



Appendix 1

**AGREEMENT UNDER
SECTION 75 OF THE NATIONAL HEALTH SERVICE ACT 2006**

**PARTNERSHIP AGREEMENT FOR THE
COMMISSIONING OF
HEALTH AND SOCIAL CARE SERVICES**

between

LEEDS CITY COUNCIL

and

**NHS LEEDS
(LEEDS PRIMARY CARE TRUST)**

**Commencement Date:
Revision Date: April 2013**

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**PARTNERSHIP AGREEMENT FOR THE COMMISSIONING OF
HEALTH AND SOCIAL CARE SERVICES**

PART 1

JOINT POLICY STATEMENT

Strengthening Commissioning: Partnership Arrangements between Leeds City Council and NHS Leeds

Part I – Policy Statement

“Commissioning is the process used by local authorities and NHS bodies to arrange services for their local population. It is the process of translating local aspirations and assessed needs, by specifying and procuring services for their local population, into services for people that use them.

“Our aims are:

- To deliver the best possible social and healthcare and wellbeing outcomes, including promoting equality***
- To provide the best possible health and care provision***
- To achieve this within the best use of available resources”***

Department of Health

Purpose

This policy statement sets out the basis and rationale for the Partnership Agreement for commissioning services between Leeds City Council and Leeds PCT (known as NHS Leeds), the Partners to this Agreement. It restates the shared commitment of the two organisations to developing their commissioning partnership and describes the context in which the commissioning relationship is being developed.

The basis for the agreement is around the following clear rationale promoting effective partnership working with the aim of effective use of resources and meeting the health and social care needs of the citizens of Leeds.

- follows national policy and guidelines
- based on a clear and well communicated vision
- clear rationale for the partnership
- written/formalised/detailed partnership agreement in place
- contracts/services/personnel are mapped
- provides clarity in relation to roles and responsibilities relating to commissioning and financial management
- delegated authority is clear, levels of business decisions and accountability are clear
- clarity regarding commissioning process is clear
- the reporting lines are clear and allows effective flows of communication both vertical and horizontal
- are all relevant parties within the formal agreement

- resources are identified clearly and the allocation of resources is within the remit of the host party
- pooled budget arrangements are clear and agreed with a reviewing mechanism
- a framework for monitoring agreed performance is in place

The Partners have included this Joint Policy Statement to inform and assist stakeholders in understanding the basis of the Agreement. The Partners acknowledge that this Statement has no legal standing and that it in no way restricts the meaning of the provisions of the Agreement as set out in Part 2.

The Policy Context

1. Both national policy and local interests lead us to developing a closer partnership between the two major public service authorities in the City. National expectations have been set by *Our health, our care, our say: a new direction for community services* *Strong and prosperous communities: the local government white paper* *Commissioning framework for health and well-being: health and social care working together in partnership*; and *Putting People First: a shared vision and commitment to the transformation of Adult Social Care*
2. In the Autumn of 2010, the Department of Health published revised NHS Performance Framework Guidance; “Transparency in Outcomes a Framework for Adult Social Care” and “Healthy Lives, Healthy People” These have been produced in line the Coalition’s *Programme for Government* and its proposals for establishing a role for local government in joining up commissioning, with a stronger local voice and accountability established through statutory Health and Wellbeing Boards. There is a National intention to build an alignment between the performance frameworks of Adult Social Care, the NHS, Public Health and others which reflects the interrelationship of their functions and activities.
3. A new local strategic planning framework for Leeds City Council and its strategic partners is being developed to cover the 2011-2015 period. The associated performance framework starts from the basis of compliance with the principle that intelligence about the quality of local services should be based upon locally developed systems to track the success in delivering improved outcomes.
4. NHS Leeds is an ambitious organisation committed to adding years to life and life to years for the people of Leeds. NHS Leeds has a clear vision “*To improve health and wellbeing, reduce inequalities and transform health services for the people of Leeds by working with others and being a leading edge organisation.*”
5. The commissioning landscape is changing. On 12 July 2010, the Government published a White Paper, *Equity and excellence: Liberating the NHS*, setting out their long-term vision for the NHS. The White Paper described a framework of reforms including transfer of some

commissioning responsibilities from primary care trusts to GPs. A phased approach to the introduction of GP commissioning is underway through a programme of GP consortia pathfinders. Across Leeds organisations are working together to develop outcome based commissioning strengthening links between health and social care.

6. The *Local Government and Public Involvement in Health Act 2006* strengthened accountability for health and social care by the establishment of Local Involvement Networks and enhancing the role of Local Authority Scrutiny Committees over both health and social care. *Communities in Control: real people, real power* emphasised the importance of public involvement in every aspect of public services.
7. NHS Leeds has worked with Leeds LINK to develop a joint working protocol and is supporting it in developing a work plan. NHS Leeds are committed to ensuring Leeds LINK takes a key part in delivering effective patient and public engagement for the coming year. As the new national commissioning landscape emerges NHS Leeds will continue to develop its formal relationship with the Leeds City Council and with Healthwatch on patient issues

Partnership Working in Leeds

8. The new strategies reflect the shared need to transform commissioning and contracting to ensure that plans for each care group develop a wider range of services available to local people. The ambition is, through greater user involvement, to commission health and care services which deliver the outcomes which users want and need within a contracting framework which is flexible but also provides the necessary protection for users and carers
9. Both authorities acknowledge that this shared agenda cannot be delivered without close partnership working at both an operational and a strategic commissioning level. A Joint Commissioning infrastructure is already in place, with joint appointments between a number of departments of the Council and NHS Leeds within commissioning. Additional joint posts will be developed in public health.
10. At the same time Leeds City Council and NHS Leeds are examining the practical and governance arrangements in place to strengthen joint commissioning and a partnership approach to delivery of shared objectives.

Practical Arrangements for Partnership

11. The statutory duty of partnership on NHS bodies and local authorities was established under the Health Act 1999 and later the Health and Social Care (Community Health and Standards) Act 2003. The NHS Act 2006 consolidated this legislation, further enabling the Health Act Flexibilities set out in the 1999 Act. Local authorities and NHS organisations can now more easily delegate functions to one another to meet partnership objectives and create joint funding arrangements.
12. The NHS Act 2006 makes provision for the functions (statutory powers or duties) of one partner to be delivered by another partner, subject to agreed terms of delegation. Responsibility for undertaking certain functions, activities or decisions can be transferred from one partner to another to achieve the partnership objectives. Although the functions are delegated, partners remain responsible and accountable for ensuring they meet their own duties under the legislation and cannot pass on responsibility for services outside the agreed activity.
13. The purpose of this agreement between Leeds City Council and NHS Leeds is therefore, to set out the governance, financial management and risk arrangements operating between the two authorities (in part 2 of the agreement).

14. The agreement does not include integrated service provision. Separate agreements are being developed in relation to integrated services and consideration will be given to other agreements in relation to integrated service provision.

Policy Statement

15. This new document provides a legal agreement which:
 - restates the commitment of Leeds City Council and NHS Leeds to a commissioning alliance
 - clearly sets out the terms and conditions relating to partnership arrangements and supports a delivery plan that is deliverable through existing service and finance frameworks
 - includes governance arrangements that do not become an additional burden to local delivery but rather offer an effective means for managing partner relations and reviewing operations
 - transparently defines priorities and developmental plans
 - is effective in delivering outcomes that are in line with national policy and take forward local strategies for service improvement
16. Leeds City Council and NHS Leeds are committed to working within this framework, in the belief that it will enable us to deliver health and wellbeing to the people of Leeds more effectively.

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between

**LEEDS CITY COUNCIL
&
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Commencing: April 2012

**PARTNERSHIP AGREEMENT FOR THE COMMISSIONING OF
HEALTH AND SOCIAL CARE SERVICES**

PART 2

THE AGREEMENT

THIS IS AN AGREEMENT BETWEEN

(1) Leeds City Council Civic Hall Leeds LS1 1UR (referred to herein as “the Council”)

and

(2) Leeds Primary Care Trust (known as NHS Leeds) (referred to herein as “the PCT”)

(each a “Partner” and together the “Partners”)

BACKGROUND

(A) The Council is the local Social Services Authority for the administrative areas of Leeds for the purposes of the Local Authority Social Services Act 1970 by virtue of Section 195 of the Local Government Act 1972 and is responsible inter alia for the provision of community care and accommodation for older people and other vulnerable adults who are residents of the area it administers.

(B) The PCT, known as NHS Leeds, is established under Section 16A of the National Health Service Act 1977 (now repealed and replaced by S.18 of the National Health Service Act 2006) and is responsible for services to meet the health needs of residents registered with a Leeds GP or usually resident within Leeds as defined within the Department of Health Responsible Commissioner guidance.

(C) section 22 of the National Health Service Act 1977 amended by section 27 of the Health Act 1999 requires Local Authorities including the Council and Primary Care Trusts including the PCT to co-operate to secure and advance the health and welfare of people of England and Wales and Section 75 of the National Health Services Act 2006 (formerly Section 31 of the Health Act 1999) and the Regulations provide powers for local authorities and NHS bodies to set up joint working arrangements;

(D) the Partners wish to establish partnership arrangements pursuant to Section 75 of the National Health Service Act 2006 and pursuant to the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (Statutory Instrument 2000 No. 617) and any amendments thereto and subsequent re-enactments thereof

(E) The Partners are satisfied that the Partnership Arrangements will lead to an improvement in the way in which their functions are exercised in relation to providing community care, accommodation and health services and the management of associated funds.

- (F) The Partners are satisfied that the Partnership Arrangements will further the shared objectives of reducing health inequalities and improving health and wellbeing and that these arrangements contribute to fulfilment of the outcomes and performance indicators set out by the Health and Wellbeing Board.
- (G) The Partners have consulted such personal and/or bodies as appear to them to be affected by the Partnership Arrangements and in accordance with the relevant consultation regulations and guidance in that regard.
- (H) The Partnership Arrangements do not affect the liability of the Council or the PCT for the exercise of their respective functions, or any power or duty to recover charges for the provision of any services in the exercise of any Local Authority function.
- (I) The administrative areas for the Council and the PCT have exactly the same boundaries, being the City of Leeds.
- (J) The Council is responsible for the resident population of Leeds and the PCT is responsible for the population who are registered with a General Medical Practitioner approved to operate within the boundaries of Leeds.
- (K) The provision of the Individual Services secured by the Pooled Fund, within the powers of the Council and the PCT, shall be limited to eligible people within their same borders of responsibility.
- (L) The Council and the board of the PCT have approved the terms and conditions of this Agreement.

MISSION STATEMENT

Whilst the intention of the parties in this document is to set out, in sufficient detail, the terms of the agreement between the parties, so as to make its implementation and subsequent operation as straightforward as possible, and to reduce the possibility of misunderstanding or potential conflict between the parties, it is acknowledged that it cannot cover all eventualities which may arise in the area of providing complex services in a changing financial and political environment.

The partners are committed to working cooperatively to increase the quality and cost effectiveness of the service they provide to the client group served by this agreement. It is therefore accepted that situations will arise which have not been foreseen by this agreement and where it cannot be used to resolve those difficulties. The parties to the agreement will use their best endeavours to resolve those issues and disputes in ways which best serves the interests of the service users and ensures the efficient use of scarce public resources.

IT IS AGREED AS FOLLOWS:

1. Definition and Interpretation

Definition

1.1. In this Agreement the following expressions will have the following meanings:

"the 2006 Act"	means the National Health Service Act 2006
"Additional Services"	means services that may be added to the Services during the life of the Agreement in accordance with Clause 18.3 3 (Entire Agreement, Variations and Change Control) of this Agreement
"Agreement"	means this Agreement between the Council and the PCT comprising these terms and conditions, together with all Schedules attached hereto
"Aims"	means the agreed aims of the Partnership Arrangement
"Area"	means the City of Leeds
"Best Value Duty"	means the duty imposed on the Council by Section 3 of the Local Government Act 1999 in relation to, inter alia, any one (1) or more of the Services
"Commencement Date"	means April 2012
"Community Care Functions"	means those functions of the Council's health related function, specified in Regulation 6a of the Regulations in relation to the commissioning of services
"Costs"	<p>Those liabilities incurred by the Partnership as a result of running the agreement which are not the cost of a care package or staffing costs i.e. stationary, utility bills rent, furniture etc. This list is not exhaustive.</p> <p>Alternative definition: Any cost of the Partnership which is not the cost of a</p>

care package or a staffing cost.

“Council”	means The Mayor and the Citizens of the City of Leeds City of Civic Hall Leeds LS1 1UR and any statutory successors to its functions in relation to the matters which are the subject of this Agreement
“Eligible Service Users”	means those residents of Leeds who the Council or PCT are responsible for and who require the needs of an Individual Service(s)
“Financial Year “	means 1 April to 31 March
“Guidance”	means the guidance on the Health Act Section 75 partnership arrangements published by the Department of Health
"Host Partner”	means, as described in Regulation 7(4) of the Regulations, the Partner responsible for the accounts and audit of Pooled Fund Arrangements
“Individual Service”	shall mean one of the constituent services which is allocated a specific budget by the Partners and which together comprise the Services
“Individual Service Budget”	means the budget allocated by the Partners to an Individual Service
“Initial Term”	means the period of three (3) years with the option to extend the agreement for a further two (2) years commencing on the Commencement Date
“JSCB”	means Joint Strategic Commissioning Board. The senior officer group responsible for overseeing this Agreement;
“Joint Commissioning Group”	is used as a generic term to mean the commissioning executive or group responsible for monitoring and overseeing the implementation of the Partnership Arrangements relating to

	services for a particular client group – for example the Learning Disabilities Joint Commissioning Executive
“Joint Information Sharing Protocol”	means the Leeds Interagency protocol for sharing information contained in Appendix 1, Part 2, subject to any variations as may be agreed between the Partners from time to time in accordance with Clause 18.3 (Entire Agreement, Variations and Change Control)
“Lead Commissioning Arrangements”	means the Arrangements for the exercise by one of the Partners of the Lead Commissioning Function as set out in Clause 6 (Lead Commissioner Arrangements) of this Agreement;
“Lead Commissioner Functions”	means the Community Care Functions and the NHS Functions
“Lead Commissioning”	means the mechanism by which one Partner commissions services on behalf of the other Partner and “Lead Commissioner” shall be construed accordingly;
“Legislation”	means a statute, statutory provision or subordinate legislation;
“NHS Functions”	means the functions of NHS bodies described in Regulation 5 of the Regulations
“Non Pooled Funds”	means those budgets available for the Individual Services which use the joint commissioning of services under Lead Commissioning Arrangements and as specified in the relevant Schedules to this Agreement
“Objectives”	means the agreed objectives of the Partnership Arrangements
“Partners”	means the Council and the PCT and “Partner” means either the Council or the PCT; the term includes the

	organisation(s), their employees, agents and sub-contractors;
“Partnership Arrangements”	means the Lead Commissioner Arrangements and the Pooled Fund Arrangements;
“PCT” or "NHS Leeds"	means Leeds Primary Care Trust (known as NHS Leeds) of North West House, West Park Ring Road, Leeds, LS16 6QG and any statutory successors to its functions in relation to the matters which are the subject of this Agreement
“Performance Measures”	means those measures to be established by the Partners in respect of the Partnership Arrangements
“Pooled Fund Arrangements”	means the arrangements agreed by the Partners for establishing and maintaining the Pooled Fund for the purposes of Regulation 7 of the Regulations
“Pooled Fund Functions”	means the arrangements set out in this Agreement for securing the Services to meet the health and social care needs of Leeds residents
“Pool Manager for Commissioning”	means the individual referred to in Clause 5.13 being an officer of the Host Partner responsible for managing the Pooled Fund on behalf of the Partners and submitting to the Partners quarterly reports and annual returns and other information, which for the purposes of each commissioning agreement will be the Director of Adult Social Care or nominated representative this title is interchangeable depending upon the model of commissioning and financial management
“Regulations”	means the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (Statutory Instrument 2000 No. 617) and any amendments thereto and

	subsequent re-enactments thereof
“Section 75”	means Section 75 of the National Health Services Act 2006
“Section 256”	means Section 256 of the National Health Services Act 2006
“Services”	means the Individual Services together
“Term”	means the period described in Clause 2.1 (Duration of Agreement)

Interpretation

- 1.2 In this Agreement (except where the context otherwise requires):
- 1.2.1 Any reference to this Agreement includes Parts 1 and 2 of this Agreement and the Schedules of or to this Agreement which form part of this Agreement and will have effect as if set out in full in the body of this Agreement but not including the table of contents which is provided for convenience of reference only and will not be construed as part of this Agreement;
 - 1.2.2 Any reference to a Schedule is to a Schedule of or to this Agreement;
 - 1.2.3 Any reference to a clause is to a provision of this Agreement that is uniquely identifiable by a preceding number and clauses may be nested so that a clause may contain subordinate clauses each uniquely identifiable by a subordinate preceding number and any reference to a clause includes all other clauses nested within that clause;
 - 1.2.4 Any reference to a paragraph is to a paragraph of a Schedule to this Agreement or a paragraph of the Regulations;
 - 1.2.5 Any reference to a statute, statutory provision or subordinate legislation (collectively referred to as “Legislation”) will be construed as referring to such Legislation as amended and in force from time to time and to any Legislation which re-enacts or consolidates (with or without modification) any such Legislation provided that, unless the Partners agree otherwise, as between the Partners, no such amendment or modification will apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Partner;

- 1.2.6 Any reference to a person or body will not be restricted to natural persons and will include natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- 1.2.7 Clause headings of all kinds including those that stand above, run into or appear to the side of clauses are provided for convenience of reference only and will not be construed as part of this Agreement or deemed to indicate the meaning of the clauses to which they relate or in any other way affect the interpretation of this Agreement or include the unique identifying numbers that precede every clause;
- 1.2.8 Where any conflict may arise between the provisions contained in this Agreement and any Schedules or other documents referred to herein, the provisions of this Agreement will prevail, except for any Legislation or other law or regulation which will prevail over the provisions of this Agreement;
- 1.2.9 Use of the singular will include the plural and use of the plural will include the singular;
- 1.2.10 Use of any gender will include the other genders; and
- 1.2.11 Any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

2. Duration of Agreement

- 2.1 This Agreement shall come into force on the Commencement Date and shall continue for the Initial Term (and such further period(s) as may be agreed by the Partners pursuant to Clause 3 (Extension of Agreement)) unless otherwise terminated in accordance with the terms of this Agreement.

3. Extension of Partnership Agreement

- 3.1 At the end of the Initial Term of this Agreement, the Partners may extend the Term for further period(s) of one (1) year provided that the aggregate of all such extensions does not exceed three (3) years in accordance with this Clause 3.
- 3.2 Where a Partner wishes to extend the Term it shall serve not less than six (6) months' and no more than twelve (12) months' notice in writing (prior to the date this Agreement is due to expire) to this effect on the other Partner and that other Partner shall reply within fourteen (14) days of the date such notice is served as to whether it wishes to agree to such extension.
- 3.3 Where the Partner on whom the notice was served pursuant to Clause 3.2 agrees to the proposed extension, the Agreement shall continue on the same terms as existed on the day before the Agreement would otherwise have expired but for the extensions.
- 3.4 Where the Partner on whom the notice was served pursuant to Clause 3.2 declines the proposed extension or fails to give a written response within fourteen (14) days of the date the notice is served, the current Agreement shall end on the expiry of the Agreement period. However both partners may by mutual agreement amend the period of 14 days notice if appropriate in the circumstances.

4. Functions

- 4.1 The Partners wish to ensure that services for people with health and social care needs are planned, commissioned and provided in an integrated manner. The primary aim of this Agreement is to ensure the most cost-effective use of the combined resources of the Partners to address the health and care needs of people who are their responsibility. This Agreement sets out the arrangements for:
- Lead commissioning
 - Establishing and maintaining the pooled budgets
- 4.2 The Partners shared aims, the agreed Aims and Objectives of the commissioning arrangements for the purposes of Regulation 7(3) (a) of the Regulations, are to ensure that:

- 4.2.1 the commissioning of services is based on an agreed picture of needs rather than historical service configurations
 - 4.2.2 the commissioned services present good value for money and best value
 - 4.2.3 services seek to promote emotional and physical good health and work to overcome social exclusion
 - 4.2.4 services are culturally competent in meeting the needs of people from black and minority ethnic communities
 - 4.2.5 a whole systems approach is taken to the commissioning and provision of services by preventing duplication of such services and to make more effective use of the current resources e.g. integrated care pathways
 - 4.2.6 robust arrangements to collect performance management information are established and maintained and that the information is used to evaluate performance against targets, monitoring both the effectiveness of the commissioning process and the commissioned services
- 4.3 Detailed reasons for the Partners entering into this Agreement are specified in the relevant schedules and the “agreed aims and objectives” of the Partnership Arrangements for the purposes of Regulation 7(3)(a) of the Regulations are the Aims and Objectives.
- 4.4 The Partnership Arrangements are the mechanism through which:
- 4.4.1 the Council agrees to delegate identified Community Care Functions to the PCT and the PCT agrees to fulfil these Community Care Functions on behalf of the Council’
 - 4.4.2 the PCT agrees to delegate identified NHS Functions to the Council and the Council agrees to fulfil these NHS Functions on behalf of the PCT; and
 - 4.4.3 the Pooled Funds and Non-Pooled Funds will be maintained.
- 4.5 Where the powers of either Partner to delegate functions are restricted, the Partners will separately agree arrangements designed to achieve the greatest degree of delegation to the other Partner which is consistent with the statutory constraints.
- 4.6 Nothing in this Agreement shall affect the liabilities of the Parties to any third parties for the exercise of their respective functions and obligations.

5. Pooled Fund Arrangements

The following shall apply where Pooled Funds are to be used:

- 5.1 the Partners hereby agree that with effect from the Commencement Date of the Pooled Fund Agreement they shall establish and thereafter during the Term maintain a Pooled Fund for revenue expenditure on the Pooled Fund Functions in accordance with the terms of this Agreement, the Partners being satisfied that the said Functions are a combination of NHS Functions and Community Care Functions;
- 5.2 the Partners shall make contributions annually to each Pooled Fund. The contribution to each Pooled Fund of each Partner shall, for the first Financial Year of the Partnership Arrangements be in accordance with Clause 8 of this agreement and with the relevant Schedule of this Agreement. The Partners may agree in writing that further services become included in the Pooled Fund Functions for meeting the needs of Eligible Service Users where the additional services meet the agreed joint Aims and Objectives of the Partners;
- 5.3 the proportions of the contributions made annually to a Pooled Fund by each Partner will determine the [proportionate/relative] levels of responsibility assumed by each Partner with respect to any elements of risk associated with those contributions;
- 5.4 the persons in respect of which the Pooled Fund Functions may be exercised shall be persons who meet the relevant Eligibility criteria as set out in the relevant schedule;
- 5.5 the agreed aims and outcomes of the Pooled Fund Arrangements shall be the Aims and the Objectives respectively;
- 5.6 the Host Partner for the purposes of the Regulations for each Pooled Fund shall be as set out in the relevant Schedule or where no Host Partner is identified for a Pooled Fund, the Partner which contributes the most to the Pooled Fund. The Host Partner will undertake to comply in all respects with the Regulations, the Guidance and any other relevant laws, regulations or guidance in the exercise of its functions as Host Partner;
- 5.7 the obligations of the Host Partner pursuant the Regulations shall be deemed to have been fulfilled if such reports returns and information as are referred to therein are submitted to the relevant Joint Commissioning Group by the Pooled Fund Manager in accordance with the timings set out in the Regulations;
- 5.8 the standing orders and standing financial instructions of the Host Partner as notified to the other Partner from time to time shall apply to the management of the Pooled Fund;

- 5.9 the Host Partner shall be responsible for establishing the necessary financial and administrative support to enable the effective efficient management and effective monitoring and audit of the Pooled Fund; The cost of administration and any associated costs of managing the Pooled fund shall be drawn from the Pooled Fund, such costs being agreed, as far as possible, in advance of the commencement of the agreement by the Partners. Such costs will be apportioned on a pro rata basis by the Partners.
- 5.10 the Host Partner shall also be responsible for establishing appropriate accounting arrangements for any funds transferred by the other Partner to enable effective monitoring and audit, and to comply with all relevant NHS or local authority guidance, including without limitation those relating to the control environment assurance.
- 5.11 the Host Partner shall provide such information as deemed necessary by the Partners, the relevant Joint Commissioning group and the Joint Strategic Commissioning Board to enable such effective monitoring and reporting;
- 5.12 the Host Partner shall provide the other Partner with the necessary information it requires to meet their controls assurance requirements;
- 5.13 The function delegated from the Director of Adult Social Services (DASS) or the appropriate PCT counterpart, the Pool Fund Manager¹ for the purposes of the 7(4) of the Regulations shall be the Pooled Fund Manager for each Individual Service and as such the Pooled Fund Manager will be responsible for:
- 5.13.1 effectively and efficiently managing the Pooled Fund on behalf of the Partners;
 - 5.13.2 authorising payments from the Pooled Fund in accordance with the Pooled Fund Functions and Service Description, as set out in the relevant Schedules;
 - 5.13.3 submitting quarterly reports and annual returns on the relevant Pooled Fund in accordance with the Guidance and the Regulations and setting out in detail the income and expenditure from the Pooled Fund and other information by which the Joint Commissioning Group can monitor the use and effectiveness of the Pooled Fund;
 - 5.13.4 ensuring that management arrangements and reporting for the Pooled Fund Budget comply with audit requirements;

¹ The term is interchangeable depending upon the model of commissioning and financial management processes

- 5.14 the Pool Manager shall be responsible for managing the budget of the Pooled Fund and forecasting and reporting to the relevant Joint Commissioning arrangement upon the targets and information in accordance with the relevant Schedule. Any further targets or performance measures may be set from time to time. Reporting will include progress against the agreed service objectives plus information on actual or likely overspends and under-spends, this to include monthly reporting in the case of any variances of or in excess of plus or minus 1% of an agreed budget.
- 5.15 The Host Partner shall be responsible for any costs, in excess of the Pooled Fund at any time, where those costs were reasonably predictable, save for those costs incurred with the written agreement of the Partners in accordance with the Terms of this Agreement. Predictable costs are those costs incurred by the Host Partner where it would be reasonable to expect a competent commissioner to have foreseen the likelihood of such costs arising.
- 5.16 Where costs have been incurred in excess of those originally agreed by the Partners at the outset of the agreement or as subsequently agreed and those costs or expenses were not reasonably foreseeable, then the Partners shall agree to meet the additional expenditure in direct proportion of the fund expended on their statutory function.

6. Lead Commissioner Arrangements

- 6.1 The following shall apply where Lead Commissioning Arrangements are to be used, as identified in the relevant Schedules under this Agreement:
- 6.2 the Partners agree that with effect from the Commencement Date of the Lead Commissioning Agreement the Partners shall enter into Lead Commissioning Arrangements in accordance with this Agreement, the Regulations and the Guidance. For each Individual Service area, the Partner which shall be the Lead Commissioner and shall exercise the NHS Functions in conjunction with the Community Care Functions will be identified in the relevant Schedule;
- 6.3 the persons in respect of whom the Lead Commissioner may Lead Commission services shall be persons who meet the agreed Eligibility Criteria set out in the relevant schedule;
- 6.4 the agreed aims and outcomes of the Lead Commissioner Arrangements shall be the Aims and the Objectives respectively;
- 6.5 the Lead Commissioner shall in performing the Lead Commissioner Functions comply with the requirements of this Agreement, the Lead Commissioner Arrangements set out in the Regulations, the Guidance and any other relevant laws, regulations or other governmental guidance;

- 6.6 excluding any of the Services which are commissioned from a Pooled Fund, the Lead Commissioner may only commission Services under the NHS Function from the NHS Budget and under the Community Care Function from the Community Care Budget;
- 6.7 the Lead Commissioner shall, subject to the provisions relating to Overspends and Underspends in Clause 9 below, only commission Individual Services using funds from the corresponding Individual Service Budget;
- 6.8 Not Used
- 6.9 where the Council is the Lead Commissioner, it shall ensure that all contracts which procure services on behalf of the NHS shall include a provision that upon expiry or termination of this Agreement such contracts will either expire or terminate or, at the sole option of the PCT, be assigned from the Council to the PCT upon the same terms as the original contract;
- 6.10 where the PCT is the Lead Commissioner, it shall ensure that all contracts which procure services on behalf of the local authority shall include a provision that upon expiry or termination of this Agreement such contracts either expire or terminate or, at the sole option of the Council, be assigned from the PCT to the Council upon the same terms as the original contract.

7. Charging

- 7.1 By virtue of Regulation 6(a) of the Regulations the Council retains the power to charge Eligible Service Users for certain of its functions and it is agreed that in accordance with the Guidance the income therefrom shall be paid to the Council, and the Council shall not account for such income in calculating its contribution to the Pooled Fund, which shall be paid by the Council gross. The Partners shall establish and maintain a charging policy and protocol to ensure that the delivery of health care through the performance of any NHS Functions pursuant to this Agreement shall remain free at the point of delivery whilst ensuring that effective procedures exist to facilitate the exercise by the Council of its charging function.
- 7.2 The partners accept that there may be occasions where an adjustment to the pooled funds is required to reflect the relationship between income (held outside of the pooled funds) and expenditure (within the pooled funds) where for example there are significant reductions or increases in activity leading to variations in income and expenditure. The procedure for making an adjustment to the pooled fund must be detailed in the relevant schedule
- 7.3 Where a support plan consists of both NHS and Local Authority commissioned services, the care management team responsible for the provision of care will ensure that it is explained to the Eligible Service User as early as practically possible and that the NHS services continue to be provided free at the point of access.

8. Financial Contributions

- 8.1 The Partners shall no later than 1st April of each Financial Year during the Term of this Agreement confirm their respective contributions to each Pooled Fund for that Financial Year and until such time their contributions shall continue at the same level as the previous Financial Year.
- 8.2 The Partners shall use their reasonable endeavours in each Financial Year during the Term of this Agreement to agree draft budgets by each 1st December for the following Financial Year.

The Partners shall agree their respective financial contributions to the fund by end of February of each year that the Agreement is in force and will ensure that the funds are in place by the start of the financial year namely 1 April.

Where it is identified that there may not be agreement as to the level of contribution from each or any partner this must be communicated to the other partner(s) at the earliest opportunity to allow for the potential escalation of the matter under the dispute resolution process.

- 8.4 The financial contribution by the Council to the Pooled Funds and the Non Pooled Funds for the period from the Commencement Date to the end of the First Financial Year is the figure as to be determined with the relevant Schedule of this Agreement.
- 8.5 The financial contribution by the Trust to the Pooled Funds and the Non Pooled Funds for the Period from the Commencement Date to the end of the First Financial Year is the figure as set out in the relevant Schedule of this Agreement.
- 8.6 When determining the Partners contributions to the Pooled Funds and the Non Pooled Funds in Financial Years subsequent to the first Financial Year, it is the intention of the Partners, in normal circumstances, to apply the following principles:
 - 8.6.1 Each Partner shall take its previous Financial Year's baseline budget and the partners shall consider whether it is appropriate to apply an inflationary factor as part of its annual allocation, add any growth agreed by the Parties and deduct any savings required in relation to the Pooled Funds and the Non Pooled Funds, as part of each Partner's budget setting process and/or local and national efficiency savings or changes in Law and commissioning strategies;
 - 8.6.2 In considering the baseline contributions in the previous Financial Year, this shall be the Partner's contribution as agreed at the commencement of the previous Financial Year and any under-spends or overspends during that year shall be ignored unless otherwise agreed by the Partners. Where Pooled Funds are introduced during a Financial Year the Partners shall agree when introducing the Pooled Funds what figures shall be taken as the baseline contributions for that Financial Year for the purposes of this Clause (as though the Pooled Funds were introduced at the commencement of that Financial Year).
 - 8.6.3 In determining financial contributions for subsequent Financial Years, the Partners will also consider whether it is appropriate to consider funding any growth proposals. Growth proposals will be considered as part of the PCT's and the Council's Medium Term Financial Strategy processes.

8.6.4 When calculating the Partners' respective financial contributions to the Partnership Arrangements for the Financial Year subsequent to the Financial Year commencing the 1st April Partners have agreed that the figures set out in the relevant Schedule shall be regarded as the Council's and the PCT's respective baseline financial contributions.

8.6.5 In the event that the financial contributions of either Partner to the Pooled Funds and the Non Pooled Funds in any Financial Year are less than the baseline in the previous Financial Year as increased by the relevant inflation factor and/or they do not cover cost pressures on the relevant services, the Partners shall negotiate and agree appropriate changes in services including the identification of efficiencies and management actions so that expenditure will be covered by the financial contributions for the new Financial Year. These changes will be reported as part of the formal reporting process.

9. Financial Arrangements

9.1 The standing orders and standing financial instructions of the Host Partner as notified to the other Partner from time to time will apply to the management of the Pooled Fund.

9.2 The Host Partner will be responsible for establishing the financial and administrative support necessary to enable the effective and efficient management of the Pooled Fund, meeting all required accounting, auditing and controls obligations.

9.3 The Host Partner will be responsible for establishing effective and efficient accounting arrangements for all funds transferred into the Pooled Fund by the PCT and the Council, such arrangements to include a separate cost centre for all such funds.

9.4 The Partners will provide whatever information is deemed necessary to enable effective auditing of the Pooled Fund. The Host Partner will arrange for the audit of the accounts of the Pooled Fund Arrangements each year and will require the Audit Commission, their successors in title or such organisation as shall be identified by the department of Health, to make arrangements to certify an annual return of those accounts under section 28(1) (d) of the Audit Commission Act 1998 or subsequent relevant legislation.

- 9.5 Where in the course of a Financial Year it appears that an overspend of any Individual Service Budget is likely at the end of the said Financial Year and the Partners have recognised that overspend, the Joint Commissioning Group will manage the Individual Service Budget by considering the following actions:
- 9.5.1 attempting action to reduce expenditure;
 - 9.5.2 identifying under-spends that can be vired;
 - 9.5.3 requesting more money from the respective partners; and
 - 9.5.4 if no more money is available agreeing a plan of action.
- 9.6 Anticipated overspends of Individual Service Budgets that are part of a Pooled Fund will be apportioned in accordance with the percentage contribution of each Partner to the Individual Service Budget unless the Partners agree in writing to an alternative approach.
- 9.7 Where in the course of a Financial Year it appears that an under-spend of any Individual Service Budget is likely at the end of the said Financial Year, the Joint Commissioning Group, having notified the Joint Strategic Commissioning Board, will manage the Individual Service Budget by considering the following options:
- 9.7.1 viring to rectify overspends;
 - 9.7.2 return to individual partners proportionate to their contributions in order to meet individual cost pressures;
 - 9.7.3 agreeing improvements to the Services; and
 - 9.7.4 carry forward for use against any previously agreed objectives for future years.
- 9.8 In the event of under-spends being vired to offset overspends during a Financial Year this will not result in either:
- 9.8.1 contributions unreasonably being reduced by the Partners in subsequent years; or
 - 9.8.2 any Individual Service Budget being reduced unreasonably in subsequent years simply because a transient under-spend on that Individual Service Budget was vired to correct an overspend elsewhere.

- 9.9 The Partners agree to use their reasonable endeavours not to make unilateral reductions to their investment levels in any one Financial Year. In any event the Partners shall not make any reductions to their respective investment levels until it has been agreed through the PCT's Board for the PCT's investment level and the Council's Executive or relevant Executive Member for the Council's investment level. Neither Partner will reduce their contribution without giving the other Partner at least three (3) months notice of their intention to do so.
- 9.10 Where one Partner provides to the other Partner a taxable supply, the Partner providing that taxable supply will provide the other Partner with a Value Added Tax invoice for that taxable supply. The Partners confirm that the Partnership Arrangements have not been designed to avoid tax in any way. These arrangements may with the agreement of the partners be amended from time to time in accordance with any advice and options for local protocols offered from HM Customs and Revenue under guidance affecting partnership arrangements.
- 9.11 This Agreement does not provide any mechanism for making capital purchases. If the Partners decide at any time throughout the duration of this Agreement that it is necessary to make capital purchases then the Partners will need to implement a procedure for so doing in the form of a variation.

10. Governance arrangements

The governance structure for this Partnership Arrangement shall include:

- 10.1 the signatories to the Agreement shall be the Chief Executive of the Council and the Chief Executive of NHS Leeds (the PCT);
- 10.2 Oversight of the Partnership Arrangements will be carried out by the Joint Strategic Commissioning Board which will meet quarterly. Membership of this group will include senior Commissioners from both health and social care.
- 10.3 The Director of Adult Social Care, or delegated representative, who is the Pooled Fund Manager for this Section 75 Partnership Agreement, will report to the Joint Strategic Commissioning Board. The Pooled Fund Managers for each service area will be in attendance to report on their area of responsibility as required.
- 10.4 Each of the service areas set out in the relevant schedules of the Agreement will be monitored by a Joint Commissioning Group. The meetings will take place quarterly so that reports from the service groups can be collated into a summary report for the Joint Strategic Commissioning Board. The Governance Structure, constitution and membership for each Joint Commissioning Group is detailed in the schedule relating to that service area.

- 10.6 an annual report on the implementation of this Agreement shall be provided to the Health and Wellbeing Board, the formal partnership body reporting to the Leeds City Partnership;
- 10.7 Individual Service areas may also wish to report annually to the service specific Partnership Boards on the delivery of the Aims and Objectives through the mechanism of this Agreement;
- 10.8 the role of the Director of Adult Social Services of the Council shall be to:
 - 10.8.1 resolve jointly with the Chief Executive, or delegated representative of the PCT any conflicts of interest relating to this Agreement;
 - 10.8.2 address sub-standard performance as described in Clause 8.8 above;
 - 10.8.3 agree strategies for media contact;
 - 10.8.4 receive notices served on the Council; and
 - 10.8.5 act as referee in the first stage referral of disputes;
- 10.9 the role of the Chief Executive, or delegated representative of the PCT will be to:
 - 10.9.1 resolve jointly with the Director of Adult Social Services conflicts of interest relating to this Agreement;
 - 10.9.2 address sub-standard performance;
 - 10.9.3 agree strategies for media contact;
 - 10.9.4 receive notices served on the PCT; and
 - 10.9.5 act as referee in the first stage referral of disputes.

11. Standards of Service and Monitoring

- 11.1 In the event that either Partner shall have any concerns about the operation of the Partnership Arrangements or the standards achieved in connection with the carrying out of the Partnership Arrangements it may convene a review with the other Partner with a view to agreeing a course of action to resolve such concerns.

- 11.2 The Partners will be accountable for the efficiency and effectiveness of the commissioning process and for Services commissioned under this Agreement by reference to Performance Measures as set out in the Schedules at Part Three of the Agreement. The Partners will monitor the effectiveness of the Partnership Arrangements and use measures of performance to develop their work. The Performance Measures will demonstrate:
- 11.2.1 how far the aims of the Partnership Arrangements are being achieved;
 - 11.2.2 the extent to which the outputs including timescales and milestones are being met;
 - 11.2.3 the extent to which agreed Aims and Objectives are being fulfilled, and targets met;
 - 11.2.4 the financial inputs and outputs;
 - 11.2.5 the extent to which the exercise of the flexibilities in Section 75 of the National Health Service Act 2006 is the reason for improved performance, or a reduction in the performance of the service;
- 11.3 The Partners shall each exercise the required degree of care, skill and diligence in accordance with best practice in relation to performance of their duties under this Agreement, and will meet their obligations under this Agreement in accordance with the relevant laws, regulations and guidance.
- 11.4 The Partners shall review the operation of the Partnership Arrangements and all or any procedures or requirements of this Agreement on the coming into force of any relevant statutory or other Legislation or guidance affecting the Partnership Arrangements so as to ensure that the Partnership Arrangements comply with such Legislation.
- 11.5 The Council is subject to the Best Value Duty. The Community Care Functions will be subject at all times to compliance with the Best Value Duty.
- 11.7 The Council shall seek to ensure that any of the Services commissioned through this Agreement comply with expected requirements for clinical governance and controls assurance to which the PCT is subject.
- 11.8 Where the Council, acting as Lead Partner, is undertaking procurement and contracting on behalf of the PCT, the form of contract and performance requirements therein will be developed with regard to the requirements of NHS contracts.

11.9 For the avoidance of doubt, this Agreement in no way releases either Partner from any requirement to comply with the general law or any internal standing order, regulation, directive, policy, financial procedure or decision of the Council or the PCT which is inconsistent with this Agreement.

11.9 Each Partner shall be entitled to make representations and recommendations to the other Partner relating to the other Partner's performance of its obligations under this Agreement. Each Partner will in good faith give due regard to the other Partner's representations and recommendations, and shall promptly respond, in writing, giving reasons why such representations and/or recommendations were or were not followed.

11.10 Sub-standard performance will in the first instance be addressed through the Joint Commissioning Group and thereafter through the Partnership Strategic Commissioning Executive.

12. Dispute Resolution

12.1 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. If any dispute cannot be settled amicably through ordinary negotiations then it shall be referred to the Chief Executive of the PCT, or delegated representative and the Director of Adults Social Services of the Council for discussion and resolution. In the event that such persons cannot resolve the dispute between themselves within a reasonable period of time having regard to the nature of the dispute, the Partners may refer the matter to the Chief Executive of the Council and the Chief Executive of the PCT, and thereafter to the Chair of the PCT and the Leader of the Council.

12.2 Each Partner will use all reasonable endeavours to reach a negotiated resolution to the dispute through the above dispute resolution procedure. If the dispute is not resolved the Partners will use every endeavour to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure").

12.3 To initiate the mediation a Partner must give notice in writing ("ADR Notice") to the other Partner requesting mediation in accordance with Clause 12.2.

12.4 The procedure in the Model Procedure will be amended to take account of:

12.4.1 any relevant provisions in this Agreement;

- 12.4.2 any other agreement which the Partners may enter into in relation to the conduct of the mediation (“Mediation Agreement”).
- 12.5 The costs of the Mediation will be met in equal shares by the Partners and will not be paid from the Pooled Fund.

13. Complaints

- 13.1 On receipt of a complaint the following will apply:
 - 13.1.1 where a complaint wholly relates to one or more of the Council’s Community Care Functions it shall be dealt with in accordance with the statutory complaints procedure of the Council;
 - 13.1.2 where a complaint wholly relates to one or more of the PCT’s NHS Functions, it shall be dealt with in accordance with the statutory complaints procedure of the PCT;
 - 13.1.3 where a complaint relates partly to one or more of the Council’s Functions and partly to one or more of the PCT’s Functions then a joint response will be made to the complaint by the Council and the PCT, in line with local joint protocol;
 - 13.1.4 where a complaint cannot be handled in any way described above or relates to the operation of the Partnership Arrangements by the Joint Commissioning Group or the content of this Agreement, then the Joint Commissioning Group will set up a complaints subgroup to examine the complaint and recommend remedies. All complaints shall be reported to the Joint Strategic Commissioning Board.

14. Regulation and Inspection

The Partners shall cooperate with any investigation undertaken by the Care Quality Commission or any regulatory authority/body

15. Information sharing

- 15.1 Both Partners shall follow and ensure that the Partnership Arrangements comply with all Legislation, regulations and guidance on information sharing produced by the Government.
- 15.2 The Partners shall establish and keep operational and ensure that there are kept operational:

- 15.2.1 procedures and documentation for Eligible Service Users which explains their rights of access, the relevance of their consent, rules and limits on confidentiality, and how information about them is treated;
 - 15.2.3 such additional policies procedures and documentation as shall be necessary in order to meet the purposes, guidance and requirements of Government and of all relevant data protection legislation as they apply to the Partners and the Partnership Arrangements.
- 15.3 The Pan Leeds Information Sharing Protocol set out at Appendix 1 is the current Code of Confidentiality for sharing information that shall apply to the Partnership Arrangements and may be extended, revised and amended from time to time to facilitate information sharing, subject to such amendments being agreed between the Partners.
- 15.4 A work programme led by Leeds City Council and under the steer of the Leeds Informatics Board has been set up to put in place robust processes for the secure sharing of information between health and social care professionals working within integrated health and social care teams. The programme is seeking to put in place city-wide information sharing agreements as well as exploring options for integrated ICT systems to facilitate joint working. ICT developments from this work programme may enable more opportunities for joint commissioning work and necessitate the need to review information sharing arrangements.

16. Termination

- 16.1 Either Partner may terminate this Agreement by giving not less than six (6) months' written notice to the other Partner.
- 16.2 Either Partner may terminate this Agreement if the other Partner (the "Defaulting Partner"):
- 16.2.1 is in default of its obligations under this Agreement and:
 - 16.2.1.1 fails to comply with a written notice from the other Partner (the "Notifying Partner") requiring the Defaulting Partner to remedy such default within a reasonable period (which shall be specified in such written notice) and stating its intention to terminate the Agreement if such default is not so remedied, or

- 16.2.1.2 such default is a material default of its obligations under this Agreement which is incapable of remedy;
- 16.2.3 has failed to comply with the requirements of Equality Legislation, or Human Rights Act legislation.
- 16.2.4 has failed to provide the agreed funds for any of the Pooled Fund Budgets within 28 working days of the due date;
- 16.2.5 has proposed any contribution which is less than the initial contribution set out in the relevant Schedule of this Agreement as appropriately increased year on year using an agreed uplift mechanism [as set out in the Schedule];
- 16.2.6 is not operating Health and Safety Procedures or Codes of Practice which protect the public and staff of either Partner;
- 16.2.7 is in breach of any of its statutory duties in relation to this Agreement or any of the functions exercised under it,

by the Notifying Partner giving notice in writing terminating this Agreement (a "Termination Notice"). A Termination Notice shall take effect two (2) weeks from its date of receipt, subject to appeal by the Defaulting Party being lodged within that period.
- 16.3 Where this Agreement is terminated by a Partner under either Clause 16.1 or 16.2 on the other Partner, each Partner shall (unless the Partners agree in writing otherwise) continue to perform its obligations under this Agreement throughout the relevant termination notice period.
- 16.4 Upon termination or expiry of this Agreement howsoever occurring, the Partners will co-operate in good faith in order to terminate the Partnership Arrangements with as little adverse impact on Eligible Service Users as reasonably possible.
- 16.5 Upon termination or expiry of this Agreement howsoever occurring, the Partners will be entitled to a proportion of any monies held by the Host Partner with regard to any of the Individual Service areas included in relevant schedules. The entitlement with regard to each Pooled Fund will be in proportion to each Partner's contribution to that Pooled Fund, and the Host Partner(s) will pay such amount to the other Partner within thirty (30) days of the date that this Agreement terminates or expires, subject always to the terms in relation to the continuing liabilities set out at Clause 16.6 below.

- 16.6 Upon termination of this Agreement for any reason whatsoever the following shall apply:
- 16.6.1 The Council and the PCT shall continue to be liable to purchase the various Individual Services set out in schedule(s) in accordance with the terms of this Agreement to fulfil all existing obligations to third parties;
 - 16.6.2 The Partners shall remain liable to operate the Pooled Fund and joint commissioning arrangements in accordance with the terms of this Agreement so far as is necessary to ensure fulfilment of their obligations;
 - 16.6.3 Each Partner shall remain liable to contribute that proportion of the cost of each Individual Service which either is its proportionate contribution in the current or most recent Financial Year. If such contribution has not at the date of notice of termination yet been confirmed, the Partners' liability will be based on their respective contributions in the immediately preceding Financial Year.
 - 16.6.4 the Partners agree that they will work together and co-operate to ensure that the winding down and disaggregation of the integrated and joint activities to the separate responsibilities of the Partners is carried out smoothly and with as little disruption as possible to Eligible Service Users, employees, the Partners and third parties. More specifically, the Partners shall ensure that procedures are in place for the winding up of the Pooled Fund, including the handling of any potential remaining overspend or underspend. Any assets purchased from any of the Pooled Fund will be disposed of by the relevant Host Partner for the purposes of meeting any of the costs of winding up the Services or where this is not practicable such goods will be shared proportionately between the Council and the PCT according to the level of past contributions to the Pooled Fund;

- 16.6.5 upon termination, monies in the Pooled Fund shall continue, notwithstanding termination, to be used by the Pooled Fund Manager to pay for any of the Services delivered by third parties under contracts approved by the Joint Commissioning Group. Thereafter any under-spend (including any interest) shall be returned to the Partners in proportion to the level of contribution to the pool. Any overspend shall be borne by the Partners pro rata to their contributions provided that where and to the extent any overspend is caused or contributed to by either Partner acting in breach of the terms of this Agreement, such Partner shall be fully responsible for such element of the overspend;
- 16.6.6 the Joint Commissioning Group shall continue to operate for the purposes of functions associated with this Agreement for the remainder of any contracts and commitments relating to this Agreement; and
- 16.6.7 termination of this Agreement shall have no effect on the liability of any rights or remedies of either Partner already accrued, prior to the date upon which such termination takes effect.

17. Indemnity and Limitation of Liability

- 17.1 Each Partner will fully indemnify the other against all losses, costs, expenses, damages, liabilities, actions, claims or proceedings at common law or under statute which arise as a result of or in connection with any act, default, negligence, breach of contract or breach of statutory duty except and to the extent that such losses, costs, expenses, damages, liabilities, actions, claims or proceedings arise out of the act, default, negligence, breach of contract or breach of statutory duty of the other Partner.
- 17.2 Neither party will be liable for any indirect losses suffered by the other partner whether such losses or the potential for such losses were made known to the partner or not, other than in respect of death or personal injury, the limit of each partners liability to the other under this agreement shall not exceed amounts stipulated within each organisations indemnity cover.
- 17.3 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 an indemnity under these provisions, the Partner that may claim against the other indemnifying Partner will:
- 17.3.1 as soon as reasonably practicable give written notice of that matter to the indemnifying Partner specifying in reasonable detail the nature of the relevant claim;
 - 17.3.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the indemnifying Partner (such consent not to be unreasonably conditioned, withheld or delayed);
 - 17.3.3 give the indemnifying 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 purpose of assessing the merits of, and if necessary defending, the relevant claim.
- 17.4 For the avoidance of doubt, the Partners shall be under a duty to mitigate any loss in accordance with the principles of common law and the indemnity given at Clause 17.1 above shall not extend to losses, costs, expenses, damages, liabilities, actions, claims or proceedings incurred by reason of or in consequence of any negligent act or omission, misconduct or breach of this Agreement committed by the Parties.
- 17.5 Each Partner shall ensure that they maintain appropriate insurance arrangements in respect of employers' liability, liability to third parties

and other insurance arrangements to cover their liability under this Agreement.

18. Other provisions

18.1 Confidentiality

18.1.1 Except as required by law and specifically pursuant to Clause 18.9 (Freedom of Information Act 2000), each Partner agrees at all times during the continuance of this Agreement and after its termination to keep confidential any and all information, data and material of any nature which either Partner may receive or otherwise obtain in connection with the operation of this Agreement or otherwise relating in any way to the business, operations and activities of the other Partner, its employees, agents and/or any other person with whom it has dealings including any client of either Partner. For the avoidance of doubt this clause shall not affect the rights of any workers under Section 43 A-L of the Employment Rights Act 1996.

18.1.2 The Partners agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning client, patient and Eligible Service User information (including material affected by the Data Protection Act in force at the relevant time) to enable efficient operation of the Services.

18.1.3 The Partners will ensure that the provision of the Services comply with all relevant data protection legislation regulations and guidance and that the rights of access by Eligible Service Users to their data are observed.

18.2 Public Relations

The Partners will co-operate and consult with each other in respect of matters involving public relations in so far as reasonably practicable having regard to the nature and urgency of the issue involved. The parties may agree Protocols of the handling of public relations from time to time.

18.3 Entire Agreement, Variations and Change Control

- 18.3.1 The terms herein contained together with the contents of the relevant schedule(s) constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement and any representation promise or condition not incorporated herein shall not be binding on either Partner.
- 18.3.2 No agreement or understanding varying or extending any of the terms or provisions of this Agreement shall be binding upon either Partner unless in writing and signed by a duly authorised officer or representative of the Partners.
- 18.3.3 If at any time during the Term of this Agreement:
- (a) the Council or PCT requests in writing any change to the Services described or the manner in which the Services are provided; or
 - (b) if a change to the manner in which an Individual Service is or the Services are provided is required by operation of NHS or local government law which expression means statutes, orders, regulations, instruments and directions made by a Secretary of State in relation to the NHS Functions or the Community Care Functions respectively or others duly authorised pursuant to statute or other changes in the law which relate to powers, duties and responsibilities of the Partners and which have to be complied with, implemented or otherwise observed by the Partners in connection with their functions then:

the Partners will investigate the likely impact of any such change on an Individual Service, the Services or any other aspects of this Agreement and shall prepare a report in writing within a reasonable period of time of receipt of a change request;
- 18.3.4 Any report prepared by the Partners pursuant to Clause 18.3.3(b) shall include:
- (a) a statement of whether the change results in an increase or decrease in contributions to the relevant Pooled Fund or Non-Pooled Fund by reference to the relevant component elements of the Individual Service the subject of the change;

- (b) a statement of the individual responsibilities of the Partners for any implementation of the change;
- (c) a timetable for the implementation of the change;
- (d) a statement of any impact on and any changes required to the Individual Service or Services;
- (e) details of any proposed staff and employment implications; and
- (f) the date for the validation of the report.

18.3.5 Where the Partners are unable to agree on the terms of the report then the dispute resolution provisions set out at Clause 12 in this Agreement shall apply.

18.3.6 If agreement in principle is agreed, the Partners shall confirm in writing their decision to proceed with the changes referred to in the said report and shall agree a formal variation of this Agreement in accordance with Clause 18.3.1 of this Agreement.

18.3.7 The Partners shall comply with their respective duties to consult on any change in, or addition to, the Services in accordance with the Regulations.

18.4 Governing Law

This Agreement shall be governed by and construed in accordance with English Law.

18.5 No Partnership

18.5.1 Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture 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.

18.5.2 Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:

- 18.5.2.1 act as an agent of the other;

18.5.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other; or

18.5.2.3 bind the other in any way.

18.6 Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Partners to this Agreement do not intend that any third party should have any rights in respect of this Agreement by virtue of that Act.

18.7 Notices

18.7.1 Any notice of communication hereunder shall be in writing.

18.7.2 Any notice or communication to the Council hereunder shall be deemed effectively served if sent by registered post or delivered by hand to the Council at the address set out above and marked for the Director of Adults Social Services or to such other addressee and address notified from time to time to the PCT.

18.7.3 Any notice or communication to the PCT hereunder shall be deemed effectively served if sent by registered post or delivered by hand to the address set out above and marked for the attention of the Chief Executive or to such other addressee and address notified from time to time to the Council for service on the PCT.

18.7.4 Any notice served by delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

18.8 Good Faith

The Partners shall act and deal in good faith towards each other in respect of all matters the subject of this Agreement

18.9 Freedom of Information Act 2000

18.9.1 Each Partner acknowledges that the other Partner is subject to the requirements of the Freedom of Information Act 2000 (the "FOIA") or the Environmental Information Regulations (the "EIR") and each Partner shall assist and cooperate with the other (at their own expense) to enable

the other Partner to comply with these information disclosure obligations.

- 18.9.2 Where a Partner receives a "request for information" under either the FOIA or EIR (as defined under those Acts) in relation to information which it is holding on behalf of the other Partner, it shall (and shall procure that its sub-contractors shall):
- (a) transfer the request for information to the other Partner as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information;
 - (b) provide the other Partner with a copy of all information in its possession or power in the form that the other Partner requires within five (5) Working Days (or such other period as may be agreed) of the other Partner requesting that information; and
 - (c) provide all necessary assistance as reasonably requested to enable the other Partner to respond to a request for information within the time for compliance set out in the EIR or section 10 of the FOIA, as relevant.
- 18.9.3 Where a Partner receives a request for information which relates to the Agreement, it shall inform the other Partner of the request for information as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information.
- 18.9.4 If either Partner determines that information must be disclosed pursuant to Clause 17.9.3, it shall notify the other Partner of that decision at least two (2) Working Days before disclosure.
- 18.9.4 Each Partner shall be responsible for determining at its absolute discretion whether the relevant information is exempt from disclosure or is to be disclosed in response to a request for information.
- 18.9.5 Each Partner acknowledges that the other Partner may be obliged under the FOIA to disclose Information:
- (a) without consulting with the other Partner, or
 - (b) following consultation with the other Partner and having taken its views into account.

18.10 Severability

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.

18.11 Changes in Legislation

Partners may review the operation of the Agreement and all or any procedures or requirements of this Agreement on the coming into force of any relevant statutory or other legislation or guidance affecting the provision of the Services so that the commissioning of the Services under this Agreement complies with such legislation or guidance.

18.12 Assignment or Transfer

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.

18.13 Waivers

- 18.13.1 The failure of any Partner to enforce at any time to or for any period of time any of the provisions of this Agreement 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.
- 18.13.2 No waiver in any one or more instance of a breach of any provision hereof shall be deemed to be a further or continuing waiver if such provision in other instances.

18.14 Costs

Each Partner shall be liable for their own respective costs in relation to this Agreement.

19. Legal Costs

- (a) The host partner shall make available to staff appropriate legal support, the cost of which shall be apportioned as per the memorandum of agreement contained in the schedules.
- (b) The partners to each Section 75 agreement shall commit to a Memorandum of Understanding prepared for the purpose of setting out the arrangements for the provision of legal services to staff under each agreement.

- (c) Where circumstances required it, each partner shall make available to staff, appropriate legal advice where that advice relates to that partner's particular statutory function. The cost of such advice shall not form part of the Pooled Fund or the lead commissioning agreement.

The Partners shall be responsible for meeting all legal and any other costs associated with any claims or legal proceedings arising from the provision of their own respective statutory functions not withstanding any Pooled Fund or Lead Commissioning agreement.

- 20.** The Partners agree to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as either Partner may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement and the intentions of the Partners as expressed in this Agreement, and the Partners will at all times act and deal in good faith onwards each other in respect of all matters the subject of this Agreement.

THE SIGNATURES BELOW indicate complete and unconditional acceptance of all the above terms and conditions by both the Council and the PCT

Signed on behalf of

Leeds City Council of Civic Hall Leeds, LS1 1UR

by:

Sandie Keene

Director of Adult Social Services, Leeds City Council

on

Signed on behalf of

Leeds PCT (NHS Leeds) of NW House, West Park Ring Road Leeds, LS16 6QG

by:

Kevin Howells

Director of Finance. NHS Leeds

on

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