

DATED 1st April 2014

CAMBRIDGESHIRE COUNTY COUNCIL

(1)

and

**CAMBRIDGESHIRE AND
PETERBOROUGH NHS FOUNDATION
TRUST**

(2)

SECTION 75 AGREEMENT

**for the PROVISION OF ADULT AND
OLDER PEOPLES MENTAL HEALTH
SERVICES**

CONTENTS

1.	Introduction	3
2.	Purpose of Agreement	4
3.	Schedules	4
4.	Financial Arrangements and Allocation	4
5.	Aims and Objectives	5
6.	The Services	5
7.	Powers Delegated	5
8.	Secondment of Staff	6
9.	Information Sharing	7
10.	Freedom of Information	8
11.	Records	8
12.	The Trust Undertakes	8
13.	The Council Undertakes	9
14.	The Partners Undertake	9
15.	Strategic Management and Accountability	9
16.	Governance	10
17.	Democratic Process	11
18.	Clinical and Professional Governance	11
19.	Human Resources Policy	12
20.	Value Added Tax	12
21.	Service Planning	12
22.	Community Engagement, Consultation and Communication	12
23.	Management, Planning and Monitoring Information	13
24.	External Inspection and Monitoring	13
25.	Representation and Complaints Procedure	14
26.	Insurance	15
27.	Legal Liabilities	15
28.	Corporate	15
29.	Business Continuity and Emergency Planning	15
30.	Variation	16
31.	Dispute Resolution	16
32.	Duration and Review of Agreement	17
33.	Termination	17
34.	Notices	18
35.	Severance	18
36.	No Partnership or Agency	18
37.	Signatories	20
38.	Glossary of Terms and Acronyms	21
Schedule 1	Service Specification	
Schedule 2	Management of Information and Performance	
Schedule 3	List of Seconded and Funded Staff and Posts	
Schedule 4	Expenditure Authorisation Process	
Schedule 5	Governance	
Schedule 6	Financial Allocation for 2014/15	
Schedule 7	Human Resource Responsibilities and Employment	
Schedule 8	AMHP Approval and Re-approval Policy	
Schedule 9	Training and Development	
Schedule 10	Information Sharing Protocol	
Schedule 11	Older Peoples Mental Health Interface Protocol	
Schedule 12	Eligibility and Exclusion Criteria	
Schedule 13	Complaints Handling	

This Agreement is made the 1st day of April Two Thousand and Fourteen

1. INTRODUCTION

- 1.1 This is an Agreement between Cambridgeshire County Council (CCC) of Shire Hall, Castle Hill, Cambridge, CB3 0AP (the “Council”) and Cambridgeshire and Peterborough NHS Foundation Trust of Elizabeth House, Fulbourn Hospital, Cambridge CB21 5EF (the “Trust”). The two bodies are collectively referred to in this Agreement as the “Partners”.
- 1.2 Section 75 of the National Health Service Act 2006 as amended by Health and Social Care Act 2012 contains powers enabling NHS Bodies 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.
- 1.3 The purpose of this Agreement is to provide a framework under which the Council shall delegate to the Trust the exercise of its functions in relation to the provision of the Services in Cambridgeshire as specified in Schedule 1.
- 1.4 This Agreement supersedes and replaces any Section 31 or any similar agreement previously made between the Partners. For the avoidance of doubt it is agreed by the Partners that the Section 31 Agreement will terminate on the Commencement Date of this Agreement
- 1.5 This Agreement aims to set out clearly the undertakings given by each of the Partners and the intended basis of their relationship. It is the intention of the Partners to operate this Agreement in a spirit of mutual trust as Partners.
- 1.6 The Partners are satisfied that the implementation of this Agreement shall lead to an improvement in the Services and outcomes for the Resident Population.
- 1.7 Transforming Lives: A new strategic approach for Social Work and Social Care for Adults in Cambridgeshire is a new model for the delivery of social care in Cambridgeshire and it is expected that the Trust will implement the new model within the delegated services and schedule 1 will be revised within the term of the agreement.
- 1.8 This Agreement shall commence on 1 April 2014 (the “Commencement Date”) and continue in accordance with Clause 32.
- 1.9 All appendices and attachments to this agreement as identified in the body of the agreement are to be taken as a constituent part of the overall agreement.
- 1.10 The government of the Agreement will be through the Mental Health Governance Board whose responsibility is to:
 - Provide the strategic governance overview of the delegated Service as set out in the Section 75 Agreement
 - Ensure that the governance arrangements of the delegated Service are in keeping with both organisations performance and quality structures
 - Agree and sign off any changes to the delegated Service that will impact on its functions and seconded staff.

2. PURPOSE OF AGREEMENT

The Partners hereby agree as follows:

Area of responsibility

2.1 The purpose of this Agreement is:

- a) to specify the conditions by which the Trust or any successor body shall take the lead responsibility for providing the Services to the Resident Population; and
- b) to describe the accountability arrangements that accompany this arrangement.

3. SCHEDULES

3.1 The Schedules referred to in this Agreement are listed in the index and detail other aspects of the relationship between the Partners. All schedules will be reviewed annually however changes may be made in year subject to both Partners agreement.

4. FINANCIAL ARRANGEMENTS and ALLOCATION

- 4.1 The Council is responsible for setting the budget for delegated Services to be provided by the Trust in relation to this Agreement and for providing the funding for such Services. The Council shall set the budget annually taking account of the overall resources available to the Council, budget pressures and any efficiency savings required, and taking into account any information the Trust provides.
- 4.2 The Council will contribute financial resources and other resources to the provision of the Services in accordance with the provisions as set out in Schedule 6.
- 4.3 The Council shall be responsible for funding the seconded staff referred to in Clause 8 and those staff employed by the Trust who are employed to deliver this service in accordance with the Financial Arrangements set out in Schedule 3 and 6.
- 4.4 The Council shall also set a budget annually to cover the costs of care and support packages for people with mental health needs. In setting this budget the Council shall take account of the overall resources available to the Council, budget pressures and any efficiency savings required, and any information the Trust provides.
- 4.5 The Council shall retain the budget referred to in Clause 4.4 and remain jointly responsible for authorising expenditure arising from the assessment and care management activity undertaken by the staff delivering the Service, subject to the arrangements set out in Schedule 4.
- 4.6 Where the Council has incurred financial expenditure resulting from failures or errors in duties delegated to the Trust in relation to the financial and practice management of social care packages, this expenditure shall be shared by Partners.
- 4.7 The Trust shall not enter into any contracts or other financial commitments in relation to the Services without the express written approval of the Council in accordance with the procedure set out in Schedule 4.

5. AIMS AND OBJECTIVES

- 5.1 The objective of this Agreement is to secure better outcomes in respect of the Services for the adults and older people within the Resident Population within the resources allocated by the Partners for this purpose. The Partners shall work together in the context of the strategic governance arrangements set out in Schedule 5 to ensure that the aims and objectives of the Agreement are met
- 5.2 The overarching objective of this agreement is to efficiently and effectively deliver social care outcomes within the Trust's mental health and social care service.
- 5.3 Where appropriate and beneficial and in agreement by the Partners this will occur through an integrated care processes. Benefit will be measured through performance as set out in Schedule 2 and service user reports outlined based on:
- breaking down cultural barriers between health and social care
 - economic efficiency and the demonstration of the best use of resources
 - clarity and seamlessness of social care functions within an integrated pathway
 - improve access and service user experience
- 5.4 The definition of integrated care for the purposes of this agreement means:
A combined health and social care service. The health and social care staff will work together to deliver a seamless service. This assumes that integration of assessment, interventions, care and support services for those people experiencing emotional, psychological distress and mental ill health including eligibility for social care.

6. THE SERVICES

- 6.1 The Trust shall provide the Services in accordance as stipulated in the service specifications detailed in Schedule 1.

7. POWERS DELEGATED

- 7.1 The Council delegates to the Trust and the Agreement provides for all adult and older people social care-related functions as specified in Schedule 1, under the relevant acts so far as they relate to mental health services for adults and older people to be delegated to the Trust for the duration of this Agreement except where prevented by statute. These duties include:
- Ensuring access to social care services for adults with mental health problems including older people and those transitioning from children's mental health services.
 - Provision of Mental Health Act Duty.
 - Provision of Mental Capacity Act and Deprivation of Liberties.
 - Temporary protection of property belonging to people in hospital or accommodation provided under Part III of the National Assistance Act 1948; paying the expenses of the

officer acting as receiver for a patient; prosecution for failure to maintain a person, giving false statements, and obstructing a person with power of entry and inspection.

- Assessment of needs for community care services; including duty to assess under section 47 of the Community Care Act, eligibility as set out in schedule 12, care and support planning, monitoring, review and discharge.
- Personal budgets, and direct payments – undertaking of assessments leading to the Council, making payments to individuals for purchasing community care services and financial assessments where appropriate.
- Assessment of ability of carers to provide care.
- Identifying the need for, and publishing information about social care services, provision of certain services, and providing certain information to the Secretary of State
- Working with user/community voluntary organisations including providing financial support subject to the agreement of the Council to enter into such arrangements.
- Cooperation in relation to homeless people and people threatened with homelessness.
- Safeguarding vulnerable adults and the protection of children.

7.2 The delegation does not include any powers or duties which the Council is not permitted by statute to delegate.

7.3 The Trust shall operate within the framework set out in the Agreement and all its appendices and attachments except where departure from it is agreed in writing with the Council.

7.4 The Trust shall obtain the agreement of the Council in writing before adopting any significant new policies affecting the Council's mental health social care functions.

7.5 The Trust will ensure that any changes to the delivery of its services does not impede or prevent the delivery of the Councils delegated functions.

7.6 The Trust shall involve the Council at the earliest opportunity and obtain the agreement of the Council in writing before making any specific decision which appears likely to give rise to significant public concern, or which may bring about a significant change in the Services provided.

8. SECONDMENT OF STAFF

8.1 The Council wishes to delegate the execution of its responsibility under the Mental Health Act 1983 (as amended by the Mental Health Act 2007) for the provision of an Approved Mental Health Professional (AMHP) service to the Trust. The Council agrees to continue the secondment arrangements of AMHP and other social work staff to the Trust.

8.2 The Council remains the employer of those staff that are listed in Schedule 3 (the "seconded staff").

8.3 The Trust agrees to manage the seconded staff as set out in Schedule 3 and provide assurances and implementation of professional and general standards of practice as set out in Schedule 1.

- 8.4 The Trust will ensure that Council funded staff that are not seconded staff but are employed by the Trust set out in Schedule 3 (Trust staff) execute their responsibilities in line with the delegated functions outlined in this agreement and receive the necessary supervision and development to ensure safe and good standards of practice.
- 8.5 The Trust will ensure that seconded staff are informed of any changes to Terms and Conditions and communicate Council information promptly and comprehensively and the Council will ensure timely provision of information.
- 8.6 On termination of the Agreement the seconded staff will return to their employment with the Council. Both partners will ensure that this process is completed in a safe and planned manner, and is compliant with standards of employment practice.
- 8.7 On termination of the Agreement staff that are not seconded staff as set out in Schedule 3 (Trust staff) but are funded by the Council and employed by the Trust will be subject to redundancy or Transfer of Undertakings (Protection of Employment) (TUPE) arrangements and Human Resource arrangements set out in Schedule 7.
- 8.8 The partnership arrangements do not include Section 114 appointment of Approved Mental Health Professionals and section 115 (Powers of Entry and Inspection) of the Mental Health Act 1983 as amended by the Mental Health Act 2007. The supervision and management arrangements must ensure that Approved Mental Health Professionals act in a personal capacity when carrying out their statutory duties as set out in the Mental Health Act 1983 as amended by the Mental Health Act 2007.

9. INFORMATION SHARING

- 9.1 A protocol for information sharing between the Council and the Trust will be agreed by the 30th June 2014 to replace the draft protocol currently in place (schedule 10). The protocol will cover the following issues:
- definition of the framework within the information is exchanged
 - definition of roles and responsibilities for managing the exchange process
 - identification of confidentiality and protection frameworks
 - legal and policy frameworks
 - ownership of information and records
 - Information Technology arrangements including ownership, governance and support
- 9.2 The Partners will work together to ensure the safe and responsive recording and sharing electronic records on their respective systems and the safe and timely management of any changes to software, hardware or system processes.
- 9.3 When a Partner obtains access to Personal Data (as defined under the Data Protection Act 2013) obtained by or in the possession of any other Partner, each Partner and its employees shall duly observe all their obligations under the Data Protection Act (DPA) which arise in connection with this Agreement.

10. FREEDOM OF INFORMATION

- 10.1 The Partners agree to comply with the provisions of the Freedom of Information Act (FOIA) in relation to delegations made under this Agreement as set out below.
- 10.2 Each Party will have in place a policy and procedure for compliance with the provisions of the DPA and the FOIA and shall co-operate with the other Parties and respond in a timely way to any request received from any other party so as to enable them to comply with their obligations under those Acts.
- 10.3 The Council and the Trust are both public bodies and are subject to the FOIA and the Environmental Information Regulations (EIR). In compliance with the FOIA and EIR the Parties agree that requests under the FOIA and the EIR shall be dealt with in accordance with paragraphs 29.4.
- 10.4 Upon receipt of a request by a Party ("the Receiving Party") that Party is responsible for the reply to the request, but if the request relates solely to information the Receiving Party does not have and which is owned by the other Party the request shall be transferred to the respective Party within 2 Working Days. If the request relates to information being held by one Party on behalf of another Party the Parties shall consult on the request but the responsibility for the request shall remain with the Receiving Party.

11. RECORDS

- 11.1 Upon termination of the Agreement in accordance with Clause 33 or otherwise the Trust shall transfer to the Council all relevant files electronic and hard copies, including personnel and client files which it may hold in connection with its responsibilities for the Services. The protocol for potential transfer of shared information will be developed within the life time of the agreement but no later than six months prior to the expiry date of the agreement.

12. THE TRUST UNDERTAKES

- 12.1 To work in partnership with the Council at all times particularly in relation to any significant operational or policy decisions which may significantly affect its discharge of the Services, and seek joint agreement on decisions which may affect any other aspects of the Council's responsibilities. In particular any major changes to the organisational configuration of the Services or areas where there are concerns about quality of performance. All of the above should be brought to the Mental Health Governance Board set out in Schedule 5.
- 12.2 To ensure that all staff holding management responsibility for Council funded staff are knowledgeable of Council duties and standards of practice and Trust commitments relevant to delegated responsibilities set out in this agreement set out in Schedule 1.
- 12.3 To work with the Council and engage in a review of the delivery model of social care, roles of staff whose salaries are funded by the Council including social workers and develop a new delivery model in line with the Council's Strategy.
- 12.4 To ensure that any proposed new improvement initiatives the Trust may take are aligned with the ambitions and deliverables within the Council Strategy and are approved by the Mental Health Governance Board.

- 12.5 To provide performance and management information on the Services in accordance with the Specifications set out in Schedule 1 and the Information and Performance Management arrangements set out in Schedule 2.
- 12.6 To provide information regarding any serious incident as defined by the Trust's or Council's policy that relates to Council's delegated Services or relevant to the Council's responsibilities as set out in Schedule 10.
- 12.7 To ensure staff delivering the Council's delegated functions are communicated with effectively and promptly in relation to Council or Trust information where it impacts on the delegated Service and/or Council funded staff within the Trust.
- 12.8 To provide financial information monthly through the Joint Finance and Performance Group and to the Council Head of Finance on a quarterly basis and as requested. To be monitored through the Mental Health Governance Board.
- 12.9 To provide reports as agreed in Schedule 2 which details the frequency of reporting, the recipients of reports, the contents of reports and the governance of reports.
- 12.10 To provide the Partners with a year-end memorandum account showing income received, expenditure and any balance remaining for inclusion in their statutory accounts within 3 months of the financial year ending 31st March.

13. THE COUNCIL UNDERTAKES

- 13.1 To use its reasonable endeavours to (and without in any way fettering its discretion) to exercise its powers and duties having regard to the impact of the manner in which it exercises those powers and duties upon the provision of the Services. To consult the Trust at the earliest feasible stage about any decisions which it is contemplating which may significantly affect the Trust's operations in relation to these Services.
- 13.2 To bring all matters pertaining to the Partnership Agreement to the Mental Health Governance Board.

14. THE PARTNERS UNDERTAKE

- 14.1 To carry out their respective responsibilities in a manner which shall ensure the closest co-ordination which can reasonably be achieved between the Trust's services and other services provided or secured by the Council.
- 14.2 In particular, the Partners agree to ensure continuing close co-operation and to develop and operate within the agreed protocol in relation to the interface between the Council's Older People's Service and the Trust's Older People's Mental Health Service set out in Schedule 11.

15. STRATEGIC MANAGEMENT AND ACCOUNTABILITY ARRANGEMENTS

- 15.1 The Partners, through the Mental Health Governance Board, shall jointly review the Agreement and revise the Schedules in February of each year as set out in Clause 32.
- 15.2 The review will take the form of addressing minor changes for accuracy identified and agreed through the previous year and will not constitute a new Agreement.

- 15.3 The revised Schedules will not constitute a new Agreement unless the Partners agree that a new Agreement is required due to the nature and degree of the revised Schedules.
- 15.4 The Agreement shall be subject to a one year initial period thereafter it may be extended for a period of three years with effect from 1st April 2014, though it shall also, where possible, include provision for developments in later years. The Partners shall agree and may from time to time amend the annual timetable for the preparation of the Agreement review.
- 15.5 The Agreement shall in particular:
- Describe any agreed strategic changes which are planned in the Services to be provided by the Trust.
 - Set out agreed objectives and targets.
 - Indicate how the Partners anticipate that the Services shall be affected by any growth or reduction in funding to the Trust.
 - Set out the charges that the Council expects the Trust to recover on its behalf for the Services.
 - Set out any workforce development program.
- 15.6 The Agreement may incorporate references to additional strategy documents which NHS bodies and the Council have produced or intend to produce, including nationally-mandated strategies, joint investment plans and other relevant documents.
- 15.7 The Agreement may be modified at any time during the period which it applies by agreement of the Parties.

16. GOVERNANCE

- 16.1 The Parties shall use the Mental Health Governance Board to oversee this Agreement in accordance with the terms of reference set out in Schedule 5.
- 16.2 The Council's Executive Director for Children, Families and Adults is the statutory director for adult and older people's mental health and is responsible for the Approved Mental Health Professional Service including the authorising of all Approved Mental Health Professionals.
- 16.3 The Trust shall appoint a suitably qualified senior officer responsible for the delivery of the Council's statutory functions covered within this Agreement who shall maintain in regular liaison with the Council's Executive Director of Children, Families and Adults to ensure that the Director is fully appraised of all relevant issues in relation to the effective discharge of these functions.
- 16.4 The Trust shall on request within 10 working days or to an agreed timescale prepare and submit reports jointly with the Service Director for Older People and Mental Health to the Council on any aspect of the Services where this is necessary to enable the Council to make a decision.

- 16.5 The Trust shall also arrange for appropriate senior officers to attend with the Service Director for Older People and Mental Health to present such reports to the Council's committees, to a full meeting of the Council or other forum.

17. DEMOCRATIC PROCESS

- 17.1 From May 2014 the Council will introduce a new governance system and will be replacing the Leader / Cabinet model with a Committee system. There will be 5 Service Committees and a General Purposes Committee. The Service Committees are:

- Adults
- Children and Young People
- Economy and Environment Health
- Highways and Community Infrastructure

These Committees replace Cabinet and the 5 Overview and Scrutiny Committees.

- 17.2 The Trust will work jointly with Council Officers in responding to requests and undertaking duties and responsibilities related to the delegated Services.

18. CLINICAL AND PROFESSIONAL GOVERNANCE

- 18.1 From the Commencement Date the Trust shall be responsible for Clinical and Professional Governance for the Services.

- 18.2 The Trust will work with the Council to ensure that professional and social care standards of practice are in line with National and Local standards including those set out in the Council's Strategy.

- 18.3 The Partners shall develop a single unified process of Clinical and Professional Governance to fulfil the following requirements:

- a) clear lines of accountability for the quality of care.
- b) regular audit and reporting against practice standards with remedial plans where required.
- c) a comprehensive programme of quality improvement activities.
- d) policies and procedures aimed at managing risk.
- e) procedures for identifying and remedying poor performance.

- 18.4 These will be signed off by the Mental Health Governance Board and the Trust's Quality and Safety Committee.

19. HUMAN RESOURCE POLICIES

- 19.1 The Trust shall be responsible for the day to day management of the seconded staff and all staff employed by the Trust funded by the Council set out in Schedule 3.
- 19.2 The Partners agree that the arrangements for dealing with employment law issues as between the Partners in relation to the seconded staff are as set out in Schedule 7 subject to any overriding requirements of employment law.
- 19.3 The Trust shall maximise opportunities to maintain and develop the social care workforce through a workforce development programme which secures ongoing training and professional development as set out in Schedule 9. The programme shall be agreed by the Partners annually and form part of the Agreement review and revision of the Schedules.

20. VALUE ADDED TAX

- 20.1 The VAT regime applied shall seek to maximise recovery of local government VAT input tax incurred on any expenditure on behalf of the Council within these arrangements.
- 20.2 The Trust shall make purchases identifiable as the Services as agent for the Council to enable the recovery of VAT. The Council agrees to seek from Her Majesty's Revenue and Customs a refund of taxation upon any expenditure incurred by it under this Agreement which is the subject to VAT.

21. SERVICE PLANNING

The Trust shall:

- 21.1 Maintain appropriate expertise to enable it to gather relevant intelligence about individual and community needs, market conditions and community capacity;
- 21.2 Prepare drafts of any planning documents relevant to mental health which are necessary to enable it to fulfil its responsibilities or are required by the Government. It shall obtain the agreement of the Council before finalising these changes and/or circulate draft versions to appropriate stakeholders if they introduce significant new policy elements;
- 21.3 Where changes will lead to impact and change on delegated services the Trust will involve Council officers in the planning and development of those services;
- 21.4 Prepare bids for funding from Government or other sources. Bids requiring a joint application between the Trust and Council shall be supported in prompt and timely manner by both Partners. It shall obtain the agreement of the Council before submitting these; and
- 21.5 Provide the Council with expert advice about the Services whenever reasonably requested to do so and within the limits of the resources available to it.

22. COMMUNITY ENGAGEMENT, CONSULTATION AND COMMUNICATION

- 22.1 The Partners shall retain their individual responsibility for consultation in relation to the Services.

- 22.2 Where any proposed consultation relates to the Services, the Partners agree to work together to effect the consultation.
- 22.3 Where any proposed consultation relates to services provided by both Partners, other than under this Agreement, the Partners agree to work together to establish the arrangements under which such consultation takes place.
- 22.4 The Mental Health Governance Board shall consider whether the Trust needs to undertake joint arrangements for statutory and other consultation which relates exclusively to the Services provided under this Agreement. Where joint arrangements for consultation are agreed upon, the agreement for such consultation shall specify in writing any additional costs for which any party shall be liable over and above this Agreement.
- 22.5 Where any action or omission of the Trust or the Council relating to the Services is likely to be, or is the subject of media comment, the Partners shall endeavour to consult each other prior to making any comment to the media or a Member of Parliament in relation to it. Where comment is urgently required prior to such consultation, the Trust shall be responsible for comment in relation to service delivery and the Council for comment related to delegated services.

23. MANAGEMENT, PLANNING AND MONITORING INFORMATION

- 23.1 The Trust shall ensure that it has adequate resources and expertise to collect and analyse information relevant to the management, planning and monitoring of all the Services for which it is responsible and shall make any information which it collects available to the Council promptly on request in accordance with Schedule 2. The Council may also request that specified classes of information be passed to it routinely through the agreed governance structure.
- 23.2 The Council may request further breakdown or information from the Trust where relating to delegated Services.
- 23.3 The Trust shall consult the Council upon and complete all statistical returns required by Government departments and agencies in relation to the Services.
- 23.4 The Trust shall ensure that it provides the relevant quality and performance monitoring information in accordance with an agreed Performance and Quality Assurance Framework to the Mental Health Governance Board.

24. EXTERNAL INSPECTION AND MONITORING

The Trust shall:

- 24.1 Comply with any statutory inspection requirements in relation to the Services and shall liaise as required with the Care Quality Commission (CQC), Monitor and or other regulatory bodies or their successors on quality, performance and related matters.
- 24.2 Provide the Council with copies of all inspection and regulatory reports from the CQC, Monitor and or other regulatory bodies or their successors on quality, performance and related matters to the delegated Service. These will be provided on publication by the aforementioned bodies to the Mental Health Governance Board within 5 working days.

- 24.3 Provide appropriate access and information to any external body empowered by statute to inspect or monitor the Council's discharge of its social care services.
- 24.4 Endeavour to make arrangements for inspections directly with any external regulatory body where such an arrangement is acceptable to that body and ensure that the Council is informed about both the anticipated and actual outcomes of any such inspection.
- 24.5 Work with the Council to ensure that recommendations for action or improvement made to the Council pursuant to a personal social services performance assessment are implemented.

25. REPRESENTATIONS AND COMPLAINTS PROCEDURE

- 25.1 The Trust will adhere to the Complaints Process outlined in Schedule 13.
- 25.2 The Partners shall review these arrangements if there are any changes to the Complaints Regulations with the aim of moving as close as is permitted by guidance and regulations to a fully-integrated process for handling all complaints about the Services.
- 25.3 The Trust shall endeavour to resolve complaints about Health Services and the Services through its own complaint procedures, where possible integrating its response with that to any linked complaints about Health Services and in accordance with the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (the "Complaints Regulations"). It shall publicise the existence of a complaints procedure to those who have a right to complain and ensure that complainants who receive Mental Health Services are informed of their right to complain to the Council under the Complaints Regulations if they are not satisfied with Trust's response (Schedule 13).
- 25.4 If Service Users make complaints directly to the Council, the Council shall seek to arrange for these to be dealt with in the first instance by the Trust, wherever that is reasonable and can be agreed with the complainant.
- 25.5 Where a complaint is formally investigated by the Council under the Complaints Regulations, the Trust shall provide all necessary assistance with the complaints investigation. The response to such a complaint shall be agreed between Trust and the Council (Schedule 13). If there is a disagreement which cannot be resolved, the complainant shall be informed of both the Council's and Trust's response, and (as in all other cases) shall be notified of the right to take the complaint to a complaints review panel arranged by the Council.
- 25.6 Upon notification of an investigation to be undertaken by any ombudsman, each Partner shall respond to requests for information and/or interview within time limits set by the ombudsman and provide access to relevant records.
- 25.7 Where there is a finding of mal-administration by an Ombudsman in respect of the Services provided by the Partners under this Agreement after the Commencement Date, save where that ombudsman finds that the Council's negligence including breach of duty (statutory or otherwise) is the cause, the Trust shall be exclusively responsible for meeting any request for payment of compensation.
- 25.8 The timescales for responding to complaints will be in line with current national NHS guidance for handling complaints. Any breach of timescales for responding to complaints will be reported through the Governance process set out in Schedule 5 and escalated to the Mental Health Governance Board if deadlines are breached.

26. INSURANCE

- 26.1 In respect of liabilities arising under any indemnity in this Agreement, the Trust shall maintain membership of the liabilities to the/a 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. The Council shall maintain such insurance as it considers appropriate.
- 26.2 The Partners shall co-operate with each other in the defence of any claim arising under this Agreement using the insurance protocol agreed between local authorities and NHS bodies in operating partnership agreements under section 75 of the 2006 Act as guidance.

27. LEGAL LIABILITIES

- 27.1 The Trust shall be responsible for all legal liabilities to third parties arising under this Agreement on a claims incurred basis and shall indemnify the Council in respect of all such liabilities, costs, expenses and claims, except where such responsibility remains with the Council under liabilities created by statute or where the Council's negligence including breach of duty (statutory or otherwise) was the cause.
- 27.2 Damages, claims and liabilities shall include the obligation to pay sums recommended by an ombudsman or under other complaint resolution process.
- 27.3 Each Partner (indemnifying partner) shall indemnify and keep indemnified the other Partner (Indemnified Partner) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether in 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 employees, or any of its representatives or subcontractors, except the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement or applicable law by the Indemnified Partner or its Representatives.
- 27.4 Representative means a Partner employee, agent or sub-contractor.

28. CORPORATE

- 28.1 All stationery, publications and liveries adopted by the Trust, and correspondence with partners and service users, shall use both the Trust and Council logos with the aim of ensuring that the partnership between the Partners is apparent to all those who have dealings with it.

29. BUSINESS CONTINUITY AND EMERGENCY PLANNING

The Trust shall:

- 29.1 In respect of its services and responsibilities assist the Council to meet its duties in the event of any significant incident in respect of the Services.

- 29.2 Ensure that robust Business Continuity Plans and associated Major Incident Plans are in place for the Services and shall identify a lead manager to take responsibility for business continuity and emergency planning.
- 29.3 Ensure that it has in place procedures to provide for the management of emergencies and winter pressures.

30. VARIATION

- 30.1 This Agreement relates to the time from April 1st 2014 to March 31st 2015 known as the initial period. There after this Agreement may be extended for a period of three years. This will not constitute a new agreement, if extended this Agreement will terminate on 30th March 2018 as set out in Clause 32.
- 30.2 The Partners through the Mental Health Governance Board will review the Agreement each year as set out in Clause 15. This may result in variations to the Agreement and these variations will be agreed through the Mental Health Governance Board.
- 30.3 It is the intention of the Council to work with the Trust to review and revise the delivery model for the Service and complete a review of all staff roles funded by the Council set out in schedule 3. This may result in variations to the Council's arrangement with the Trust and services outlined in the agreement for the year 1st April 2015 to March 31st 2016.
- 30.4 This Agreement may be varied at any time by agreement in writing between the Partners and signed by the authorised signatories who are the Chief Executive of the Trust and The Executive Director for Children, Families and Adults.
- 30.5 Variation to this Agreement may be made by either party.

31. DISPUTE RESOLUTION

- 31.1 The Partners shall use their best endeavours to resolve disputes arising out of this Agreement.
- 31.2 In the first instance any potential dispute should be referred to the Mental Health Governance Board for resolution by Partners, who shall co-operate in good faith to resolve the potential dispute as amicably as possible.
- 31.3 If any dispute arises in connection with this Agreement, directors or other senior representatives of the Partners with authority to settle the dispute shall, within 14 calendar days of a written request from one Partner to the other, meet in good faith in an effort to resolve the dispute and agree a remedial plan monitored through the Mental Health Governance Board.
- 31.4 If the dispute is not resolved through the remedial plan referred to in Clause 31.3 or any agreed follow-up meetings, the Partners shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Partners, the mediator shall be nominated by CEDR. To initiate the mediation a Partner must give Notice in writing ("Dispute Notice") to the other Partner to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation shall start not later than 28 calendar days after the date of the Dispute Notice.

- 31.5 Any dispute not resolved within a reasonable time in accordance with Clause 31 which arises or occurs between the Partners in relation to anything or matter arising out of or in connection with this Agreement, shall be finally settled by arbitration by one arbitrator appointed in default of agreement between the Partners by President or the Vice President, for the time being, of the Chartered Institute of Arbitrators. The seat of the proceedings shall be England and Wales.
- 31.6 Either Party may refer a dispute for arbitration at any time and the commencement of mediation shall not prevent the Partners commencing or continuing any arbitration proceedings.

32. DURATION AND REVIEW OF AGREEMENT

- 32.1 This agreement shall become effective on the commencement date as stated as 1st April 2014 and shall be subject to an initial period of one year. For the avoidance of doubt this period is 1st April 2014 to 30th March 2015.
- 32.2 There after this agreement may be extended for a period of three years. If extended this agreement will terminate on 30th March 2018.
- 32.3 An annual review of the Agreement as set out in Clause 15 will confirm the continuance of this Section75 arrangement. The annual review of the Agreement will confirm each year the termination date as stated in Clause 32.2.
- 32.4 The Mental Health Governance Board will review this Agreement annually including all appendices and attachments in February of each year or immediately in the event of changes to relevant legislation.
- 32.5 In the final year of the Agreement Partners will negotiate and agree a new Section75 arrangement (or agree a discontinuance) bringing up-to-date the Agreement that takes account of major variations, new strategic direction, financial changes and any other changes to the current arrangement.

33. TERMINATION

- 33.1 Either of the Partners may at any time terminate this Agreement by serving at least 12 months written notice on the other partner if:
- 33.1.1 There is a fundamental breakdown in the Partners' relationship such that they cannot reasonably work together as intended by this Agreement; and/or
- 33.1.2 There is a fundamental breach by any Partner which is either:
- 1) not capable of remedy; or
 - 2) capable of remedy but has not been remedied within three months or an alternative reasonable time period agreed by the Partners following receipt of written notice by the Partner not in breach which required the breach to be remedied; and/or
 - 3) as a result of any change in law or legislation it is unable to fulfil its obligations; and/or

- 4) its fulfilment of its obligations would be in contravention of any applicable guidance from the UK Government issued after the date hereof; and/or
 - 5) its fulfilment would be ultra vires.
- 33.2 Should notice to terminate the Agreement be given, both partners will be required to perform their respective obligations up to and including the date of termination. The Partners shall use their reasonable endeavours to arrive at an alternative partnership agreement or an agreed variation to this Agreement.

34. NOTICES

- 34.1 All notices shall be in writing. They can be personally delivered or posted by first class mail.
- 34.2 Any notices required to be served under this Agreement shall be sufficiently served if delivered in person to the other Partner and shall be deemed to be sufficiently served two working days after the time of posting. Such notices should be addressed to the respective Chief Executive or Executive Director of each of the Partners at:

Cambridgeshire County Council,
Shire Hall, Castle Hill,
Cambridge,
CB3 0AP

Cambridgeshire and Peterborough NHS
Foundation Trust
Elizabeth House,
Fulbourn Hospital,
Cambridge CB21 5EF

35. SEVERANCE

- 35.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 35.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

36. NO PARTNERSHIP OR AGENCY

- 36.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided in this Agreement.
- 36.2 The provision of the Partnership Act 1890 will not apply to this Agreement.
- 36.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

- 36.4 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.
- 36.5 Words in the singular include the plural and vice versa.
- 36.6 If the dispute is not resolved at the meeting referred to in Clause 31.3 or any agreed follow-up meetings, the Partners shall attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure, and a copy of such Procedure current as at the Commencement Date is attached at Schedule 10. Unless otherwise agreed between the Partners, the mediator shall be nominated by CEDR. To initiate the mediation a Partner must give Notice in writing (“Dispute Notice”) to the other Partner to the dispute requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation shall start not later than 28 calendar days after the date of the Dispute Notice.
- 36.7 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.
- 36.8 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.
- 36.9 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.
- 36.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

37. SIGNATORIES.

EXECUTED AS A DEED the day and year first before written

The Common Seal of Cambridgeshire County Council
Was hereunto affixed in the presence of:

Authorised Signatory
Executive Director of Adult Social Care
Cambridgeshire County Council

The Common Seal of Cambridgeshire and
Peterborough NHS Foundation Trust
Was hereunto affixed in the presence of:

Authorised Signatory
Chief Executive
Cambridgeshire and Peterborough NHS
Foundation Trust

38. GLOSSARY OF TERMS and ACRONYMS

In this Agreement, the following words and expressions shall have the following meanings:

Adult	Service Users for whom Cambridgeshire County Council have funding responsibility and who are aged 18 years and over.
AMHP	Approved Mental Health Practitioner under the Mental Health Act 1983 as amended by the 2007 Act.
Annual Performance Assessment	The annual performance assessment process conducted by the Care Quality Commission which assesses and scores mental health services.
CEDR	Centre for Dispute Resolution.
Clinical & Professional Governance	A framework through which NHS bodies are accountable for continuously improving the quality of their services and safeguarding high standards of care by creating an environment in which excellence in clinical and professional care will flourish.
Council	Cambridgeshire County Council.
CQC	The Care Quality Commission.
DASS	The Director of Adult Social Care.
DPA	Data Protection Act 2013 and all secondary legislation, rules and regulations, made pursuant to it and all and any amendments and replacements from time to time and including any codes of practice.
Eligibility Criteria Threshold	The threshold for the provision of Mental Health Services determined by the Council.
EIR	Environmental Information Regulations.
Executive	The decision making body of the Council with responsibility for implementing the policies of the Council within the Budget and policy framework approved by the Council.

FOI	Freedom of Information Act 2000 and all secondary legislation, rules and regulations made pursuant to it, and all and any relevant amendments and replacements from time to time and including any codes of practice.
FOIA	Freedom of Information Act.
Integrated services	Combined health and social care services.
Mental Health Governance Board	The Joint Council and Trust executive board that oversees, monitors and reviews the Section 75 Agreement and delivery of the Services.
Monitor	The Regulator of NHS Foundation Trusts.
Older People	Service Users for whom Cambridgeshire County Council have funding responsibility and who are aged 66 years and over.
Partners	Cambridgeshire County Council and Cambridgeshire and Peterborough NHS Foundation Trust.
Representative	Representative means a Partner employee, agent or sub-contractor.
Resident Population	Those people who are resident within the Council's area of responsibility
Service Users	The people who are the users and/or beneficiaries of the Services.
Services	The Council delegated mental health social care services as specified in Schedule 1.
Social Services Legislation	The powers and duties of the Council under its social services functions, as defined by the Local Authority Social Services Act 1970 (including all subsequent amendments).
Strategic Plan	The rolling 5 year strategic plan, agreed by healthcare providers, for the development of health services.
Sustainable Communities Strategy	The sustainable Communities Strategy developed in accordance with the Sustainable Communities Act 2007.
Trust	Cambridgeshire and Peterborough NHS Trust.
TUPE	Transfer of Undertakings (Protection of Employment), the employment regulations that are utilised in the case that a service transfers to another provider.
VAT	Value Added Tax.
Working Day	Any day other than Saturday, Sunday, a public or bank holiday in England.