

Authority's Financial Contribution for the First Financial Year will be based on the estimated forecast expenditure for the year 2014/15 which is approximately £785,000 for a full year. This sum will be divided pro-rata calculated on a daily basis to take into account the Commencement Date in relation to the Financial Year of the Authority.

2. The NHS Bodies' Financial Contribution for the First Financial Year will be based on the estimated forecast expenditure for the year 2014/15 which is set out below on a full year basis. These sums will be divided pro-rata calculated on a daily basis to take into account the Commencement Date in relation to the Financial Year of the NHS Bodies.

<b><u>CCG</u></b>	<b><u>Approximate Contribution</u></b>
Ashford	£79,000
Canterbury and Coastal	£109,000
South Kent Coast	£110,000
Swale	£53,000
Thanet	£97,000
Dartford, Gravesham & Swanley	£147,000
West Kent	£286,000

Actual contribution in the First Financial Year for each of the Partners will be calculated based on the actual expenditure for the year 2014/15.

3. The Contributions from the CCGs are net of VAT.

### 4. FINANCIAL CONTRIBUTIONS: Pooled Fund (Aligned)

The aligned portion of the Pooled Fund relates solely to NHS only equipment and is therefore funded wholly by NHS Bodies.

The NHS Bodies' Financial Contribution for the First Financial Year will be based on the estimated forecast expenditure for the year 2014/15 which is set out below on a full year basis. These sums will be divided pro-rata calculated on a daily basis to take into account the Commencement Date in relation to the Financial Year of the NHS Bodies.

<b><u>CCG</u></b>	<b><u>Approximate Contribution</u></b>
Ashford	£435,000
Canterbury and Coastal	£828,000
South Kent Coast	£887,000
Swale	£441,000
Thanet	£664,000
Dartford, Gravesham & Swanley	£475,000
West Kent	£1,117,000

**N.B. This Schedule may be revised**

- Pending outcome of the tender process there may be no requirement for the aligned portion of the Pooled Fund. In this instance only the integrated portion of the above Schedule will apply.
  - In year adjustments to figures pending actual budget allocations from the Partners.
5. The Contributions from the CCG's are gross of VAT.



## **SCHEDULE 4- Information Sharing Protocol**

Note: For the avoidance of doubt, the Standard Operating Procedure is an example rather than a prescriptive document and the Partners shall have flexibility with regard to its contents generally.

# **Section 75 Agreement for the Procurement of Integrated Community Equipment Services (ICES) For Adults and Children**

## **Information Sharing Agreement Standard Operating Procedure (SOP) – December 2014**

### **Type of Agreement**

This SOP is to be read in conjunction with the Kent & Medway Information Sharing Agreement and with clauses 19 and 20 of the main body Section 75 Agreement for the Procurement of Integrated Community Equipment Services (ICES) for Adults and Children.

Personnel involved in the information sharing process must be fully aware of the requirements of the Agreement and with clauses 19 and 20 of the main body Section 75 Agreement for the Procurement of Integrated Community Equipment Services (ICES) for Adults and Children.

**This SOP is included for information as an example of practice only; it is not prescriptive and parties will have flexibility according to situation and need.**

### **Parties to this Agreement and contact number to identify Primary Designated Officer (PDO)**

Anne Tidmarsh – Director of Older People and Physical Disability, Kent County Council (03000415521)

Hazel Carpenter – Accountable Officer, Thanet Clinical Commissioning Group (03000424615 )

**A list of regular PDO and Designated Officer (DO) contacts is to be maintained for easy reference and is to be attached to this document (electronic and paper version). If there is any doubt about the contact or the information requested check with your supervisor before disclosing information.**

## **Purpose**

Information will be shared in order to supply community equipment to adults and children through an integrated health and social care equipment service.

## **Administration/Process**

The administration/processes for sharing information are detailed in clauses 19 and 20 of the main body Section 75 Agreement for the Procurement of Integrated Community Equipment Services (ICES) for Adults and Children, with particular reference to clause 19.1.

## **Information Disclosure Types (Examples)**

**Disclosure for the following relevant areas for each partner will be considered. Specific exclusions are also listed.**

For each client using the Integrated Community Equipment Service, the following information may be shared via an online database:

- Surname
- Forename/known as
- Title
- Address/postcode
- Telephone
- Date of birth
- Deceased date
- Gender
- Ethnicity
- GP
- Social care case manager/named health professional
- Agency identifiers – NHS number, Social Service ID number
- Hospital discharge date
- Next of kin/emergency contacts
- Main language
- Marital status/lives alone

- Access to property – for example key safe details and keyholders
- Hazards – relating to the household/individual
- Impairments
- Details of equipment assigned currently and historically
- Details of practitioner ordering/prescribing equipment
- Period of equipment loan
- Reason for equipment issue
- Notes relating to receipt/refusal of equipment

Specific exclusions will be processed in accordance with the principles set out in the main body Section 75 Agreement for the Procurement of Integrated Community Equipment Services (ICES) for Adults and Children clauses 28.1, 28.2 and 26.3.

For the purposes of Information Governance, the contractor will pseudonymise information for the CCGs to enable the CCGs to manage the information without breaching rules on Patient Identifiable Information

**Signatory partners recognise that any data shared must be justified on the merits of each case.**

### **Date of Next Review**

**The review of the Procedure will be completed by all partners to the Standard Operating Procedure by: \_\_\_\_\_**