

**Dated** \_\_\_\_\_ **2021**

**NHS NORTH YORKSHIRE CLINICAL COMMISSIONING  
GROUP**

**AND**

**NORTH YORKSHIRE COUNTY COUNCIL**

\_\_\_\_\_  
**SECTION 75 PARTNERSHIP AGREEMENT**  
**in relation to the Targeted Healthy Child Service**  
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**THIS DEED** is made on

day of

2021

**BETWEEN**

- (1) **NHS NORTH YORKSHIRE CLINICAL COMMISSIONING GROUP** of 1, Gimbald Crag Court, St James Business Park, Knaresborough, HG5 8QB (**the 'CCG'**); and
- (2) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, DL7 8AD (**the 'Authority'**)

each a '**Partner**' and together the '**Partners**'

**BACKGROUND**

- (A) The Authority has responsibility for commissioning and/or providing public health and children social care services on behalf of North Yorkshire.
- (B) The CCG is responsible for commissioning health services pursuant to the 2006 Act.
- (C) Section 75 of the 2006 Act contains powers enabling NHS Bodies (as defined in section 28(6) of the 2006 Act) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under section 75 of the 2006 Act and pursuant to the Regulations.
- (D) This Agreement relates to Lead Commissioning Arrangements between the CCG and the Authority in respect of the Service.
- (E) The Partners are committed to achieving better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (F) The main aims and objectives of the Partners in entering in to this Agreement are, in line with North Yorkshire Mental Health and Learning Disabilities Partnership Proposed Strategic Priorities, to:
  - bring together commissioners in the procurement of services to support young people aged 9-19 in respect of their emotional health and wellbeing, working together to deliver an integrated and easily accessible service offer which reduces duplication and ensures ease of access for people using the service and professionals, contributing to the national target to increase access to mental health services by 35%;
  - provide a greater focus on prevention and early intervention;
  - provide integrated care closer to home;
  - intervene and support people earlier and more effectively in their illness to reduce the number of admissions for inpatient treatment;
  - better use resources across the whole pathway;
  - support people to achieve their self-determined health and well-being goals; and
  - deliver comprehensive mental health and learning disability services, initially prioritising those in the NHS Long Term Plan and the local Transforming Care Partnership.
- (G) Given the publication of the Health and Care Bill, the Partners recognise that the arrangements may need to adapt as the intentions around the development of Integrated Care Systems become more apparent.

## AGREED TERMS

### 1 DEFINITION AND INTERPRETATION

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

**2000 Act** means the Freedom of Information Act 2000.

**2006 Act** means the National Health Service Act 2006.

**Agreement** means this agreement including its Schedules and Appendices.

**Aims and Outcomes** means the objectives of the Partners, setting out how the Partnership Arrangements are likely to lead to an improvement in the way the Functions are exercised, as described in Schedule 1 F.

**Annual Review** has the meaning set out in Clause 15.

**Annual Service Review Plan** has the meaning set out in Clause 6.

**Authorised Officers** means the Authority's Authorised Officer and the CCGs Authorised Officer as appointed by each Partner as set out in this Agreement.

**Authority Health-Related Functions** means those of the health related functions of the Authority specified in Regulation 6 of the Regulations from time to time as are relevant to the commissioning of the Service, including but not limited to functions under the Care Act 2014 and the Children Act 2004.

**Authority's Authorised Officer** means the Commissioning Manager for Health and Inclusion.

**Authority's Financial Contribution** means the Authority's financial contribution in respect of the Service for each relevant Financial Year as set out in Schedule 3.

**CCG's Authorised Officer** means the Commissioning Manager for Children and Young People.

**CCG Financial Contributions** means the CCGs financial contribution in respect of the Service for each relevant Financial Year as set out in Schedule 3.

**Change in Law** means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England after the date of this Agreement.

**Commencement Date** means 1 April 2022.

**Confidential Information** has the meaning given in Clause 21.1 of this Agreement.

**Data Controller** shall have the meaning given in the Data Protection Legislation.

**Data Security and Protection Toolkit** means the online self-assessment tool that all organisations must use if they have access to NHS patient data and systems.

**Data Subject** shall have the meaning given in the Data Protection Legislation.

**Data Protection Legislation** means for the periods in which they are in force in the United Kingdom, the Data Protection Act 2018 (and regulations made thereunder), the UK GDPR, 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, in each case as amended or substituted from time to time.

**Dispute Resolution Procedure** means the procedure set out in Clause 300.

**EIR** means the Environmental Information Regulations 2004 (SI 2004/3391).

**Financial Contributions** means the Authority's Financial Contribution and the CCG's Financial Contribution as set out in Schedule 3.

**Financial Year** means 1 April to 31 March.

**First Financial Year** means 1 April 2022 to 31 March 2023.

**Force Majeure Event** means any circumstance not within a Partner's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) nuclear, chemical or biological contamination or sonic boom;
- (d) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (e) collapse of buildings, fire, explosion or accident; and
- (f) any labour or trade dispute, strikes, industrial action or lockouts,

but excluding any pandemic or epidemic as declared by the World Health Organisation (including Covid-19).

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

**Health Improvement Plan** means the local NHS health improvement and modernisation plan which applies to the CCG.

**Indirect Losses** means loss of profits, loss of use, loss of production, increased operating costs, 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.

**Information** has the meaning given under Section 84 of the 2000 Act.

**Information Commissioner** means the independent authority established to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals ico.org.uk and any other relevant data protection or supervisory authority recognised pursuant to Data Protection Legislation.

**Information Governance Breach** means an information governance serious incident requiring investigation, as defined in Information Governance Guidance for Serious Incidents.

**Information Governance Guidance for Serious Incidents** means NHS Digital's Checklist Guidance for Information Governance Serious Incidents Requiring Investigation June 2013, available at: <https://www.igt.hscic.gov.uk/KnowledgeBaseNew/HSCIC%20IG%20SIRI%20%20Checklist%20Guidance%20V2%200%201st%20June%202013.pdf>.

**Information Sharing Protocol** means the protocol describing how the Partners will share Information contained in Schedule 6 of this Agreement.

**Initial Term** means the period commencing on the Commencement Date and ending on the 31 March 2025.

**Integrated Care System** means a collaborative arrangement through which NHS organisations, in partnership with local authorities and others, take collective responsibility for managing resources, delivering NHS standards, and improving the health of the population they serve. See: <https://www.england.nhs.uk/integratedcare/integrated-care-systems/>.

**Integrated Commissioning Group** means the governance group responsible for the oversight and scrutiny of this Agreement in accordance with the terms of reference as set out in Schedule 4.

**Law** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

**Lead Commissioning Arrangements** means the arrangements by which one Partner commissions Services and exercises Functions on behalf of the other in conjunction with their own Functions.

**Local Healthwatch** means an organisation established under section 222 of the Local Government and Public Involvement in Health Act 2007.

**Loss** means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but excluding any Indirect Losses and "Losses" shall be interpreted accordingly.

**NHS Assets** shall have the meaning set out in Schedule 2.

**NHS Care Records Guarantee** means the publication setting out the rules that govern how patient information is used in the NHS and what control the patient can have over this, available here: <https://webarchive.nationalarchives.gov.uk/20130513181153/http://www.nigb.nhs.uk/pubs/nhscrg.pdf>

**NHS Functions** means those of the NHS functions of the CCG listed in Regulation 5 of the Regulations from time to time as are relevant to the commissioning of the Services, including the CCGs functions under Section 3 of the 2006 Act.

**NHS Long Term Plan** means the document published by NHS England on 7 January 2019, which sets out its priorities for healthcare over the next 10 years and shows how the NHS funding settlement will be used.

**NHS Standard Contract** means the NHS Standard Contract entered into by the CCG with the Service Provider.

**Partner** means either the CCG or the Authority, and "Partners" shall be construed accordingly.

**Partnership Arrangements** means the arrangements made between the Partners under this Agreement.

**Personal Data** shall have the meaning given to it in the Data Protection Legislation.

**Process** shall have the meaning given in the Data Protection Legislation, and "Processed" and "Processing" shall be construed accordingly.

**Processor** shall have the meaning given in the Data Protection Legislation.

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

- (a) 1 April to 30 June;

- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

**Regulations** mean the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 No 617 (as amended).

**Regulatory Body** means those government departments and regulatory, statutory and other entities, committees and bodies that, 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 Partners.

**Relevant Transfer** means a relevant transfer under TUPE.

**Representative** means a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.

**Request for Information** means a request for Information or an apparent request under the Code of Practice on Access to Government Information, the 2000 Act or the EIR.

**Service** means the Targeted Healthy Child Service as further set out in Schedule 2.

**Service Development Improvement Plan** means the plan containing the final performance trajectories and assurance statements applicable to the Service Provider.

**Service Provider** means a third-party provider of any of the Services, as commissioned by the CCG from the Commencement Date.

**Service Specification** means the services specification as set out in Schedule 2.

**Service Users** means individuals who are eligible to receive the Services, as more particularly described in Schedule 2.

**Special Category Data** shall have the meaning given in the Data Protection Legislation.

**Transforming Care Partnership** means an organisation made up of clinical commissioning groups, NHS England's specialised commissioners and local authorities which works with people with a learning disability autism or both and their families and carers to agree and deliver local plans.

**Term** means the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement that are agreed under Clause 3; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**UK GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

**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 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule

## **2 COMMENCEMENT AND DURATION**

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term, subject to earlier termination in accordance with Clause 31 or at Law.

## **3 EXTENDING THE INITIAL TERM**

- 3.1 The Partners may, by written agreement, extend the Agreement for a period of two (2) years beyond the Initial Term, subject to approval of the Partners.
- 3.2 Such agreement to extend the Agreement under Clause 3.1 must be reached at least 6 months before the end of the Initial Term. The CCG will be responsible for giving notice to the Service Provider to extend the Services contract in line with the relevant contractual requirements.

## **4 PARTNERSHIP ARRANGEMENTS**

- 4.1 The Partners enter into these Partnership Arrangements under Section 75 of the 2006 Act to commission integrated health and social care services to better meet the needs of the Service Users of North Yorkshire than if the Partners were operating independently.
- 4.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Recital F.
- 4.3 The Partnership Arrangements shall comprise Lead Commissioning Arrangements as follows:
  - 4.3.1 Lead commissioning by the CCG whereby the Authority is arranging with the CCG and the CCG agrees to exercise on the Authority's behalf, the Authority Health Related Functions in conjunction with the NHS Functions in respect of the Service.
- 4.4 In accordance with Regulation 4(2) of the Regulations, the Partners have carried out a joint consultation on the proposed Partnership Arrangements with Service Users, and other individuals and groups who appear to them to be affected by the Partnership Arrangements.

- 4.5 The Partners are satisfied that the Partnership Arrangements fulfil the objectives set out in the Health Improvement Plan.
- 4.6 Nothing in this Agreement shall detract from the principle that NHS services are free at the point of delivery and may not be charged for.
- 4.7 Nothing in this Agreement shall prejudice or affect:
- 4.7.1 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
  - 4.7.2 the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
  - 4.7.3 the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

## **5 SERVICES**

- 5.1 The CCG is responsible for making arrangements for commissioning the Service with a Service Provider and where appropriate, mandating a sub-contractor.
- 5.2 The CCG shall be accountable to the Authority for the Authority Health Related Functions for the benefit of Service Users.
- 5.3 The CCG will:
- 5.3.1 ensure the proper discharge of the Functions;
  - 5.3.2 use reasonable skill and care in commissioning the Service and exercising the Partners' Functions, and in accordance with best practice guidance;
  - 5.3.3 commission the Service in accordance with the Aims and Outcomes of the Service as set out in Schedule 1; the performance management framework as set out in Schedule 5; the provisions of this Agreement; and the Authorities applicable policies set out in Schedule 2;
  - 5.3.4 commission the Service in accordance with its standing orders or other rules on contracting; and
  - 5.3.5 act in accordance with all applicable Law.

## **6 ANNUAL SERVICE REVIEW PLAN**

- 6.1 The Partners shall prepare and agree an Annual Service Review Plan for the Service as at the Commencement Date in respect of the First Financial Year. This will be directly aligned to the Service Development Improvement Plan which will be agreed as part of the NHS Standard Contract for the delivery of the Service.
- 6.2 The Annual Service Review Plan will be reviewed and updated as required at least four weeks before the start of each Financial Year (excluding the First Financial Year). The Annual Service Review Plan shall:
- 6.2.1 set out the agreed Aims and Outcomes for the Service;
  - 6.2.2 describe any changes or development required for the Service;
  - 6.2.3 provide information on how changes in funding or resources may impact the Service; and
  - 6.2.4 include details of the estimated contributions due from each Partner for the Service.

6.3 The Annual Service Review Plan may be varied by written agreement between the Partners. Any variation that increases or reduces the number or level of the Service in the scope of the Agreement may require the Partners to make corresponding adjustments to the Financial Contributions set out in Schedule 3 which will be agreed in line with Clause 16 of this Agreement.

6.4 If the Partners cannot agree the contents of the Annual Service Review Plan, the matter shall be dealt with in accordance with Clause 30. Pending the outcome of the dispute resolution process or termination of the Agreement under Clause 31, the Partners shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **7 PERFORMANCE MANAGEMENT**

7.1 The CCG is responsible for contract management of the Service Provider in respect of the Service in line with the performance management framework/reporting requirements set out in Schedule 5.

## **8 FINANCIAL CONTRIBUTIONS**

8.1 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 16.

## **9 OVERSPENDS AND UNDERSPENDS**

9.1 The CCG shall arrange for the discharge of the Authority Health-Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year, as set out in Schedule 3 of this Agreement.

9.2 The CCG and the Authority will work together in partnership to address any potential shortfall in the Financial Contributions of the Partners. The CCG shall manage any in-year overspends within its commissioning arrangements for the Service. The CCG shall make the Authority aware of any potential overspend as soon as it becomes aware of this possibility. The CCG will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance. If a potential overspend has been identified by the CCG, the Partners will work together to agree a way forward to ensure service sustainability.

9.3 The Authority shall not be responsible for any such overspends, unless approved in writing by the Authority prior to incurring such overspend.

9.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend:

9.4.1 such overspend will be met by the CCG if such overspend has not been approved by the Authority in line with Clause 9.3; or

9.4.2 if such overspend has been approved by the Authority in accordance with Clause 9.3, it will be met jointly by the Partners proportionately to their respective Financial Contributions.

9.5 The CCG shall make the Authority aware of any potential underspend in relation to Financial Contributions, prior to the end of each Financial Year. The CCG shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

9.6 The benefit of any underspend at the end of the Financial Year or on termination or expiry of this Agreement (whichever is appropriate) shall:

9.6.1 if the Partners agree, be applied to the Services, as the Integrated Commissioning Group shall determine;

9.6.2 if the Partners agree, be deducted proportionately from the Partners' Financial Contributions for the following Financial Year; or

- 9.6.3 if the Partners cannot agree, be returned to the Partners in proportion to their Financial Contribution for the Financial Year.

## **10 CAPITAL EXPENDITURE**

- 10.1 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 2006 Act and Directions made thereunder.

## **11 SET UP COSTS**

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

## **12 CONTRACTS (PRE-EXISTING AND FUTURE)**

- 12.1 The CCG shall enter into such contracts with third parties as it sees fit for the purpose of facilitating the discharge of the Functions, subject to the agreement of the Authority.

## **13 GOVERNANCE**

- 13.1 The CCG shall nominate the CCG Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the CCG and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.
- 13.2 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the CCG and shall be responsible for representing the Authority and liaising with the CCG's Authorised Officer in connection with the Partnership Arrangements.
- 13.3 The CCG Authorised Officer and the Authority Authorised Officer shall be responsible for referring matters to the Integrated Commissioning Group for a decision/recommendation, unless they indicate that the decision is one that must be referred to the relevant internal governance for both Partners.
- 13.4 The Partners shall each appoint officers to the Integrated Commissioning Group in accordance with Schedule 4. The terms of reference of the Integrated Commissioning Group are set out in Schedule 4.
- 13.5 The governance arrangements set out in this Clause 13 and Schedule 4 shall be subject to review 6 months from the Commencement Date.
- 13.6 Any changes which are necessary following that review, including the establishment of additional governance arrangements, shall be agreed in accordance with Clause 16.

## **14 QUARTERLY REVIEW AND REPORTING**

- 14.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.
- 14.2 The CCG shall submit a quarterly report to the Integrated Commissioning Group setting out:
- 14.2.1 the performance of the Partnership Arrangements, including any reporting requirements as set out in Schedule 5, in the preceding Quarter; and
  - 14.2.2 any forecast overspend or underspend of the Financial Contributions.

## **15 ANNUAL REVIEW**

- 15.1 The Partners agree to carry out a review of the Partnership Arrangements within two months of the end of each Financial Year (excluding the First Financial Year) ("**Annual Review**"), which will include:

- 15.1.1 consideration of the agreed Annual Service Review Plan for the next Financial Year;
  - 15.1.2 the performance of the Partnership Arrangements against the Aims and Outcomes and the quality framework (as set out in Schedule 5);
  - 15.1.3 the performance of the Service against the service levels and other targets contained in the relevant commissioning contract entered into with the Service Provider;
  - 15.1.4 plans to address any underperformance in the Service;
  - 15.1.5 staff levels and staff turnover;
  - 15.1.6 comments, compliments and complaints;
  - 15.1.7 actual expenditure compared with agreed Financial Contributions, and reasons for and plans to address any actual or potential underspends or overspends, and evidence of value for money;
  - 15.1.8 review of plans and performance levels for the following year; and
  - 15.1.9 plans to respond to any changes in policy or legislation applicable to the Service or the Partnership Arrangements.
- 15.2 The CCG shall prepare an annual report, detailing the points in Clause 15.1 above, following the Annual Review for submission to the Partners and the Integrated Commissioning Group. Following submission of the report, the Partners will agree any required amendments to the Annual Service Review Plan.

## **16 VARIATIONS**

- 16.1 This Agreement may be varied by the Partners at any time by agreement in writing in accordance with the Partners' internal decision-making processes.

## **17 STANDARDS**

- 17.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:
  - 17.1.1 the service standards set out in Schedule 2 and Schedule 5;
  - 17.1.2 the prevailing standards of clinical governance;
  - 17.1.3 the CCG's standing orders;
  - 17.1.4 the Authority's internal governance process as set out in its constitution; and
  - 17.1.5 the requirements specified by the Care Quality Commission and any other relevant external regulator.
- 17.2 The Partners shall develop operational guidance and procedures to reflect compliance with this Clause 17.
- 17.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **18 HEALTH AND SAFETY**

- 18.1 The CCG shall (and shall use reasonable endeavours to ensure its Representatives shall) comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations

and codes of practice relating to health and safety, which may apply to the Service and persons working on the Services.

- 18.2 The CCG 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 Authority on request.
- 18.3 The CCG shall notify the Authority if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury.

## **19 EQUALITY DUTIES**

- 19.1 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.
- 19.2 The CCG agrees to adopt and apply policies in its commissioning of the Authority Health-Related Functions and NHS Functions, to ensure compliance with their equality duties.
- 19.3 The CCG shall take all reasonable steps to secure the observance of this Clause 19 by all servants, employees or agents of the CCG and all Service Providers employed in delivering the Service described in this Agreement.

## **20 FREEDOM OF INFORMATION**

- 20.1 The Partners acknowledge that each is subject to the requirements of 2000 Act and the EIR, and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.
- 20.2 Subject to the rest of this Clause 20, the Partners acknowledge that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA or EIR is a decision ultimately for the Partner to whom the request is made ("the **Receiving Party**").
- 20.3 Where the Receiving Party receives a request for information in relation to this Agreement or the Services which are provided under this Agreement:
- 20.3.1 the Receiving Party will promptly invite representations from the other Partner on the content of and application of any exemptions under the 2000 Act or EIR in any response to the individual making the request for information before the response to the request is issued;
- 20.3.2 the other Partner shall respond to the request for representations from the Receiving Party promptly taking into account any timescales under 2000 Act and the EIR;
- 20.3.3 the Receiving Party shall take into account any representations made by the other Partner before the response to the Request for Information is issued; and
- 20.3.4 both Partners accept and acknowledge that the final decision regarding the disclosure of information under 2000 Act and EIR rests with the Receiving Party.

## **21 DATA PROTECTION AND INFORMATION SHARING**

### **Data Protection**

- 21.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Service shall) comply with any notification requirements under Data Protection Legislation.

- 21.2 Both Partners shall process data lawfully and duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 21.3 The Partners acknowledge that they each may be a Data Controller in respect of any Personal Data which is obtained or processed in respect of complaints, member and MP enquiries on behalf of constituents and decisions on individualised placements and packages of care.
- 21.4 The Partners agree that, for the purposes of services delivered under this Agreement, they do not intend to share Personal Data apart from that which is listed at Clause 21.3. The Partners have therefore agreed that a Data Sharing Agreement shall be entered into setting out their responsibilities in relation to Personal Data and Special Category Data.
- 21.5 The Partners will be individually responsible for their own compliance with the Data Protection Legislation and will each be separately responsible for processing of Personal Data and informing the Data Subjects of the processing purposes in respect of any Personal Data which they hold for the purpose of Clause 21.3.
- 21.6 The Partners agree that they will take the necessary technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental or malicious loss or destruction of or damage to Personal Data to the standard required by the Data Protection Legislation and having regard to the type of Personal Data set out at Clause 21.3.
- 21.7 On the termination of this Agreement in accordance with Clause 31, the Partners will each confirm to the other what Personal Data it holds in relation to Clause 21.3 within five Working Days of the termination date, and notify the other Partner of the proposed retention period for that data.
- 21.8 A Partner must report any security incidents relating to Personal Data to the other Partner promptly and within 48 hours of discovery of the incident. The Partners agree that any security incident that is likely to affect the rights and freedoms of an individual must be reported to the Information Commissioner within 72 hours of the incident being discovered and the other Partner must be informed when an incident is reported to the Information Commissioner.

### **Information Governance**

- 21.9 To the extent the Partners are permitted to do so by Law the Partners shall share anonymised information about Service Users to improve the quality of care and enable integrated working.
- 21.10 Both Partners must complete and publish an annual information governance assessment and must demonstrate satisfactory compliance as defined in the Data Security and Protection Toolkit (or any successor framework), as applicable to the Services and organisations.
- 21.11 The Partners must:
- 21.11.1 nominate an information governance lead;
  - 21.11.2 nominate a caldicott guardian and senior information risk owner; and
  - 21.11.3 ensure that each Partner is kept informed at all times of the identities and contact details of the information governance lead, caldicott guardian and the senior information risk owner via the Data Security and Protection Toolkit (or any successor framework).
- 21.12 The Partners must adopt and implement the recommendations made by the national data guardian and must comply with further guidance issued by the Department of Health, NHS England and/or NHS Digital pursuant to or in connection with those recommendations. The Partners must be able to demonstrate their compliance with those recommendations in accordance with the requirements and timescales set out in such guidance including its adherence to data security standards and requirements for enabling patient choice.

- 21.13 The Partners must, at least once in each contract year, audit their practices against quality statements regarding data sharing set out in National Institute for Health and Care Excellence clinical guidance 138 'Patient experience in adult NHS services'.
- 21.14 The Partners must ensure that their Data Security and Protection Toolkit (or any successor framework) submission is audited in accordance with information governance audit guidance where applicable.
- 21.15 The Partners must report and publish any data breach and any Information Governance Breach in accordance with the Information Governance Guidance for Serious Incidents.
- 21.16 The Partners must have in place a communications strategy and implementation plan to ensure that Service Users are provided with, or have made readily available to them, the relevant information specified in Data Protection Legislation (being 'fair processing information' or privacy notices') and for the dissemination of nationally produced patient information materials.
- 21.17 In relation to Personal Data processed by the Partners in the course of delivering Services, the Partners must publish, maintain and operate:
- 21.17.1 policies relating to confidentiality, data protection and information disclosures that comply with the Law, the caldicott principles and good practice;
  - 21.17.2 policies that describe the personal responsibilities of staff for handling Personal Data; and
  - 21.17.3 a policy that supports the Partners' obligations under the NHS Care Records Guarantee.
- 21.18 Where information is required for the purposes of quality management of care processes, the Partners must consider whether the request can be met using anonymised and aggregated data which does not contain Personal Data. Where Personal Data is required, the Partners must ensure there is a lawful basis for processing.
- 21.19 If either Partner is to engage any subcontractor (to be agreed by all Partners prior to any such engagement(s)) to deliver any part of the Services and the subcontractor is to access Personal Data or Confidential Information or interact with Service Users, the Partner engaging the sub-contractor must impose on its subcontractor obligations that are no less onerous than the obligations imposed in this Agreement.
- 21.20 If either Partner is to require any subcontractor to process Personal Data on its behalf, the Partner must:
- 21.20.1 require the subcontractor to provide sufficient guarantees in respect of its technical and organisational security measures governing the data processing to be carried out and take reasonable steps to ensure compliance with those measures; and
  - 21.20.2 ensure that the subcontractor is engaged under the terms of a written agreement requiring the subcontractor to:
    - (a) process such Personal Data only in accordance with the Partner engaging the sub-contractor instructions; and
    - (b) allow rights of audit and inspection in respect of relevant data handling systems.

## 22 NOT USED

## 23 CONFIDENTIALITY

- 23.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential or are provided in conditions imparting an obligation of confidence ("**Confidential Information**").



- 23.2 The Partners shall keep the other Partner's Confidential Information confidential and shall not:
- 23.2.1 use such Confidential Information except for the purpose of exercising its rights under this Agreement; or
  - 23.2.2 disclose any Confidential Information in whole or in part to any third party except as expressly permitted by this Clause 23.
- 23.3 The Partners agree not to disclose any Confidential Information in whole or in part to any third party unless the Partner wishing to disclose the information (the '**Disclosing Partner**') informs the other Partner in writing and the other Partner agrees for the Confidential Information to be disclosed. The Disclosing Partner shall use all reasonable endeavours to ensure that the third party keeps the Confidential Information confidential and does not use the Confidential Information for any other purpose than for the purpose that the disclosure was made.
- 23.4 Notwithstanding Clause 23.3 above, the Partners may disclose Confidential Information to the extent required by Law, by any governmental or other Regulatory Body or by a court or other authority of competent jurisdiction provided that, to the extent that it is legally permitted to do so, the Disclosing Partner gives the other Partner as much notice of such disclosure as possible where notice of disclosure is not prohibited, and the Disclosing Partner takes into account the reasonable requests of the other Partner in relation to the content of such disclosure.

## 24 AUDIT

- 24.1 The CCG shall provide to the Authority body any reports required concerning the Authority Health Related Functions on reasonable notice. The Partners shall agree an annual audit schedule pertaining to elements of the Authority Health Related Functions to determine compliance and quality.
- 24.2 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.

## 25 INSURANCE

- 25.1 The Partners shall effect and maintain a policy or policies of insurance or equivalent indemnity cover, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

## 26 NOT USED

## 27 LIABILITIES AND INDEMNITIES

- 27.1 If a Partner ("**First Partner**") incurs a Loss arising out of or in connection with this Agreement or in relation to the Services being commissioned under the terms of this Agreement as a consequence of any act or omission of another Partner ("**Other Partner**") which constitutes negligence, fraud or a breach of contract in relation to this Agreement or the contract under which the Services are to be provided then the Other Partner shall be liable to the First Partner for that Loss and shall indemnify the First Partner accordingly.
- 27.2 Clause 27.1 shall not apply if such act or omission occurred as a consequence of the Other Partner acting in accordance with the instructions or requests of the First Partner.
- 27.3 If any third party makes a claim or intimates an intention to make a claim against either Partner, which may reasonably be considered as likely to give rise to liability under this Clause then the Partner that may claim against the other indemnifying Partner will:
- 27.3.1 as soon as reasonably practicable give written notice of that matter to the Other Partner specifying in reasonable detail the nature of the relevant claim;

- 27.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the Other Partner (such consent not to be unreasonably conditioned, withheld or delayed); and
- 27.3.3 give the other Partner and its professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the indemnifying Partner and its professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purposes of assessing the merits of and if necessary, defending the relevant claim.
- 27.4 In respect of the indemnities given in this Clause 27:
- 27.4.1 the indemnified Partner shall give written notice to the indemnifying Partner as soon as is practicable of the details of any claim or proceedings brought or threatened against it in respect of which a claim will or may be made under the relevant indemnity;
- 27.4.2 the indemnifying Partner shall at its own expense have the exclusive right to defend conduct and/or settle all claims and proceedings to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact upon the indemnified Partner, the indemnifying Partner shall consult with the indemnified Partner about the conduct and/or settlement of such claims and proceedings and shall at all times keep the indemnified Partner informed of all material matters; and
- 27.4.3 the indemnifying and indemnified Partner shall each give to the other all such co-operation as may reasonably be required in connection with any threatened or actual claim or proceedings which are or may be covered by a relevant indemnity.
- 27.5 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.
- 27.6 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.
- 27.7 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 AND INVESTIGATIONS**

- 28.1 During the Term of the Agreement, complaints can be made to either Partner to this Agreement and will be dealt with through that Partner's usual complaints process in line with the statutory complaints procedure of that Partner but where the complaint relates to both Partners, or a sub-set thereof, they will work together to provide a joint response.
- 28.2 Where a complaint cannot be handled in any way described above or relates to the operation of the arrangements made pursuant to this Agreement or the content of this Agreement, then the Responsible Officers, or their nominated deputies will set up a complaints subgroup to examine the complaint and recommend remedies.
- 28.3 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

## **29 HEALTHWATCH**

- 29.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.
- 29.2 The CCG shall ensure the effective discharge of the CCG's and the Authority's obligations in the establishment of Local HealthWatch.

29.3 The CCG shall ensure its contracts with Service Providers require co-operation with Local HealthWatch as appropriate.

### **30 DISPUTE RESOLUTION**

30.1 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.

30.2 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:

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

30.2.2 in the second instance (if resolution by the Authorised Officers cannot be reached in line with Clause 30.2.1) to, the Integrated Commissioning Group. The members of the Integrated Commissioning Group shall use their best endeavours to resolve such disputes through ordinary negotiations within sixty (60) days;

30.2.3 in the third instance (if resolution by the Integrated Commissioning Group cannot be reached in line with Clause 30.2.2) 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.

30.3 If the dispute is not resolved within thirty (30) days following a referral under Clause 30.2.3, the Partners shall attempt in good faith to resolve the dispute through the model mediation procedure of the Centre for Effective Dispute Resolution ('CEDR').

30.4 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.

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

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

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

30.5.3 chair, and determine the procedure for the mediation;

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

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

30.6 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.

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

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

30.7.2 organising a suitable venue and dates;

- 30.7.3 organising exchange of the case summaries and documents;
  - 30.7.4 meeting with either of the Partners (and the mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
  - 30.7.5 general administration in relation to the mediation.
- 30.8 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.
- 30.9 The Partners agree to notify the mediator of any of the relevant timescales which they wish to observe.
- 30.10 Each Partner will state the names of:
- 30.10.1 the person(s) who will be the lead negotiator(s) for that Partner, who must have full authority to settle the dispute; and
  - 30.10.2 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.
- 30.11 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:
- 30.11.1 its case summary; and
  - 30.11.2 all the documents to which the case summary refers and any others to which it may want to refer in the mediation.
- 30.12 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.
- 30.13 The mediator will be responsible for sending a copy of each Partner's case summary and supporting documents to the other simultaneously.
- 30.14 The Partners should try to agree:
- 30.14.1 the maximum number of pages of each case summary; and
  - 30.14.2 a joint set of supporting documents or the maximum length of each set of supporting documents.
- 30.15 The mediation will take place at the time and place arranged by CEDR.
- 30.16 The mediator will chair, and determine the procedure at, the mediation.
- 30.17 No recording or transcript of the mediation will be made.
- 30.18 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.
- 30.19 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.

- 30.20 The mediation will terminate when:
- 30.20.1 a Partner withdraws from the mediation;
  - 30.20.2 a written settlement agreement is concluded;
  - 30.20.3 the mediator decides that continuing the mediation is unlikely to result in a settlement; or
  - 30.20.4 the mediator decides he should retire for any of the reasons in CEDR's code of conduct.
- 30.21 Every person involved in the mediation will keep confidential and not use for any collateral or ulterior purpose:
- 30.21.1 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
  - 30.21.2 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.
- 30.22 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.
- 30.23 Clauses 30.21 and 30.22 shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the mediation.
- 30.24 Neither 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.
- 30.25 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.
- 30.26 Each Partner will bear its own costs and expenses of its participation in the mediation.
- 30.27 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.

## 31 TERMINATION

- 31.1 Without prejudice to other rights and remedies at Law, and unless terminated under Clause **Error! Reference source not found.**, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner.
- 31.2 Either Partner (for the purposes of this Clause 31.2, the '**First Partner**') may terminate this Agreement with immediate effect by the service of written notice on the other Partner (for the purposes of this Clause 31.2, the '**Other Partner**') in the following circumstances:
- 31.2.1 if the Other 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 31.2, if the Other Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner ('**Remediation Notice**') to do so;
  - 31.2.2 there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or

31.2.3 following a failure to resolve a dispute under Clause 30.

31.3 The provisions of Clause 322 shall apply on termination of this Agreement.

## **32 CONSEQUENCES OF TERMINATION**

32.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:

32.1.1 the Partners will comply with the exit strategy set out in Schedule 7;

32.1.2 premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;

32.1.3 assets purchased from the Financial Contributions shall be returned to the Partner from whose Financial Contribution the purchase was made;

32.1.4 responsibility for the Authority's Functions exercised under the Agreement will be returned to the Authority; and

32.1.5 the CCG shall transfer to the Authority all records in its possession relating to the Authority Health Related Functions.

32.2 Overspends on termination of the Agreement shall be dealt with in accordance with Clause 9.4.

32.3 Subject to Clause 32.4, underspends on termination of the Agreement shall be dealt with in accordance with Clause 9.6.

32.4 The CCG shall be entitled to direct any underspends to the following purposes:

32.4.1 to meet obligations under existing contracts;

32.4.2 to defray the costs of making any alternative arrangements for Service Users; and

32.4.3 to meet the costs of any redundancies arising from the termination of the Partnership Arrangements.

32.5 The provisions of the following clauses shall survive termination or expiry of this Agreement:

32.5.1 Clause 20;

32.5.2 Clause 21;

32.5.3 Clause 23;

32.5.4 Clause 24;

32.5.5 Clause 27;

32.5.6 Clause 28;

32.5.7 Clause 32; and

32.5.8 Clause 42.

32.6 The Partners shall continue to co-operate with each other or their statutory successors following the termination of this agreement (for any reason) with a view to ensuring the continuity of delivery of the Services, the continuation, renewal or re-procurement of the Service, any commissioning arrangements relating to them and the continued provision of public health services to the population

of North Yorkshire, including but not limited to the provision of TUPE information where required for a re-procurement.

### **33 PUBLICITY**

33.1 The Partners shall co-operate when issuing any public statement, press release or social media communication relating to the terms of this Agreement or any activity undertaken under it or discretion exercised by reference to it to the intent that both Partners agree such statement or release which should represent the agreed position of both Partners in relation to such matters.

### **34 NO PARTNERSHIP**

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

### **35 THIRD PARTY RIGHTS**

35.1 No one other than a Partner to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

### **36 NOTICES**

36.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the Authorised Officers or another person duly notified by the Partners for the purposes of serving notices on that Partner, at the address set out for the Partner in this Agreement.

36.2 All formal Notices relating to this Agreement shall be given by hand, pre-paid first class post (or in accordance with the Postal Services Act 2000 if applicable) or email confirmed by pre-paid letter to the addressee at the address given in this Agreement or such other address as the addressee shall have for the time being notified to the other Partner giving notice and such notice shall be deemed to have been delivered either upon delivery if by hand or if by letter at the expiration of forty eight (48) hours after posting or if by email the next Working Day.

### **37 ASSIGNMENT AND SUBCONTRACTING**

37.1 Subject to Clauses 37.2 and 37.3, this Agreement and any right and conditions contained in it may not be assigned or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.

37.2 The Partners recognise the upcoming changes to the structure of the NHS and agree that the CCG shall be entitled to novate, assign in whole or in part any right or condition under this Agreement to NHS England or any other NHS body or any other entity replacing the CCG or who has become responsible for the exercise of any or all of the NHS Functions.

37.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the CCG, provided that assignment, novation or disposal is limited to any legal entity with which the Authority merges or which is a successor body of the Authority by reason of statutory reorganisation.

### **38 SEVERABILITY**

38.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

### **39 WAIVER**

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

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

#### **40 ENTIRE AGREEMENT**

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

#### **41 FORCE MAJEURE**

41.1 No Partner shall be entitled to bring a claim for a breach of obligations under this Agreement by the other Partner or incur any liability to the other Partner for any losses or damages incurred by that Partner to the extent that a Force Majeure Event occurs, and it is prevented from carrying out its obligations by that Force Majeure Event.

41.2 On the occurrence of a Force Majeure Event, the affected Partner shall notify the other Partner as soon as practicable. Such notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the affected Partner and any action proposed to mitigate its effect.

41.3 As soon as practicable, following notification as detailed in Clause 41.2, the Partners shall consult with each other in good faith and use all best endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and, subject to Clause 41.4, facilitate the continued performance of the Agreement.

41.4 If the Force Majeure Event continues for a period of more than sixty (60) days, either Partner shall have the right to terminate the Agreement by giving fourteen (14) days written notice of termination to the other Partner. For the avoidance of doubt, no compensation shall be payable by either Partner as a direct consequence of this Agreement being terminated in accordance with this Clause 41.

#### **42 GOVERNING LAW AND JURISDICTION**

42.1 Subject to Clause 30, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

#### **43 FAIR DEALINGS**

43.1 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.



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

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

**NORTH YORKSHIRE CLINICAL COMMISSIONING GROUP**

in the presence of authorised signatory:

---

AUTHORISED SIGNATORY

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

**NORTH YORKSHIRE COUNTY COUNCIL**

in the presence of authorised signatory:

---

AUTHORISED SIGNATORY

## **SCHEDULE 1 - AIMS AND OUTCOMES OF THE INTEGRATED COMMISSIONING GROUP**

### **1 AIMS AND OUTCOMES OF THE INTEGRATED COMMISSIONING GROUP**

1.1 The aims and outcomes of the Integrated Commissioning Group are to:

- 1.1.1 improve the quality and efficiency of the Service;
- 1.1.2 meet the national conditions and local objectives;
- 1.1.3 create the foundations that empower greater levels of innovation and best practice across North Yorkshire;
- 1.1.4 ensure the collective resources of the Partners are spent on a shared understanding of collective need;
- 1.1.5 expand and embed the good practice delivered through the COVID-19 pandemic through formalising and strengthening partnership working;
- 1.1.6 improve prevention of health and care needs arising, early intervention and steps to avoid people's needs from escalating;
- 1.1.7 remove duplication from the system to improve people's experience;
- 1.1.8 commission services that build on both individual's strengths and our strengths across the system;
- 1.1.9 enable cross organisational working that finds solutions to move forward together; and
- 1.1.10 deliver greater productivity and increased efficiency.

**SCHEDULE 2- SERVICES IN SCOPE**

## **SCHEDULE 3 – FINANCIAL CONTRIBUTIONS**

### **1 FINANCIAL CONTRIBUTIONS**

- 1.1 The CCG Financial Contribution in respect of the Services for each Financial Year is £308,840.
- 1.2 The Authority's Financial Contribution in respect of the Services for each Financial Year is £318,840.
- 1.3 Each Partners Financial Contribution is not subject to inflation or any other increase over the Term unless agreed in writing by the Partners.
- 1.4 The Authority's Financial Contribution for each Financial Year will be paid quarterly in advance in four equal instalments.
- 1.5 The Partners shall agree any changes to the level of Financial Contribution for each Partner for the following Financial Year by 31 December. Such changes will be evidenced in writing by insertion into this Schedule 3 as an agreed variation under Clause 16.
- 1.6 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.

### **2 VAT**

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

### **3 POOLED FUND**

- 3.1 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 16. If the Partners do agree to establish a Pooled Fund, the Partners recognise that this Agreement will require amendments to ensure compliance with the Regulations.

### **4 SUPPORT SERVICES/NON-FINANCIAL CONTRIBUTIONS**

- 4.1 There is no non-financial contributions or shared support services under this Agreement.

## SCHEDULE 4- GOVERNANCE



EHWB Governance  
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## SCHEDULE 5- PERFORMANCE MANAGEMENT FRAMEWORK

|  | Reporting Period | Format of Report | Timing and Method for delivery of Report  |
|--|------------------|------------------|---|
| <b>National Requirements Reported Locally</b>  |                  |                  |   |
| 1. Activity and Finance Report <i>(note that, if appropriately designed, this report may also serve as the reconciliation account to be sent by the Provider under SC36.22 of the NHS Standard Contract)</i> | Quarterly        | Quarterly report | 15 <sup>th</sup> July 2022<br>14 <sup>th</sup> Oct 2022<br>13 <sup>th</sup> Jan 2022<br>14 <sup>th</sup> Apr 2022 |
| 2. Service Quality Performance Report, detailing performance against Operational Standards, National Quality Requirements, Local Quality Requirements, Never Events and the duty of candour                  | Quarterly        | Quarterly report | As above  |
| 3. Complaints monitoring report, setting out numbers of complaints received and including analysis of key themes in content of complaints  | Quarterly        | Quarterly report | As above  |
| 4. Summary report of all incidents requiring reporting   | Quarterly        | Quarterly report | As above  |
| <b>Local Requirements Reported Locally</b>   |                  |                  |   |
| 5. Number of referrals into service  | Quarterly        | Quarterly report | As above  |
| 6. Number of children referred onto specialist Children and Young People's Mental Health Services  | Quarterly        | Quarterly report | As above  |
| 7. % of children seen for treatment within 6 weeks of referral (Mental Health Services Data Set ('MHSDS')). Data flow from the service to MHSDS in line with reporting requirements                          | Quarterly        | Quarterly report | As above  |
| 8. Number of professional consultations taken place  | Quarterly        | Quarterly report | As above  |
| 9. % of training delegates reporting increase in knowledge/confidence as a result of the training session  | Quarterly        | Quarterly report | As above  |
| 10. % of children reporting excellent or good of their experience of the service (Service User questionnaire)  | Quarterly        | Quarterly report | As above  |
| 11. Number of texts sent to the text messaging service, including primary reason for contact   | Quarterly        | Quarterly report | As above  |

**SCHEDULE 6 – DATA SHARING AGREEMENT**

| 5.  |  |  |  |
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| 17. |  |  |  |

## SCHEDULE 7– EXIT STRATEGY

### 1 EXIT STRATEGY

- 1.1 No less than 6 months prior to the end of the Term, both Partners shall establish a process for the effective transition of the Service to any successor arrangements.
- 1.2 The process referred to at paragraph 1.1 of this Schedule 7 shall consider:
- 1.2.1 how to most effectively, and with minimal disruption to people accessing the Service, facilitate the transfer of Service provision to a successor service / provider;
  - 1.2.2 what data, personal information or Service level intelligence will be required by a successor provider to operate effectively from the start date of any future contract / arrangement;
  - 1.2.3 how Service Users will be communicated with on the nature of any change and the impact on the service they currently receive; and
  - 1.2.4 if necessary, how separately commissioned services from the Authority and CCG will work together in the best interests of Service Users, and how determinations will be made for the division of workload from a single to multiple services.