

DATED

2013

WILTSHIRE COUNCIL

and

NHS WILTSHIRE CLINICAL COMMISSIONING GROUP

OVERARCHING AGREEMENT  
FOR JOINT BUSINESS ARRANGEMENTS  
UNDER THE NHS ACT 2006

Version 1

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**THIS DEED OF AGREEMENT** is made the . . . day of . . . 2013

**BETWEEN**

- (i) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire BA14 8JN ("the **Council**"); and
- (ii) **NHS WILTSHIRE CLINICAL COMMISSIONING GROUP** of Southgate House, Pans Lane, Devizes, Wiltshire SN10 5EQ ("the **CCG**");

(each a "**Party**" and together the "**Parties**").

**SECTION A. GENERAL INFORMATION**

**1. Definitions and Interpretation**

1.1 The terms and expressions used in this Agreement shall have the meanings set out below:

<b>2000 Regulations</b>	the NHS Bodies and Local Authority Partnership Arrangements Regulations 2000
<b>2006 Act</b>	the National Health Service Act 2006
<b>Agreement</b>	this document and any and all Schedules, Appendices and documents as are attached to it or referred to in it
<b>Annual Financial Contribution</b>	the amount or amounts contributed to an Individual Service Budget for each Financial Year as set out in each Service Schedule, adjusted from time to time in accordance with any relevant provisions set out in this Agreement that specifically relate to that Service Schedule
<b>Annual Transfer Amount</b>	the amount or amounts paid as Transfers for each Financial Year as set out in the relevant Transfer Schedule adjusted from time to time in accordance with the provisions set out in this Agreement that specifically relate to that Transfer Schedule
<b>Assessment Criteria</b>	the assessment criteria for the receipt of a specified Individual Service delivered under this Agreement as determined and agreed by the Parties from time to time
<b>Best Value Duty</b>	the obligations of the Council under Part 1 of the Local Government Act 1999 including the statutory instruments and guidance issued by the Secretary of State in relation to that Act
<b>Best Value Performance Plan</b>	any scheme the Council might put in place to achieve its Best Value Duty

<b>Carer</b>	a friend or relative of the Service User who provides day-to-day support for the Service User
<b>Care Quality Commission</b>	the independent regulator of health and adult social care services in England established under the Health and Social Care Act 2008
<b>CCG</b>	NHS Wiltshire Clinical Commissioning Group (and any statutory successor in title)
<b>CCG Functions</b>	those functions of the CCG specified in paragraph 5 of the 2000 Regulations which relate to the Joint Business Arrangements, as set out in each Service Schedule
<b>CCG Redundancy Costs</b>	<p>statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the CCG to any Transferring Council Staff whom the CCG has dismissed following a lawful redundancy within 6 months of:</p> <p>a) the date that the CCG became aware of the relevant TUPE transfer; or</p> <p>b) the expiry or termination for whatever reason of this Agreement or the relevant Individual Service,</p> <p>but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination</p>
<b>CCG Staff</b>	any professional, operational, managerial and/or temporary staff employed or engaged by or through the CCG in connection with the operation of this Agreement or the provision of the Services
<b>Combined Resources</b>	such shared health and social care resources of the Parties as are permitted under the 2006 Act and agreed by the Parties under this Agreement, including (without limitation) staff, accommodation, equipment and services. Each Transfer Schedule and Service Schedule will detail the Combined Resources relevant to that specific Transfer or Service.
<b>Commencement Date</b>	1 April 2013
<b>Confidential Information</b>	any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA

<b>Contract Arrangements</b>	as described in clause 17
<b>Contract Management</b>	the activity by which this Agreement is monitored and reviewed
<b>Contractor</b>	any provider with whom a Party contracts for the provision of an Individual Service under the Contract Arrangements
<b>Convictions</b>	other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023))
<b>Council</b>	Wiltshire Council
<b>Council Functions</b>	those health-related functions of the Council specified in paragraph 6 of the 2000 Regulations which relate to the Joint Business Arrangements, as set out in this Agreement and detailed within each Service Schedule
<b>Council Redundancy Costs</b>	<p>statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Council to any Transferring CCG Staff whom the Council has dismissed following a lawful redundancy within 6 months of:</p> <p>a) the date that the Council became aware of the relevant <b>TUPE</b> transfer; or</p> <p>b) the expiry or termination for whatever reason of this Agreement or the relevant Individual Service,</p> <p>but excluding any payments or liabilities arising from any claim as to the fairness of the dismissal and/or unlawful discrimination</p>
<b>Council Staff</b>	any professional, operational, managerial and/or temporary staff employed by the Council in connection with the operation of this Agreement or the provision of the Services
<b>DPA</b>	the Data Protection Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>EIR</b>	the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to those regulations

<b>Eligibility Criteria</b>	the eligibility criteria for the receipt of an Individual Service as determined and agreed by the Parties from time to time
<b>Financial Year</b>	each financial year commencing 1 April and ending 31 March on the following year. (This should not be confused with the individual Service Schedule and Transfer Schedule "years" that are defined by the start and end dates within these Schedules where financial commitment may extend beyond a particular Financial Year or end prior to the end of a Financial Year).
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
<b>Force Majeure</b>	<p>any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the organisation of the Party concerned or any Contractor's organisation; or</p> <p>(b) the failure by any Contractor to perform its obligations under any service contract let pursuant to clause 17</p>
<b>Functions</b>	the Council Functions and the CCG Functions collectively
<b>Health Act Flexibilities</b>	the flexibilities permitted under section 75(2) of the 2006 Act and set out at clause 6
<b>Host Party</b>	<p>the Party responsible in relation to an Individual Service for:</p> <p>(a) undertaking the other Party's Functions in Integrated Provision arrangements, commissioning or any other services on behalf of the other Party (especially in regards to Lead Commissioning arrangements); and</p> <p>(b) any associated Pooled Fund</p>
<b>Indirect Loss</b>	loss of profits (other than profits directly and solely attributable to provision of the Services), loss of use, loss of production, increased operating costs (other than operating costs directly and solely attributable to the provision of the Services), loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis
<b>Individual Service</b>	one of the health and social care services offered in the exercise of a Function and agreed by the Parties to be

	<p>procured for the benefit of Service Users using one or more of the powers under section 75 of the 2006 Act, as set out in the relevant Service Schedule. An Individual Service will exercise one or more of the Health Act Flexibilities and may involve:</p> <ol style="list-style-type: none"> <li>a. the CCG exercising Council Function(s) (and payments from the Council to the CCG towards costs incurred);</li> <li>b. the Council exercising CCG Function(s) (and payments from the CCG to the Council towards costs incurred);</li> <li>c. the provision of staff, goods or services in relation to (i) a Pooled Fund, and/or (ii) the exercise of one Party's Function(s) by the other Party.</li> </ol> <p>The Individual Services together comprise the Services</p>
<b>Individual Service Aims</b>	the agreed aims relating to an Individual Service set out in the relevant Service Schedule
<b>Individual Service Budget</b>	the annual budget agreed by the Parties for the provision of an Individual Service, including the Annual Financial Contributions of each Party
<b>Integrated Provision</b>	arrangements by which the Parties combine resources, Staff and management structures to help integrate provision of an Individual Service, with the Host Party undertaking some or all of the other Party's functions
<b>Intellectual Property Rights</b>	all copyright, patents or patent rights, registered and unregistered design rights, trade marks, service marks and all other intellectual or industrial property rights wherever in the world enforceable
<b>Joint Commissioning Board</b>	the working group set up by the Parties in accordance with regulation 10(2) of the 2000 Regulations to provide effective governance and performance management for the Joint Business Arrangements, as set out in Appendix 1 (Governance Protocol)
<b>Joint Business Arrangements</b>	the arrangements which have been agreed between the Parties pursuant to sections 75, 76 and 256 of the 2006 Act and the 2000 Regulations and are set out in this Agreement, as varied from time to time in accordance with clause 44
<b>Lead Commissioning</b>	arrangements by which a Host Party takes the lead and is responsible for commissioning or other such services on behalf of the other Party to achieve a jointly agreed set of aims

<b>Legislation</b>	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or guidance, directives or requirements of any Regulatory Body
<b>Liabilities</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of reasonably and necessarily incurred legal or professional services), proceedings, demands and charges whether arising under Legislation, contract or at common law but excluding Indirect Loss
<b>Local Healthwatch</b>	an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007
<b>NHS</b>	the National Health Service of England and Wales
<b>Nominated Account</b>	the account into which a Transfer is paid as notified in writing by one Party to the other from time to time
<b>Non-Pooled Fund</b>	a fund comprising either the Council's financial contribution or the CCG's financial contribution toward the joint commissioning of an Individual Service under Lead Commissioning or Integrated Provision arrangements as set out in the relevant Service Schedule, and for the avoidance of doubt the financial contributions of the Parties in relation to any Non-Pooled Fund shall be kept separate at all times
<b>Party</b>	either the Council or the CCG individually and "Parties" refers to the Council and the CCG together
<b>Pooled Fund</b>	an account held and managed by a Host Party comprising financial contributions from both Parties for an Individual Service .
<b>Pooled Fund Arrangement</b>	the arrangements within the meaning of Regulation 7 of the 2000 Regulations agreed by the Parties for establishing and maintaining any Pooled Fund
<b>Pool Manager</b>	a senior member of staff of a Host Party with responsibility for managing a Pooled Fund as set out in regulation 7(4) of the 2000 Regulations
<b>POVA Register</b>	the register established pursuant to the POVA Scheme to record the details of persons deemed unsuitable to work with vulnerable adults
<b>POVAScheme</b>	the Protection of Vulnerable Adults scheme for care



	homes and domiciliary care agencies as set out in the Care Standards Act 2000 and any amendment or replacement of that Act, codes of practice and any guidance issued from time to time concerned with the same
<b>Principal Aims</b>	the Principal Aims for the Joint Business Arrangements as set out in clause 4
<b>Prohibited Act</b>	<p>(a) offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward:</p> <ul style="list-style-type: none"> <li>i. for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or</li> <li>ii. for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council;</li> </ul> <p>(b) committing any offence:</p> <ul style="list-style-type: none"> <li>i. under the Prevention of Corruption Acts 1889-1916; or</li> <li>ii. under Legislation creating offences in respect of fraudulent acts; or</li> <li>iii. at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council;</li> </ul> <p>(c) defrauding or attempting to defraud or conspiring to defraud the Council</p>
<b>Quarter</b>	<p>each of the following periods in each Financial Year:</p> <ul style="list-style-type: none"> <li>(a) 1 April to 30 June;</li> <li>(b) 1 July to 30 September;</li> <li>(c) 1 October to 31 December; and</li> <li>(d) 1 January to 31 March</li> </ul>
<b>Records</b>	<p>full and accurate records of:</p> <ul style="list-style-type: none"> <li>(a) all services and resources provided;</li> <li>(b) all agencies, facilities and sites used; and</li> <li>(c) all expenditure made;</li> </ul> <p>in relation to an Individual Service or Transfer Project</p>
<b>Regulatory Body</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any

	other affairs of the Council and/or the CCG as appropriate
<b>Safety Legislation</b>	the Health and Safety at Work Act 1974 and the Consumer Protection Act 1987 together with all regulations made under them including, but not limited to, the General Product Safety Regulations 1994, the Control of Substances Hazardous to Health Regulations 1999 and all other Legislation imposing legal requirements with respect to health and safety at work, health and safety in the delivery of the Service, and health and safety of the Service Users
<b>Seconded Staff</b>	the Staff designated as seconded staff in relation to an Individual Service as set out in the relevant Service Schedule and any other persons designated in writing as Seconded Staff by the employing Party
<b>Services</b>	the Individual Services together
<b>Service Schedule</b>	a schedule in relation to an Individual Service which: <ul style="list-style-type: none"> <li>(a) forms, or will form, part of this Agreement and shall be subject to the terms of this Agreement;</li> <li>(b) documents aims, objectives and arrangements agreed by the Parties in relation to the Individual Service in question in accordance with clause 19; and</li> <li>(c) shall be signed by duly authorised representatives of the Parties</li> </ul>
<b>Service Standards</b>	as described in clause 20 and within each Service Schedule
<b>Service User</b>	a person who receives the Services provided always that he/she satisfies the Eligibility Criteria and the Assessment Criteria
<b>Service User Documents</b>	the statement of need, individual care plan and any other document required to be produced for a Service User in accordance with Legislation
<b>Staff</b>	the CCG Staff, the Council Staff and the Seconded Staff
<b>Term</b>	has the meaning given in clause 36
<b>Transfer</b>	a payment made directly: <ul style="list-style-type: none"> <li>(a) by the CCG to the Council towards the cost of delivering a Council Function in accordance with section 256 of the 2006 Act; or</li> <li>(b) by the Council to the CCG towards the cost of delivering a CCG Function in accordance with section 76 of the 2006 Act,</li> </ul>

	as set out in the relevant Transfer Schedule
<b>Transfer Aims</b>	the agreed aims relating to a Transfer set out in the relevant Transfer Schedule
<b>Transfer Project</b>	the project to deliver the Transfer Aims
<b>Transfer Schedule</b>	a schedule in relation to a Transfer which: <ul style="list-style-type: none"> <li>(a) forms, or will form, part of this Agreement and shall be subject to the terms of this Agreement;</li> <li>(b) documents aims, objectives and arrangements agreed by the Parties in relation to the relevant Transfer in accordance with clause 22; and</li> <li>(c) shall be signed by duly authorised representatives of the Parties</li> </ul>
<b>Transferring Council Staff</b>	the Council Staff whose contracts of employment have transferred or will transfer to the CCG by virtue of TUPE to the extent that TUPE applies in relation to this Agreement, and for the purposes of any transfer by virtue of TUPE at the expiry or termination for whatever reason of an Individual Service shall include Staff who were formerly CCG Staff and whose contracts of employment have already transferred to the Council in relation to that Service
<b>Transferring CCG Staff</b>	the CCG Staff whose contracts of employment have transferred or will transfer to the Council by virtue of TUPE to the extent that TUPE applies in relation to this Agreement, and for the purposes of any transfer by virtue of TUPE at the expiry or termination for whatever reason of an Individual Service shall include Staff who were formerly Council Staff and whose contracts of employment have already transferred to the CCG in relation to that Service
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the Acquired Rights Directive (EEC 77/187)
<b>VAT</b>	Value Added Tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994
<b>Vulnerable Adult</b>	someone over 18 years of age who may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation as described in the Department of Health and Home Office publication "No Secrets"
<b>Vulnerable Adult</b>	the latest edition of Swindon Borough Council and the

<b>Policy and Procedures</b>	Council's publication "Policy and Procedures for the Protection of Vulnerable Adults from Harm in Swindon and Wiltshire" or any update or replacement of that publication
<b>Working Day</b>	a day other than a Saturday, Sunday or bank or public holiday in England

- 1.2 words importing the singular include, where the context so admits, the plural and vice versa;
- 1.3 words importing one gender only shall be construed as importing any other gender;
- 1.4 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.6 references to any "person" shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person but without derogation from any liability of any original Party to this Agreement;
- 1.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.8 the index and headings included in this Agreement are for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- 1.9 the expressions "the Council", "the CCG", "Party", "Parties" and any other relevant body or authority shall include their respective statutory successors in title, their permitted transferees or assignees and any persons which have taken over their functions or responsibilities but without derogation from any liability of any original Party to this Agreement; and
- 1.10 in the event of and only to the extent of any conflict between the terms and conditions of the Agreement, Schedules, Appendices and other documents referred to in or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Service Schedules and the Transfer Schedules;
  - (b) the clauses of the main Agreement;
  - (c) the Appendices; and
  - (d) any other document incorporated or referred to in the Agreement.

## 2. **Background**

- 2.1 The Council is a local authority for the purposes of sections 75, 76 and 256 of the 2006 Act and a local social services authority for the purposes of section 256 of the 2006 Act and provides social care services to members of the public resident in the county of Wiltshire (excluding the administrative area of Swindon Borough Council).
- 2.2 The CCG is an NHS body for the purposes of section 75 of the 2006 Act and a clinical commissioning group for the purposes of sections 76 and 256 of the 2006 Act and is the commissioner of healthcare services for members of the public resident in Wiltshire ..
- 2.3 The Parties now wish to enter into this Agreement pursuant to the powers contained in sections 75, 76 and 256 of the 2006 Act (and associated regulations) to promote the provision of their respective services . In accordance with section 75 of the 2006 Act, the Parties believe that entering into this Agreement is likely to lead to an improvement in the way in which the Parties' respective Functions set out in each Service Schedule are exercised. As at the date of this Agreement:
  - 2.3.1 the Services which the Parties have agreed will be delivered under the Joint Business Arrangements are set out in Service Schedules; and
  - 2.3.2 the Transfers which the Parties have agreed will be made under the Joint Business Arrangements are set out in Transfer Schedules
- 2.4 As the Parties further develop these Joint Business Arrangements, the Service Schedules and/or Transfer Schedules may be varied or supplemented to include other services and/or transfers.
- 2.5 Although there may be additional joint arrangements between the Parties which are not within the scope of this Agreement, the Parties intend that, for clarity, all such additional joint arrangements shall be recorded in Appendix 9 (Joint Arrangements outside the Scope of this Agreement) as amended from time to time in accordance with clause 44.
- 2.6 The Parties have carried out consultation on the proposals for the Joint Business Arrangements with such persons as appear to them to be affected, as required by regulation 4(2) of the 2000 Regulations. The Parties will carry out the same consultation process for any supplementary Service Schedules agreed by them in the future.
- 2.7 The Parties acknowledge that, in accordance with clause 71, as of the Commencement Date all previous agreements entered into between the Parties under:
  - 2.7.1 section 75 of the 2006 Act (or previously section 31 of the Health Act 1999);
  - 2.7.2 section 76 of the 2006 Act (or previously section 28BB of the National Health Service Act 1977); and
  - 2.7.3 section 256 of the 2006 Act (or previously section 28A of the National Health Service Act 1977),

save those joint arrangements listed in Appendix 9 (Joint Arrangements outside the Scope of this Agreement) are superseded by the provisions of this Agreement and all acts done on and from the Commencement Date shall be deemed to have been done pursuant to the provisions of this Agreement.

Anything done prior to the Commencement Date which did not give rise to a liability under such previous arrangements will not, unless expressly stated otherwise, be deemed to do so under this Agreement. Anything done prior to the Commencement Date which did give rise to a liability under such previous arrangements will, unless expressly stated otherwise and where such liability remains outstanding, remain a liability and therefore subject to a claim.

### **3. Powers to enter into the Agreement**

- 3.1 This Agreement is made pursuant to sections 75, 76 and 256 of the 2006 Act and regulation 4(1) of the 2000 Regulations.
- 3.2 The Wiltshire Health and Wellbeing Board has approved the terms of this Agreement.
- 3.3 The Parties have agreed to enter into this Agreement to fulfil the requirements of regulation 8(2) and regulation 9(3) of the 2000 Regulations and to record their respective rights and obligations under the Joint Business Arrangements and the terms on which the Joint Business Arrangements will be exercised.

## **SECTION B. JOINT BUSINESS ARRANGEMENTS AND GOVERNANCE**

### **4. Principal Aims of the Joint Business Arrangements**

- 4.1 The Principal Aims of the Joint Business Arrangements are:
  - 4.1.1 to ensure the most cost-effective use of the Combined Resources to address the health and social care needs of residents in Wiltshire;
  - 4.1.2 to improve the physical and mental health and well-being of residents in Wiltshire;
  - 4.1.3 to support the independence of vulnerable and potentially vulnerable residents in Wiltshire;
  - 4.1.4 to ensure that the local communities served by the Parties are more informed and involved; and
  - 4.1.5 to establish a Joint Commissioning Board which will be responsible for overseeing and monitoring the Joint Business Arrangements.

### **5. Joint Business Arrangements Protocol**

- 5.1 The Parties agree to co-operate towards the efficient use of their respective resources and expertise in order jointly to achieve the Principal Aims, the Individual Service Aims and the Transfer Aims.
- 5.2 In order to deliver the Principal Aims, the Individual Service Aims and the Transfer Aims the Parties will make reasonable efforts:
  - 5.2.1 to foster a close working relationship between the Council and the CCG at all levels;
  - 5.2.2 for the Parties to assist each other in the discharge of their respective statutory responsibilities;
  - 5.2.3 to achieve an operational performance that achieves best value for money within agreed timescales;

- 5.2.4 to set in place business and cultural processes to enable the Parties to meet the common goals;
- 5.2.5 to recognise each other's needs, constraints, limitations, capabilities, roles and responsibilities to achieve mutually beneficial outcomes;
- 5.2.6 to develop openness and trust in a transparent information and data-sharing environment;
- 5.2.7 to recognise and resolve differences, conflicts and disputes in a "no surprises" environment;
- 5.2.8 to identify by regular monitoring, weaknesses and strengths in the relationships between the Parties and to work together to overcome the weaknesses and build on the strengths; and
- 5.2.9 to appoint within each of the Council and the CCG managers at a suitably senior level who will co-operate to support, defend and promote the long-term strategic partnership.

6. **Health Act Flexibilities**

6.1 Each Service Schedule sets out the arrangements for:

- 6.1.1 Lead Commissioning;
- 6.1.2 Integrated Provision; and
- 6.1.3 the establishment of Pooled Funds (if any):

in relation to the relevant Individual Service.

7. **Governance**

7.1 The Governance arrangements between the CCG and the Council shall be implemented through:

- 7.1.1 The Joint Commissioning Board, further details relating to which are set out in Appendix 1 (Governance Protocol); and
- 7.1.2 the Contract Management process, which will ensure the provisions within this Agreement are effectively monitored and reviewed.

7.2 No group of representatives formed to perform or monitor the performance of this Agreement shall be a committee or joint board or joint committee of any one or more of the Parties and no such group shall have any legal existence separate to or apart from either or both Parties.

8. **Services to be included in the Joint Business Arrangements**

8.1 The Joint Business Arrangements shall include such Individual Services as shall be agreed by the Parties from time to time for the benefit of residents in Wiltshire in accordance with the process which is contained within Appendix 3 (Change Request, Authorisation and Control Process).

8.2 The introduction of any Individual Service by the Parties into these Joint Business Arrangements during the Term shall be documented in a Service Schedule setting out the details of the Individual Service in question, including the matters which are set out in clause 19. Such Service Schedules shall be signed by duly authorised representatives of the Parties and shall be subject

to compliance with any applicable legal requirements including consultation and notification under section 75 of the 2006 Act.

- 8.3 Neither Party shall be under any obligation to agree to a Service Schedule unless it is satisfied that to do so will improve services for Service Users.
- 8.4 The introduction of any Services by the Parties into these Joint Business Arrangements during the Term may be subject to business case approval by the Joint Commissioning Board and approval by the Wiltshire Health and Wellbeing Board.
- 8.5 The Parties agree and confirm that the Joint Business Arrangements shall not affect:
  - 8.5.1 the liabilities of each Party either to the other Party or to any third party for the exercise of their respective Functions and obligations; or
  - 8.5.2 the liberty of the Council to charge for such elements of the Services for which Legislation requires or permits the Council to charge; or
  - 8.5.3 the principle that NHS services are free at the point of delivery and may not be charged for.

## 9. **Transfers to be included in the Joint Business Arrangements**

- 9.1 The Joint Business Arrangements shall include such Transfers as shall be agreed by the Parties from time to time to secure a more effective use of public funds.
- 9.2 The introduction of any Transfer by the Parties into these Joint Business Arrangements during the Term shall be documented in a Transfer Schedule setting out the details of the Transfer in question, including the matters which are set out in clause 22. Such Transfer Schedules shall be signed by duly authorised representatives of the Parties and shall be subject to compliance with any applicable legal requirements including the relevant directions by the Secretary of State for Health.
- 9.3 Neither Party shall be under any obligation to agree to a Transfer Schedule unless it is satisfied that to do so will secure a more effective use of public funds.
- 9.4 The introduction of any Transfers by the Parties into these Joint Business Arrangements during the Term may be subject to business case approval by the Joint Commissioning Board and approval by the Wiltshire Health and Wellbeing Board.

## 10. **Consultation**

- 10.1 The Parties shall retain their individual responsibility for consultation with Service Users and relevant stakeholders in relation to health and social care services including the Individual Services. Where appropriate, the Parties shall agree combined and/or co-ordinated consultation protocols in order to achieve effective engagement with Service Users and communities.

## **SECTION C. FUNCTIONS AND OBLIGATIONS**

### 11. **Functions**

The Council Functions and the CCG Functions are set out in each Service Schedule.



12. **The Obligations of the Parties**

For the duration of the Term, the Parties shall deliver the Services to each Service User throughout the administrative county of Wiltshire in the manner set out in this Agreement and in accordance with its terms and conditions.

13. **Rights of the Council and the CCG reserved**

Except insofar as the Parties are expressly or by necessary implication constrained by the provisions of this Agreement, nothing herein contained or implied shall prejudice or affect the Parties' rights and powers, duties and obligations in the exercise of their functions as public bodies and/or in any other capacity. All rights, powers, discretions, duties and obligations of the Parties under all Legislation and/or contained in their respective Constitutions may at all times be fully and effectually exercised as if the Parties were not parties to this Agreement and as if this Agreement had not been made.

14. **Seconded Staff**

Any Seconded Staff shall be made available to the Host Party for an Individual Service on the terms and subject to the requirements of the relevant Service Schedule, and subject to the provisions relating to management of the Seconded Staff at clause 34.3.

15. **Assets**

15.1 Each Party shall contribute or make available in respect of an Individual Service or Transfer (where applicable):

15.1.1 the assets and administrative services specified under its name in the relevant Service Schedule or Transfer Schedule; and

15.1.2 any existing contracts for assets and administrative services which exclusively relate to its Functions in relation to the Individual Service in question and which are set out in the relevant Service Schedule;

and the transfer of ownership of any assets or the novation of any contracts will be negotiated and agreed under each Service Schedule and the financial impact of such transfers will be taken into account in the overall financial schedule.

15.2 Any assets that are wholly acquired by a Party with the funding provided to that Party under a Service Schedule or Transfer Schedule:

15.2.1 shall be held by that Party on trust for the benefit of the Parties jointly;

15.2.2 shall only be used for the purpose of providing the Individual Service or Transfer Project in question; and

15.2.3 except as permitted and in accordance with the exit strategy set out in the relevant Service Schedule or Transfer Schedule, shall not be written *off*, disposed of or put to a different purpose than that for which the funding was given.

15.3 Each Party shall maintain and make available to the other Party at any time upon reasonable request a register of the assets purchased in relation to an Individual Service or Transfer with the funding provided to it.

16. **Premises**

- 16.1 Each Party shall make available in respect of an Individual Service the premises under its name in the relevant Service Schedule.
- 16.2 Any premises provided by a Party for the use of the Parties for an Individual Service shall be used in accordance with the terms of the Service Schedule and the terms of any lease, licence, covenant or easement to which the premises is otherwise subject.
- 16.3 The Parties will not transfer ownership of any of the premises referred to in any Service Schedule, but may grant a lease or licence of these at a rent/licence fee on terms to be agreed between the Parties acting reasonably. Ownership will remain with the original Party.
- 16.4 Each Party will continue to provide the same premises, support services and facilities management that it provided before the relevant commencement date of each Service Schedule. Any changes to the premises, support services and facilities management set out in each Service Schedule shall be agreed by the Parties through the Joint Commissioning Board and made in accordance with clause 44.
- 16.5 Each Service Schedule shall set out how the outgoings and expenses incurred (including any notional costs of the premises) in respect of any premises (or any part thereof) used for the purposes of an Individual Service shall be taken into account in the financial arrangements for the Individual Service in question.
- 16.6 Nothing in this Agreement shall prevent either of the Parties from selling or otherwise withdrawing one (1) or more of its premises from use for the purposes of an Individual Service but the relevant Party must use its best endeavours to give at least twelve (12) months' notice in writing of such sale or withdrawal to the other Party, who may then terminate the relevant Service Schedule in accordance with clause 39.
- 16.7 The Host Party for an Individual Service must ensure that all premises used in relation to the relevant Service Schedule are compliant in all respects with the Safety Legislation.

17. **Contract Arrangements and Monitoring of Contract Arrangements**

- 17.1 All Contract Arrangements with Contractors for the provision of any of the Services which are entered into:
- 17.1.1 by the Council shall be procured in accordance with the Council's Constitution;
  - 17.1.2 by the CCG shall be procured in accordance with the CCG's Constitution.
- 17.2 The Party which enters into Contract Arrangements shall ensure that the Contract Arrangements:
- 17.2.1 are first approved by the other Party;
  - 17.2.2 are capable of being assigned or novated to the other Party;
  - 17.2.3 can be terminated either upon termination of this Agreement or upon termination of the Service Schedule to which the Contract

Arrangements in question relate (subject to the relevant exit strategy); and

- 17.2.4 ensure that both Parties' obligations under this Agreement can be discharged.
- 17.3 Each Party shall co-operate with the other to facilitate the overseeing and monitoring of the Contract Arrangements.
- 17.4 Any breach by a Contractor of the Contract Arrangements or any irregularity relating to the Contract Arrangements which comes to the attention of a Party shall be reported to the other Party as soon as reasonably practicable after the Party in question becomes aware of the breach or irregularity. The Parties shall then agree what action must be undertaken to remedy the breach or irregularity in question to ensure compliance by the Contractor with the Contract Arrangements and the Party who is party to the Contract Arrangements shall take such action as has been agreed.
- 17.5 In monitoring Contract Arrangements, neither Party accepts liability to the other Party for any breach of the Contract Arrangements or any irregularity relating to a contract with a Contractor except in circumstances where a Party fails in performing its obligations to monitor the Services. Where a Party fails to perform its obligations to monitor the Services, the Party in question shall be liable to the other Party for the consequence of its failure.
- 17.6 Each Party shall remain liable for its own statutory functions in respect of the services that are being procured under a service contract either on its own behalf, or on behalf of the other Party, in accordance with this Agreement regardless of which Party has entered into the service contract.
- 17.7 Each Party shall retain statutory responsibility for its statutory functions notwithstanding the terms of this Agreement.

## **SECTION D. THE SERVICES**

### **The Service Schedules**

#### **18. Consultation- Individual Services**

- 18.1 Where any proposed consultation relates to an Individual Service to be included in a Service Schedule, then the Parties agree to work together to carry out consultation with relevant stakeholders in accordance with regulation 4(2) of the 2000 Regulations.

#### **19. Service Schedules**

- 19.1 Each Service Schedule may specify:
  - 19.1.1 the Individual Service Aims;
  - 19.1.2 which of the Health Act Flexibilities applies to the Individual Service in question, and identification of the Host Party;
  - 19.1.3 the Council Functions and the CCG Functions which are the subject of the Individual Service in question;
  - 19.1.4 the duration of the Individual Service and provisions for the review, variation or termination of the Individual Service;

- 19.1.5 the Service Standards and performance indicators for the Individual Service and arrangements for monitoring the Individual Service;
- 19.1.6 the Annual Financial Contribution of the CCG and the Annual Financial Contribution of the Council to any Pooled Fund or Non-Pooled Fund for each Individual Service in the first Financial Year for the Individual Service in question and how these Annual Financial Contributions may be varied;
- 19.1.7 if the Individual Service includes the establishment of a Pooled Fund, provision for the appointment of the Pool Manager and the production or reports and other information by which the Parties and the Joint Commissioning Body can monitor the effectiveness of the Pooled Fund;
- 19.1.8 the treatment of VAT in relation to the Individual Service;
- 19.1.9 the Service Users to whom the Individual Service relates and the Services which are to be provided to them;
- 19.1.10 the assets and premises (if any) to be provided by each Party in connection with the Individual Service;
- 19.1.11 the administration services (if any) to be provided by each Party in connection with the Individual Service;
- 19.1.12 the Staff to be made available by the CCG and/or the Council in relation to the Individual Service together with any special arrangements which will apply to the Staff in question and specific consideration of:
  - (a) whether or not TUPE will apply at the commencement and/or termination of the Service Schedule and which Staff will be affected in either case; and
  - (b) the financial implications arising from any pension liabilities and membership of the respective NHS and Local Government Pension Schemes;
- 19.1.13 any integrated management and support structures (if applicable) which will apply to the Individual Service;
- 19.1.14 the Contract Arrangements in relation to the Individual Service;
- 19.1.15 the name and contact details of the officer of the CCG and the officer of the Council who will act as lead officers for the Individual Service. Each Party shall use reasonable endeavours to ensure that any change to such contact details are promptly communicated to the other Party;
- 19.1.16 the exit strategy upon termination of the Individual Service as set out in clause 40;
- 19.1.17 the levels of authority under the CCG's Constitution and/or the Council's Constitution which apply to the Individual Service and

details of amendments necessary to appropriate schemes of delegation;

19.1.18 risk and benefit share arrangements that will apply for the duration of the Individual Service; and

19.1.19 Care Quality Commission registration requirements in relation to the Individual Service.

19.2 The Parties shall not enter into a Service Schedule in relation to an Individual Service unless they are satisfied that doing so will improve health and well-being in accordance with this Agreement.

## **20. The Service Standards**

20.1 The Host Party for an Individual Service shall at all times during the Term fulfil its obligations hereunder in a timely, proper, skilful and professional manner, as measured by the agreed performance indicators set out in each Service Schedule and in accordance with the relevant codes of conduct.

20.2 The Parties shall collaborate to ensure that the Joint Business Arrangements are discharged in accordance with:

20.2.1 the specific Service Standards set out in each Service Schedule;

20.2.2 the prevailing standards of clinical governance;

20.2.3 each Party's Constitution; and

20.2.4 all applicable Legislation and government guidance and the requirements specified by the Care Quality Commission and any other relevant external regulator.

20.3 The Parties shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **SECTION E. THE TRANSFERS**

### **21. The Transfers- Obligations of the Parties**

21.1 Each Party agrees to make the Transfers specified against its name in each Transfer Schedule into the receiving Party's Nominated Account in accordance with the terms of that Transfer Schedule.

21.2 The Parties shall at all times during the Term:

21.2.1 ensure that each Transfer complies with the requirements of Legislation, the relevant Transfer Schedule (as varied in accordance with the Agreement from time to time), the terms of this Agreement and best practice (insofar as this does not give rise to a conflict with the provisions of clause 13);

21.2.2 fulfil its obligations hereunder in a timely, proper, skilful and professional manner;

21.3 The receiving Party shall:

- 21.3.1 apply the Transfers and make drawings from its Nominated Account solely for the purposes of the Transfer Project;
- 21.3.2 enter into a legal charge in respect of any property acquired with the Transfer in favour of the funding Party (at the request of the Funding Party) upon the happening of any of the events mentioned in clause 41.1.2.

## 22. **Transfer Schedules**

22.1 Each Transfer Schedule may specify:

- 22.1.1 the Transfer Aims;
- 22.1.2 the Transfer Project including the Service Users to whom the Transfer relates and the services which are to be provided to them;
- 22.1.3 the Annual Transfer Amount and how the Annual Transfer Amount may be varied for each subsequent Financial Year;
- 22.1.4 the date(s) on which each Transfer is to take place in each Financial Year;
- 22.1.5 duration of the arrangements set out in the Transfer Schedule and provisions for the review, variation or termination of the Transfer Schedule;
- 22.1.6 the obligations of the Council in relation to the Transfer and any associated services;
- 22.1.7 the obligations of the CCG in relation to the Transfer and any associated services;
- 22.1.8 the administration services (if any) to be provided by each Party in connection with the Transfer;
- 22.1.9 the name and contact details of the officer of the CCG and the officer of the Council who will act as lead officers in relation to the Transfer and confirmation that each Party shall use reasonable endeavours to ensure that any change to such contact details is promptly communicated to the other Party;
- 22.1.10 any detailed exit strategy upon termination of the Transfer Schedule including any repayment provisions permitted under the relevant section of the 2006 Act;
- 22.1.11 the levels of authority under each Party's Constitution which apply to the Transfer.

22.2 2 The Parties shall not enter into a Transfer Schedule unless they are satisfied that doing so will improve health and well-being in accordance with this Agreement.

22.3 The funding Party shall not enter into the relevant Transfer Schedule unless it believes;

- 22.3.1 that it is empowered to pay the Transfer by virtue of the relevant section of the 2006 Act; and
- 22.3.2 that it has complied with all requirements imposed upon it by the 2006 Act and any relevant directions made by the Secretary of State for Health.

## **SECTION F. PAYMENT AND FINANCIAL MANAGEMENT**

### **23. Payments from one Party to the other**

- 23.1 Each Party shall comply with the provisions of Appendix 2 (Financial Arrangements) as varied from time to time in accordance with clause 44.
- 23.2 The Parties acknowledge that under section 75 of the 2006 Act:
  - 23.2.1 the CCG may make payments to the Council in relation to the exercise of the CCG Functions by the Council; and
  - 23.2.2 the Council may make payments to the CCG in relation to the exercise of the Council Functions by the CCG,and such payments will be set out in the relevant Service Schedule and will not constitute Transfers for the purposes of this Agreement.
- 23.3 Subject to clause 23.4 below, the Parties acknowledge that (in contrast with the power to make payments under section 75 of the 2006 Act) a Transfer is a contribution by the funding Party to the costs of delivering a Function of the receiving Party. A Transfer does not involve a transfer of Functions.
- 23.4 The Parties will not rely on the power to make payments under section 75 of the 2006 Act for Services requiring the purchase of a major asset or other capital expenditure. In these circumstances, Transfers will be made under either section 76 or 256 of the 2006 Act, as the case may be.

### **24. Annual Financial Contributions**

- 24.1 The Annual Financial Contribution of each Party to any Pooled Fund or any Non-Pooled Fund for each Individual Service in the first Financial Year and projections for a subsequent two years (where practicable) for the Individual Service in question shall be as set out in the relevant Service Schedule or Transfer Schedule to which it relates.
- 24.2 The Annual Financial Contribution of each Party, plus any additional sums agreed between the Parties from time to time in accordance with clause 25.1, shall be paid by each Party as set out in the relevant Service Schedule or Transfer Schedule.
- 24.3 The Parties agree that the annual Individual Service Budget or Annual Transfer Amount in respect of each Individual Service or Transfer for each subsequent Financial Year will normally be calculated and confirmed at least thirty days prior to the beginning of the Financial Year for which it applies. If in exceptional circumstances the annual Individual Service Budget or Annual Transfer Amount is not agreed by the beginning of the relevant Financial Year then each Party's Annual Financial Contribution will be equal to its Annual Financial Contribution for the previous Financial Year with a commitment to resolve this by 31 May of the relevant Financial Year and each Party's revised Annual Financial Contribution shall be reduced by any

payment it has already made for the period from 1 April of the relevant Financial Year to the date of resolution.

24.4 The Parties agree that the annual Individual Service Budget or Annual Transfer Amount will normally be calculated as the initial Individual Service Budget or Annual Transfer Amount for the previous Financial Year, plus any agreed in-year changes where it is decided these should be recurrent, plus any agreed inflationary uplift or deflationary reduction for the forthcoming Financial Year, plus any agreed planned service changes for the coming Financial Year, plus any agreed efficiency requirements.

24.5 Any money specifically allocated by HM Government for an Individual Service shall be put into the relevant Pooled Fund or Non-Pooled Fund.

## 25. **Overspends and underspends**

25.1 Nothing in this Agreement shall entitle either Party to be paid for any overspend incurred by it in connection with the provision of the Services without the prior approval of the other Party in each instance. Any approval given in accordance with this clause 25.1 must be agreed in writing in advance to be valid.

25.2 Each Individual Service Budget or Annual Transfer Amount is intended by the Parties to cover costs properly and necessarily incurred by the Parties in performing their obligations relating to the relevant Individual Service under this Agreement. If:

25.2.1 the Parties fail for any reason to apply any part of an Individual Service Budget or Annual Transfer Amount in accordance with this Agreement; or

25.2.2 any underspend of any part of an Individual Service Budget or Annual Transfer Amount exists at the end of any Financial Year during the Term; or

25.2.3 any underspend of any part of an Individual Service Budget or Annual Transfer Amount exists upon termination of the relevant Service Schedule or Transfer Schedule;

then the underspend shall be refunded to the Parties in proportion to their Annual Financial Contributions towards the individual Services.

26. Where a Party forecasts an underspend of an Individual Service Budget or Annual Transfer Amount, the forecasting Party shall as soon as reasonably practicable inform the Joint Commissioning Board and the other Party. The Parties shall agree how such underspend should be allocated and in what proportion. Subject to the requirements of Legislation, the underspend could remain within the Individual Service Budget in question; be reallocated to another Individual Service, or returned to the relevant Party.

## 27. **Invoicing & Payment**

27.1 The invoicing arrangements shall be in accordance with this clause 27, Appendix 2 (Financial Arrangements) and as defined within each Service Schedule and Transfer Schedule.

27.2 The Host Party shall issue invoices (when required) at least 30 days in advance of the required payment due date to a Contractor to ensure that



sufficient time is allowed for the funding from the other Party to be received by the Host Party prior to such due date.

- 27.3 Where the Parties agree to each pay the Contractor direct for the Individual Service neither Party shall be liable for the non-payment of the other to the Contractor or any such disputes arising from non-payment. Where such an arrangement exists this shall be stated within the Service Schedule and the funding contributions and limitations of the Parties clearly defined within any subsequent agreement with the Contractor. The Contractor will thereby invoice the Parties separately.
- 27.4 The other Party shall pay the Host Party within 28 days of receipt of an invoice (where required) to ensure the Host Party is in receipt of the appropriate funds relating to an Individual Service when making payments to the Contractor.
- 27.5 Payments made to the Host Party shall be made via SACS (Bank Automated Credit System) transfer unless indicated otherwise within the Service Schedule or Transfer Schedule to which it relates.
- 27.6 Payments to the Host Party shall be made in accordance with this clause 27, Appendix 2 (Financial Arrangements) and as defined within each Service Schedule and Transfer Schedule and (wherever possible) limited to the following timescales:
- 27.6.1 annually in advance (payable in March); or
- 27.6.2 each Quarter in advance (in March, June, September, December);  
or
- 27.6.3 monthly in either:
- (a) 12 calendar month instalments (commencing March); or
- (b) 13 instalments (commencing February).

## 28. **Accounting**

- 28.1 The Parties shall comply with the accounting and financial reporting requirements set out in clauses 28 to 33, Appendix 2 (Financial Arrangements), Appendix 7 (Quality Performance, Monitoring and Reporting) and (where applicable) within each Service Schedule and Transfer Schedule.
- 28.2 In addition, each Party shall comply with its Constitution..

## 29. **Audit**

- 29.1 The Host Party for an Individual Service or the receiving Party for a Transfer shall keep or cause to be kept the Records in relation to that Individual Service or Transfer Project.
- 29.2 The Host Party for an Individual Service or the receiving Party for a Transfer shall grant to the other Party, to any auditors of the other Party and to its respective authorised agents the right of access to the Records (including permission to copy and remove any copies and remove the originals of the Records) and shall provide all reasonable assistance at all times during the Term for the purposes of carrying out an audit (including pursuant to the Audit Commission Act 1998 or the Local Government Act 1999, for the purposes of

conducting an internal audit or an external audit, inspection or an audit of Best Value Performance Plans) of the Host Party's or the receiving Party's compliance with this Agreement including all expenditure, activities, charges, performance and security matters in connection with this Agreement or for the purpose of dealing with any matter arising in the course of the provision of the relevant Individual Service or Transfer Project.

29.3 Without prejudice to the generality of clause 29.2, the Parties shall comply with any specific audit requirements which may be recommended by the Department of Health, other Regulatory Body or each Party's external auditor from time to time.

### 30. VAT

30.1 The Parties shall agree the treatment of the Services for VAT purposes in discussion with the relevant taxation authority and in accordance with the joint guidance issued by the Department of Health and HM Customs and Excise dated 12 June 2002 (and updated 7 March 2003).

30.2 The treatment of VAT in relation to each Individual Service shall seek to maximise recovery of tax incurred and shall be set out (if applicable) within each Service Schedule and Transfer Schedule.

### 31. Charging

31.1 The Agreement shall not affect the Council's powers or duty as may exist to recover fully such charges for the provision of the Services or any other services in the exercise of any local authority functions.

31.2 The Host Party or receiving Party of a Transfer shall be entitled to recover all direct and indirect costs in regard to the provision of an Individual Service or Transfer Project, including, but not limited to, "in house" management and administration costs in accordance with Appendix 2 (Financial Arrangements). The other Party shall be charged at the appropriate Host Party/receiving Party Pay Scales plus an additional 22.15% charge to cover salary related "on costs".

31.3 The Council's charging policies as at the date of this Agreement in relation to an Individual Service will apply to that Individual Service and, subject to clause 31.4, the Council will collect any charges using its financial assessment and collection systems.

31.4 The Parties may agree arrangements for the CCG to collect charges on behalf of the Council provided always that it is made clear to Service Users that the charges are those of the Council.

### 32. Interest

32.1 Any arrangements in regards to the management of interest charges and payments shall be in accordance with Appendix 2 (Financial Arrangements) and (where applicable) clearly defined within each Service Schedule and Transfer Schedule to which it applies.

### 33. Pooled Funds

33.1 The Parties shall agree prior to the approval of any individual Service Schedule or Transfer Schedule, the basis of the funding arrangements for each Service Schedule or Transfer Schedule and decide whether a Pooled Fund Arrangement shall apply and who will be the nominated "Pool Manager"

33.2 Any Pool Manager appointed during the Term will:

- 33.2.1 be responsible for the effective deployment and management of his or her Pooled Fund;
- 33.2.2 ensure that the expenditure of his or her Pooled Fund keeps within the budget approved by the Joint Commissioning Board; and
- 33.2.3 be responsible for monitoring and reporting to members of the Joint Commissioning Board on the use of his or her Pooled Fund.

## **SECTION G. STAFF MANAGEMENT**

### **34. Management**

- 34.1 The Council and the CCG shall comply with and operate the management and governance arrangements in relation to the Staff which are applicable to each Individual Service as set out in the relevant Service Schedule.
- 34.2 The Council and the CCG shall use all reasonable endeavours to ensure that the Staff comply with the management and governance arrangements which are applicable to each Individual Service as set out in the relevant Service Schedule.
- 34.3 Where the Joint Business Arrangements for an Individual Service involve Seconded Staff, as set out in the relevant Service Schedule, the day-to-day management of the Seconded Staff will be the responsibility of the Host Party. The Parties agree to apply the provisions of each Service Schedule to the management of the Seconded Staff. The personnel procedures operating in relation to the Seconded Staff shall be those of the employing Party and matters relating to terms and conditions of employment, discipline, grievances and all other employment procedures shall be the responsibility of the employing Party. Where any issues cannot be resolved through the line management processes of the Host Party these will be referred to the employing Party's Human Resource function for resolution.

### **35. Development and Training**

- 35.1 The Parties shall aim to develop and train such of the Staff for whom they have day-to-day responsibility in accordance with each Service Schedule.

## **SECTION H. TERM AND TERMINATION**

### **36. Term**

- 36.1 This Agreement shall come into force on the Commencement Date and shall expire upon expiry or termination for whatever reason of the last existing Service Schedule or Transfer Schedule (the "Term") unless terminated earlier in accordance with the provisions of this Agreement or otherwise lawfully terminated.

### **37. Termination of the terms and conditions of this Agreement**

- 37.1 The terms and conditions of this Agreement may be terminated at any time by the Parties entering into replacement terms and conditions.

### **38. Exit Strategy upon Termination of the Agreement**

- 38.1 The provisions of this clause 38 apply without prejudice to any provisions regarding exit strategy set out in each Service Schedule and Transfer Schedule.

- 38.2 In the event that this Agreement expires or is terminated for whatever reason the Parties shall:
- 38.2.1 co-operate to ensure an orderly wind down of the performance of their respective obligations under this Agreement;
  - 38.2.2 use their best endeavours to minimise disruption to the health and social care provided to the Service Users; and
  - 38.2.3 ensure that the implications for Staff and Carers are managed as proactively as possible to minimise the impact on these groups.
- 38.3 Termination of this Agreement shall be without prejudice to:
- 38.3.1 the Parties' rights in respect of any breach ; and
  - 38.3.2 the provisions of clause 74.
39. **Termination of Individual Services**
- 39.1 All or any of the Service Schedules may be terminated:
- 39.1.1 subject to any alternative provision stated within the relevant Service Schedule, by either Party giving at least twelve (12) months' prior written notice to the other Party, such notice to expire at the end of a Financial Year;
  - 39.1.2 subject to any alternative provision stated within the relevant Service Schedule, by either Party at any time giving a maximum of six (6) months' prior written notice to the other Party or such shorter notice period as may be agreed between the Parties if:
    - (a) the Parties are unable to agree appropriate changes to the Individual Service in question so that expenditure is covered by the Parties' Annual Financial Contributions in the following Financial Year; or
    - (b) the Parties are unable to agree their respective Annual Financial Contributions; or
    - (c) the Parties are unable to agree the inflation rate;
  - 39.1.3 by either Party at any time giving a reasonable period of prior written notice to the other Party if:
    - (a) the other Party commits a material breach of any of its obligations under the relevant Service Schedule, including a breach which compromises either Party's obligations in respect of safety and the effective delivery of the relevant Service (such as abusive, exploitative or negligent treatment of Service Users) and the material breach is either:
      - (i) not capable of remedy; or

- (ii) capable of remedy but has not been remedied within a reasonable time after receipt of written notice from the terminating Party which required the breach to be remedied;
- (b) as a result of any change in Legislation or guidance it is unable to fulfil its obligations under the relevant Service Schedule; or
- (c) its fulfilment of its obligations under the relevant Service Schedule would be in contravention of any guidance from any Secretary of State issued after the date of that Service Schedule; or
- (d) its fulfilment of its obligations under the relevant Service Schedule would be ultra vires;

39.1.4 by either Party at any time giving sixty (60) Working Days' prior written notice to the other Party if the other Party has repeatedly breached its obligations under the relevant Service Schedule where:

- (a) those breaches are of a similar character or type;
- (b) the Party in breach has received a written notice from the terminating Party stating that the repeated breaches have occurred and requiring the Party in breach to procure that they will cease occurring and the cause of those breaches has not been removed within 15 Working Days of receipt of the notice; and
- (c) there is a reasonable likelihood that a breach of the same type will re-occur.

39.2 All Service Schedules may be terminated by the Council at any time if the CCG, any of the CCG's employees or anyone acting on the CCG's behalf:

39.2.1 offers, gives or agrees to give to anyone any inducement or reward in respect of this Agreement or any other Council contract;  
or

39.2.2 commits any offence:

- (a) under the Bribery Act 2010; or
- (b) under legislation creating offences concerning fraudulent acts;

39.2.3 commits any fraud in connection with this Agreement or any other Council contract whether alone or in conjunction with Council Members, contractors or employees:

and any clause in this Agreement that seeks to limit the CCG's liability shall not apply to this clause 39.2.

**40. Exit Strategy upon Termination of an Individual Service**

- 40.1 Detailed provisions regarding the exit strategy in relation to an Individual Service shall be set out in the relevant Service Schedule including:
- 40.1.1 maintaining continuity of Services;
  - 40.1.2 allocation and/or disposal of any equipment relating to the Individual Service in question;
  - 40.1.3 responsibility for continuing Contract Arrangements (subject to the agreement of either Party to continue contributing to the costs of the Contract Arrangements);
  - 40.1.4 where appropriate, the responsibility for the sharing of the liabilities incurred by the Host Party.

**41. Termination of Transfers**

- 41.1 A Transfer Schedule may be terminated :
- 41.1.1 subject to any alternative provision stated within the relevant Transfer Schedule, by either Party giving at least twelve (12) months' prior written notice to the other Party, such notice to expire at the end of a Financial Year;
  - 41.1.2 by the funding Party immediately if:
    - (a) the receiving Party fails in a material way (after fourteen (14) days' prior notice in the case of a breach capable of remedy) to perform and observe any of its obligations under the relevant Transfer Schedule;
    - (b) the receiving Party uses the relevant Transfer or any part thereof for purposes other than for the Transfer Project without the prior written consent of the funding Party; or
    - (c) the receiving Party disposes of, or parts possession with, the whole or any part of any property which was purchased with part or all of the relevant Transfer or Transfers. For the purposes of this sub-clause, a disposal by the receiving Party of its interest or part of its interest in any property shall include a disposal by way of a sale, an assignment, the creation of any lease or tenancy, a surrender, a merger or a disclaimer, the creation of a legal charge or any other encumbrance, and the holding on trust for another.
  - 41.1.3 by the receiving Party immediately if the funding Party fails without good cause to pay any of the Transfers in accordance with the relevant Transfer Schedule having been given not less than ten (10) days written notice by the receiving Party that the funding Party is in default.

- 41.2 All Transfer Schedules may be terminated by the Council at any time if the CCG, any of the CCG's employees or anyone acting on the CCG's behalf:
- 41.2.1 offers, gives or agrees to give to anyone any inducement or reward in respect of this Agreement or any other Council contract; or
- 41.2.2 commits any offence:
- (a) under the Bribery Act 2010; or
- (b) under legislation creating offences concerning fraudulent acts;
- 41.2.3 3 commits any fraud in connection with this Agreement or any other Council contract whether alone or in conjunction with Council Members, contractors or employees:

and any clause in this Agreement that seeks to limit the CCG's liability shall not apply to this clause 41.2.

#### 42. **Exit Strategy upon Termination of a Transfer**

- 42.1 Detailed provisions regarding the exit strategy in relation to a Transfer may be set out in the relevant Transfer Schedule.
- 42.2 Upon termination of a Transfer Schedule for whatever reason, the receiving Party shall (at the request of the funding Party) repay to the funding Party:
- 42.2.1 an amount equal to any proportion of the relevant Transfer or Transfers as remains unspent at the date of such termination, together with any accrued interest on such sum within twenty eight (28) days of the date of termination; and
- 42.2.2 the proportion of the open market value of any property as is attributable to the expenditure of the Transfer, such open market value to be assessed (as at the date of termination) by the District Valuer on the assumption that no legal charge or encumbrance exists and whose decision shall be final and binding on the Parties.

#### 43. **TUPE**

- 43.1 The Parties intend that in relation to an Individual Service, save as otherwise stated in the relevant Service Schedule (as amended from time to time in accordance with clause 44 and Appendix 3), the provisions of TUPE will not apply and the relevant employees shall remain employed by the CCG and the Council respectively and shall retain their existing terms and conditions of employment except insofar as may be necessary to give effect to that Service Schedule.
- 43.2 Each Service Schedule shall include the TUPE and pensions information set out at clause 19.1.12.
- 43.3 If a relevant transfer for the purposes of TUPE shall occur in relation to an Individual Service, the remaining provisions of this clause 43 shall apply.

- 43.4 Each Party shall comply with its obligations under TUPE and the Host Party for the Individual Service in question shall procure that any relevant Contractor shall comply with its obligations under TUPE.
- 43.5 The following provisions shall apply in relation to the Transferring CCG Staff:
- 43.5.1 Subject to clause 43.5.4 below, the CCG shall indemnify and keep indemnified in full the Council against all Liabilities incurred by the Council in connection with or as a result of:
- (a) any claim or demand by (i) any Transferring CCG Staff or by (ii) any trade union or staff association or employee representative in respect of all or any of the Transferring CCG Staff, in either case that arises out of the employment or the termination of employment of any such Transferring CCG Staff by the CCG prior to the date on which the relevant TUPE transfer occurs (including, for the avoidance of doubt, any claims under the Equal Pay Act 1970); and/or
  - (b) any claim or demand by (i) any Transferring CCG Staff or by (ii) any trade union or staff association or employee representative in respect of all or any of the Transferring CCG Staff, which is attributable (in whole or, subject to clause 43.5.3, in part) to any action or omission of the CCG before the date on which the relevant TUPE transfer occurs; and/ or
  - (c) any claim or demand brought by any person who is not classed as Transferring CCG Staff but was employed or engaged by the CCG prior to the date on which the relevant TUPE transfer occurs alleging that their employment has transferred to the Council pursuant to TUPE or that they are otherwise entitled to be employed or engaged by the Council in both cases as a result of anything done by the CCG pursuant to this Agreement.
- 43.5.2 Subject to any alternative provision stated within the relevant Service Schedule, the CCG shall indemnify the Council against 50% of the Council Redundancy Costs reasonably and properly incurred by the Council provided that the Council has:
- (a) complied with its legal obligations;
  - (b) used all reasonable endeavours to limit the CCG's liability under this clause 43.5.2; and
  - (c) used all reasonable endeavours to consult the CCG in advance on the relevant redundancies CCG.
- 43.5.3 Where any liability in relation to any Transferring CCG Staff in respect of their employment by the CCG or its termination which transfers in whole or in part in accordance with TUPE arises partly as a result of any act or omission of the CCG and partly as a result



of any act or omission of the Council (whether as a result of a breach of its obligations under this Agreement or otherwise) the CCG shall indemnify and keep indemnified in full the Council against any such part of the Liabilities sustained by the Council in consequence of the liability as is reasonably attributable to the act or omission of the CCG, such proportion to be determined by agreement between the Parties and in the absence of agreement in accordance with clause 45 and Appendix 4.

43.5.4 The Council shall indemnify and keep indemnified in full the CCG against all Liabilities incurred by the CCG in connection with or as a result of:

- (a) any acts or omissions and/ or failure to comply with TUPE and/ or the Council's obligations under this Agreement by the Council before, on or after the date on which the relevant TUPE transfer occurs; and
- (b) subject to clause 43.5.3, any claim by any Transferring CCG Staff that any proposed or actual substantial change by the Council to the working conditions of the Transferring CCG Staff; and / or that any proposed measures of the Council are to that Staff member's detriment including any claim for constructive dismissal pursuant to regulations 4(9) or 4(11) of TUPE whether such claim arises before, on or after the date on which the relevant TUPE transfer occurs.

43.6 The following provisions shall apply in relation to the Transferring Council Staff:

43.6.1 Subject to clause 43.6.4 below, the Council shall indemnify and keep indemnified in full the CCG against all Liabilities incurred by the CCG in connection with or as a result of:

- (a) any claim or demand by (i) any Transferring Council Staff or by (ii) any trade union or staff association or employee representative in respect of all or any of the Transferring Council Staff, in either case that arises out of the employment or the termination of employment of any such Transferring Council Staff by the Council prior to the date on which the relevant TUPE transfer occurs (including, for the avoidance of doubt, any claims under the Equal Pay Act 1970); and/or
- (b) any claim or demand by (i) any Transferring Council Staff or by (ii) any trade union or staff association or employee representative in respect of all or any of the Transferring Council Staff, which is attributable (in whole or, subject to clause 43.6.3, in part) to any action or omission of the Council before the date on which the relevant TUPE transfer occurs; and/ or
- (c) any claim or demand brought by any person who is not classed as Transferring Council Staff but was employed or

engaged by the Council prior to the date on which the relevant TUPE transfer occurs alleging that their employment has transferred to the CCG pursuant to TUPE or that they are otherwise entitled to be employed or engaged by the CCG in both cases as a result of anything done by the Council pursuant to this Agreement.

43.6.2 Subject to any alternative provision stated within the relevant Service Schedule, the Council shall indemnify the CCG against 50% of the CCG Redundancy Costs reasonably and properly incurred by the CCG provided that the CCG has:

- (a) complied with its legal obligations;
- (b) used all reasonable endeavours to limit the Council's liability under this clause 43.6.2; and
- (c) used all reasonable endeavours to consult the Council in advance on the relevant redundancies.

43.6.3 Where any liability in relation to any Transferring Council Staff in respect of their employment by the Council or its termination which transfers in whole or in part in accordance with TUPE arises partly as a result of any act or omission of the Council and partly as a result of any act or omission of the CCG (whether as a result of a breach of its obligations under this Agreement or otherwise) the Council shall indemnify and keep indemnified in full the CCG against any such part of the Liabilities sustained by the CCG in consequence of the liability as is reasonably attributable to the act or omission of the Council, such proportion to be determined by agreement between the Parties and in the absence of agreement in accordance with clause 45 and Appendix 4.

43.6.4 The CCG shall indemnify and keep indemnified in full the Council against all Liabilities incurred by the Council in connection with or as a result of:

- (a) any acts or omissions and/ or failure to comply with TUPE and/ or the CCG's obligations under this Agreement by the CCG before, on or after the date on which the relevant TUPE transfer occurs; and
- (b) subject to clause 43.6.3, any claim by any Transferring Council Staff that any proposed or actual substantial change by the CCG to the working conditions of the Transferring Council Staff; and / or that any proposed measures of the CCG are to that Staff member's detriment including any claim for constructive dismissal pursuant to regulations 4(9) or 4(11) of TUPE whether such claim arises before, on or after the date on which the relevant TUPE transfer occurs.

43.7 The Parties will observe the provisions of:

43.7.1 The Best Value Authorities Staff Transfers (Pensions) Direction 2007; and

43.7.2 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector ("COSOP") in particular in relation to the pension arrangements available to Transferring Council Staff and/or Transferring CCG Staff.

#### **SECTION I. CHANGES TO THE AGREEMENT**

##### **44. Change Request, Authorisation and Control Process**

44.1 Either Party may at any time during the Term request that changes be made to any part of the subject matter of this Agreement by making a change request in accordance with the procedures set out in Appendix 3 (Change Request, Authorisation and Control Process).

44.2 The Parties will comply with the provisions of Appendix 3 (Change Request, Authorisation and Control Process) in dealing with requests for changes.

44.3 Any variation to the Agreement may only be made in writing and must be agreed and signed by the Council and the CCG.

44.4 Where such change request relates solely to an individual Service Schedule or Transfer Schedule, then agreement shall be deemed to have been reached once a revised Service Schedule or Transfer Schedule has been signed by the Council and the CCG. The revised Service Schedule or Transfer Schedule shall replace its predecessor on an agreed predetermined date (the "Start Date").

#### **SECTION J. DISPUTE RESOLUTION PROCEDURE**

##### **45. Dispute Resolution Procedure**

Subject to clause 39, in the event of any dispute between the Parties arising out of or in connection with this Agreement, the Parties agree that the dispute resolution procedures contained in Appendix 4 (Dispute Resolution Procedure) shall apply.

##### **46. Third Party claims against the Parties**

In relation to third party claims against one or both of the Parties for public liability, employer's liability, professional indemnity and related areas and clinical negligence, the Parties agree that the procedures for handling such claims and the apportionment of liability contained in Appendix 5 (Third Party Claims and Complaints) shall apply.

#### **SECTION K. LIABILITY, INDEMNITY AND INSURANCE**

##### **47. Liability preserved**

The Agreement shall not affect the liability of either Party to any third party for the exercise of its respective functions and obligations as preserved by section 75(5) of the 2006 Act.

##### **48. Legal Liabilities and Indemnities**

48.1 In this clause 48:

48.1.1 1 any reference to a Party shall include its employees, agents and contractors, and any Seconded Staff made available to that Party who are acting in accordance with the instructions of that Party; and

- 48.1.2 references to Liabilities shall include the obligation to pay sums recommended by an Ombudsman, Regulatory Body or under any other third party complaint resolution process with appropriate jurisdiction.
- 48.2 2 Without prejudice to the primary liability of each Party for its respective functions preserved by section 75(5) of the 2006 Act the following indemnity provisions will apply.
- 48.3 The CCG 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 of the CCG Functions or the breach by the CCG of any obligation under this Agreement (except in so far as such damages claims or liabilities arise from any negligent act or omission or breach of any obligation in this Agreement by the Council) including, without prejudice to the generality of this provision, any act, neglect or default of the CCG.
- 48.4 The Council will indemnify the CCG from and against any damages, claims, or liabilities suffered and reasonable legal fees and costs incurred by the CCG arising from the exercise of the Council's Functions or the breach by the Council of any obligation arising under this Agreement (except in so far as such damages, claims or liabilities arise from any negligent act or omission or breach of any obligation in this Agreement by the CCG) including, without prejudice to the generality of this provision, any act, neglect or default of the Council.
- 48.5 In relation to the diagnosis, care and treatment of a client or patient of the CCG under the CCG Functions, the provisions of "NHS Indemnity" shall apply in relation to any acts or omissions of the CCG, its employees or agents in consequence of which the client/patient suffers harm and the CCG hereby agrees to indemnify and keep indemnified the Council against all Liabilities which it might incur in this regard.
- 48.6 Each Party shall promptly inform the other of any circumstances in its knowledge or contemplation reasonably likely to give rise to any Liability which is or may be subject to an indemnity under this Agreement, and if such a notification is made, of any material developments from time to time.
- 48.7 The Parties agree to use all reasonable endeavours to co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by either Party 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.
49. **Insurance**
- 49.1 Each Party shall at all times maintain such policies of insurance as it considers appropriate to cover any indemnity on its part in this Agreement, which in the CCG's case may include membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts or such other schemes as may be operated from time to time by the National Health Services Litigation Authority (or replacement body). Each Party shall immediately on request provide to the other Party brokers' letters or notes of cover or a copy of the documentary evidence of such membership to enable the other Party to verify that such insurance remains properly maintained.

## **SECTION I. INFORMATION HANDLING**

### **50. Data Protection and Information Sharing**

- 50.1 Each Party shall comply with the provisions of the DPA.
- 50.2 Each Party shall comply with the protocol and provisions set out in Appendix 6 (Information Sharing Protocol) or such other information protocol as may be agreed between the Parties from time to time in accordance with clause 44.
- 50.3 Subject to clauses 50.1 and 50.2, the Parties will share information about Service Users in order to improve the quality of care provided.
- 50.4 Neither Party shall disclose the other Party's information about Service Users to any third party unless such disclosure is made either:
- 50.4.1 with the prior written consent of the other Party and for the avoidance of doubt, the signature of a Party on a Service Schedule or Transfer Schedule shall constitute that Party's consent to the disclosure of such information to any relevant third party named in that Service Schedule or Transfer Schedule; or
  - 50.4.2 in compliance with a legal obligation; or
  - 50.4.3 in accordance with the "Information Sharing Strategic Agreement" that exists between the Parties as members of the "Wiltshire Public Services Board" (a copy of which is contained in Appendix 6).
- 50.5 In addition each Party shall, if requested, assist the other Party in complying with its powers and obligations whether statutory (including statutory review or inspection) or otherwise by providing such statistics and other information as the other reasonably requires from time to time in connection with the Services or this Agreement.
- 50.6 The provisions of clauses 50.1, 50.2, 50.4 and 50.5 shall survive any termination of this Agreement.
51. **Confidentiality**
- 51.1 Except as required by law and subject to the provisions of clauses 50 and 52, each Party shall keep confidential:
- 51.1.1 the terms of this Agreement; and
  - 51.1.2 any and all Confidential Information that it may acquire in relation to the other Party or the subject matter of this Agreement.
- 51.2 Neither Party shall use the other Party's Confidential Information for any purpose other than to perform its obligations under this Agreement and the Parties agree to deal with all Confidential Information on an utmost good faith basis.
- 51.3 The obligations on a party set out in clause 51.1 shall not apply to any Confidential Information which:
- 51.3.1 a Party can demonstrate is in the public domain (other than as a result of a breach of this clause 51); or
  - 51.3.2 a Party is required to disclose by Legislation or by order of a court of competent jurisdiction and then only to the extent of such required disclosure.

- 51.4 Prior to the issue of any press release or making any contact with the press on any issue attracting media attention that is relevant to the subject matter of this Agreement, the [Chair of the Governing Body] of the CCG (or someone holding an equivalent position) and the Corporate Director- Adult Social Care of the Council will consult with each other on the release or handling of the issue.
- 51.5 The provisions of this clause 51 shall survive any termination of this Agreement for a period of five (5) years from the date of termination.

**52. Freedom of Information**

- 52.1 Each Party acknowledges that it and the other Party are subject to the requirements of the FOIA and the EIR and each Party shall assist and cooperate with the other Party (at its own expense) to enable the other Party to comply with any disclosure obligations thereunder.
- 52.2 Where a Party receives a Request for Information (as defined in the FOIA) in relation to Information (as defined in section 84 of the FOIA) which it is holding on behalf of the other Party, it shall:
- 52.2.1 transfer the Request for Information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information;
  - 52.2.2 provide the other Party with a copy of all Information in its possession or power in the form that the other Party requires within five (5) Working Days (or such other period as the other Party may reasonably specify) of a request from the other Party; and
  - 52.2.3 provide all necessary assistance as reasonably requested by the other Party to enable that Party to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA.
- 52.3 Where a Party receives a Request for Information which relates to this Agreement, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event within two (2) Working Days of receiving the Request for Information.
- 52.4 If either Party determines that Information (including Confidential Information) must be disclosed under the FOIA, it shall notify the other Party of that decision at least two (2) Working Days before disclosure.
- 52.5 The provisions of this clause 52 shall survive any termination of this Agreement howsoever arising.

**SECTION M. PUBLIC SECTOR PROVISIONS**

**53. Conflict of Interest**

Each Party shall procure that it has in place policies and procedures to reasonably ensure that neither it nor any member of Staff for whom it is responsible puts itself in a position whereby duty and private interest conflict.

**54. Standards of conduct**

The CCG and the Council will comply and will reasonably procure that the Staff comply with all statutory requirements, national, local and other guidance pertaining to conduct (including professional conduct) and probity and to ensure good corporate governance (including their respective standing orders and standing financial regulations).

**55. Best Value**

The Council is subject to the Best Value Duty and the CCG will co-operate with all reasonable requests from the Council which the Council considers are necessary in order to effect or demonstrate the fulfilment of its Best Value Duty.

**SECTION N. MONITORING AND REVIEW**

**56. Record Keeping**

In addition to provisions elsewhere in the Agreement requiring the Host Party for an Individual Service to keep certain records, the Parties agree that the Host Party shall keep the records set out in Appendix 2 (Financial Arrangements).

**57. Reviews**

57.1 The Parties agree to carry out review meetings in accordance with Appendix 1 (Governance Protocol) and in addition at such other dates, times and locations as the Parties shall agree from time to time.

57.2 In the event that either Party shall have any concerns about the Joint Business Arrangements or the standards achieved in connection with carrying out any of the Services it may request a review with the other Party with a view to agreeing a course of action to resolve such concerns. Nothing in this clause 57.2 shall prejudice the operation of the dispute resolution procedure set out at clause 45 nor the Party's rights to terminate the Agreement pursuant to clause 39.

**58. Performance Monitoring**

58.1 The Parties agree to follow the provisions of Appendix 7 (Quality Performance Monitoring & Reporting).

58.2 The Joint Commissioning Board will use the information produced by each Host Party in accordance with this Agreement, and in particular with clauses 29 and 56, to monitor the effectiveness of the provision of the Services against the agreed performance measures set out in within each Service Schedule and Transfer Schedule.

58.3 Without prejudice to the specific requirements set out in each Service Schedule and Transfer Schedule, the Council and the CCG shall measure:

58.3.1 the extent to which the Principal Aims, Individual Service Aims, Service Standards and Transfer Aims are being achieved; and

58.3.2 the extent to which the exercise of the flexibilities in section 75 of the 2006 Act is the reason for improved performance or a reduction in the performance of the Service.

**59. Complaints Protocol**

In the event of a complaint from a current or past Service User (or his or her representative) or any other member of the public in relation to the Services, the Parties shall handle the complaint in accordance with the complaints and

third party claims protocol set out in Appendix 5 (Third Party Claims and Complaints).

**60. Ombudsman**

The Council and the CCG will co-operate with investigations undertaken by their respective Ombudsman and any other Regulatory Body.

**SECTION 0. STATUTORY/REGULATORY OBLIGATIONS**

**61. Notification, reporting and other requirements**

61.1 The CCG confirms that prior to the Commencement Date it has fulfilled any notification, reporting and other requirements under relevant Legislation and guidance relating to the intended exercise of the relevant powers under the 2006 Act pursuant to this Agreement.

61.2 During the Term, the CCG shall prior to the commencement of any Service Schedule or Transfer Schedule fulfil any notification, reporting and other requirements under relevant Legislation and guidance relating to the intended exercise of the relevant powers under the 2006 Act pursuant to that Service Schedule or Transfer Schedule.

61.3 Where the Council is the Host Party or the party receiving a Transfer, the Council shall co-operate with the CCG in order to assist it with fulfilment of its obligations under this clause 61.

**62. Compliance with all laws**

Each Party shall comply with and take into account all applicable Legislation in the performance of its obligations under the Agreement.

**63. Vulnerable Adults**

63.1 The Host Party shall ensure that all Staff or persons performing the Services who may reasonably be expected in the course of their employment or engagement to have access to Vulnerable Adults receive adequate training in the Vulnerable Adult Policy and Procedures and:

63.1.1 receive an enhanced Disclosure and Barring Service check;

63.1.2 are questioned concerning their Convictions;

63.1.3 are questioned concerning their POVA Register status; and

63.1.4 are questioned during the term of their employment or engagement concerning their POVA Register status and any Convictions which arise during the term of their employment,

and the Host Party undertakes to take such action as shall be necessary or appropriate as a result of matters disclosed as a result of the above.

63.2 Where the delivery of the services results in relevant contact by the Parties with vulnerable adults, the Parties shall as appropriate to its performance of the services have regard to the "No Secrets in Swindon and Wiltshire" guidelines (as amended or replaced from time to time) and the "Vulnerable Adult Policy and Procedures" (which shall be provided to the service provider upon request).

**64. Child Protection**

64.1 Where the delivery of the Services results in relevant contact by a Party (and/or its employees, agents and sub-contractors) or the Staff with children, that Party shall, as appropriate to its performance of the Services, have regard to the need to safeguard and promote the welfare of children in



accordance with section 11 of the Children Act 2004 (as amended or replaced from time to time) and any current guidelines issued by the Department of Education and Skills in relation to that section.

- 64.2 Without limitation to the generality of the foregoing, the Host Party shall:
- 64.2.1 operate recruitment and training policies and procedures having regard to the need to safeguard and promote the welfare of children; and
  - 64.2.2 operate a child protection policy that reflects and complements "Wiltshire's Multi-Agency and Single Agency Child Protection Procedures" (which can be accessed via the Wiltshire Council website [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)).

**65. No discrimination**

- 65.1 The Parties acknowledge their respective duties under equality Legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 65.2 The Host Party agrees to adopt and apply policies in its carrying out of the Functions, to ensure compliance with the equality duties referred to at clause 65.1.
- 65.3 The Host Party shall take all reasonable steps to secure the observance of clause 65.1 by all of its Staff, servants, employees or agents, and all suppliers and sub-contractors employed or engaged in the delivery of the Individual Service in question.

**66. Health and Safety**

- 66.1 Each Party confirms to the other that its own health and safety policies and procedures comply with the requirements of the Safety Legislation relating to the health and safety of the Staff, Service Users, the public and others who may be affected by the Services.
- 66.2 Each Party shall review its respective health and safety policies and procedures as often as may be necessary in the light of changing working practices, introduction of new equipment, Legislation and other circumstances and shall give to the other written details of any such revisions as soon as practicable after they are made.
- 66.3 The Council health and safety policies and procedures shall continue to apply in relation to the fulfilment of the Council Functions.
- 66.4 The CCG health and safety policies and procedures shall continue to apply in relation to the fulfilment of the CCG Functions.
- 66.5 The Host Party shall be responsible for the health and safety of any Seconded Staff made available to it by the other Party in relation to an Individual Service as set out in the relevant Service Schedule.
- 66.6 The Host Party shall ensure that the policies and procedures relating to the Individual Service in question, to the CCG Functions and/or the Council Functions have been drawn to the attention of all Staff who are unfamiliar with them.

**67. Prevention of Corruption**

- 67.1 As soon as either Party becomes aware of or suspects the commission of any Prohibited Act in respect of the supply of the Services or otherwise, it shall notify the other Party.
- 67.2 The Council shall have the right to require that the CCG suspend from any further work on this Agreement any person reasonably suspected of fraudulent action or malpractice.
68. **HealthWatch**
- 68.1 The Parties shall promote and facilitate the involvement of Service Users, Carers and members of the public in decision-making concerning the Joint Business Arrangements.
- 68.2 Any Party entering into Contract Arrangements shall ensure that those Contract Arrangements require Contractor co-operation with Local HealthWatch as appropriate and/or as specified more particularly in the relevant Service Schedule.

## **SECTION P. GENERAL CLAUSES**

### **69. Assignment and Novation**

The Parties may agree to assign, transfer, sub-contract, novate or otherwise dispose of this Agreement or any benefits and obligations under the Agreement to another party or parties for the purposes of achieving the Principal Aims, the Individual Service Aims and/or the Transfer Aims.

### **70. Force Majeure**

- 70.1 Neither Party shall be entitled to bring a claim for a breach of obligations under the Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.
- 70.2 On the occurrence of a Force Majeure Event the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.
- 70.3 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Services.
- 70.4 If no such terms are agreed on or before the date falling three months after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is substantially unable to comply with its obligations under the Agreement then either Party may terminate the Agreement by giving 30 Working Days' written notice to the other Party.
- 70.5 Notwithstanding clause 70.3 the Host Party shall use all reasonable endeavours to restore or maintain the provision of the Services.
- 70.6 During the period in which the Force Majeure Event is continuing the Parties will continue to make payment (adjusted as appropriate) for the Services in accordance with the relevant Service Schedule or Transfer Schedule to the extent that the Services can be provided to Service Users.

70.7 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under the Agreement. Following such notification the Agreement shall continue to be performed on the terms subsisting immediately prior to the occurrence of the Force Majeure Event.

71. **Entire agreement**

In the absence of fraud each Party acknowledges that this Agreement sets forth the entire agreement between the Parties with respect to the supply of the Services and supersedes and replaces all prior communications, drafts, representations, warranties, stipulations, undertakings and agreements of whatsoever nature, whether oral or written, between the Parties relating to the subject matter of this Agreement.

72. **No partnership or agency**

72.1 Nothing in this Agreement shall be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Council and the CCG.

72.2 Save as expressly provided otherwise in this Agreement, neither Party shall be, or be deemed to be, an agent of the other Party and neither Party shall hold itself out as having authority or power to bind the other Party in any way.

72.3 Without prejudice to the generality of clause 72.2 neither Party shall have the authority or power (or represent themselves as having such authority or power) to enter into contracts in the name of or to undertake any liability or obligation on behalf of or to pledge the credit of the other Party unless specifically authorised in writing.

73. **No waiver**

73.1 Failure by either Party at any time or for any period to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions of this Agreement shall not:

73.1.1 constitute or be construed as a waiver of any such provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement; nor

73.1.2 affect the validity of the Agreement or any part of this Agreement or the right of the Parties to enforce any provision in accordance with its terms.

73.2 No waiver of any of the provisions of the Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 76.

74. **Survival**

Following the termination of this Agreement, neither the Council nor the CCG shall have any further obligation or right with respect to the other Party provided that termination of this Agreement shall not affect any rights and obligations of the Parties under any provision of this Agreement that is expressed to survive termination or is required so to survive in order to give effect to such termination or the consequences of such termination.

75. **Severance**

75.1 Each provision of this Agreement is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at

any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, that provision may:

75.1.1 be amended by the Parties in accordance with clause 44 in such reasonable manner as may be calculated to achieve the intention of the Parties without any illegality; or

75.1.2 be severed from the Agreement by agreement between the Parties but the remaining provisions shall remain in full force and effect and their validity, legality and enforceability shall not be thereby affected or impaired, provided that the effect of such severance would not negate the commercial intent and purpose of the Parties under this Agreement.

75.2 If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a Regulatory Body that provision shall take effect within a time period that is acceptable to the relevant Regulatory Body subject to it not negating the commercial intent of the Parties under this Agreement.

## **76. Notices**

76.1 Any notice required by this Agreement to be given by either Party to the other shall be in writing and addressed to the [Chair of Governing Body] (for the CCG) or Corporate Director- Adult Social Care (for the Council) and shall be served personally, by fax or by sending the same by recorded "signed for" post or recorded delivery to the address set out at the head of this Agreement or such address or fax number as notified to each other in accordance with this clause 76.

76.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted and any notice sent by fax will be deemed to have been served 24 hours after it was dispatched.

## **77. Remedies Cumulative**

Except as otherwise expressly provided in this Agreement, all remedies available to the CCG or to the Council under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.

## **78. Law and jurisdiction**

This Agreement shall be governed by the laws of England and the Parties submit to the exclusive jurisdiction of the English courts.

## **79. Contracts (Rights of Third Parties) Act 1999**

The Parties agree that the Agreement shall not be enforceable by any third party pursuant to the Contracts (Rights of Third Parties) Act 1999 and any rights contained in that Act are excluded.

## **80. Business continuity and emergency planning**

80.1 Each Party shall provide mutual aid to the other Party to meet their respective duties in the event of a major incident, including the mobilisation of resources where necessary.

80.2 The Parties shall ensure that business continuity/emergency plans are in place throughout the Term in relation to the Joint Business Arrangements and the Services and shall each identify a lead officer to take responsibility for emergency planning and business continuity.

81. **No manuscript amendments**

Any manuscript amendments to this Agreement shall be inapplicable and of no effect unless initialled by both the Council and the CCG.

82. **Counterparts**

This Agreement may be executed in any number of counterparts and shall be effective in accordance with its terms as soon as each Party has executed one or more counterparts and the Agreement has been dated and when so effective shall constitute one and the same instrument.

**SECTION Q. ATTESTATION**

IN WITNESS whereof this Agreement has been duly executed as a DEED by the Parties and DELIVERED on the date which first appears in this Agreement

THE COMMON SEAL of )  
**WILTSHIRE COUNCIL** )  
was hereunto affixed )  
in the presence of: )

Authorised Officer

THE COMMON SEAL of )  
**NHS WILTSHIRE CLINICAL** )  
**COMMISSIONING GROUP** )  
was hereunto affixed )  
in the presence of:- )

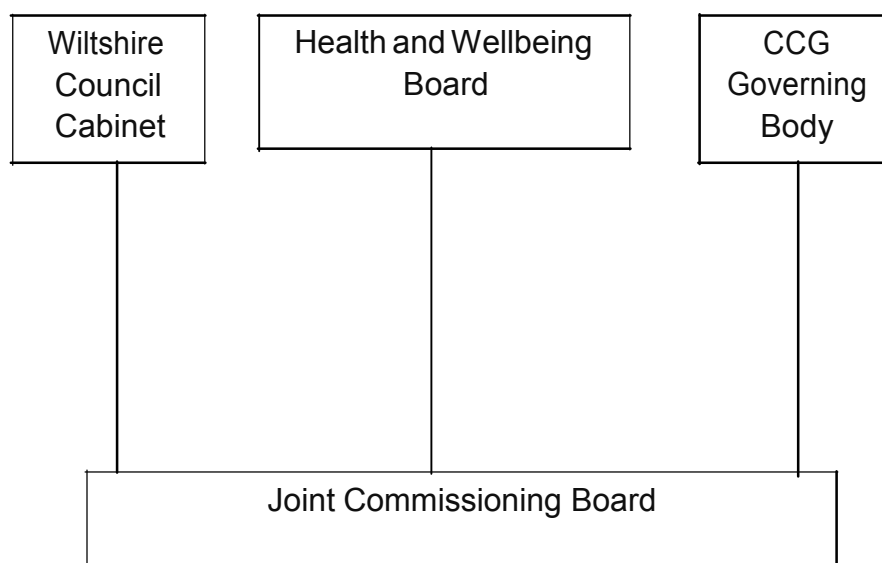
Authorised Officer

## Appendix 1 - Governance

### Introduction

Governance arrangements for the Joint Business Arrangements are likely to evolve in response to developments within the health and social care landscape and governance arrangements will therefore be reviewed within the first six months following implementation.

Governance will be based on the following reporting structure:



### Health and Wellbeing Board

The Health and Wellbeing Board has been constituted to comply with the requirements of the Health and Social Care Act 2012. The statutory functions of the Health and Wellbeing Board contained within the Act are:-

- to prepare Joint Strategic Needs Assessments (JSNAs) and Joint Health and Wellbeing Strategies (JHWSs), which is a duty of local authorities and clinical commissioning groups (CCGs).
- a duty to encourage integrated working between health and social care commissioners, including providing advice, assistance or other support to encourage arrangements under Section 75 of the National Health Service Act 2006 (i.e. lead commissioning, pooled budgets and/or integrated provision) in connection with the provision of health and social care services.
- a power to encourage close working between commissioners of health related services and the board itself.

- a power to encourage close working between commissioners of health-related services (such as housing and many other local government services) and commissioners of health and social care services

The Act also provides for Councils to delegate any other functions under section 196(2) of the Health and Social Care Act 2012. For example, this could include certain public health functions and/or functions relating to the joint commissioning of services and the operation of pooled budgets between the NHS and the council. Such delegated functions need not be confined to public health and social care. Where appropriate, they could also, for example, include housing, planning, work on deprivation and poverty, leisure and cultural services, all of which have an impact on health, wellbeing and health inequalities.

The Act lays down the statutory membership of the Board as follows:-

- at least one councillor from the relevant council
- the director of adult social services
- the director of children's services
- the director of public health
- a representative of the Local Healthwatch organisation (which will come into being on a statutory footing on 1 April 2013)
- a representative of each relevant clinical commissioning group (CCG)

The Health and Wellbeing Board will meet every 8 weeks .

### **Joint Commissioning Board**

The draft terms of reference for the JCB are below. The JCB will meet 6 times per year and will receive a quarterly report on joint business arrangements. The Wiltshire Council Health Partnerships team will be responsible for compiling and presenting the report, with relevant Commissioning Leads from the Council and Officers from NHS Wiltshire, being responsible for providing information relating to the individual schedules.

The report will identify:

- New or obsolete arrangements:
- Significant changes to the terms of the overarching agreement and/or individual schedules
- An update on delivery against the business outcomes of the overarching agreement (as per Appendix 7)
- By exception, an update on delivery against the business outcomes of the individual schedules
- By exception, an update regarding disputes between parties

## **Joint Commissioning Board Draft Terms of Reference**

### **1. Duration**

The terms of reference apply to Year 1 arrangements for the Joint Commissioning Board (JCB) and will be reviewed prior to the commencement of Year 2.

### **2. Purpose of the JCB**

- 2.1.** In year 1, the JCB will act as an advisory body to the two commissioning organisations, making jointly agreed recommendations for change.
- 2.2.** The JCB will build on a shared vision for the commissioning and development of services, taking into account:
  - Local needs and local priorities, as set by the Wiltshire Health and Wellbeing Board through the JSA and the Joint Health and Wellbeing Strategy
  - An evidence-base of what works to deliver the best outcomes for local people
  - A focus on early, creative preventive approaches, based in local communities.
  - A shared understanding of risk
  - A need for improved information, advice and signposting about services available to people, including services available from the voluntary and community sector
  - National direction and national outcomes and frameworks for the NHS and social care.
- 2.3.** The JCB will provide collective governance in relation to the commissioning of health and social care for adults in Wiltshire and to be accountable to the Health and Wellbeing Board for the delivery of joint commissioning arrangements.
- 2.4.** The JCB will oversee the management of existing joint investments and initiatives
- 2.5.** The JCB will oversee a targeted programme of activities that exploits opportunities where greater coordination, alignment and/or integration of resources can lead to improved outcomes and efficiency. This could include the recommendation for pooled funds.
- 2.6.** The JCB will ensure that joint commissioning plans are effective and are monitored against the agreed performance measures for each service



2.7. The JCB will make recommendations to the Wiltshire Council Cabinet and CCG Governing Body on priorities for service redesign, investment and disinvestment – this will include agreeing changes to premises, support services, and facilities management.

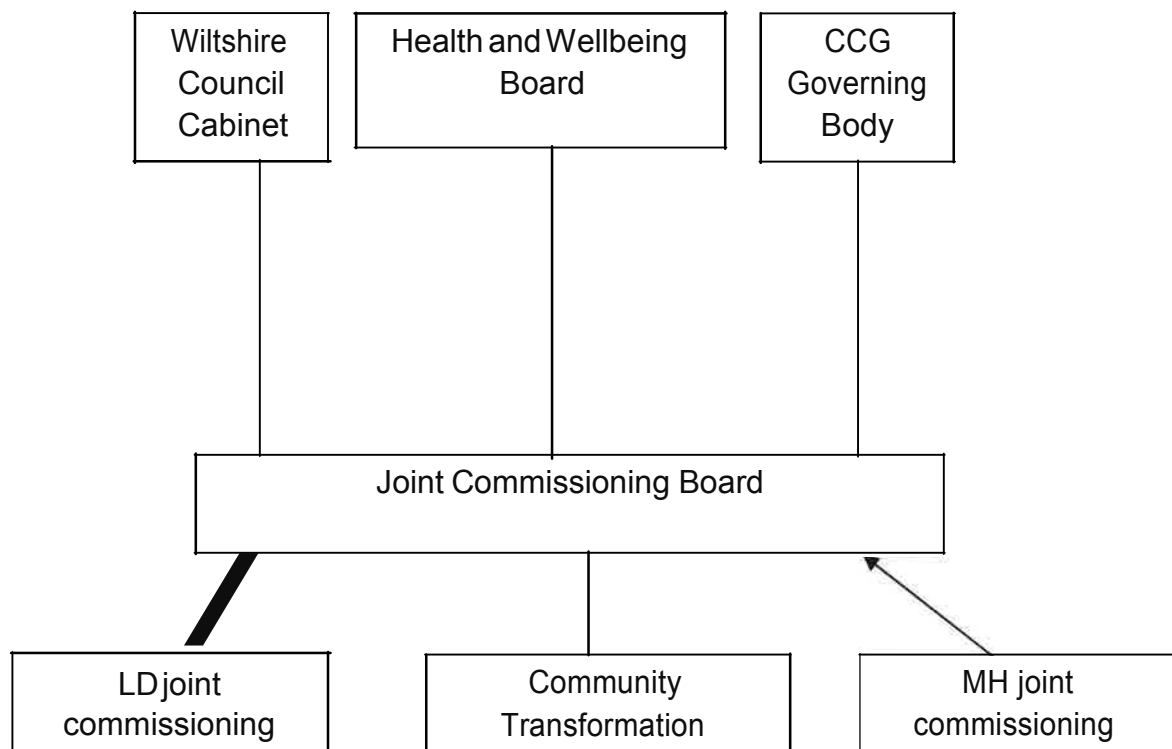
2.8. The JCB will review risks raised by constituent organisations to the delivery of the agreed Health and Wellbeing Strategy and other significant service issues

### 3. Structure and reporting

3.1 In Year 1 the JCB will work within the schemes of delegation and the accountability arrangements of the Council and the CCG. Decisions of the JCB will need to be ratified by the Wiltshire Council Cabinet and the CCG Governing Body. Individual members will be responsible for reporting progress through their organisations' appropriate internal governance arrangements.

3.3. The JCB will report on progress (as a minimum) twice each year to the Health and Wellbeing Board

3.3 Executive groups will sit beneath the JCB and run the day to day business of each of 3 priority areas for joint commissioning: learning disabilities; mental health; community transformation programme. The diagram below sets out reporting arrangements



### **3.4 Frequency of meetings**

The JCB will meet 6 times per year. Meetings will be held in private and take place in alternate months to the HWB meetings. Meetings will be on Tuesdays or Thursdays.

### **3.5 JCB Membership**

#### **Membership from CCG**

- Accountable Officer - Deborah Fielding
- Chief Finance Officer - Simon Truelove
- Director of Quality and Patient Safety- Jacqui Chidgey-Ciark
- Director of Planning, Performance and Corporate Services- David Noyes
- Group Director WWYKD - Mike Relfe
- Group Director Sarum - Mark Harris
- Group Director NEW- Ted Wilson
- GP- to be advised

#### **Membership from Wiltshire Council**

- Corporate Director- Maggie Rae
- Service Director Strategy & Commissioning - James Cawley
- Head of Finance - Janet Ditte
- Head of Commissioning, Older People - Nicola Gregson
- Head of Commissioning, Specialist Services- George O'Neill
- Head of Performance, Health & Workforce – Sue Geary
- Head of New Housing - Janet O'Brien
- Head of Business Change - Iain Kirby
- Public Health Consultant- to be advised

Other attendees in an advisory/supporting role as required

### **3.6 Executive Group**

A small executive group will be established, to meet informally every 2 months, in alternate months to JCB meetings. The executive group will determine the agenda for JCB meetings and maintain an overview of the joint work programme.

### **3.7 Year 1 Chair**

The CCG Accountable Officer will chair the JCB in Year, with Wiltshire Council Corporate Director acting in the role of vice chair. The allocation of responsibilities for Year 1 reflects the fact that the Health and Wellbeing Board is chaired by the Council and the Vice Chair is a member of the CCG Governing Body.

### **3.8 Conflicts of interest**

The Chair will ensure that conflicts of interest are formally disclosed and managed in adherence with the Nolan Principles for Standards in Public Life and in favour of the commissioning of high quality, safe and cost effective services

### **3.9 Year 1 Joint Commissioning Board Support**

In the first year, the Board will be supported by officers from Wiltshire Council.

## **4. Year 1 Priorities**

- Community Services Transformation – including the immediate priorities of improving patient flow through the system to relieve pressures on acute healthcare and reduce the number of long-term care placements.
- Community Mental Health and Dementia – review of options for joint commissioning and improved delivery
- Learning Disabilities – review of options for joint commissioning and improved delivery, including the delivery of a shared action plan resulting from Winterbourne View inquiries.

Revised draft 4.0

08 05 2013

## APPENDIX 2

### FINANCIAL ARRANGEMENTS

THIS APPENDIX 2 CONFIRMS THE FINANCIAL ARRANGEMENTS BETWEEN THE PARTIES IN ADDITION TO THOSE SPECIFIED WITHIN THE MAIN BODY OF THE AGREEMENT (ESPECIALLY SECTION F (PAYMENT AND FINANCIAL MANAGEMENT) AND THE INDIVIDUAL SERVICE SCHEDULES AND TRANSFER SCHEDULES OF THIS AGREEMENT.

1. The Host Party will provide such financial, contractual and exchequer services as are detailed within this Agreement. The amounts against each Service Schedule and Transfer Schedule will be reviewed annually by the Joint Commissioning Board and will be (where appropriate and applicable):
  - a. increased to reflect salary increases as agreed nationally or locally; and / or
  - b. increased to reflect an increase in the Service requirements; and / or
  - c. decreased to reflect a decrease in the Service requirements; and / or
  - d. increased and / or decreased in line with agreed annual uplifts / savings (inflationary or otherwise); and / or
  - e. increased and / or decreased in order to continue to meet the cost in relation to the provision of Services.

Any changes to the amounts shall be made in accordance with clause 44 and Appendix 3.

2. Funding may be increased / decreased by agreement between all relevant parties (this includes negotiations between other funders and any Contractors who provide any of the Services). Any such change request will be initiated using the process contained in Appendix 3 (Change Request, Authorisation and Control Process).
3. Neither Party shall be liable for any additional costs, other than those specified within each existing Service Schedule and Transfer Schedule, where written formal agreement has not been reached.
4. Where a Host Party is undertaking a function on behalf of the other Party, purely for the benefit of the other Party, then the Host Party shall not be liable for any costs arising from such an arrangement.
5. A replacement Service Schedule or Transfer Schedule will be issued once agreement on fees has been reached and the Service Schedule or Transfer Schedule signed by all parties.

6. The following key principles shall apply to all Service and Transfer arrangements where the Council is the Host Party:
  - a. The CCG shall commit to provide such funding towards any services provided, managed and maintained by the Council under this Agreement that ensures the Council is able to achieve "full cost recovery".
  - b. Payments made by the CCG to the Council shall be made in line with Council policy. This will be subject to:
    - ((i) the provisions in the main Agreement, this Appendix or a Schedule,
    - ((ii) the Council making such policy known to the CCG, and
    - ((iii) such policy being reasonable
7. The following key principles shall apply to all Service and Transfer arrangements where the CCG is the Host Party:
  - a. The Council shall commit to provide such funding towards any services provided, managed and maintained by the CCG under this Agreement that ensures the CCG is able to achieve "full cost recovery".
  - b. Payments made by the Council to the CCG shall be made in line with CCG policy. This will be subject to:
    - ((i) the provisions in the main Agreement, this Appendix or a Schedule,
    - ((ii) the CCG making such policy known to the Council, and
    - ((iii) such policy being reasonable
8. The Host Party shall (where applicable) maintain separate holding accounts within their accounting system, where funds (i.e. "Individual Service Budgets") which have been transferred by the other Party will be received. These separate holding accounts will enable the Individual Service Budgets to be separately identified, managed and audited against a particular Service Schedule or Transfer Schedule. This is to ensure that:
  - a. Each Service or Transfer can be separately accounted for;
  - b. The Individual Service Budget can only be used to fund the Service for which it has been agreed between the Parties that it will be used for; and
  - c. Transfers can only be made between holding accounts with the written formal approval of the other Party given in accordance with clause 44 and Appendix 3.
9. Where the Host Party acts as an "Agent" of the other party, the Host Party shall maintain these separate holding accounts where the other party's money will be held and spent in accordance with the Agreement, Joint Commissioning Board's requirements and in accordance with the requirements within each Service Schedule or Transfer Schedule to which this type of arrangement applies.

10. For Services where the Host Party is not managing funds on behalf of the other Party against a particular Service (i.e. where payment is being made direct to the Contractor), both Parties will be invoiced separately by the Contractor, in accordance the requirements of the relevant Service Schedule and any agreement in place with the Contractor to which this Service Schedule relates.
11. Where the Council is providing its own "in house" resource the CCG shall be charged at the appropriate Wiltshire Grade Pay Scales plus an additional 22.15% charge to cover salary related "on costs" ..
12. Key Staff salary scales for the Council will be charged at the following rates:

<b>Position</b>	<b>Pay Grade</b>	<b>Role</b>	<b>Salary</b>	<b>Hourly Rate</b>
Commissioning & Contracts Manager	N	Lead Commissioning	£39,351.00	£20.40 ph
Contracts Officer	J	Tendering, Contract Management & Monitoring	£28,922.00 +7.5% (Market plussage)	£14.99 ph + 7.5% (Market plussage)
Administration	O	General Administration & co-ordination	£16,998.00	£8.81 ph
Finance-Principal Accountant	M	Financial Lead & Analysis	£36,676.00 +10% (Market Plussage)	£19.01 ph +10% (Market Plussage)
Finance-Management Accountant	J	Financial Management & Reporting	£28,922.00	£14.99 ph
Finance-Accounting Technician	H	Financial Monitoring & Recording	£23,945.00	£12.41 ph
Finance-Business Services payments officer	E	payments & invoice processing	£17,980	£9.32 ph
Finance-Business Services AP Deputy Team	G	Manages payments & invoice processing	£21,734.00	£11.27ph

Leader				
Finance-Business Services AP Team Leader	J	Manages payments & invoice processing	£28,922.00	£14.99 ph

**Note: 22.15% has not been applied to the above figures**

13. Where the Council is making payments on behalf of the CCG, there will be an additional "Financial Transaction" charge. This will be a fixed fee, based on an estimate of the number of transactions to be processed, subject to review if there is more than 5% variation of demand or costs. The charge will be confirmed in each individual Service Schedule or Transfer Schedule to which it applies and will be agreed by the Parties prior to the individual Schedule being signed.
14. Where the CCG is providing its own "in house" resource the Council shall be charged at the appropriate CCG Pay Scales plus an additional 22.15% charge to cover salary related "on costs" ..
15. If the CCG take on the role of host in respect of an individual schedule key staff salary scales for the CCG will be inserted at the time.
16. If the CCG take on the role of host in respect of an individual schedule, where the CCG is making payments on behalf of the Council, there will be an additional "Payment Processing" charge and this will be inserted at the time.
17. Any financial arrangements in regards to the renting, leasing or purchase of property from the 6th Party by the other Party shall be dealt with outside of this Agreement.
18. **Charging & Payment of Interest**
  - a. Interest shall only apply to those Transfer holding accounts where the Host Party is acting as the "Agent" on behalf of the other Party and shall be credited and / or debited to the other Party's account at their sole discretion.
  - b. The Host Party shall provide the other Party with monthly cash flow statements that detail any incoming and outgoing amounts for each holding account and the current balance. The Host Party will also provide a monthly budget statement that details the individual Service Budget and the current projected amount that will be under or over spent for that financial year. Where interest is applied to a holding account, the average monthly balance will also be identified, along with the interest to be credited or debited against it.
  - c. Where there is a positive average monthly balance against a holding account where interest is applied, the Host Party shall credit the other Party interest at the rate advised by their Exchequer.

- d. Where there is a negative average monthly balance against a holding account where interest is applied, the Host Party shall debit the other Party interest at the rate advised by their Exchequer.
- e. The Host Party will (where applicable) retain any interest gained to offset the costs of administering the holding account if such costs have not been covered by other means. This will apply only to those costs that have been properly and reasonably incurred by the Host Party, and only where the Host has informed the other party in advance of the proposed set off.
- f. For Pooled Funding arrangement, interest credits and debits (where applicable) shall be split on a percentage pro rata basis and shall be directly proportional to the percentage average monthly spend of each Party contributing funds towards the Pooled Fund holding account.

#### 19. **Matched Accounting**

- a. The Parties shall ensure that, wherever possible, all accounting transactions can be matched each to the other so that the receipt of a payment by the Host Party from the other Party, into a holding account, exactly corresponds to the appropriate debited amount from the other Party's account and vice versa.
- b. The Parties shall ensure that all transactions are clearly identified in terms of the financial year and period to which they apply to enable clear auditing of the full year's accounts. This also applies to the financial management of overspends and underspends issued at the end of a financial year.
- c. It is the responsibility of each Party to maintain such records independently of the other, to ensure transactions between them can be fully accounted for and that they meet their audit requirements.
- d. It is the responsibility of the Parties to agree any specific financial reporting and monitoring arrangements (if applicable) in respect of each Service or Transfer within the relevant Service Schedule or Transfer Schedule.
- e. Where the Host Party is managing Pooled Fund or Non-Pooled Fund Budgets (where the annual cost of Services funded from such Budgets are dependent on a variable volume / throughput and cannot be based on a fixed amount), the Host Party will identify any underspend or overspend to the other Party prior to the end of each Financial Year.
- f. Underspend will be dealt with in accordance with **Clause 25** and **Clause 26** of the main Agreement. Underspends could remain within the Individual Service Budget in question; be reallocated to another Individual Service, or returned to the relevant party. The use of underspends will be proportionate to the value of the



underspend and decisions on the use of underspends will be made as follows:

- Up to £25,000 to be decided by Head of Service/Associate Director
- Up to £100,000 to be decided by Director of Finance/Director of Commissioning
- Over £100,000 to be decided by JCB.

**20. Funding & Payments**

- a. Payments to the Host Party shall be made in accordance with paragraphs 6 and 7 of this Appendix.
  - b. Each Service Schedule and Transfer Schedule will be independent of the other in regards to the level of funding approved and the payment method adopted.
  - c. The funding requirement shall be specified within each Service Schedule and Transfer Schedule of this Agreement and shall be determined prior to the formal acceptance of the Service Schedule or Transfer Schedule to which it applies.
21. Both Parties will be responsible for checking its data and rectifying any anomalies via the Joint Commissioning Board.
22. In relation to any financial disputes the process in Appendix 4 (Dispute Resolution Procedure) shall apply.
23. If either Party over pays the other for whatever reason, the Parties may jointly agree to deal with the overpayment in one of the following ways:
- a. deduct the amount of the over payment from the next payment due; or
  - b. pay back the amount of the overpayment within an agreed timescale; or
  - c. agree, within a reasonable timescale, an alternative process for dealing with the overpayment,

and this paragraph shall survive termination or suspension of the Agreement.

24. Both Parties shall keep and maintain proper accounts and records in relation to the provision of the Services and Transfers in accordance with good accounting practice and permit the other Party access to them to inspect and take extracts from them if required.
25. The Host Party shall submit, to the other Party, in addition to monthly cash flow statements, an annual report identifying the annual spend of the other Party against (where applicable) each Service Schedule and Transfer Schedule. (This is in addition to monthly budget forecasting and monthly cash flow statements). This annual report shall only be issued after consultation between the Parties relevant Lead Representatives, confirming the final accounting position for a particular financial year.

This is to ensure that the Host Party's accounting records are accurately reflected within the other Party's accounts and thereby fully auditable.

This annual report shall provide a full statement of income and expenditure for the financial year against each budget / holding account, together with a final cash flow statement showing how much has been received from the other Party; how much has been spent and the balance owed to the other Party (where there is an underspend against transferred funds), or to the Host Party (where there is an overspend against transferred funds).

26. Invoices must be clearly addressed to the correct Lead Representative and must identify the relevant Service Schedule or Transfer Schedule reference to which it applies. Any invoices received that do not specify the correct Service Schedule or Transfer Schedule unique reference will not be processed until such information has been confirmed.
  
27. The Host Party will provide monthly reports on spend with a clear forecast outturn.

### **APPENDIX 3**

#### **CHANGE REQUEST, AUTHORISATION AND CONTROL PROCESS**

##### **(PROCESS PRECEEDING THE ISSUE OF FORMAL VARIATIONS TO THE AGREEMENT)**

1. Where the Parties see a need to change any clauses, Appendices or Schedules of this Agreement, either Party may at any time request and the other Party may at any time recommend such change only in accordance with the Change Request, Authorisation and Control Process set out in this Appendix 3.
2. Nothing in this Agreement shall entitle either Party to require changes to any of the clauses, Appendices or Schedules to this Agreement and any changes shall be formally agreed in writing by the other Party before being implemented.
3. For the avoidance of doubt either Party shall be entitled to reject any recommendation to change the clauses, Appendices or Schedules of this Agreement made by the other Party.
4. Following the discussion at paragraph 1, the Party requesting the change will submit a CCN to the other Party for consideration.
7. Each CCN shall contain:
  - 7.1 the clause, Appendix or Schedule number to which it refers (if applicable);
  - 7.2 the title of the change;
  - 7.3 the originator and date of the request or recommendation for the change;
  - 7.4 the reason for the change;
  - 7.5 full details of the change including any specifications;
  - 7.6 the value, if any, of the change;
  - 7.7 a timetable for implementation, together with any proposals for acceptance of the change;
  - 7.8 a schedule of payments if appropriate;
  - 7.9 details of the likely impact, if any, of the change on other aspects of this Agreement, and the existing Services or Transfers provisions covered under this Agreement at the time of making such a request for change;
  - 7.10 the date of expiry of validity of the CCN;
  - 7.11 estimate of reasonable cost (if relevant) in respect of preparation of the CCN; and

- 7.11 provision for signature by the Authorised Signatories of both Parties.
8. For each CCN submitted by one Party to the other, the other Party shall, within the period of the validity of the CCN:
- 8.1 allocate a sequential number to the CCN;
  - 8.2 evaluate the CCN; and, as appropriate:
    - 8.2.1 request further information; or
    - 8.2.2 approve the CCN; or
    - 8.2.3 notify the other Party of the rejection of the CCN.
9. In the event that the CCN is approved by both Parties, the Parties shall arrange for two copies of the approved CCN to be signed by or on behalf of both Parties (one for each Party to retain in acknowledgement of the acceptance of change).
10. A CCN signed by both Parties shall constitute an amendment to the relevant clauses, Appendices or Schedules of this Agreement.
11. Where any of the agreed amendments relate to an individual Service Schedule or Transfer Schedule, then a replacement Service Schedule or Transfer Schedule shall be issued.
12. The effect on this Agreement of any amendments to agreements made between the Host Party and a third party which relates to the provisions of Services under a Service Schedule, will be contractually binding as long as both Parties to this Agreement have formally, in writing, approved such amendment, even if the individual Schedules have not been updated to reflect the amendment. However, the Host Party shall use reasonable endeavours to ensure that Schedules are updated to always reflect the current situation in regards to any Joint Business Arrangement.
13. If the Parties are unable to agree a CCN then this will be referred to the Dispute Resolution Procedure (Appendix 4)

**APPENDIX4**  
**DISPUTE RESOLUTION PROCEDURE**

- A. Subject to paragraph D of this Appendix, any dispute (including breach of contract or any instance of non-agreement) arising between the Parties under or in connection with the Agreement shall be dealt with in accordance with the provisions of this procedure and neither Party shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute until the procedures set out in this Appendix have been exhausted.
- B. If a Party considers that a dispute has arisen between it and the other Party it shall forthwith serve notice on the other Party in accordance with clause 75 (Notices) of the main Agreement giving sufficient detail for the other Party to be able to identify the nature of the dispute.
- C. Within 5 working days of the receipt by the other Party of a notification made under paragraph B above the Head of Performance, Health & Workforce (Council) and [INSERT] (CCG) meet in person (or otherwise as they both shall agree) in order to attempt in good faith to negotiate a settlement to the dispute.
- D. If the dispute cannot be resolved pursuant to paragraph C of this Appendix then either Party shall be entitled to require the dispute to be escalated to the following persons in each organisation: Service Director Strategy, Commissioning & Housing (Council) and [INSERT] (CCG) for resolution.
- E. If the dispute has not been resolved within 10 working days of an escalation by either Party in accordance with paragraph D above then it may be referred to Members of the Council's Cabinet and of the Governing Body of the CCG for mediation by either Party pursuant to the procedure set out in paragraph H below.
- F. The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to the dispute resolution procedure and both Parties shall, insofar as they are able given the nature of the dispute or breach, comply fully with the requirements of the Agreement at all times.
- G. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- H. The procedure for mediation and consequential provisions relating to mediation are as follows:
- i) a neutral adviser or mediator ("**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 5 working days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 5 Working Days from the date of the proposal to appoint a Mediator or within 5 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator.

- ii) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- iii) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- iv) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- v) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- vi) If the Parties fail to reach agreement in the structured negotiations within 25 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

## **APPENDIX 5**

### **THIRD PARTY CLAIMS AND COMPLAINTS**

Complaints by members of the public will be dealt with in accordance with the relevant complaints procedure relating to the Service of the subject matter of the complaint.

Any complaints received by the CCG shall be initially dealt with in accordance with their relevant complaints procedure.

Any complaints received by the Council shall be initially dealt with in accordance with their relevant complaints procedure.

Any complaints received by a third party or Contractor who is contracted by the Host Party to provide a Service that relates to a Joint Business Arrangement between the Parties and that is referenced within a Schedule to this Agreement, shall be initially dealt with in accordance with the relevant complaints procedure relating to such agreement.

The Council and the CCG agree to assist one another in the management of complaints arising out of the Services provided by under this Agreement and to provide any necessary information and support to enable complaints to be dealt with efficiently and effectively.

The Council and the CCG agree that if they receive a complaint in relation to their own Services, that involve the conduct of an employee or Contractor's representative of the other, they will :

- notify the other as soon as reasonably practicable after it becomes apparent that the employee or Contractor's representative is involved;
- provide the opportunity to the employer to be involved in the handling of the complaint; and
- assist in the provision of any necessary information and support to enable the employer to conduct any disciplinary or other procedure relating to the employee resulting from the complaint.

For the avoidance of doubt, only the employer may instigate disciplinary proceedings or take any disciplinary action relating to its own employee.

If a complaint is received in regard to a Service that is being provided by a Contractor, then the Host Party will be responsible for ensuring the correct process for managing such a complaint (i.e. in accordance with the terms and conditions of the Agreement with the Contractor) is followed.

# Strategic agreement to share information

April 2011





# Strategic agreement to share information

## Wiltshire Public Services Board

### 1. Purpose of the agreement

A number of very good, robust data sharing protocols and agreements designed to meet the requirements of specific assessments or projects already exist. In order to avoid a proliferation of such protocols and agreements and allow existing agreements to be re-visited, or replaced if it is felt to be appropriate, it is proposed that one new agreement be adopted to be signed at the highest level. The purpose of this agreement is to facilitate the exchange of information between the agencies represented by the Wiltshire Public Services Board (WPSB), which will enable members of the board to work together for the benefit of the public of Wiltshire. Specifically this agreement is designed to:

- maximise access to shared information with minimal hindrance or restriction
- strengthen service delivery and improve collaborative working
- enhance community and individual wellbeing, whilst reducing demand and dependency on public services
- enable users to access high quality information and understand its use
- maintain awareness and assess risk to ensure agencies achieve the agreements aims whilst complying with the law, in general, and the Data Protection Act 1998 (as amended) in particular.

### 2. Role of the Wiltshire Knowledge Management Group

A county-wide knowledge management group exists, made up of knowledge experts from the various agencies. It is represented by the WPSB and was formed in order to expand our knowledge about Wiltshire and improve our understanding about the needs of its population. Intelligence emanating from the group, in all forms, whether presentations, reports or data, will be freely available. In most cases there will be no restriction or charge to access it. Exceptions to this will be when:

- the intelligence identifies or, through the availability of other data publicly available, is at risk of identifying individual people
- the intelligence divulges, or is at risk of divulging commercially sensitive information, or information satisfying non-disclosure provisions of the Freedom of Information Act
- intelligence divulges, or is at risk of divulging data which is classified under the government protective marking scheme (or those other schemes operated by partner agencies) as not deemed suitable for public access.

### 3. Information to be shared

Personal and non-personal information held by agencies will be shared in accordance with HM Government 'Information Sharing: Guidance for Practitioners and Managers' available at the Department for Education website publications section:

ISBN: 978-1-84775-273-4

# Strategic agreement to share information

The main legal powers are contained within HM Government 'Information Sharing: Further guidance on Legal Issues' available at the Department for Education website publications section

ISBN: 978-1-84775-276-5

In all situations where information is to be publicly available i.e. in the form of published reports, maps or references, it will be in the form of **aggregated de-personalised data** such as that often already available in the public domain. Personal information should never be made available to the public.

Where intelligence involves access to or production of personal data then an approved Second Tier agreement will be required in order to share the data. Such agreement will be specific to the instance of data sharing and the organisation sharing the data and will usually be time or project limited. An example of an approved Second Tier agreement is attached (Appendix 1)

## 4. Responsibility of the Wiltshire Public Services Board:

Partners shall attempt to indemnify all other partners and keep them fully and effectively indemnified against all direct losses, claims, damages, liabilities (whether criminal or civil), costs, charges, expenses (including legal fees and costs), demands, proceedings and actions which all or any of the partners may incur or which may be established against them by any person and which in any case arises out of:

- any breach by the indemnifying partner, its servants or agents, or any of the provisions of this agreement

- any processing by the indemnifying partner, its servants or agents, of personal data received, for the purposes other than the originating purpose

- any breach by the indemnifying partner, its servants or agents, of any law in respect of its processing of personal data received by reason of a disclosure made by another partner.

It shall also be the responsibility of members of the WPSB to ensure that:

- each organisation's own ethical, legislative requirements and standards are maintained

- a mechanism exists by which the sharing of information is agreed, controlled and audited

- appropriate multi-agency training and awareness is provided

- adequate arrangements exist to test adherence to the agreement.

## 5. Nominated sponsor of the agreement

The nominated sponsor of this agreement is Maggie Rae, joint director of public health of Wiltshire Council and NHS Wiltshire who shall, on behalf of the WPSB:

- ensure that a review is carried out in the first six months of the document being signed and then subsequently reviewed on an annual basis, when changes in legislation occur or when a partner requests it.

## 6. Retention of data

One area that often gets overlooked is the retention of data by data users long after the need to retain that data has passed.

# Strategic agreement to share information

Retention should be for the minimum period required to achieve the objectives for which the information was obtained, after which it should be returned to the originator or destroyed.

## 7. Security of data

- );> Each partner must ensure they have appropriate security arrangements in place and take all reasonable steps to protect the data adequately from both a technological and physical point of view in accordance with British and International Standards. This must include security of computer data, manual files and all forms of transfers of data between partners.

## 8. Requesting/disclosing personal data

It is essential that adequate control of the flow of data be maintained. The Data Protection Act 1998 permits the exchange of data, provided the data has been fairly obtained and processed (the individual has been clearly informed how their data will be used and disclosed) and it is appropriately registered under the Act.

Disclosures can also take place under the Act's non-disclosure exception provisions. Reliance on these must be assessed on a case-by-case basis.

The provisions are as follows:

- );> For the prevention or detection of crime, the apprehension or prosecution of offenders, and taxation purposes request for information must be on a case-by-case basis, when failure to provide the information would be likely to prejudice these purposes. All requests and responses must be appropriately authorised and documented. (Section 29 Data Protection Act 1998).
- );> Where information is made available to the public by or under enactment. (Section 34 Data Protection Act 1998).
- );> Where the disclosure is required by law or by the order of a court. (Section 35 Data Protection Act 1998).
- );> Where a disclosure is made in connection with legal proceedings, for the purpose of obtaining legal advice and establishing, exercising or defending legal rights. (Section 35 Data Protection Act 1998).
- );> For the purpose of safeguarding national security. (Section 28 Data Protection Act 1998).
- );> By order of the Secretary of State. (Section 38 Data Protection Act 1998).

## 9. Complaints

Any complaints about data sharing relating directly to this agreement will be brought to the attention of the nominated officer of this agreement as outlined in section 5 above who will report directly to the Wiltshire Public Services Board on the nature and resolution of that complaint.

## 10. Training

Each partner is responsible for ensuring that appropriate members of staff are adequately trained in respect of all matters covered in this protocol.

# Strategic agreement to share information

## 11. Confidentiality

The information shared should not be disclosed to any third party without the written consent of the agency that provides the information.

## 12. Signatories/organisations/co-sponsors

The nominated sponsor of this agreement, Maggie Rae, joint director of public health of Wiltshire Council and NHS Wiltshire, will sign on behalf of the Public Services Board along with the requisite Caldicott Guardian, or data protection officer, or other nominated person from each organisational member of the Public Services Board.

- Wiltshire Council
- Wiltshire Police Authority
- Wiltshire Constabulary
- NHS Wiltshire
- Wiltshire Probation
- Wiltshire & Swindon Fire & Rescue
- Wiltshire College
- Learning & Skills Council
- Ministry of Defence

# Strategic agreement to share information

## Appendix 1

### Wiltshire Public Services Board Tier 2 data sharing agreement form

#### A. Project specific data transfer information

1. General description of data	
2. Summary of personal information included	
3. Project name	
4. Reason for data transfer	
5. Frequency of transfer	

#### B. Data transfer protocol

Data type	Data can be person / patient / client. Data must be de-personalised, but can include geographical identifiers (address, postcode, LSOA, etc).
Date transfer method	Data can be transferred electronically by one of the following methods: <ul style="list-style-type: none"> <li>• Encrypted data stick</li> <li>• Encrypted laptop</li> <li>• Secure email</li> </ul> All files must be password protected and passwords supplied separately. All data must be deleted from transfer medium as soon as transfer is complete.
Data storage	Data must be stored either on encrypted data sticks or secure computer systems with access restricted to named analysts.
Data retention	All data must be deleted at the earliest opportunity . This will be once the data has been analysed and aggregated data produced.

## Strategic agreement to share information

<b>Data quality</b>	Data quality is the responsibility of the organisation supplying the data for sharing.
<b>Data transfer standards</b>	<p>Every member of staff has an obligation to request proof of identity before confidential personal information is passed on.</p> <p>Every member of staff is personally responsible for taking precautions to ensure the security of confidential personal information both whilst it is in their possession and when it is being transferred from one person or organisation to another.</p>

### C. Data transfer sign-off

<b>Details of current data holder</b>	
Name	
Signature	
Job title	
Organisation	
<b>Caldicott or data guardian</b>	
Name	
Signature	
<b>Details of intended data recipient</b>	
Name	
Signature	
Job title	
Organisation	

Signatories to this document certify that the personal data being received will not be disclosed to unauthorised persons. The Data and their Purposes of Use are Notified under the Data Protection Act 1998 and my organisation/company is committed to compliance with the Data Protection Principles.

# Strategic agreement to share information

## Guidance

This form is designed to compliment the data sharing agreement signed by members of the Wiltshire Public Services Board. Where intelligence involves access to or production of personal data (i.e. as defined below) then this form is required in order to share the data. Such agreement will be specific to the instance of data sharing and will usually be time or project limited.

**'Personal data'** is information that relates to a living individual, that can be identified from those data or from those data and other information which is in the possession, or is likely to come into the possession, of the data controller. It includes any expression of opinion or intention in respect of the individual.

## A. Project specific data transfer information

1. General description of data: A brief description of the topic area; data origin and extent of the data (e.g. time period; geographical detail, etc.)
2. Summary of personal information included: What is the personal identifier in the data? What other information may result in the identification of an individual?
3. Project name
4. Reason for data transfer: See appendix
5. Frequency of transfer: One-off or regular. Should be time limited even if a regular transfer to enable review of transfer agreement.

## B. Data transfer protocol

This section outlines the protocols that each person and organisation that sign this form are required to adhere to.

## C. Data transfer sign-off

Signatories should be the person responsible for the data transfer who will actually be handling the data. If necessary, multiple signatories are acceptable and may include senior managers or Caldicott guardians although these are not required.

## Reasons for data transfer

Personal information should be shared only for specific purposes and used only for the purposes named in this document. A list of common reasons for sharing personal data are given below, but this list is not exhaustive and further details should be added for clarity (e.g. type of audit). The more detailed reasons given the easier it is to decide whether the data can be shared.

Audit	Assurance of care
Service planning	Investigate complaints
Delivering care	Needs assessment
Health impact assessment	Community safety
Crime prevention/detection	Production of National Indicators (Nis)
Child protection	Quality assurance
Information validation	Support for clinical governance
Health monitoring	Communicable disease control
Better understanding of population's needs	Legal requirement

# Strategic agreement to share information

Please sign this agreement to share data and complete the details in the spaces below:

**Signature**

**Organisation**

Wiltshire Council

Cabinet Member for Communities,  
Wiltshire Council

Wiltshire Police Authority

Wiltshire Police

NHS Wiltshire

Wiltshire Probation

Wiltshire & Swindon Fire & Rescue

Wiltshire College

Ministry of Defence

Job Centre Plus

South West Regional Development  
Agency

Natural England

Environment Agency

Government Office of the South West

Homes and Communities Agency



## APPENDIX 7

### QUALITY PERFORMANCE MONITORING AND REPORTING

#### **\*\*DETAIL TO BE DEVELOPED IN CONSULTATION WITH THE CCG DURING THE FIRST SIX MONTHS OF THE AGREEMENT TERM \*\***

(Note: The document information here is for information only)

#### INTRODUCTION

The Service and Transfer Schedules which form part of this Agreement will contain reference to quality, performance, monitoring and reporting requirements which are specific to the individual Schedules.

This Appendix identifies requirements relating to the main Agreement itself.

The following are the minimum requirements to be met during the term of this Agreement, in addition to any specific requirements contained within each Service Schedule or Transfer Schedule.

#### 1. PERFORMANCE MONITORING:

The Host Party will provide the other Party with the following information (where applicable) on a quarterly basis (*it is recognised and acknowledged that the other Party may be required to assist with the collection and collation of the required data*):-

- 1.1 Number and value of overdue unpaid invoices
- 1.2 Agreements where the Host Party is not achieving full cost recovery.

#### 2. OUTCOMES TO BE ACHIEVED AND REPORTED

- 2.1 The Host Party will contract upon terms which enable it to achieve full cost recovery including in relation to the management, administration and provision of services which it provides to the other Party.
- 2.2 Both Parties will facilitate the prompt payment of monies due to the other Party.

#### 3. In addition the following shall be collected and reported quarterly:-

- 3.1 The Host Party will produce information and or data relating to the Services, as required, to satisfy the regulatory requirements of not only itself but also that of the other Party, that is sufficient to establish compliance to all key performance indicators in relation to adult health and social care and to comply with Best Value requirements.
- 3.2 The Host Party (where applicable) will also produce all data reasonably required to monitor performance in delivering the Services. This will

include data to monitor past performance and forecasts / estimates of current and future performance. It will also include data to inform trajectories for future performance.

- 3.3 Either Party may challenge any statistics provided and require that they are reviewed by either Party against the relevant data and confirmation / revision will be provided by either Party within a reasonable period as specified. An audit trail and supporting data will be provided as reasonably required.
- 3.4 Where a separate agreement exists with a Contractor that is directly linked to a Service Schedule or Transfer Schedule, the quality performance, monitoring and reporting arrangements included within that agreement shall apply and take precedence over this Appendix 7.
- 3.5 The national performance monitoring of services is measured by national outcomes frameworks. The overriding obligation is to provide accurate and timely information to enable the compliance of all parties with national performance monitoring requirements.

#### **4, Performance Trajectories**

- 4.1 The Host Party will work to achieve performance improvement trajectories.
- 4.2 Trajectories will be reviewed at regular intervals and performance judged against them. Either Party may propose a reasonable variation to the trajectories and they will be varied so far as is reasonably consistent with the objective of securing continuous service improvement.
- 4.3 The Host Party will provide the other Party with data on past and current performance and estimates of future performance, along with other relevant information, to enable the other Party to set trends and trajectories.

#### **5. Financial Records**

The Host Party shall at all times keep and maintain proper, accurate and transparent financial records in respect of the provision of the Services such as to enable the Host Party to comply with its obligations under this Agreement.

#### **6. Monitoring and Access**

The Host Party will allow the Lead Representative of the other Party (or any person authorised by the other Party), together with appropriate staff, to inspect the premises where the Services are to be provided. If this is the Service User's home then prior permission from the Service User would need to be obtained by the Host Party prior to such a visit taking place. This visit would only be required in relation to assessing the provision of the Services. The other Party shall give reasonable notice in advance of such inspections, except where there have been concerns about the safety or wellbeing of a Service User and then notice is not required.

The Host Party shall provide such information and reports to the other Party as the other Party may require from time to time.

## **7. Reviews**

The Parties agree to monitor the effectiveness of the provision of the Services and carry out an annual review for each Service within three months after each anniversary of the Commencement Date or such other date as the Parties may agree in each year of the Individual Service Schedule Term.

- (b) The annual review will include (but not be limited to) consideration of:
- 1 the performance of the Host Party and / or Contractor against the Scope of Service identified;
  - 2 proposed changes to the Services;
  - 3 shared teaming and opportunities for improving the delivery of the Services.
- (c) As required by the Parties they may additionally be required to attend and participate in more frequent reviews, which may be weekly, monthly or at such other intervals as the Parties may require.

Appendix 8 – Not used

## Appendix 9 - Joint arrangements which sit outside the scope of the Joint Business Agreement

Arrangements which will fall within the scope of Appendix 9 are any which are not S75 or S256 but are nonetheless arrangements made jointly by the CCG and the Council. These could be arrangements such as Memorandums of Agreement (MOA) or arrangements where the Parties have a joint contract with a provider but pay the provider separately, rather than one of the Parties hosting the arrangement and making payments on behalf of the other.

**N.B. this may not be a definitive list and will require commissioners at the CCG and the Council to check whether there are any additional joint arrangements, which are not carried out under S75 or 5256, which should appear on this list.**

Ref.	Title	Description	Provider
MOA 001	STARR- Nursing, therapy and medical cover-payment service	Transfer under the Localism Act 2011 S1 using a Memorandum of Agreement to provide the Council with funds to make payments to the providers of clinical staff on behalf of the CCG	Wiltshire Council
TBC	Mental Health User Involvement		WSUN
DCSO 381	Mental Health Recovery, Choice, Inclusion and Mental Wellbeing Service	<ul style="list-style-type: none"> <li>• Person Centred Planning</li> <li>• Community Bridge Building Support</li> <li>• Courses and Support Groups:</li> <li>• <u>Peer led and run support networks</u></li> </ul>	Alabare
DCSO 392	Age UK Wiltshire Partnership	To ensure that there are a range of information and support services are available to older people	Age UK Wiltshire
DCS 0485	Alzheimers Service	Support services for Wiltshire residents eligible for Alzheimer or Dementia services (or who are Carer's to people who are eligible for Alzheimer or Dementia services)	Alzheimer Society Alzheimer Support
DCSO 424	Community Link	Link Schemes exist to provide good neighbour support to those in need in the community they serve. The service broadly covers two areas <ol style="list-style-type: none"> <li>1) Help with transport</li> <li>2) Help with care</li> </ol>	Community First