

LEARNING DISABILITY SERVICES

**Cambridgeshire County Council
Cambridgeshire Primary Care Trust**

NATIONAL HEALTH SERVICE ACT 2006 SECTION 75 PARTNERSHIP AGREEMENT

POOLED BUDGET AND LEAD COMMISSIONING

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PART 1: ARRANGEMENTS

Arrangement 1: Partnership Arrangement

This Agreement dated _____ defines the Partnership Arrangement made between Cambridgeshire County Council of Shire Hall, Castle Hill, Cambridge CB3 0AP (“the Council”) and Cambridgeshire Primary Care Trust of Lockton House, Clarendon Road, Cambridge CB2 8FH (“the PCT”) and any successor organisations, under Section 75 of the National Health Service Act 2006 (“the Act”). The purpose of this partnership arrangement is to create an integrated approach to the delivery of services for people with learning disabilities, within which the Partners work collaboratively to determine the strategic direction for the services and the desired outcomes for local people. The functions of pooled funds and lead commissioning are used to support the Partners in the delivery of their joint strategic intentions.

Arrangement 2: Pooled Fund Arrangement

This is a Pooled Fund Arrangement to which both Partners will make financial contributions and out of which payments will be made towards expenditure incurred in the exercise of the following NHS functions and health-related functions:

Health-related Functions:

Social Care Services for People with a Learning Disability

NHS Functions:

Specialist Health Care Services for People with a Learning Disability

The persons in respect of whom the Pooled Fund may be used are:

Health-related Functions:

Adults: People between 16 and 64 who have a learning disability

NHS Functions:

People between 16 and 64 with specific health related or nursing needs who have a learning disability.

The Host Authority is the Council and is responsible for the accounts and the audit of the Pooled Fund and for the appointment of a Pool Manager to be responsible for:

(a) managing the Pooled Fund on their behalf; and

(b) submitting to the Partners quarterly reports, and an annual return, 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.

Arrangement 3: Exercise of Functions

This is an exercise of NHS functions by the local authority, namely the Council.

The NHS functions, the exercise of which are the subject of the arrangements, are the commissioning of:

Specialist Health Care Services for People with a Learning Disability

The persons in respect of whom the functions may be exercised are:

People between 16 and 64 with specific health related or nursing needs who have a learning disability.

Under the legislation the Council has to report to the PCT, both quarterly and annually, on the exercise of the NHS functions that are the subject of the arrangements.

PART 2: INTERPRETATION AND CONSTRUCTION

1. Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the parties.
2. Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
3. Notices or communication in relation to the Agreement shall be deemed to be delivered to the relevant parties if sent by first class post, delivered by hand, or sent by email or fax, as agreed with the relevant Partners from time to time.
4. Words and expressions used in the Agreement shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
5. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
6. Words and expressions defined in the Act shall have the same meaning when used in this Agreement.
7. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Agreement.
8. In construing the provisions of this Agreement, the heading or title of any Part, Condition or Schedule shall be disregarded.
9. Where any obligation of the Partnership is required to be performed by a specified date or within a specified period, and where the Partnership has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
10. In this Agreement:
 - a) The **Council** is Cambridgeshire County Council of Shire Hall, Castle Hill, Cambridge CB3 0AP
 - b) The **PCT** is Cambridgeshire Primary Care Trust of Lockton House, Clarendon Road, Cambridge CB2 8FH
 - c) The **Partners** to this agreement are the Council and the PCT
 - d) **Representations** is the term used by the Council to describe negative comments about policies or practices from anyone using or entitled to use services.
 - e) **PALS** is the service available to patients of the health service that gives information and advice in order to sort out any concerns, issues and problems as soon as possible.

- f) **Lead Commissioning** is the delivery of the following functions by the Council:
 - a. the commissioning and contract management of a specialist health care services for People with a Learning Disability.
- g) **Market Management** is the process of ensuring that there is a sufficiently robust and diverse market of health and social care providers for Micro Commissioners to buy from. The Market Management process will usually ensure that the independent sector and voluntary sector providers are subject to an umbrella contract from which Micro Commissioners call off. The Market Management process includes the negotiation and setting of the annual inflation uplift with independent sector and voluntary sector providers, subject to the approval by the Council's Cabinet as part of the Council's Integrated Planning Process.
- h) **Micro Commissioning** is the process by which individual packages of care are arranged with independent sector and voluntary sector providers usually under umbrella contracts put in place through the Market Management arrangements.
- i) **Micro Commissioners** are health and social care staff involved in the assessment and care management process, and Service Users arranging their own care either as self funders or by using a direct payment or a personal budget.
- j) A **Pooled Budget** is a budget to which both Partners make financial contributions and out of which payments will be made towards expenditure incurred in the exercise of specified NHS functions and health-related functions and for which the Partners have agreed how the associated financial risk will be managed and shared.
- k) A **Pooled Fund** is the name used for a Pooled Budget in the National Health Service Act 2006.
- l) The **Host Authority** is the Partner who is hosting the Pooled Budget in this case the Council.
- m) **The Pool Manager** is a suitably qualified manager in the Host Authority responsible for the delivery of the Agreement, which specifically includes managing the Pooled Budget, managing the delivery of the performance targets, managing the risks associated with the Agreement and maintaining the agreement.
- n) **Data Controller** is a person (legal or living) who either alone, jointly or in common with other persons, determines the purpose for which and the manner in which any personal data are, or are to be processed. (Data Protection Act 1998 – s.1(1))
- o) **Data Processor** in relation to personal data, means any person (legal or actual) (other than an employee of the Data Controller) who processes the data on behalf of the Data Controller. (Data Protection Act 1998 s.1(1))
- p) **Contract Year** the calendar year commencing 01 April and ending on 31 March.
- q) **Financial period** includes four financial quarters that can begin at any quarter in the year.

PART 3: CONDITIONS

CONDITION 1: PURPOSE OF AGREEMENT

Working Arrangements

- 1.1 The purpose of this Agreement between the PCT and the Council is to support the creation of an integrated approach to the delivery of services for people with learning disabilities, within which the Partners work collaboratively to determine the strategic direction for the services and the desired outcomes for local people. The functions of pooled funds and lead commissioning are used to support the two organisations in the delivery of their joint strategic intentions, and this agreement sets out the working arrangements for these two functions:
- a) the establishment of a Pooled Budget for social care and specialist health care for People with Learning Disabilities.
 - b) the Lead Commissioning of social care and specialist health care for People with Learning Disabilities.

Terms

- 1.2 This Agreement sets out the terms under which:
- a) the partners set up a Pooled Budget for social care and specialist health care for People with a Learning Disability.
 - b) the PCT delegates to the Council the responsibility of Host Authority for the Pooled Budget.
 - c) the PCT delegates to the Council responsibility for the Lead Commissioning of specialist health care for People with Learning Disabilities.

Duration

- 1.3 This Agreement is effective from 01 April 2011 and will continue until 31 March 2013 or unless terminated earlier pursuant to Condition 16 or Condition 8.23. This Agreement replaces previous like agreements.

CONDITION 2: OBLIGATIONS OF THE PARTNERS

Obligations of the Council

- 2.1 The Council undertakes:
- a) To fulfil on behalf of the PCT all of its statutory duties towards Lead Commissioning for adults with learning disabilities arising under NHS legislation.
 - b) To allocate the role of Pool Manager to a suitably qualified manager.
 - c) To operate in a manner which takes account of the PCT's strategic objectives
 - d) To seek the views of the PCT at the earliest feasible stage on any decisions which it is contemplating which would affect its discharge of delegated NHS functions, and to consult the PCT about decisions which would affect any other aspects of the PCT's responsibilities.
 - e) to carry out their functions in a manner which will ensure the closest co-ordination which can reasonably be achieved between the services of the Council and the PCT.

Obligations of the PCT

2.2 The PCT undertakes:

- a) To pay their contribution to the Pooled Budget in a timely manner.
- b) To consult the Council at the earliest feasible stage about decisions which it is contemplating which would affect the Council's operations.
- c) to carry out their functions in a manner which will ensure the closest co-ordination which can reasonably be achieved between the services of the Council and the PCT.

CONDITION 3: RELATED AGREEMENTS AND CONTRACTS

Related Section 75 Agreements

3.1 There is one related Section 75 Agreement:

- a) Between the Council and the PCT for the Integrated Provision of social care and specialist health care for People with Learning Disabilities.

CONDITION 4: DECISION MAKING

Decision-making Bodies

4.1 The decision making body for the Council is the Council's Cabinet and for the PCT is the PCT Board. These decision making bodies have delegated some decision making responsibility to the Cambridgeshire Care Partnership through the Joint Commissioning Strategy. Decisions that fall outside this delegation must be referred back to the decision-making bodies.

Reports and Attendance

4.2 The Council will prepare reports on request on any aspect of its responsibilities in relation to this Agreement to the PCT Board where this is necessary to enable the PCT Board to make a decision. The Council will arrange for appropriate senior managers to attend relevant meetings to present these reports.

4.3 The PCT will prepare reports on request on any aspect of its responsibilities in relation to this Agreement to the Council's Cabinet where this is necessary to enable the Council's Cabinet to make a decision. The PCT will arrange for appropriate senior managers to attend relevant meetings to present these reports.

CONDITION 5: LEADERSHIP

The Cambridgeshire Care Partnership

5.1 The Cambridgeshire Care Partnership oversees the provision of health and social care services to the people of Cambridgeshire. The role of the Cambridgeshire Care Partnership is to provide leadership and co-ordination for the provision of integrated services for all adult client groups and exercise an overview of this, and other, Section 75 Agreements and related contractual agreements.

5.2 The Constitution of the Cambridgeshire Care Partnership forms Schedule 1 to this Agreement.

The Section 75 Officer Governance Group

5.3 The Section 75 Officer Governance Group promotes effective and efficient joint working through the implementation of the Section 75 Agreements for all adult

client groups and monitors this, and other Section 75 Agreements and related contracts and agreements.

- 5.4 The terms of reference of the Section 75 Officer Governance Group forms Schedule 2 to this Agreement.

The Disability Commissioning and Provider Group

- 5.5 The Disability Commissioning and Provider Group resolves operational level issues resulting from, and monitors compliance with, the implementation of this Section 75 Agreement and the related contracts and agreements outlined in Condition 3. Membership includes relevant Council and PCT Managers.
- 5.6 The terms of reference of the Disability Commissioning and Provider Group forms Schedule 3 to this Agreement.

The Joint Commissioning Strategy

- 5.7 The Joint Commissioning Strategy sets a commissioning framework within which all Market Management, Lead Commissioning and Micro Commissioning must operate.

CONDITION 6: MARKET MANAGEMENT

Market Management

- 6.1 The Council is responsible for the Market Management for social care and specialist health care for People with Learning Disabilities. In fulfilling this responsibility the Council will:
- Ensure that the Managed Market contains sufficient providers for all residents in Cambridgeshire with a Learning Disability
 - Monitor the quality of services provided through the Managed Market.
 - Work with providers within the Managed Market to address quality concerns.
 - Negotiate contracts when new providers are brought into the managed market
 - Re-negotiate contracts with providers in the managed market as required
 - Negotiate the annual inflationary uplift with the Managed Market providers following agreement by both parties as to the percentage inflationary uplift to be awarded.

CONDITION 7: STAFFING ISSUES

Staff Transfers

- 7.1 No staff have been transferred or seconded to deliver the services covered by this Agreement.

CONDITION 8: ACCOUNTABILITY

Democratic Process

- 8.1 The elected Members of the Council must be kept fully informed about matters on which they may be required to make decisions or which affect their electoral division.

- 8.2 Individual Members of the Council may ask for factual information. Such requests must be reasonable. If the cost of providing the information requested is prohibitive, or the nature of the request is considered unreasonable, then guidance shall be sought from the Council's Chief Executive as to whether the information shall be provided.
- 8.3 Confidential information relating to casework should not normally be sought. If in exceptional circumstances a Councillor wishes to discuss confidential aspects of an individual case, they shall first seek advice from the Council's Service Director for Strategy & Commissioning (Adult Social Care).

Scrutiny

- 8.4 The services delivered through this Agreement will be subject to scrutiny through the Council's Health and Adult Social Care Scrutiny Committee. The Partners will prepare reports on request on any aspect of its responsibilities to the Health and Adult Social Care Scrutiny Committee in the format and to the timetable defined by the Council's Democratic and Member Services. The Partners will arrange for appropriate senior managers to attend relevant meetings to present these reports.

Engagement

- 8.5 The Council will ensure that service users and carers or their representatives are actively engaged and involved as appropriate in the Lead Commissioning of the integrated service.

External Inspection

- 8.6 The Council will provide appropriate access and information to any external body empowered by statute to inspect or monitor the PCT's discharge of its health services functions.
- 8.7 The Council will be subject to performance management by the Care Quality Commission, and the PCT by the Strategic Health Authority or successor organisation.
- 8.8 The service subject to this Agreement will also be subject to inspection by the Care Quality Commission.
- 8.9 The PCT and the Council will work together with these bodies to bring together inspection and monitoring processes wherever possible.

External Audit

- 8.10 The Council, as the Host Authority for the Pooled Budget, will arrange for the audit of the accounts of the Pooled Budget and this will need to be certified by the Auditor appointed by the Audit Commission in the annual return, under section 28 of the Audit Commission Act 1998(a), or future arrangements.

Internal Audit

- 8.11 The Council, as the Host Authority for the Pooled Budget, will maintain a level of Internal Audit coverage of the Pooled Budget and related activities sufficient to provide assurance as to adequacy of internal controls and the probity of financial transactions.

- 8.12 The Internal Audit function of the Council and of the PCT will jointly agree areas for audit coverage annually and produce an annual audit plan using a risk based approach for all the Cambridgeshire Section 75 Partnership Agreements. The plan will be agreed at the Council's Audit and Accounts Committee and the PCT board by the end of the March prior to the start of the financial year.
- 8.13 The plan will be reported to the Section 75 Officer Governance Group following agreement by the respective authorities. The audit work will be shared between the Internal Audit function of the Council and of the PCT as determined by the respective Heads of Internal Audit.
- 8.14 The results of audit work will be reported either in draft or final format to the Section 75 Officer Governance Group. All audit reports and audit responses will be made available to the other Internal Auditor by the last working day of the month in which the audit was completed. Audit completion is defined as the date that an acceptable audit response is received from the auditee.
- 8.15 The Partners will allow Internal Audit access to their premises for the purposes of access to the books of account, vouchers and records (whether manual or computerised) and documents related to the Pooled Budget agreement for audit purposes, including the right to explanations and information. The auditor shall give at least one week's notice of their requirement for access unless the Auditor considers that impropriety (including without limitation fraud or corruption) may be involved.

Complaints and Representations/PALS

- 8.16 Complaints and Representations/PALS will be dealt with by the Council under the Council's policies. The Council will share with the PCT suitable analysis of complaints and Representations/PALS to facilitate organisational learning and policy development. The Partners will work together to resolve complex complaints.

Ombudsman Complaints

- 8.17 Both Partners will cooperate with any investigation undertaken by either the Health Service or Local Government Ombudsman, including giving access to records of any sort and access to the respective officers for the purposes of interview.

Data Protection

- 8.18 The Partners agree:
- a) To observe all obligations under the Data Protection Act 1998 and Directive 95/46/EU and any other implementing regulations which arise as a result of the Agreement.
 - b) To ensure that the other Partner is not in breach as a result of their actions or omissions.
 - c) To use the personal information required for the completion of obligations in relation to service users only for the purpose of fulfilling those obligations in an appropriate manner.
 - d) To ensure the confidential destruction of these personal data once the information is no longer required to provide the required services.

- e) To ensure that all appropriate technical and operational measures are taken to guard against unauthorised or accidental loss or damage to any personal information and to comply with any other obligations set down in the seventh principle of the Data Protection Act 1998 in respect of processing done on behalf of this Agreement.
- f) To not transfer any personal information outside of the European Economic Area without the consent of the individual data subject and to only transfer it to the extent to which that individual has agreed.
- g) To allow the other Partner access to the information they hold as reasonably required to monitor each other's performance of obligations under Data Protection Act 1998.
- h) The Partners are bound by the same obligations owed to the Agreement whether they are acting as Data Controller or Data Processor on behalf of the Agreement.
- i) The Partners agree that, in cases where the personal information is given to a third party for the provision of the appropriate services, then that third party is to be bound by the same obligations as the Partners in relation to the data and that this obligation will be passed on via a contract or agreement.
- j) The Partners agree to provide each other with all of the information reasonably required for each to:
 - account for the funds which they have contributed to the Pooled Budget.
 - report on its statutory obligations.
 - plan overall strategies
- k) The Partners agree that data relating to the social care needs of an individual is owned by the Council and that data relating to the health care needs of an individual is owned by the PCT.
- l) Partners agree to complete and submit the relevant DOH annual information governance toolkit self assessment.

Freedom of Information

8.19 The Partners agree to comply with the obligations of the Freedom of Information Act 2000, any amending enactments and any amending regulations.

8.20 The Partners will:

- a) support each others current and future Freedom of Information Act 2000 obligations and any codes of practice and best practice guidance issued by the Government and any appropriate enforcement agencies.
- b) comply with the Freedom of Information Act 2000 insofar as it places obligations upon that Partner in the performance of its obligations under this Agreement.
- c) assist each other where possible to aid compliance with the obligation under these provisions and comply with any reasonable requests for that purpose.
- d) acknowledge that, if a request for information is received by the other Partner ("the Receiving Body"), the Receiving Body will be entitled to disclose information held by it relating to this Agreement or which otherwise relates to the other Partner.

- e) agree to take reasonable steps to notify the other Partner of any request under the Freedom of Information Act which relates to this Agreement or the other Partner, within ten days of receiving the request.
- f) agree to give consideration to any comments made by the other Partner where those comments are made within 5 days of notification.
- g) acknowledge that if the other Partner doesn't make comments to the receiving body within the set period, or if the other Partners comments do not alter the view of the receiving body that the information should be disclosed, the receiving body is entitled to disclose such information.
- h) agree to co-operate with the Receiving Body in connection with any request received by the other Partner under Freedom of Information Act 2000 and such co-operation shall be at no cost to the receiving body.

8.21 In relation to a request for information, the Receiving Body is only required to provide such information as is held by the Receiving Body at the time of request. They are not obliged to seek further information in compliance with that request. If the information requested is held by the other Partner not the Receiving Body, the Receiving Body is required to issue the appropriate refusal notice and offer to pass the request to the other Partner.

8.22 The Partners shall provide each other with such information as each Partner may reasonably request to satisfy themselves that the other Partner is complying with their obligations in this agreement.

Prevention of Corruption

8.23 Either Partner may terminate this Agreement and recover all its loss if the other Partner, its employees or anyone acting on the other partner's behalf do any of the following things:

- a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other contract (even if the Partner does not know what has been done); or
- b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- c) commit any fraud in connection with this or any other contract whether alone or in conjunction with contractors, employees or Council members.

8.24 Any condition limiting the Partner's liability shall not apply to this condition.

CONDITION 9: INTEGRATED PLANNING

Planning Horizons

9.1 The Annual Planning Cycle will include detailed financial, performance, service and risk management planning for the following financial year as well as a refresh of the medium term and long term plans. Medium term planning will be based around a five-year horizon. The first year being firm, the following four years in outline. Long term planning for strategic issues, e.g. implications of the growth agenda, will be based around a twenty-year horizon.

Annual Planning Cycle

9.3 The Annual Planning Cycle will start in July and conclude in February prior to the start of the financial year. A plan will be prepared that will contain the financial and performance implications of; demography, complexity and inflation

changes, efficiency requirements and any proposed additional investment / disinvestments in services. During November CCP will be briefed on the outline of the plan to allow non-public discussion of the plans. Towards the middle of January Cambridgeshire Care Partnership will receive further detail to allow for non-public review of the plans. During January the Council's Cabinet and the PCT Board will approve the integrated plan, which will be scrutinised in early February and finally approved at the Council's Full Council and the PCT Board by the end of February. Upon approval the Partners are agreeing to the implied financial risk share proportions.

CONDITION 10: RISK MANAGEMENT

Risk Management

- 10.1 Risk Management in this context is defined as the risk associated with the Council's ability to deliver, either directly or through a contract, the service specified in this Agreement. It therefore covers all risks outlined in this condition. The Pool Manager will carry out an annual risk assessment as part of the integrated planning process. Section 75 Officer Governance Group will monitor the in-year management of these risks.

Corporate Reputation Risk Management

- 10.2 Risk in this context is defined as events connected to the functions covered by this Agreement that have or could lead to negative publicity or that could be used to generate positive publicity.
- 10.3 Responsibility for managing these risks rests with the Council and the PCT and is delivered through the Pool Manager who is responsible for assessing and reporting the risk. The risk status will be reported to Section 75 Officer Governance Group and Cambridgeshire Care Partnership quarterly. All Partners will work collaboratively to manage any emerging issues.

Financial Risk Management

- 10.4 Risk in this context is defined as the financial consequences of the following:
- a) year-end overspends.
 - b) year-end underspends.
 - c) termination costs.
- 10.5 Responsibility for managing these risks rests with the Council and is delivered through the Pool Manager who is responsible for assessing, managing and reporting the risk. The risk status will be reported to Section 75 Officer Governance Group and Cambridgeshire Care Partnership quarterly.

Financial Risk Sharing

- 10.6 Risk in this context is defined as the financial consequences of the following:
- a) year-end overspends.
 - b) year-end underspends.
 - c) termination costs.
- 10.7 The financial implications resulting from the realisation of the above risks will be shared between the Partners in proportion to the respective risk share

contributions to the Pooled Budget unless in exceptional circumstances there is an agreed attributable issue.

- 10.8 An attributable issue is an over spend that is greater than 5% of the budget **and** is attributable to:
- a) One Partner changing their policy without re-negotiating the integrated plan or
 - b) One Partner not declaring a legislative change during the integrated planning process or through a later re-negotiation.
- 10.9 In the case of an attributable issue the Partner concerned will be liable for the attributable over spend which will be recorded into their published accounts in the year relating to the financial risk, the remaining non-attributable over spend will be shared in proportion to the respective risk share contributions to the Pooled Budget.
- 10.10 Each Partner's liability will be recorded in their published accounts.

Performance Risk Management

- 10.11 Risk in this context is the risk associated with non-achievement of the performance targets.
- 10.12 Responsibility for managing these risks rests with the Council and is delivered through the Pool Manager who is responsible for assessing, managing and reporting the risk. The risk status will be reported to Section 75 Officer Governance Group and Cambridgeshire Care Partnership quarterly.

Liability and Indemnity – Workers

- 10.13 Where an employee of one Partner is seconded to another Partner or is managed by another Partner and is found to be "a worker" in terms of employment law, in any employment law context, the employer of that "worker" will indemnify the Partner to whom the "worker" is seconded from and against any costs (including legal fees), damages, claims or liabilities suffered or incurred by the latter directly relate to the "worker's" employment.

Liability and Indemnity - General

- 10.14 Without prejudice to the primary liability of each Partner for its respective functions, preserved by Section 75(5) (a) and (b) of the Health Act 1999, the following indemnity provisions will apply.
- 10.15 References in this Condition to damages, claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution process.
- 10.16 The PCT will indemnify the Council from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the Council arising from the exercise by the Council of the PCTs' Functions or the breach by the PCT of any obligation under this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the Council or a Council Staff or any other employee of the Council) including, without prejudice to the generality of this

provision, any act, neglect or default of the PCT their employees, agents or contractors.

- 10.17 The Council will indemnify the PCT from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the PCT arising from exercise by the PCT of the Council's Functions or the breach by the Council of any obligation under this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the PCT its employees or agents) including, without prejudice to the generality of this provision, any act, neglect or default of the Council, its agents, contractors or employees.
- 10.18 Each Partner will indemnify the others from and against any direct loss and expense suffered and reasonable legal fees and costs incurred as a result of any breach of this Agreement by it, except to the extent that such loss etc is caused by the breach of contract or the act, neglect or default of the other, its employees, agents or contractors.
- 10.19 In relation to the diagnosis, care and treatment of a service user or patient of the PCT under the PCTs' functions, the provisions of NHS Indemnity shall apply in relation to any acts or omissions of the PCT, its employees or agents in consequence of which the client/patient suffers harm.
- 10.20 The Partners shall use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any claim or proceedings which are or maybe subject to an indemnity under this Agreement and any material developments. Partners shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by any Partners in dealing with a complaint or in connection with any professional or disciplinary proceedings shall vitiate its right to be indemnified by the other under this Agreement.

Insurance

- 10.21 In respect of liabilities arising under any indemnity in this Agreement, the PCT shall maintain membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to time by the National Health Services Litigation Authority; and, the Council shall maintain such insurance as it considers appropriate.
- 10.22 All Partners will maintain full public liability insurance.
- 10.23 For the avoidance of doubt the following applies with regard to liabilities for matters arising which predate this section 75 Agreements and previous section 31 Agreements:
- 10.24 Liability for all claims lodged before the commencement of the first partnership agreement will remain with the organisation then responsible for the delivery of the service to which the claim relates.
- 10.25 Liability for any claims not yet reported but pertaining to service prior to the commencement of the first partnership agreement will be the responsibility of

the organisation then responsible for the delivery of the service to which the claim relates.

- 10.26 The Partners will make available data in relation to claims received, in respect of those services transferring, for the purpose of any insurance renewal negotiations. The Partners shall co-operate with each other in the bringing of or in the defence of any insurance claim arising under this Agreement. In the event of litigation arising from such an insurance claim the Partners agree to provide witnesses and evidence to each other without charge.

CONDITION 11: SERVICE DELIVERY

Service Specification

- 11.1 All service specifications used in contracts or agreements must be approved by all Partners and must, where relevant, be included in agreements with contractors and other suppliers of services.

Performance Targets

- 11.2 The performance targets relevant to this Agreement will be specified and agreed between the Partners as part of the integrated planning process on an annual basis and included in Schedule 4. These performance targets must, where relevant, be included in agreements with contractors and other suppliers of services and will have as a minimum a monthly expected run rate linked to action plans and team and management responsibilities.
- 11.3 The Council is expected to ensure the achievement of these targets within budget.

CONDITION 12: REPORTING REQUIREMENTS

Finance and Performance Reporting

- 12.1 Finance and Performance Reports will be produced monthly by the Council and presented at Section 75 Officer Governance Group by the Pool Manager. The report which falls at the end of each quarter will be presented at Cambridgeshire Care Partnership by the Pool Manager. Where finance or performance is not to target, an appropriate recovery plan will be produced (or an existing one amended) to accompany the report.

Risk Management

- 12.2 Risk Management Reports will be produced quarterly by the Council and by exception in between if necessary and presented at Section 75 Officer Governance Group and Cambridgeshire Care Partnership by the Pool Manager. These reports will provide commentary on the risk assessment and incidence of issues relating to the risks outlined in Conditions 10.

Engagement

- 12.3 A report will be produced annually by the Council on engagement and involvement of service users and carers and presented at Section 75 Officer Governance Group and Cambridgeshire Care Partnership by the Council.

CONDITION 13: FINANCIAL ARRANGEMENTS

Determining Partner Contributions

- 13.1 The partner contributions relevant to this Agreement will be agreed between the Partners as part of the integrated planning process on an annual basis and included in Schedule 5.
- 13.2 Capital funding is not within the scope of this Agreement. The capital requirements of services to adults with learning disabilities will be incorporated within the capital planning processes of the Council and the PCT.
- 13.3 The partner contributions will be composed of two elements: the risk share contribution and the non-risk share contribution. This is shown diagrammatically in Schedule 5 note 3. The risk share contribution is the general resource available in the Pooled Budget for which the risk share policy will apply and is expected to form the vast majority of the Pooled Budget (including the roll forward budget, demography, inflation and efficiency) The non-risk share contribution allows one or both Partners to separately or jointly invest or disinvest in exceptional, usually non-recurrent, changes where a knock on impact on the risk share proportions would be inappropriate.
- 13.4 All non-risk share items must be considered by the Section 75 Officers Governance Group. Where a non-risk share contribution is recurrent it can become part of the standard risk share contribution in future years once successfully embedded. The non-risk share items will by their nature have specific and agreed financial and performance implications that can be measured in addition to the Pooled Budget arrangements.
- 13.5 The current years risk share contributions will be used as a base line for budget building the following years budget. This base line will be adjusted for issues emerging in the current years monthly finance and performance reports. Inflation, demography, CSR efficiency targets, general legislative changes, shared investments and shared disinvestments will be jointly funded. For each item the funding shall be split in the proportion to the adjusted current year risk share contribution or on another jointly agreed basis. Specific legislative changes and policy changes will be separately funded. This is shown diagrammatically in Schedule 5 note 3. Both Partners need to understand and approve the integrated plan related to the Pooled Budget. The Pooled Budget and the integrated plan will be reviewed and amended in the light of the results of closing the previous years accounts. If this leads to a change in contributions this will be recorded as a variation to the Agreement.
- 13.6 The Partners will work towards pegging inflation to Treasury levels.

Paying Partner Contributions

- 13.7 Contributions will be paid to the Host Authority based on the agreed partner contributions in equal twelfths on the 15th day of every month. Payments will be reconciled at the end of each quarter and adjustments made to the first payment of the following month to reflect transactions made outside of the Pooled Budget and agreed; performance, activity or general risk share arrangements. Partners can jointly agree to vary this payment schedule if it is mutually financially

advantageous so to do; e.g. if there is a bank interest or other benefit to be gained.

Financial Monitoring and Corrective Action

- 13.8 The budget will be monitored monthly throughout the financial year by Section 75 Officer Governance Group using the monthly Finance and Performance Reports. Variances reported in the monthly finance and performance reports in excess of 2% or £50,000 whichever is the greater will 1. trigger an investigation to determine if there is an attributable issue (see financial risk share) 2. trigger the development of (or amendment of an existing) recovery plan.
- 13.9 If there is an attributable issue the Partner concerned may choose to amend their risk share contribution to fund the issue through a variation to the Agreement.

Recovery Planning

- 13.10 The Pooled Budget can have only one recovery plan at any one time. Any subsequent issues requiring recovery actions must be dealt with through an adaptation of the existing recovery plan. All recovery plans must clearly describe the performance implications of the plan. The Pool Manager is responsible for the development and amendment of the recovery plan and for the management of the delivery of the recovery plan. All recovery plans, and amendments to recovery plans, must be approved by both Partners at Section 75 Officer Governance Group.

Efficiency Incentivisation

- 13.11 Where an under spend on the total Pooled Budget is achieved in conjunction with satisfactory delivery of performance targets, a proportion of the under spend will be reinvested in the service. The proportion to be re-invested will be no more than 2% of the total Pooled Budget. The re-investment will be delivered by retaining the under spend in a reserve for access by the Pooled Budget as one-off funding.

Accounting Arrangements

- 13.12 The Council is responsible for the financial administration and accounting arrangements. The Council's Standing Orders and Financial Instructions will apply. The Council will maintain financial records in a format that will enable effective monitoring and reporting, and the completion and audit of performance returns and grant claims. The Council will produce a year-end memorandum of account for inclusion in the PCT's statutory accounts.

CONDITION 14: OTHER SUPPORT

Support from the Council

- 14.1 The Council will provide all support services to this Agreement.

CONDITION 15: MANAGING THE AGREEMENT

Procedural Documentation

- 15.1 Any process documents, report formats, working protocols, principles or methodologies necessary for the delivery of this Agreement will be agreed by all Partners at Section 75 Officer Governance Group.

Review and Variation

- 15.2 All changes to this Agreement must be approved by the decision-making bodies defined in Condition 4 of this Agreement.
- 15.3 Any changes proposed to this Agreement must take into account the implications for the related agreements and contracts outlined in Condition 3.
- 15.4 This Agreement terminates on 31 March 2013. At least twelve months before the end of the Agreement the Council will lead a full review of the Agreement and all Partners will consider the appropriateness of entering into a new agreement on similar terms.
- 15.5 On an annual basis the Pool Manager will lead a review of the Agreement and any approved changes will be recorded as a variation.
- 15.6 At any point either Partner can propose changes to the Agreement that, once approved, will be recorded as a variation.

Maintenance of the Agreement

- 15.7 The following schedules need updating on an annual basis:
- a) Schedule 4 Performance Targets
 - b) Schedule 5 Financial Contributions
- 15.8 The responsibility for updating these schedules rests with the Pool Manager following agreement by the Partners through the Section 75 Officer Governance Group.

Monitoring of the Agreement

- 15.9 Both Partners are responsible for monitoring compliance with this Agreement.

Disputes

- 15.10 Issues should be addressed in the first instance by the Service Director for Strategy & Commissioning (Adult Social Care) of the Council and the Director of Integrated Commissioning of the PCT.
- 15.11 If resolution is not achieved the dispute will be referred to the Section 75 Officer Governance Group.
- 15.12 If resolution is not achieved the dispute will be referred to the Chief Executive of the Council and of the PCT.
- 15.13 In the event that the Chief Executives are unable to resolve the dispute within 30 working days, then mutually acceptable mediation arrangements will be set in place, the costs of the mediator will be shared 50:50 and each partner will bear its own costs incurred in the mediation process.
- 15.14 In the event that the Partners are unable to resolve the dispute through mediation, arbitration arrangements will be set in place.

- 15.15 The arbitration shall be in accordance with the provisions of the Arbitration Act 1996 or any re-enactment for the time being in force and the costs of the arbitration shall be borne as the arbitrator directs. Reference to arbitration shall not reduce the right of a Partner to terminate the Agreement in accordance with Condition 16.

CONDITION 16: TERMINATION OF THE AGREEMENT

Notice Period

- 16.1 Any Partner may terminate in advance this Agreement at the end of a financial period, by giving at least six months notice in writing to the Chief Executive of the Council and the Chief Executive of the PCT.

Related Contracts and Agreements

- 16.2 Termination of this Agreement will trigger a review led by the Council of all the related agreements and contracts outlined in Condition 3.

Termination Obligations

- 16.3 Upon either Partner giving notice to the other Partner of termination pursuant to Condition 15.1, the Council will:
- a) continue to provide the services specified within the Agreement during the notice period.
- 16.4 The Partners will contribute the full agreed funding up to the date on which any notice to terminate given pursuant to Condition 15.1 takes effect.
- 16.5 Upon service of a notice of termination pursuant to Condition 15.1 the partners will:
- a) contribute towards any overspend carried forward at the date on which the notice to terminate given pursuant to Condition 15.1 took effect in accordance with the risk share arrangements set out in Condition 9.
 - b) receive a share of any under spend carried forward at the date on which the notice to terminate given pursuant to Condition 15.1 takes effect in accordance with the risk share arrangements set out in Condition 9.
 - c) meet any reasonable costs resulting from termination in line with the risk share agreement in Condition 9.
 - d) arrange for the sharing of any assets or liabilities between the Partners in accordance with the risk sharing policy in Condition 9.
 - e) retain liability in respect of any claims relating to the period that they were a member of the Agreement in accordance with Condition 9.
 - f) return all documents, programmes and other information to the other Partner and shall provide any other such information as reasonably requested in relation to the Agreement for the purposes of terminating the arrangement
 - g) arrange for any staff to be transferred appropriately either through the termination of the relevant secondment agreement or through a TUPE transfer.

PART 4: SIGNATURES OF THE PARTIES

In witness whereof the Council and the PCT have executed this deed the day and year first before written.

The COMMON SEAL of CAMBRIDGESHIRE COUNTY COUNCIL was hereunto affixed in the presence of

Signature

Title

Executed as a DEED by CAMBRIDGESHIRE PRIMARY CARE TRUST acting by

Signature

Title

SCHEDULE 1: CONSTITUTION OF THE CAMBRIDGESHIRE CARE PARTNERSHIP

1.0 NAME

1.1 The Cambridgeshire Care Partnership, hereafter referred to as ‘the Partnership’.

2.0 AIMS

2.1 The aim of the Partnership will be to oversee the provision of high quality health and social care services to the people of Cambridgeshire that are:

- Focussed on the needs of local people.
- Integrated across Health and Social Care.
- Planned and delivered in partnership.
- Delivered by a skilled, motivated and integrated workforce.
- Achieving agreed performance and modernisation targets.

3.0 DUTIES AND PRINCIPAL FUNCTIONS

3.1 The role of the Partnership is to provide leadership in establishing the joint commissioning strategies for services for adults and older people, co-ordination of integrated services and to exercise an overview of the Section 75 Agreements. Its focus will be on setting the overall strategic direction and monitoring its implementation, including monitoring of finance and performance.

Note: the partners need to consider whether the changing governance arrangements between the parties require the Partnership to continue to play a role in the strategic direction of those services contained within the Partnership agreements.

3.2 The Partnership will make decisions or recommendations on major issues relating to the implementation of the commissioning and provision of integrated services within the joint commissioning strategies and financial frameworks agreed by the County Council and PCT Boards. Decisions that fall outside these frameworks will need to be referred back to the decision-making bodies – i.e. the Council’s Cabinet and the Board of the PCT.

3.3 The Partnership’s principal functions shall be:

- To recommend the joint commissioning strategies between the Council and the PCT to the Board of the Primary Care Trust and the Cabinet of the County Council.
- To monitor the implementation of these strategies.
- To oversee the use of Health Act flexibilities between the Council and the PCT.
- To oversee the planning of any services that have been integrated using these Health Act flexibilities.
- To monitor the delivery of Section 75 Agreements in relation to these service user groups and ensure that the terms of such agreements are adhered to by all relevant partners.
- To develop the management of pooled budgets.

Schedule 1: Constitution of the Cambridgeshire Care Partnership

- To monitor progress with the provision of integrated health and social care services for adult service user groups.

4.0 VOTING MEMBERSHIP

4.1 The Partnership shall comprise an equal number of voting members from the Council and the Board of the PCT. This will consist of:

- One Non Executive Director of the PCT. This will be the chairman.
- Lead Member for Adult Services from the Administration of the Council.

4.2 Each organisation will ensure that a representative is identified to hold the vote in their absence. For the PCT this will be another Non Executive Director or the Chief Executive. For the Council this will be another member of the Cabinet.

5.0 SUBSTITUTION

5.1 Where voting members of the Partnership are unable to attend a meeting, they shall have the power to appoint a substitute to attend on their behalf. For the Council this will be another member of the administration. For the PCT this will be either another Non Executive Director of the PCT or the Chief Executive.

5.2 Substitution shall only be permissible where notice has been given to the Partnership Administrator no later than **one hour** before the meeting is due to commence.

6.0 CHAIRMAN AND VICE CHAIRMAN

6.1 The Partnership shall agree the Chairman and Vice-Chairman from the voting members at its first meeting and then rotate this on an annual basis at the first meeting to take place after the annual meeting of the Council. This will ensure a rotation of these two roles between the Council and the PCT on an annual basis, unless there is agreement that the re-election of individuals to the roles of Chairman and Vice-Chairman is agreed between the parties that this is in the best interests of the Partnership.

6.2 The Chairman will be responsible for ensuring the Constitutional and administrative requirements of the Partnership are met.

6.3 The Vice Chairman will deputise for the Chairman in his/her absence.

6.4 In the absence of both the Chairman and the Vice Chairman, one of the voting substitutes will chair the meeting.

7.0 NON VOTING MEMBERSHIP

7.1 Significant value has been added to the work of the Partnership by having cross party representation from Council members, which also serves to demonstrate the commitment to partnership working from across the Council. Membership will

Schedule 1: Constitution of the Cambridgeshire Care Partnership

include one seat (in addition to the Lead Member for Adults) for the Conservatives, plus one seat for the Liberal Democrat party and one for the Labour party.

- 7.2 There will be three seats from the officers from the PCT, (the representatives to be confirmed) and three seats for the officers from the Council consisting of the Executive Director Community and Adult Services, the Service Director Strategy/Commissioning (Adult Social Care) and the Head of Finance and Performance.
- 7.3 Other staff will attend as appropriate to support the agenda of each meeting.
- 7.4 The Partnership will invite representatives from Provider organisations to attend as and when required.

8.0 LEAVING OFFICE

- 8.1 Members shall cease to be on the Partnership where they:
- Notify the Partnership Administrator in writing that they wish to resign.
 - Cease to be an elected Member of the Council or a Non Executive Director of the PCT.
 - The body concerned notifies the Partnership Administrator that the individual is no longer their appointed representative.

9.0 CONDUCT

- 9.1 All Members of the Partnership will be required at all times to conduct themselves in accordance with the Council's Code of Conduct or the Code of Conduct and Accountability for PCT Board Members.

10.0 MEETINGS AND PROCEEDINGS AT MEETINGS

Frequency of Meetings

- 10.1 The Partnership shall meet on a quarterly basis – i.e. four meetings each year. The Partnership Administrator, following consultation with Members, will prepare a programme of dates for these meetings.
- 10.2 Where necessary, additional 'special' meetings of the Partnership can be arranged at the discretion of the Chairman, or at the request of no fewer than 4 Partnership members. The date of such meetings shall be agreed by the Chairman, following consultation with other Partnership members.

Quorum

- 10.3 A meeting of the Partnership shall be considered quorate when the voting members or their representatives are present. (Two)

Schedule 1: Constitution of the Cambridgeshire Care Partnership

Agenda

- 10.4 An agenda plan setting out business to be discussed at Partnership meetings shall be maintained by the Partnership Administrator in consultation with the Council's Service Director Strategy/Commissioning (Adult Social Care) and the PCT's Director of Integrated Commissioning.

Minutes

- 10.5 The Partnership Administrator will produce minutes reflecting attendance, discussion and conclusions reached at each meeting. These minutes will be subject to confirmation as a correct record of proceedings by the Partnership at the subsequent meeting.

Dispute resolution

- 10.7 Where the Partnership is unable to reach agreement on a particular matter due to a conflict of opinion, it will make every effort to resolve this through a process of negotiation. However, where these attempts have been exhausted and there is no prospect of the parties concerned reaching agreement, the matter will be referred to the Council's Cabinet and PCT's Board as appropriate.

Publicity

- 10.8 Partnership meetings shall be open to the public unless there are items for discussion, which are 'exempt' under the meaning of the Local Government (Access to Information) Act or the Public Bodies (Admissions to Meetings) Acts. Where this is the case, the reason for confidentiality shall be included on the agenda for the meeting, and/or reported before individuals are asked to leave.
- 10.9 Papers for Partnership meetings, including agenda, reports and minutes will be public documents, produced in accordance with the requirements of the Local Government (Access to Information) Act or the Public Bodies (Admissions to Meetings) Acts.

11.0 REVIEW AND AMENDMENTS TO THE CONSTITUTION

- 11.1 The Partnership will review the operation of the Constitution on a regular basis and may agree changes, provided that they have unanimous support and are consistent with Government legislation, Regulations and Guidance on partnership working.

13.0 DISSOLUTION

- 13.1 The Partnership may be dissolved at any time by mutual agreement between the Council and the PCT.

Updated 04/01/11

SCHEDULE 2: TERMS OF REFERENCE FOR THE SECTION 75 OFFICER GOVERNANCE GROUP

Purpose To support Cambridgeshire Care Partnership (CCP) in fulfilling the governance responsibilities of that body by providing governance of the Section 75 agreements at Senior Office level.
To oversee the joint commissioning of appropriate services to meet the needs of older people, people requiring occupational therapy assessments and services, equipment and adaptations plus people with learning disabilities and Mental Health service users.

Membership

- Executive Director CAS
- Service Director Strategy & Commissioning (ASc)
- Director of Integrated Commissioning
- Board Nurse
- AD of Community Contracts
- Head of Finance
- AD/Director of Finance

Presenting officers

- Head of OP Commissioning
- Head of Commissioning (Disability and Carers)
- Head of Commissioning (MH & SP)
- Commissioning Managers
- Head of Mental Health/LD Commissioning
- Director of Operations (CPFT)

Monthly To receive monthly reports detailing the financial position plus activity and performance data.

To consider the projected year end positions for finance activity and performance plus the cause/reasons for these projections.

Where year end projections are off-target, received realistic action plans to rectify the situation as quickly as possible highlighting and aspects of concern over deliverability.

To consider the overall performance and compliance of relevant provider organisations in delivering the joint agenda of the Council and the PCT, identifying any specific issues that need escalating through relevant S75 agreements or contracts.

Annually To agree the demographic growth relevant to each service area informed by JSNA.

To agree strategies/plans to deliver efficiency savings required by the Council and the PCT, plus monitor the progress against the action plan. To approve the refreshed strategies annually.

To recommend the annual financial uplifts to respective organisations. Subject to formal approvals by each organisations' decision making bodies, agree contributions to the pooled budget for the following year and risk share arrangements to be presented to CCP for recommendation for approval by the Council and the PCT decision making bodies.

Schedule 2: Terms of Reference for Section 75 Officer Governance Group

**Frequency
of meetings** Monthly

**Accountable
to** CCP

SCHEDULE 3: Terms of Reference for the Disability Commissioning and Provider Group

SCHEDULE 3: TERMS OF REFERENCE FOR THE DISABILITY COMMISSIONING AND PROVIDER GROUP

To be confirmed.

Schedule 4: Performance Targets 2010–11

SCHEDULE 4: PERFORMANCE TARGETS 2010–11

Not yet determined. Will be included on completion.

Schedule 5: Funding 2009–10

SCHEDULE 5: FUNDING 2009–10

TBC