

Dated _____ **2021**

NORTH YORKSHIRE COUNTY COUNCIL
and
HARROGATE AND DISTRICT NHS FOUNDATION TRUST

SECTION 75 PARTNERSHIP AGREEMENT

This Document is a working draft, negotiations between NYCC and HDFT are ongoing to finalise the content in accordance with the requirements of each organisation.

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THIS DEED IS MADE ON

BETWEEN

- (1) **North Yorkshire County Council** of County Hall, Racecourse Lane, Northallerton, DL7 8AD (the "**Council**")
- (2) **Harrogate and District NHS Foundation Trust** of Lancaster Park Road, Harrogate, North Yorkshire, HG2 7SX (the "**Trust**").

WHEREAS

- (A) The Council is a Local Authority established under the Local Government Act 1972 (as amended) and by virtue of Part 1 of the Care Act 2014 the Council is responsible for ensuring access to, commissioning and/or providing Early Year's and Health Services on behalf of the population of North Yorkshire.
- (B) The Trust is an NHS Foundation Trust established under Section 35 of the National Health Service Act 2006 ("**2006 Act**").
- (C) Section 75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, S.I. 617 ("**Regulations**") enable NHS bodies to exercise prescribed local authority health-related functions and for local authorities to exercise various prescribed NHS functions. The power to enter into section 75 agreements is conditional on the following:
 - The arrangements are likely to lead to an improvement in the way in which those functions are exercised.
 - The partners have jointly consulted people likely to be affected by such arrangements.
- (D) The health-related functions that could be exercised by an NHS body on behalf of the Council under a Section 75 agreement include health visiting and school nursing.
- (E) The Partners enter into this Agreement in exercise of the powers in Section 75 of the 2006 Act and the Regulations in order to establish a framework for the exercise of provision of health related functions, and the integrated provision of the 0-19 Healthy Child Service to eligible people within the Council's administrative area in accordance with the terms of this Agreement. The delivery of the service is managed through joint governance mechanisms in which both the Trust and Council participate through a process of co-operation and joint working.
- (F) The objective of this Agreement is to improve outcomes for children aged 0 to 19 and their families, through the provision of an integrated service. The service will be known as the 0-19 Healthy Child Service ("**the Service**"). This will be achieved through close working between the NHS and Local Government and which is pursuant to the obligations for the Partners to co-operate with each other in providing such services in accordance with Section 82 of the 2006 Act
- (G) The Agreement promotes and implements the joint delivery and support of the Service by bringing together Public Health, Children's Social Care and NHS services. The Partnership Arrangements will allow for more coordinated approaches to the delivery of the Service, leading through shared objectives, coordinated support and joined up oversight. This will enable improved efficiency within the system and better experience and outcomes for people accessing services. The aims and outcomes of the Partners are set out in Clause 3.
- (H) The Partners intend to develop their partnership over time and move towards further integration in respect of service provision. Key work streams including looking at further integration of working practices and pathways, co-location of services, integrated data and information systems. The ongoing aim is to ensure that needs and issues are identified early, and the right interventions and support by the right practitioner at the right time and place are implemented. During the Agreement the Partner's

will continually pursue opportunities for children's services integration, wider partnership working, and integrated provider management approaches.

- (I) This Agreement follows consultation jointly by the Partners with such persons as appear to the Partners to be affected by these arrangements and these arrangements contribute to the fulfilment of the objectives set out in the Health Improvement Plan as required under the Regulations.
- (J) The Partners are satisfied that the arrangements contemplated by this Agreement are likely to lead to an improvement in the way that their funds and services for children and young people aged 0-19 and their families are managed and delivered.
- (K) The Council and the Trust have approved the terms and conditions of this Agreement.
- (L) The Partners are entering into this Agreement in exercise of powers referred to in Section 75 of the 2006 Act.

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1 DEFINED TERMS AND INTERPRETATION

1.1 In this Agreement, except where the context otherwise requires, the following expressions shall have the meanings respectively ascribed to them:-

"**2000 Act**" means the Freedom of Information Act, 2000;

"**2006 Act**" means the National Health Service Act, 2006;

"**Additional Services**" means any services that are not included in the Services on the Commencement Date but are subsequently included within the scope of this Agreement by agreement between the Partners in accordance with Clause 35;

"**Agreement**" means this Agreement, Schedules and Annexes and any variation of it from time to time agreed by the Partners;

"**Aims and objectives**" means as described in Clause 3 of this Agreement;

"**Annual Review**" means a review undertaken by the Partners to demonstrate the extent to which the Aims and Objectives have been delivered for each year of the Agreement;

"**Authorised Officers**" means the person notified by each of the Partners to the other from time to time as authorised to act on behalf of that Partner (which person shall until further notice be for the Council its Commissioning Manager Health and Inclusion and for the Trust its General Manager for North Yorkshire);

"**Change in Law**" means a change in Law that impacts on the Partnership Arrangements, which comes into force after the Commencement Date;

"**Commencement Date**" means 1 April 2021;

"**Council**" means North Yorkshire County Council (and any successor to its statutory function);

"**Council Health Related Functions**" means those of the health related functions of the Council, specified in Regulation 6 of the Regulations as relevant to the provision of the Services as further set out in Schedule 2 including in particular the functions under Section 2B and 6C (1) of the 2006 Act;

"**Data Controller**" has the meaning set out in the Data Protection Legislation;

"**Data Protection Legislation**" means, for the periods in which they are in force in the United Kingdom, the GDPR, the Data Protection Act 2018, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner's Office, in each case as amended or substituted from time to time;

"**Exit Strategy**" means an exit strategy agreed between the Partners within six (6) months of the Commencement of this Agreement;

"**Expiry Date**" means 31 March 2026;

"**Financial Contributions**" means the financial contributions of the Partners as set out in Schedule 3;

"**Financial Year**" means the financial year from 1st April in any year to 31st March in the following calendar year;

"**GDPR**" means (a) the General Data Protection Regulation (Regulation (EU) 2016/679); and (b) any equivalent legislation amending or replacing the General Data Protection Regulation;

"Health Improvement Plan" means the local NHS health improvement and modernisation plan which applies to the Trust and any other plan known to incorporate the Aims and Outcomes;

"Healthy Child Programme Board" means the Healthy Child Programme Board (previously named the Shadow Board) which shall be the joint officer group responsible for the review of performance and oversight of this Agreement as set out in the governance arrangements in Schedule 4;

"Information Commissioner's Office" means the UK's supervisory authority based at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF;

"Law" means any applicable law (including but not limited to decisions of the European Court of Justice) provision of the EC Treaty, legislation of the European Union, statute, bye-law, regulation, order, regulatory policy, guidance or code of practice (to the extent that such policy, guidance or code is legally binding) rule of court or directions or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"NHS Functions" means those of the NHS functions listed in Regulation 5 of the Regulations as are exercisable by the Trust as are relevant to the provision of the Services, including in particular those set out in Schedule 2;

"Partners" means the parties to this Agreement and the term "Partner" shall mean either one of them; the term "Partnership" shall be construed accordingly;

"Partnership Arrangements" means the arrangements made between the Partners under this Agreement;

"Personal Data" shall have the meaning set out in the Data Protection Legislation;

"Pooled Fund" means any pooled fund established and maintained by the Partners as a pooled fund in accordance with the Regulations;

"Public Health Grant" means the ring fenced grant amount determined and paid to the Council by or on behalf of the Secretary of State pursuant to Section 31 of the Local Government Act 2003;

"Quarter" means one of the following periods in each Financial Year:

- (a) 1 April to 30 June (quarter one);
- (b) 1 July to 30 September (quarter two);
- (c) 1 October to 31 December (quarter three); and
- (d) 1 January to 31 March (quarter four);

"Regulations" means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, S.I. 617 as amended by the Care Act 2014 (Consequential Amendments) (Secondary Legislation) Order, 2015 and other amendments as may be made from time to time;

"Regulatory Body" means a government department and regulatory, statutory and other entities committees and bodies which whether under statute, rules and regulations, codes of practice or otherwise are entitled to regulate or investigate the matters dealt with in this Agreement or any other affairs of either of the Partners;

"Service" means the 0-19 Healthy Child Service as set out in in **Schedule 1** (Service Specification);

"Service Transformation and Improvement Plan" has the meaning set out in Clause 8;

"Service User" means any eligible person receiving or entitled to receive the benefit of the Service;

"**Trust**" means the Harrogate and District NHS Foundation Trust (and any successor to its statutory function);

"**TUPE**" means the Transfer of Undertakings (Protection of Employment Regulations) 2006.

"**VAT Guidance**" means the guidance published by the Department of Health entitled "VAT arrangements for Joint NHS and Local Authority Initiatives including Disability Equipment Stores and Welfare- Section 31 Health Act 1999" as amended or replaced from time to time.

"**Working Day**" means any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3 Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4 Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5 In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6 Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8 In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9 In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10 Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing.
- 1.11 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement will come into force on the Commencement Date.

- 2.2 Unless terminated earlier in accordance with Clause 30 or other prior lawful termination and subject to Clauses 2.3 and 2.4, the Agreement will terminate on the Expiry Date.
- 2.3 The Partners may extend this Agreement for a period of 3 years after the Expiry Date by agreement in writing, subject to approval of the Partners' boards ("**the First Extension**"). Such extension will commence on the day after the Expiry Date.
- 2.4 The Partners may extend this Agreement for further period of 2 years beyond the First Extension, ("**the Second Extension**") by agreement in written subject to the approval of the Partners' Board. Such extension will commence on the day after the expiry of the First Extension.
- 2.5 The Partners will aim to enter into discussions 18 months prior to the Expiry of the Agreement and of the First Extension. Any agreement to extend will be formally agreed in writing by the Partners 12 months prior to the Expiry Date or expiry of the First Extension unless otherwise agreed by the Partners.

3 AIMS AND OBJECTIVES

- 3.1 The Partners have agreed to enter into partnership arrangements as described in this Agreement for the purpose of developing and providing the Service as set out in **Schedule 1**.
- 3.2 The overall strategic aim of the Service will be to ensure the delivery of high quality services for children and families through joint working across the health and social care system.
- 3.3 The strategic objectives of the Partnership are:
 - 3.3.1 To ensure the effective and efficient management and delivery of the Service;
 - 3.3.2 Through sharing resources and working in collaboration, to improve service, performance, quality and outcomes for families and children and young people;
 - 3.3.3 To ensure that services are children, young people and family focused, and responsive to identified needs;
 - 3.3.4 To deliver seamless services through effective multi-agency and multi-disciplinary planning, communication and processes;
 - 3.3.5 To ensure value for money and efficient use of resources, maximising income where at all possible and avoiding duplication;
 - 3.3.6 To respond to gaps in service delivery through improved service design, and inform commissioning intentions;
 - 3.3.7 To increase the range of skills, professional and organisational, available for the provision of services and provide a diverse range of learning and development opportunities for staff.

4 PRINCIPLES

- 4.1 The Partners agree to adopt the following principles when carrying out this Section 75 agreement:
 - 4.1.1 To be openly accountable for performance of the Partners' respective roles and responsibilities set out in this Section 75;
 - 4.1.2 To communicate openly and transparently about major concerns, issues or opportunities relating to the delivery of this Section 75;
 - 4.1.3 To commit to learn, develop and seek to achieve full potential from the Service;

- 4.1.4 To share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- 4.1.5 To adopt a positive outlook and behave in a positive, proactive manner;
- 4.1.6 To act in the best interests of Service Users and their families and to ensure that they are always at the forefront of decision making;
- 4.1.7 To adhere to statutory requirements and evidence based best practice, complying with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation;
- 4.1.8 To act in a timely manner, recognising the time-critical nature of the project and to respond accordingly to requests for support;
- 4.1.9 To act in good faith to support achievement of the key objectives and compliance with these principles; and
- 4.1.10 To provide coherent, timely and efficient decision-making.

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

5 FUNCTIONS

- 5.1 The purpose of this Agreement is to establish a framework through which the Partners can secure the provision of the Services in accordance with the terms of this Agreement.
- 5.2 The Council agrees that the Trust will exercise the Council's Health Related Functions to the extent necessary for the purposes of performing its obligations under this Agreement in conjunction with the NHS Functions.
- 5.3 The Councils Health Related Functions that are being exercised under the Agreement by the Trust are further set out in Schedule 2 of this Agreement. The NHS services which the Trust will provide in conjunction with the Council Health Related Functions are set out in Schedule 2 of this Agreement.

6 SERVICES

- 6.1 The Trust agree to provide the Service in accordance with the Service specification in Schedule 1 and subject to the governance arrangements set out in Schedule 4. The Trust will be responsible for the management and the delivery of the Services under this Agreement.
- 6.2 The Trust shall ensure that all relevant legislation and statutory guidance in relation to delivery of the Service are complied with and shall manage their staff and the Service in accordance with all such legislation and statutory guidance.
- 6.3 Other services may be included in the Agreement if they are intended to meet the needs of the Service Users, and where those other services meet the agreed joint Aims and Objectives of the Partners as described in Clause 3, and the Healthy Child Programme Board so determines and any such services which the Partners agree are to be included with the scope of this Section 75 Agreement will require a formal variation to this Agreement in accordance with Clause 35.

7 STAFFING

- 7.1 The Trust shall ensure that adequate staff are allocated to the provision of the Service, and that those staff members are competent and able to carry out their duties, including but not limited to, having the appropriate and up-to-date qualifications where applicable to that role.
- 7.2 Staff remain subject to their respective employer's terms and conditions and employment policies.
- 7.3 Each Partner will bear responsibility for all costs associated with their directly employed staff, including basic costs of employment and associated non- pay costs including professional indemnity, and costs associated with development and training.
- 7.4 The Partners may wish to develop/create integrated service functions in the future.

8 SERVICE TRANSFORMATION AND IMPROVEMENT PLAN

- 8.1 The Partners shall prepare a Service Transformation and Improvement Plan for the Service for the entirety of this Agreement. The Service Transformation and Improvement Plan shall:
 - 8.1.1 set out the agreed Aims and Outcomes for each specific Service and any Additional Services;
 - 8.1.2 describe any changes or development required for the specific Service; and
 - 8.1.3 provide information on how changes in funding or resources may impact the specific Service.
- 8.2 The Service Transformation and Improvement Plan shall be developed by the Partners within the first six (6) months from the Commencement Date and shall continually be developed throughout the Agreement.
- 8.3 The Service Transformation and Improvement Plan will be led by the Trust and will involve a collaborative approach with both Partners working together to agree the contents. The Service Transformation and Improvement Plan will be developed with the operational working group and approved by the Healthy Child Programme Board.
- 8.4 In the event that any agreed changes to the Service Transformation and Improvement Plan results in any increases or reductions in the level of services in the scope of the Agreement, the partners shall vary the Agreement in accordance with Clause 35, and which may require the Partners to make corresponding adjustments to the financial arrangements as set out in Schedule 3 of this Agreement.
- 8.5 If the Partners cannot agree the contents of the Service Transformation and Improvement Plan, the matter shall be dealt with in accordance with Clauses 29.1 and 29.2. Pending the outcome of the dispute resolution process (without for the avoidance of doubt does not include the mediation process set out in Clauses 29.3 to 29.7 or termination of the Agreement under Clause 31), the Partners shall continue to provide the Service on the same basis as the Services were provided as at the Commencement of this Agreement.

9 PERFORMANCE MANAGEMENT

- 9.1 The Partners shall adhere to the performance management framework set out in Schedule 5.

10 FINANCIAL ARRANGEMENTS

- 10.1 The financial arrangements in respect of the delivery of this Agreement shall be as described in Schedule 3, which may be amended from time to time in accordance with Clause 35.
- 10.2 Each Partner shall pay its own costs and expenses incurred from time to time in the negotiation and management of this Agreement, save as expressly otherwise provided in this Agreement.

- 10.3 For the avoidance of doubt, it is not the intention of the Partners through this Agreement to establish a Pooled Fund, although there is nothing in this Agreement that precludes the Partners from doing so if subsequently agreed in accordance with Clause 36. If the Partners do agree to establish a Pooled Fund, the Parties recognise that this Agreement will require amendments to ensure compliance with the Regulations.

11 RISK SHARE, OVERSPENDS AND UNDERSPENDS

Risk Share

- 11.1 No risk share arrangements shall apply to this Agreement unless otherwise agreed in accordance with Clause 36. For the avoidance of doubt, each Partner shall manage their own risks in respect of their respective financial and resource contribution to the Service as set out in Schedule 3.
- 11.2 The Partners have agreed that if the Council does not receive an appropriate inflationary increase in its Public Health Grant allocation and therefore is unable to pass such an increase across to the Trust, the position would be managed through dialogue between both Partners, based on the principles of partnership as set out in Clause 4 of this Agreement. An example of where this might arise is the nationally agreed pay award. Any agreement in this regard that require changes to this S75 Agreement will be agreed in in accordance with Clause 36.

Overspends

- 11.3 Liability for any overspends shall sit with the Trust unless approved in writing by the Council prior to the overspend occurring.
- 11.4 Notwithstanding the position as set out in Clause 11.1 and 11.3 above, where there is a financial pressure for either Partner, both Partners commit to working collaboratively to discuss how this might be addressed. Partners will work together and flexibly with respect to any overspends and underspends that arise. This could, for example, look at phasing any overspends where appropriate and also balancing off any underspends against non-funded pay costs.
- 11.5 The Trust shall make the Council aware of any potential overspend as soon as it becomes aware of this possibility. The Trust will confirm reasons for the overspend, both current and projected, and in conjunction with the Council, agree recommendations for action to bring the budget back into balance.

Underspends

- 11.6 The Trust shall make the Council aware of any potential underspends prior to the end of the Financial Year.
- 11.7 The benefit of any underspend at the end of the Financial Year will be agreed between the Partners with the intention to reinvest in the Service.
- 11.8 The benefit of any not already committed underspend (including any redundancy costs) on termination or expiry of this Agreement (whichever is appropriate) shall be repaid in full to the Council.

12 CAPITAL EXPENDITURE

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

13 SET UP COSTS

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

14 PREMISES/NON-FINANCIAL CONTRIBUTIONS

14.1 As at the Commencement Date the list of the premises owned by the Council from which parts of the Service will be delivered from (the “**Council Premises**”) are:

14.1.1 [Please insert]

14.2 The Partners acknowledge that the Council Premises named in Clause 14.1.1 may change by agreement in writing between the Partners.

14.3 The Council will make the Council Premises available to the Trust for the delivery of the Services only. For the avoidance of doubt, the Council Premises cannot be used by the Trust for any other reason other than to deliver the Services as specified in this Agreement.

14.4 The Council will grant a license for the Trust to enter the Council Premises on a non-exclusive basis for the delivery of the Service. Such license will terminate automatically on the termination of this Agreement for any reason. The costs associated with the license fall outside of this Agreement.

14.5 There are no other non-financial contributions by the Partners.

15 GOVERNANCE

15.1 The governance arrangements in respect of this Agreement are as set out in Schedule 4.

15.2 The Trust shall nominate its Authorised Officer, who shall be the main point of contact for the Council and shall be responsible for representing the Trust and liaising with the Council’s Authorised Officer in connection with the Partnership Arrangements.

15.3 The Council shall nominate the Council’s Authorised Officer, who shall be the main point of contact for the Trust and shall be responsible for representing the Council and liaising with the Trust’s Authorised Officer in connection with the Partnership Arrangements.

15.4 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements on behalf of their respective organisations, unless they indicate that the decision is one that must be referred to their respective boards or Committees. All decisions in respect of this Agreement shall be made by each respective Partner in line with its own Standing Orders and Scheme of Delegation.

15.5 The Partners shall each nominate officers to the Healthy Child Programme Board in accordance with Schedule 4. The Terms of Reference of the Healthy Child Programme Board are set out in Schedule 4 (as amended from time to time by agreement between the Partners).

15.6 The Partners shall each nominate officers to the Healthy Child Programme Operational Group. The terms of reference of the Healthy Child Programme Operational Group are set out in Schedule 4 (as amended from time to time by agreement between the Partners).

16 QUARTERLY REVIEW AND REPORTING

16.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter. The aim of the review is to identify and consider new issues as have arisen during the Quarter and to address/confirm progress in respect of previously agreed actions.

16.2 The Trust shall submit a quarterly report to the Healthy Child Programme Board setting out:

16.2.1 A summary of new issues/actions arising during the Quarter and a summary of progress against previously agreed actions;

16.2.2 the Service delivery against the agreed outcomes and performance as set out in Schedule 5; and

- 16.2.3 an update on the workforce position including key risk and mitigations to the partnership such as staffing capacity, sickness absence and recruitment.

17 ANNUAL REVIEW

- 17.1 The Partners agree to carry out a review of the Partnership Arrangements within three months of the end of each Financial Year (**Annual Review**), including:
 - 17.1.1 the performance of the Partnership Arrangements against the Aims and Objectives set out in Clause 3 of this Agreement;
 - 17.1.2 the performance of the individual Service against the service levels and other targets contained in the relevant contracts;
 - 17.1.3 plans to address any underperformance in the Services;
 - 17.1.4 actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
 - 17.1.5 review of plans and performance levels for the following year; and
 - 17.1.6 plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.
- 17.2 The Trust shall prepare an annual report with input from the Council following the Annual Review for submission to the Trust's board and for Council approval.

18 STANDARDS

- 18.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:
 - 18.1.1 the service standards set out in Schedule 1 and Schedule 6;
 - 18.1.2 the prevailing standards of clinical governance;
 - 18.1.3 the requirements specified by the Care Quality Commission and any other relevant external regulator.
- 18.2 The Trust shall ensure its operational guidance and procedures reflect compliance with this Clause 18. In particular the Trust shall comply with the North Yorkshire Safeguarding Policy.
- 18.3 The Trust shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

19 HEALTH AND SAFETY

- 19.1 The Trust shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other legislation, orders, regulations and codes of practice relating to health and safety, which may apply to the Service and persons working on the Service.
- 19.2 The Trust shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the Council on request.
- 19.3 The Trust shall notify the Council if any incident occurs in the performance of the Service, where that incident causes any personal injury or damage to property that could give rise to personal injury.

20 EQUALITY DUTIES

- 20.1 The Partners 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.
- 20.2 The Trust agrees to adopt and apply policies in its carrying out of the Council's Health-Related Functions, to ensure compliance with their equality duties.
- 20.3 The Trust shall take all reasonable steps to secure the observance of this Clause 20 by all servants, employees or agents of the Trust employed in delivering the Service described in this Agreement.

21 DATA PROTECTION

- 21.1 The Partners acknowledge that for the purpose of this Agreement, they are each Data Controllers and agree to comply with their obligations under the Data Protection Legislation and abide by Schedule 6 (Information Sharing Agreement).

22 FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL PROTECTION REGULATIONS

- 22.1 The Partners acknowledge that each of them is subject to obligations under the 2000 Act ("FOIA") and the 2004 Regulations.
- 22.2 The Partners agree that they will each cooperate with each other to enable any Partner receiving a request in relation to this Agreement under the 2000 Act or the 2004 Regulations to respond to a request promptly and within the statutory timescales. This cooperation shall include (but not be limited to) finding, retrieving and supplying information held, directing requests to other Partners as appropriate and responding to any reasonable requests by the Partner receiving a request for comments or other assistance.
- 22.3 Any and all agreements between the Partners as to confidentiality shall be subject to duties under the 2000 Act and 2004 Regulations. No Partner shall be in breach of this Clause 22 if it makes disclosures in accordance with the 2000 Act and/or the 2004 Regulations.

23 CONFIDENTIALITY

- 23.1 The Partners shall ensure that confidentiality is maintained at all times in all matters relating to the services provided under this Agreement.
- 23.2 In this Agreement "**Confidential Information**" shall mean any information or data (of whatever nature and however recorded or preserved) of a confidential nature relating to either Partner or its activities or the activities and affairs of its employees, agents, Service Users or relatives, under this Agreement. Save that Confidential Information shall not include information or data that is or becomes:-
- 23.2.1 generally available to the public otherwise than by reason of breach of the provisions of this Clause;
 - 23.2.2 known to the other Partner and is at its free disposal (having been generated independently by the other Partner or a third party) and not derived directly or indirectly from the Partner's Confidential Information prior to its receipt from the Partner;
 - 23.2.3 subsequently disclosed to the other Partner without obligations of confidence by a third party owing no such obligations to the Partner in respect of that Confidential Information;
 - 23.2.4 required by law to be disclosed;
 - 23.2.5 required by the Local Government Commissioner for England.

- 23.3 The Partners agree at all times during the continuance of this Agreement to keep confidential all the other Partner's Confidential Information, and only to share such information to the extent permitted by Law. For avoidance of doubt, this Clause shall not affect the rights of any workers under Section 43 A-L of the Employment Rights Act 1996.
- 23.4 The Partners hereby warrant that in respect of the Confidential Information of the other Partner (including any person employed or engaged by them in connection with this Agreement) they shall:
- 23.4.1 only use the other Partner's Confidential Information for the performance of their obligations under this Agreement;
 - 23.4.2 not disclose any of the other Partner's Confidential Information to any third party without the prior written consent of the other Partner;
 - 23.4.3 take all necessary precautions to ensure that all the other Partner's Confidential Information is treated as confidential and not disclosed (save as aforesaid) or used other than for the performance of their obligations under this Agreement by their employees, servants, agents or sub-contractors;
- 23.5 Nothing in this Clause 23 shall be deemed or construed to prevent either Partner from disclosing any Confidential Information obtained from the other to any employee, consultant, contractor or other person engaged by them in connection herewith, provided that they shall have obtained from the employee, consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause.
- 23.6 Upon termination or expiry of this Agreement, howsoever occurring, the Partners shall return or destroy at the direction and request of the other Partner all Confidential Information and all notes and memoranda prepared in relation to the Confidential Information, of the other Partner.
- 23.7 The Partners must ensure that all matters relating to the individual Service User's circumstances are treated as confidential. When information is to be shared with other agencies a Service User consent form will be signed, the form of which shall be agreed between the Partners.
- 23.8 The provisions of this Clause 23 shall continue to apply notwithstanding termination of this Agreement.

24 OMBUDSMEN AND INVESTIGATIONS BY REGULATORY BODIES

- 24.1 The Partners shall co-operate with any investigation undertaken by the Health Service Commissioner for England or the Local Government Commissioner for England (or both of them) or any other Regulatory Body in connection with this Agreement.

25 AUDIT

- 25.1 The Trust shall provide to the Council any reports reasonably required concerning the Health-Related Functions for the purposes of their audit on reasonable notice. The Partners shall agree an annual audit schedule pertaining to elements of the Health Related Functions to determine compliance and quality.
- 25.2 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

26 INDEMNITY AND INSURANCE

- 26.1 Each Partner shall ensure that they maintain policies of insurance (or equivalent arrangements through schemes operated by National Health Service Resolution) in respect of all potential liabilities arising from this Agreement. Both Partners will seek to recover any losses incurred as a result of the arrangements set out in this Agreement through the insurance arrangements set out in this Clause

26.1. Each Partner shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Agreement.

26.2 Each Partner shall provide to the other upon request such evidence as may reasonably be required to confirm that the insurance arrangements are satisfactory and are in force at all times.

26.3 Except insofar as such loss, damage or injury has been caused by any act or omission by on the part of, or in accordance with the instructions of, the Council, its employees and agents, the Trust (the **"Indemnifying Partner"**) shall indemnify the Council, its officers, employees and agents against any damage, cost, liability, loss, claim or proceedings whatsoever arising in respect of:

26.3.1 any damage to property real or personal, including any infringement of third party patents, copyrights and registered designs;

26.3.2 any personal injury including injury resulting in death;

26.3.3 any award or recommendation of compensation payable to a Service User following complaint or investigation by the Health Service Commissioner or Local Government Commissioner for England or any similar entity;

arising following the commencement date of this Agreement out of or in connection with the Service, to the extent such damage, cost, liability, loss, claim or proceedings shall be due directly to any negligent act or omission, fraud or a breach of contract in relation to this Agreement, by the Indemnifying Partner, its officers or employees, any fraudulent or dishonest act of any of its officers, employees or contractors or any breach of statutory or common law duty,

26.4 Under this Agreement neither Party shall be liable to the other for any indirect loss of profit, loss of use, loss of production, loss of business, loss of business opportunity, loss of business revenue, loss of goodwill or any claim for consequential loss or for indirect loss of any nature.

26.5 The indemnity shall not apply to any such claim or proceeding:

26.5.1 unless as soon as reasonably practicable following receipt of notice of such claim or proceeding, the Partner in receipt of that notice shall have notified the other Partner in writing of it and shall, upon the latter's request and at the latter's cost, have permitted the latter to have full care and control of the claim or proceeding, using legal representation approved by the Partner in receipt of that notice, such approval not to be unreasonably withheld or delayed; or

26.5.2 if the Partner in receipt of the notice the claim or proceeding, its employees or agents shall have made any admission in respect of such claim or proceeding or taken any action related to such claim or proceeding prejudicial to the defence of it without the written consent of the other Partner (such consent not to be unreasonably withheld or delayed), provided that this condition shall not be treated as breached by any statement properly made by the former Partner, its employees or agents in connection with the operation of its internal complaints procedures, accident reporting procedures or disciplinary procedures or where such statement is required by Law.

26.6 Each Partner shall keep the other Partner and its legal advisers fully informed of the progress of any such claim or proceeding, will consult fully with the other Partner on the nature of any defence to be advanced and will not settle any such claim or proceeding without the prior written approval of the other Partner (such approval not to be unreasonably withheld).

26.7 The Partners shall use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any such claim or proceedings of which they are directly aware and shall keep each other reasonably informed of developments in relation to any such claim or proceeding even where they decide not to make a claim under this Clause 26.

26.8 The Partners shall each give to the other such help as may reasonably be required for the efficient conduct and prompt handling of any claim or proceeding.

- 26.9 No Council staff will be transferring to the Trust under the terms of this Agreement. The Council therefore warrants that there are no individuals presently employed by the Council (including, for the avoidance of doubt, the Council's Staff) whose contracts of employment will, by virtue of TUPE, would or could be deemed as employees of the Trust after the Commencement Date.
- 26.10 No Trust staff will be transferring to the Council under the terms of this Agreement. The Trust therefore warrants that there are no individuals presently employed by the Trust (including, for the avoidance of doubt, the Trust's staff) whose contract of employment will, by virtue to TUPE, would or could be deemed as employees of the Council after the Commencement Date.
- 26.11 Nothing in this Agreement shall absolve the Council or the Trust of their statutory duties to Service Users or others.

27 LIABILITIES

- 27.1 Subject to Clauses 27.2 and 27.3, neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.
- 27.2 As the Trust is currently providing the Service under separate service agreements (which will terminate prior to the commencement of this Agreement), all rights and liabilities under these existing agreements are preserved.
- 27.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

28 COMPLAINTS

- 28.1 Complaints, incidents and serious incidents related to the Service will be managed by the organisation from which they originate. If there is a complaint in relation to the provision of the Services, the Trust will investigate and respond to the complaint. If there is a perceived benefit in shared accountability the Partners will together take a decision on which Partner is best placed to lead the appropriate process to investigate and respond.
- 28.2 Where a complaint cannot be handled in the way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, then the Authorised Officers, or their nominated deputies will set up a complaints subgroup to examine the complaint and recommend remedies.
- 28.3 Any dispute or uncertainty about which procedure to follow should be resolved jointly by the Patient Experience Team (Trust) and the Complaints Manager (Council).
- 28.4 Where the complaint is being brought against both the Trust and the Council, it will be managed within the shortest timeframe of whichever Partner.
- 28.5 Both parties shall co-operate in the investigation of all complaints and will participate in the complaints resolution process as required.
- 28.6 Both parties shall co-operate in the investigation of enquiries from elected members of the Council.
- 28.7 The Trust shall ensure that all Services provided and arrangements for complaints are in accordance with its policy and that of the Equality and Human Rights Commission and all or any policies and procedures approved by the Trust as available through its web site under the 2000 Act.
- 28.8 During the term of the Agreement, the Partners shall work together to develop closer integration on a range of issues including complaints management.

28.9 Each Partner shall use their reasonable endeavours to inform the other Partner of any circumstance reasonably thought likely to give rise to a complaint or in which a complaint has been made.

29 DISPUTE RESOLUTION

29.1 The Partners will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement.

29.2 In the event of a dispute over the application or interpretation of this Agreement, the dispute may be referred by the Partners in writing as follows:

29.2.1 in the first instance to the Authorised Officers or their nominated deputy to resolve through ordinary negotiations within ten (10) days;

29.2.2 in the second instance (if resolution by the Authorised Officers cannot be reached in line with Clause 29.2.1) to, the Healthy Child Programme Board. The members of the Healthy Child Programme Board shall use their best endeavours to resolve such disputes through ordinary negotiations within sixty (60) days;

29.2.3 in the third instance (if resolution by the Healthy Child Programme Board cannot be reached in line with Clause 29.2.2) to, the Chief Executives or relevant Director within each organisation who shall co-operate in good faith to resolve the dispute as amicably as possible within 30 days of service of the notice.

29.3 If the Dispute is not resolved within thirty (30) days following a referral under clause 29.2.3, the Partners shall attempt in good faith to resolve the dispute through the model mediation procedure of the Centre for Effective Dispute Resolution (CEDR).

29.4 If the Partners are unable to agree on the joint appointment of a mediator within five (5) days, they shall make a joint application to CEDR to nominate the mediator.

29.5 The mediator, after consultation with the Partners where appropriate, will:

29.5.1 attend any meetings with either or both of the Partners preceding the mediation, if requested or if the mediator decides this is appropriate and the Partners agree;

29.5.2 read before the mediation each case summary and all the documents sent to him;

29.5.3 chair, and determine the procedure for the mediation;

29.5.4 assist the Partners in drawing up any written settlement agreement; and

29.5.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

29.6 The mediator (and any member of the mediator's firm or company) will not act for either of the Partners individually in connection with the dispute in any capacity during the Term. The Partners accept that in relation to the dispute neither the mediator nor CEDR is an agent of, or acting in any capacity for, either of the Partners. Furthermore, the Partners and the mediator accept that the mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

29.7 CEDR, in conjunction with the mediator, will make the necessary arrangements for the mediation including, as necessary:

29.7.1 nominating, and obtaining the agreement of the Partners to, the mediator;

29.7.2 organising a suitable venue and dates;

- 29.7.3 organising exchange of the case summaries and documents;
 - 29.7.4 meeting with either or both of the Partners (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
 - 29.7.5 general administration in relation to the mediation.
- 29.8 If there is any issue about the conduct of the mediation upon which the Partners cannot agree within a reasonable time, CEDR will, at the request of either Partner, decide the issue for the Partners, having consulted with them.
- 29.9 The Partners agree to notify the mediator of any of the relevant timescales which they wish to observe.
- 29.10 Each Partner will state the names of:
- 29.10.1 the person(s) who will be the lead negotiator(s) for that Partner, who must have full authority to settle the dispute; and
 - 29.10.2 any other person(s) (such as professional advisers, colleagues or sub-contractors) who will also be present at, and/or participating in, the mediation on that Partner's behalf.
- 29.11 Each Partner will send to CEDR at least 2 (two) weeks before the mediation, or such other date as may be agreed between the Partners and CEDR, sufficient copies of:
- 29.11.1 its case summary; and
 - 29.11.2 all the documents to which the case summary refers and any others to which it may want to refer in the mediation.
- 29.12 In addition, each Partner may send to the mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the mediator but not to the other Partner, clearly stating in writing that such documentation is confidential to the mediator and CEDR.
- 29.13 The mediator will be responsible for sending a copy of each Partner's case summary and supporting documents (pursuant to clause 23.10) to the other simultaneously.
- 29.14 The Partners should try to agree:
- 29.14.1 the maximum number of pages of each case summary; and
 - 29.14.2 a joint set of supporting documents or the maximum length of each set of supporting documents.
- 29.15 The mediation will take place at the time and place arranged by CEDR.
- 29.16 The mediator will chair, and determine the procedure at, the mediation.
- 29.17 No recording or transcript of the mediation will be made.
- 29.18 If the Partners are unable to reach a settlement in the negotiations at the mediation, and only if both the Partners so request and the mediator agrees, the mediator will produce for the Partners a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the mediator suggest are appropriate settlement terms in all of the circumstances.
- 29.19 Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Partners. The mediator will assist the Partners in recording the outcome of the mediation.

- 29.20 The mediation will terminate when:
- 29.20.1 a Partner withdraws from the mediation;
 - 29.20.2 a written settlement agreement is concluded;
 - 29.20.3 the mediator decides that continuing the mediation is unlikely to result in a settlement; or
 - 29.20.4 the mediator decides he should retire for any of the reasons in CEDR's code of conduct.
- 29.21 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose:
- 29.21.1 information that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the dispute of that information; and
 - 29.21.2 all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the mediation including the fact of any settlement and its terms.
- 29.22 All information (whether oral or documentary and on any media) arising out of, or in connection with, the mediation will be without prejudice, privileged and not admissible as evidence or disclosed in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would in any event have been admissible or disclosed in any such proceedings.
- 29.23 Clauses 29.21 and 29.22 shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the mediation.
- 29.24 None of the Partners will call the mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The mediator and CEDR will not voluntarily act in any such capacity without the written agreement of both the Partners.
- 29.25 CEDR's fees (which include the mediator's fees) and the other expenses of the mediation will be borne equally by the Partners. Payment of these fees and expenses will be made to CEDR in accordance with its fee schedule and terms and conditions of business.
- 29.26 Each Partner will bear its own costs and expenses of its participation in the mediation.
- 29.27 Neither the mediator nor CEDR shall be liable to the Partners for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

30 TERMINATION

- 30.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 30.3, either Partner may terminate this Agreement at any time by giving 18 months' written notice to the other Partner.
- 30.2 The Partners may, without prejudice to any other provision of this Agreement, agree in writing to terminate the Agreement, and if the Partners so agree, they must agree the date upon which termination takes effect.
- 30.3 Either Partner (for the purposes of this clause 30.2, the **First Partner**) may terminate this Agreement in whole or part with immediate effect by the service of written notice on the other Partner (for the purposes of this clause 30.2, the **Second Partner**) in the following circumstances:
- 30.3.1 if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement

under clause 30.330-2, if the Second Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner (**Remediation Notice**) to do so;

- 30.4 Either Partner may terminate this Agreement in whole or part upon a minimum of 12 months' written notice following a failure to resolve a dispute under Clause 29.
- 30.5 If there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement or a Change in Law makes provision substantially more onerous, the Partners will discuss the impact on the Services (including any financial impact) and agree a way forward, including whether termination under Clause 30.2 is required.
- 30.6 The provisions of clause 31 shall apply on termination of this Agreement.

31 CONSEQUENCES OF TERMINATION

- 31.1 On the termination or expiry of this Agreement, howsoever occurring:
 - 31.1.1 the Partners shall co-operate in good faith in order to terminate this Agreement with as little adverse impact on Services Users and staff as reasonably possible;
 - 31.1.2 the Partners will comply with the Exit Strategy;
 - 31.1.3 premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;
 - 31.1.4 any assets purchased in connection with this Agreement/the Services shall be returned to the Partner from whose Financial Contribution the purchase was made;
 - 31.1.5 The Trust shall, at the request of the Council, assign any contracts or parts thereof, which relate to services it performs on behalf of the Council under this Agreement; and
 - 31.1.6 the Trust shall transfer to the Council all records in its possession relating to the Health-Related Functions in accordance with the Data Sharing Agreement at Schedule .
- 31.2 Overspends on termination of the Agreement shall be dealt with in accordance with Clause 11.2.
- 31.3 Subject to clause 31.4, underspends on termination of the Agreement shall be dealt with in accordance with Clause 11.5.
- 31.4 The Trust shall be entitled to direct any underspends to the following purposes:
 - 31.4.1 to meet obligations under existing contracts;
 - 31.4.2 to defray the costs of making any alternative arrangements for Service Users; and
 - 31.4.3 to meet the costs of any redundancies arising from the termination of the Partnership Arrangements.
- 31.5 The provisions of the following clauses shall survive termination or expiry of this Agreement:
 - 31.5.1 Clause 21;
 - 31.5.2 Clause 22
 - 31.5.3 Clause 23;
 - 31.5.4 Clause 26;
 - 31.5.5 Clause 27;

- 31.5.6 Clause 28;
- 31.5.7 Clause 34; and
- 31.5.8 Clause 40.

32 PUBLICITY

- 32.1 No Partner shall issue any press release or any statement containing information relating to or connected with or arising out of this Agreement or the matters contained in it, including information relating to the business or affairs of any other Partner, without obtaining the previous approval of the other Partner such approval to be in relation to its contents and the manner of its presentation and publication or disclosure (such approval not to be unreasonably withheld or delayed).

33 EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY

- 33.1 Nothing in this Agreement shall create a legal partnership as defined under the Partnership Act, 1890 or joint venture between the partners or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.
- 33.2 Neither Partner nor any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Partner, except where expressly permitted by this Agreement.
- 33.3 Save as expressly provided otherwise in the Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner shall in any way whatsoever have authority to, or hold itself out as having authority to:
 - 33.3.1 act as an agent of the other;
 - 33.3.2 make any representations or give any warranties to third parties on behalf of or in respect of the other;
 - 33.3.3 bind the other in any way; or
 - 33.3.4 vary, amend revoke or create any byelaw.

34 PROTECTING CHILDREN AT RISK

- 34.1 The Partners shall at all times act to safeguard and promote the wellbeing of the Service Users. The protection of children at risk and safeguarding is a priority. A new service safeguarding model, agreed with the North Yorkshire Children Safeguarding Partnership, is in place which describes clearly the role of the Heathy Child Programme within the system in North Yorkshire. There is a dedicated safeguarding team to work across the system, but the Partners recognise that all practitioners have a role to play in protecting children and keeping them safe.
- 34.2 The Partners shall maintain comprehensive procedures that:
 - 34.2.1 promote the safety and welfare of children and adults at risk; and,
 - 34.2.2 comply with any statutory requirements.
- 34.3 The Trust shall provide training on safeguarding matters to all Service staff, and they shall require all staff to undertake such training, ensuring they have an understanding of their safeguarding roles and responsibilities to a level that is commensurate with their duties to safeguard adults and children and to meet the competencies outlined in any national framework for safeguarding in accordance with the statutory requirements and government guidance relating to safeguarding adults and children.

- 34.4 The Trust shall maintain and keep training records of all such training undertaken by Service staff so as to evidence the staff's attendance and the level of training undertaken. This training should include active encouragement to staff in respect of whistle blowing if they become aware of suspected abuse.
- 34.5 The Trust shall ensure that the issue of safeguarding of adults and children is included in its induction procedures for all service staff.
- 34.6 The Trust must ensure that professional boundaries are maintained between service staff and Service Users so that Service Users are safeguarded from any form of abuse or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhuman or degrading treatment through deliberate intent, negligent acts or omissions or ignorance by the Service staff in accordance with written policies and procedures.

35 VARIATION

- 35.1 The Partners anticipate that over the lifetime of this Agreement the provisions may need to change in order to support the delivery of the Aims and Objectives and the Service Specification in Schedule 1, which may themselves change from time to time (as agreed between the Partners) to reflect national and local priorities. This Agreement shall not be varied or amended unless such variation or amendment has been agreed in writing and signed by the Partners.

36 ASSIGNMENTS AND SUB-AGREEMENT

- 36.1 Subject to Clause 36.2 and other than as required by Law, neither Partner shall:
- 36.1.1 assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Partner, which shall not be unreasonably withheld or delayed.
 - 36.1.2 create any interest, charge or security over or deal in any other manner with this Agreement or part of it without the prior written consent of the other and for the avoidance of doubt, a partner shall be absolutely entitled to withhold such consent;
 - 36.1.3 only sub-contract the performance of this Agreement or any part thereof with the prior written consent of the other partner, which consent the other partner shall be absolutely entitled to withhold;
 - 36.1.4 cease to sub-contract if the other Partner in writing withdraws such consent, save that in such event the partner who has so sub-contracted shall be allowed a reasonable period in which to rearrange its affairs of not less than three months; and
 - 36.1.5 consent to sub-contract (if given) shall not relieve the sub-contracting partner from any liability or obligation under this Agreement.
- 36.2 The Council may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Trust, provided that such assignment, novation or disposal shall not increase the burden of the Trust's obligations under this Agreement and such assignment, novation or disposal is limited to any legal entity with which the Council merges or which is a successor body of the Council by reason of statutory or voluntary reorganisation.

37 INTELLECTUAL PROPERTY

- 37.1 In this Clause 37 "**Intellectual Property**" shall mean all copyright, patents trademarks, service marks, database rights, design rights (whether registered or unregistered) and all other similar proprietary rights as may exist anywhere in the world.
- 37.2 The Partners hereby grant each other a royalty free licence with the right to sub-license to use any of existing Intellectual Property of either Partner required for the performance of the other's obligations under this Agreement in accordance with the provisions of this Agreement. Such license and any sub-licence to expire when this Agreement is terminated or expires howsoever occurring. Upon termination

of the licence each Partner shall return or destroy and procure the return or destruction by any sub-licensee at the direction and request of the other Partner all the other Partner's Intellectual Property.

37.3 Any Intellectual Property that arises solely as a result of this Agreement shall be assigned as follows:

37.3.1 If the Intellectual Property relates to the NHS Functions the rights shall be vested in the Trust;

37.3.2 If the Intellectual Property relates to the Council's Health Related Functions the rights shall be vested in the Trust;

37.3.3 Where any Intellectual Property cannot be so determined as being created either in the exercise of NHS Functions or Health Related Functions ("**Joint Intellectual Property**") then the Joint Intellectual Property shall vest in the Partner in the best position to exploit the Intellectual Property as determined by the Healthy Child Programme Board. The other Partner shall be entitled to be paid royalties at a reasonable rate to be determined by the Healthy Child Programme Board on any commercial exploitation of the Joint Intellectual Property.

37.4 Each Partner hereby grants to the other Partner an irrevocable royalty free license of all Intellectual Property arising in the course of this Agreement, with the right to sub license, to use such Intellectual Property for any purposes the other Partner sees fit, save that where a Partner is receiving royalties from the exploitation of Joint Intellectual Property from the other Partner it shall be entitled to sub-license such Joint Intellectual Property on a commercial basis with the prior consent of the other Partner, such consent not to be unreasonably withheld or delayed.

38 EVIDENCE IN LEGAL PROCEEDINGS

38.1 Each Partner shall if required to do so by the other provide any relevant information in connection with any legal proceedings, internal disciplinary hearing or other hearing arising in connection with this Agreement, save in connection with any proceedings or potential proceedings between the Partners.

38.2 Each Partner shall immediately on becoming aware of any accident, damage or breach of any statutory provision relating to or connected in any way with the Partnership arrangements under this Agreement, notify the other of the said accident, damage or breach.

38.3 Any information or assistance provided by either Partner to the other in accordance with this Clause 38 shall be provided free of charge unless the subject of the proceedings or hearing arose prior to the Commencement Date of this Agreement.

39 ENTIRE AGREEMENT

39.1 The terms herein contained together with the contents of the Schedules and Annexes constitute the complete agreement and understanding between the Partners and supersede all previous communications representations understandings and agreements with respect to the subject matter hereof, and any representation promise or condition not incorporated herein shall not be binding on either Partner.

39.2 Each of the Partners acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement, excluding fraudulent misrepresentation.

40 FORCE MAJEURE

40.1 In this Agreement, "**Force Majeure**" shall mean any cause preventing either Partner from performing any or all of its obligations which arises from or are attributable to either acts, events, omissions or accidents beyond the reasonable control of the Partner so prevented including act of God, war, riot,

civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm or war, civil war, armed conflict or terrorist attack, nuclear, chemical or biological contamination or sonic boom.

40.2 If either Partner is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that Partner shall forthwith serve notice in writing on the other Partner specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay and have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that Partner, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

40.3 If either Partner is prevented from performance of its obligations, by reason of force majeure, for a continuous period in excess of three months, the other Partner may terminate this Agreement forthwith on service of written notice upon the Partner so prevented, in which case neither Partner shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

41 OBSERVANCE OF STATUTORY REQUIREMENTS

41.1 The Partners shall comply and ensure that their employees, agents and sub-contractors shall comply with all the relevant legal provisions, whether in the form of orders, regulations, statutes, statutory instruments, codes of practice, bye laws, directions or governmental guidance or the like, to be performed in connection with this Partnership arrangements under this Agreement.

42 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT, 1999

42.1 The Contracts (Rights of Third Parties) Act, 1999 shall not apply to this Agreement.

43 WAIVERS

43.1 The failure or delay of either Partner to exercise a right or remedy provided by this Agreement or by law shall not be construed to be a waiver of the right or remedy. A waiver of a breach of any provision of this Agreement or of a default under this Agreement shall not be construed to be a waiver of any other breach or default and shall not affect the terms of this Agreement.

43.2 A waiver of a breach of any terms of this Agreement or a default under this Agreement will not prevent a Partner from subsequently requiring compliance with the waived obligation. The rights and remedies provided by this Agreement are cumulative and (subject as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

44 NOTICES

44.1 Any notice to be given under this Agreement shall either be delivered personally or sent by first class post or electronic mail. The address for service of each Partner shall be as set out in Clause 45.3 or such other address as each Partner may previously have notified to the other Partner in writing. A notice shall be deemed to have been served if:

44.1.1 personally delivered, at the time of delivery;

44.1.2 posted, at the expiration of forty eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities; and

44.1.3 if sent by electronic mail, at the time of transmission and a telephone call must be made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Partner sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

44.2 In proving such service, it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class or airmail letter (as appropriate), or that the electronic mail was properly addressed and no message was received informing the sender that it had not been received by the recipient (as the case may be).

44.3 The address for service of notices as referred to in Clause 44.1 shall be as follows unless otherwise notified to the other Partner in writing:

44.3.1 if to the Council, addressed to the Authorised Officer; and

44.3.2 if to the Trust, addressed to the General Manager for North Yorkshire 0-19 Services.

45 SEVERANCE

45.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement, which shall remain in full force and effect.

45.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modifications as may be necessary to make it valid or enforceable.

46 GOVERNING LAW

46.1 This Agreement shall be governed by and construed in all respects in accordance with the laws of England and the Partners submit to the exclusive jurisdiction of the Courts of England.

47 COUNTERPARTS

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

IN WITNESS whereof the Partners Authorised Officers have signed and executed as a Deed and delivered this Agreement on the day and year first before written.

EXECUTION OF AGREEMENT BY THE TRUST

THE COMMON SEAL of Harrogate and District NHS Foundation Trust
Was hereunto affixed in the presence of:

Authorised Signature.....

Name (print).....

Position.....

Date.....

Authorised Signature.....

Name (print).....

Position.....

Date.....

EXECUTION OF AGREEMENT BY THE COUNCIL

THE COMMON SEAL of North Yorkshire County Council
Was hereunto affixed in the presence of:

Authorised Signature.....

Name (print).....

Position.....

Date.....

SCHEDULE 1- SERVICE SPECIFICATION

DRAFT

SCHEDULE 2– FUNCTIONS**1 INTRODUCTION**

- 1.1 This Schedule details the Council Health Related Functions and NHS services that are delivered under this Partnership Agreement. This Schedule may be subject to amendment from time to time.

2 COUNCIL HEALTH RELATED CARE FUNCTIONS – 0-5 SERVICE

- 2.1 The Council delegates its Health Related Functions to the Trust under The Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013, as amended.
- 2.2 The Regulations described in paragraph 2.1 above require local authorities to carry out five mandated child development reviews, providing a national, standardised format to ensure universal coverage and ongoing improvements in public health (as set out in Regulation 5A(2) of the Regulations referenced in paragraph 2,1 of this Schedule 2).
- 2.3 the five mandated reviews are:
- 2.3.1 the antenatal health promoting visit;
 - 2.3.2 the new baby review;
 - 2.3.3 the six to eight week assessment;
 - 2.3.4 the one year assessment; and
 - 2.3.5 the two to two-and-a-half year review.

3 COUNCIL HEALTH RELATED CARE FUNCTIONS – 6-19 SERVICE

- 3.1 The Council delegates its Health Related Functions to the Trust under 2006 Act, specifically Schedule 1, paragraph 1 which require local authorities to
- “provide for the medical inspection at appropriate intervals of pupils in attendance at schools maintained by [the local authority] and for the medical treatment of such pupils.”*

4 TRUST NHS FUNCTIONS - 0-5 SERVICE

- 4.1 The NHS services which the Trust will provide in conjunction with the Council Health Related Functions are:
- 4.1.1 Specialist children’s services (complex health needs and disabilities);
 - 4.1.2 Speech and language therapy;
 - 4.1.3 Acute and community paediatrics;
 - 4.1.4 Specialist safeguarding service for children;
 - 4.1.5 Elective children’s surgery; and
 - 4.1.6 Childhood immunisations.

SCHEDULE 3– FINANCIAL CONTRIBUTIONS

1 FINANCIAL CONTRIBUTIONS

- 1.1 This Agreement is proposed to continue in force for a period of five years with two potential extensions of three and two years respectively, totalling a maximum of ten years.
- 1.2 The Council agrees to pay the Financial Contributions to the Trust in respect of the delivery of the Council's Health Related Functions as follows:

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6 - 10
Financial Years	2021-22	2022-23	2023-24	2024-25	2025-26	Years 2026-31
	£	£	£	£	£	£
Revised service 0 - 19 after savings applied	7,611,500	7,394,500	7,154,500	6,884,500	6,884,500	34,422,500

- 1.3 The Financial Contribution for each Financial Year will be paid quarterly in advance. The Trust is not required to issue an invoice.
- 1.4 Where a change in cost base is outlined within NHS guidance and where this matches the additional allocation provided to the Local Authority in the Public Health Grant, this will be passed on to the Trust in a full and timely manner. Where this causes a financial pressure for either Partner, further discussions will need to occur as set out in Clause 11.4 of this Agreement.
- 1.5 If the process outlined in paragraph 1.4 above introduces a level of risk to the service, or a financial risk to either or both Partners, the Partners agree to act at the earliest opportunity to understand the potential scale of any shortfall and develop options for how this could be managed. Jointly-developed proposals will be shared with the Healthy Child Programme Board for further development or approval. The Partners agree to use reasonable endeavours to work together to reach a position where there is a good outcome for both Partners, and importantly the children and families this service serves.

2 PREMISES

- 2.1 Any costs arising out of the Trust's use of Council Premises to provide the Services will be addressed in a separate licence agreement.

3 VAT

- 3.1 As at the Commencement Date, the Services are exempt from VAT and VAT is therefore not payable in addition to the Financial Contributions.

SCHEDULE 4– GOVERNANCE STRUCTURE

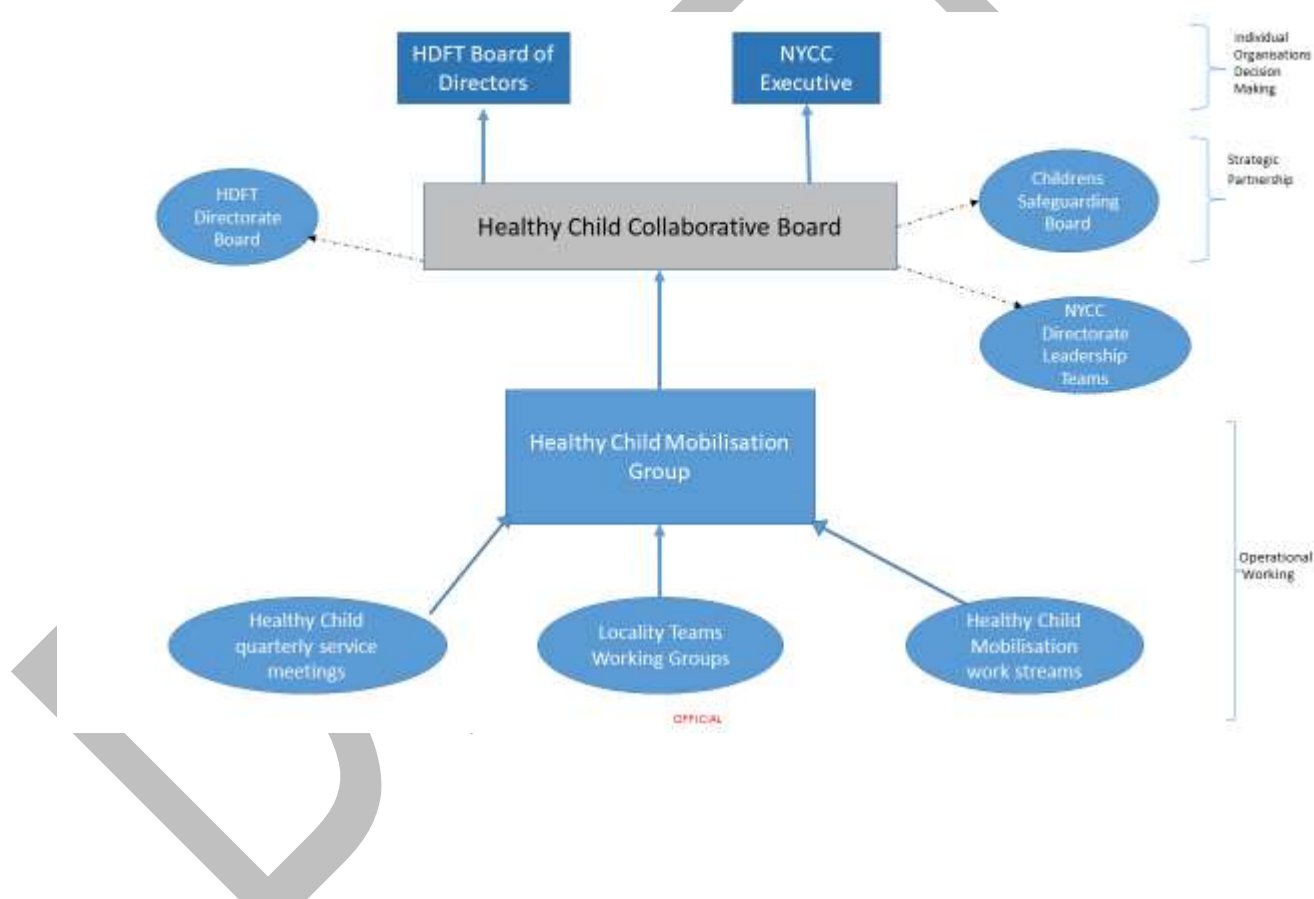
1 INTRODUCTION

- 1.1 The purpose of this Schedule 4 is to set out the governance structure for the Partnership Arrangements under this Agreement.
- 1.2 This Schedule includes the terms of reference of the groups directly involved in the governance of this Agreement and describes those of relevance to it.

2 GOVERNANCE STRUCTURE CHART

2.1 The diagram below illustrates the governance arrangements agreed between the Partners.

PARTNERSHIP GOVERNANCE FRAMEWORK FOR INTEGRATED 0-19 HEALTHY CHILD SERVICE



2.2 Where members of the Healthy Child Collaborative Board do not have requisite authority to make decisions, they must escalate to the relevant authority holder in line with its own constitution and governance arrangements.

3 TERMS OF REFERENCE

SCHEDULE 5– PERFORMANCE MANAGEMENT FRAMEWORK

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SCHEDULE 6– INFORMATION SHARING AGREEMENT

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