



DATED

2019

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**SECTION 75 AGREEMENT**

between

**THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON**

and

**SOUTH WEST LONDON AND ST GEORGE'S MENTAL HEALTH NHS TRUST**

DRAFT

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Relating To The Delivery of Adult Mental Health Services Within The London Borough of Merton

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© London Borough of Merton  
Civic Centre  
London Road  
Morden  
SM4 5DX

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DRAFT

**THIS AGREEMENT**

is dated

**2019**

**PARTIES**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF MERTON** whose principal office is at Civic Centre, London Road, Morden, SM4 5DX (**Authority**); and
- (2) **SOUTH WEST LONDON AND ST GEORGE'S MENTAL HEALTH NHS TRUST** of Springfield University Hospital, 61 Glenburnie Road, London SW17 7DJ (**NHS body**).

**BACKGROUND**

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (B) The Partners are committed to better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (C) The purpose of this Agreement is to facilitate the provision of services to adults of a working age and older people with a mental illness in the manner and locations specified in this Agreement.
- (D) This Agreement follows consultation jointly by the Partners with such persons as appear to the Partners to be affected by these arrangements and provides the framework within which the Partners will work together to achieve the Aims and Outcomes.

**AGREED TERMS**

**1. Definitions and Interpretation**

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

**Agreement:** the agreement between the NHS Body and the Authority comprising these terms and conditions together with all schedules attached to it.

**Aims and Outcomes:** 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.

**Annual Development Plan:** has the meaning set out in clause 7.

**Authority Health-Related Functions:** shall have the same meaning as set out in the NHS Regulations 2000.

**Authority's Authorised Officer:** Hannah Doody, Director of Community & Housing

**Authority's Financial Contribution:** the Authority's financial contribution for the relevant Financial Year. The Authority's Financial Contribution for the First Financial Year is set out in Schedule 3.

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

**Commencement Date:** 1st April 2019.

**Data Protection Legislation:** means: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Dispute Resolution Procedure:** the procedure set out in clause 34.

**Financial Contributions:** the financial contributions of the Partners as set out in Schedule 3.

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

**First Financial Year:** 2019/20.

**FOIA:** The Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation.

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

**GDPR:** The General Data Protection Regulation ((EU) 2016/679).

**Host Partner:** the host partner for the Functions under this Agreement or any of the Previous Section 75 Agreements, as appropriate.

**Information:** has the meaning given under section 84 of FOIA.

**Information Sharing Protocol:** the protocol describing how the Partners will share Information contained in Schedule 8.

**Initial Term:** the period commencing on the Commencement Date and ending on the fifth (5<sup>th</sup>) anniversary of the Commencement Date.

**Law:** 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.

**NHS Act 2006:** National Health Service Act 2006.

**NHS Functions:** shall have the meaning set out in regulation 5 of the NHS Regulations 2000.

**NHS Body Assets:** the assets used by the NHS Body's employees in the discharge of the NHS Functions.

**NHS Body Premises:** the NHS Body premises listed in Schedule 3.

**NHS Body's Authorised Officer:** Sue McKenna, Chief Operating Officer.

**NHS Body's Financial Contribution:** the NHS Body's financial contribution for the relevant Financial Year. The NHS Body's Financial Contribution for the First Financial Year is set out in Schedule 3.

**NHS Regulations 2000:** the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (*SI 2000/617*).

**Non-pooled Fund:** a non- pooled fund comprising either the Authority's Financial Contribution or the NHS Body's Financial Contribution for the Services designated in Schedule 3.

**Partner:** either the NHS Body or the Authority, and "**Partners**" shall be construed accordingly.

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

**Pooled Fund:** a pooled fund comprising the Authority's Financial Contribution and the NHS Body's Financial Contribution for the Services designated in Schedule 3, out of which payments may be made by the Authority towards expenditure incurred in the exercise of the Functions.

**Previous Section 75 Agreements:** previous agreements entered into by the Partners or their predecessor bodies under section 75 NHS Act 2006 or the *Health Act 1999*, as listed in Schedule 7.

**Quarter:** 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.

**Regulatory Body:** 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 Authority.

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

**Representative:** 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:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (*SI 2004/3391*) (**EIR**).

**Seconded Staff:** the employees of the Authority seconded to the NHS Body in accordance with identified in the Secondment Agreement.

**Secondment Agreement:** the agreement between the Authority and the NHS Body relating to the Seconded Staff.

**Service Provider:** a third-party provider of any of the Services, as commissioned by the NHS Body or the Authority before the Commencement Date or the NHS Body from the Commencement Date.

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

**Services:** the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in Schedule 2.

**Term:** 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:** The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 (DPA 2018) or any successor legislation.

**Working Day:** 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**

This Agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. EXTENDING THE INITIAL TERM**

The Partners may extend this Agreement for a period and on varied terms as they agree, beyond the Initial Term, subject to approval of the Partners' boards.

### **4. PARTNERSHIP ARRANGEMENTS**

4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to provide integrated health and social care services to better meet the needs of the Service Users within The London Borough of Merton than if the Partners were operating independently.

4.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.

4.3 From the Commencement Date, the Previous Section 75 Agreements are replaced by the provisions of this Agreement.

4.4 The Partnership Arrangements shall comprise:

- (a) the delegation by the Authority to the NHS Body of the Authority Health-Related Functions so that it may exercise the Authority Health-Related Functions alongside the NHS Functions and act as provider of the Services described in Schedule 2.
- (b) the establishment of Pooled Funds for the following Services:
  - (i) The provision of community mental health social work functions;
  - (ii) The provision of an Approved Mental Health Social Worker function.
- (c) the establishment of Non-Pooled Funds for the following Services:
  - (i) The commissioning of social care services for mental health service users.
- (d) the establishment of an integrated management and commissioning department.

4.5 The NHS Body shall host and provide the financial administrative systems for the Pooled Fund and the Non-Pooled Fund.

4.6 The NHS Body shall appoint a Pooled Fund manager, who shall be responsible for:

- (a) managing the Pooled Fund and the Non-Pooled Fund on behalf of the Partners;

- (b) managing expenditure from the Pooled Fund and the Non-Pooled Fund within the budgets set by the Partners and in accordance with the Annual Development Plan; and
  - (c) submitting quarterly reports and an annual return to the Partners, to enable them to monitor the success of the Partnership Arrangements.
- 4.7 In accordance with Regulation 4(2) of the NHS Regulations 2000, 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.
- 4.8 Nothing in this Agreement shall prejudice or affect:
  - (a) the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
  - (b) the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
  - (c) the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

## **5. DELEGATION OF FUNCTIONS**

- 5.1 For the purposes of the implementation of the Partnership Arrangements, the Authority hereby delegates the exercise of the Authority's Health-Related Functions to the NHS body to exercise alongside the NHS Functions and act as integrated provider of Adult Mental Health Services.
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement of the Partners.

## **6. SERVICES AND ADULT SAFEGUARDING**

- 6.1 The NHS Body is the Host Partner for the Partnership Arrangements, and agrees to act as provider of the Services listed in clause 5.1.
- 6.2 The NHS Body shall provide the Services or procure that they are provided (and shall be accountable to the Authority for the Authority's Health-Related Functions) for the benefit of Service Users:
  - (a) to ensure the proper discharge of the Partners' Functions;
  - (b) with reasonable skill and care, and in accordance with best practice guidance;

- (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement, and the Authority's applicable policies set out in Schedule 2;
- (d) in accordance with its standing orders or other rules on contracting; and
- (e) in accordance with all applicable Law.

### **Adult Safeguarding**

6.3 The NHS Body will plan and deliver adult mental health services with due regard to the safety of Service Users and their families. The NHS Body will apply the Authority's Adult Safeguarding Strategy and adhere to the Authority's Adult Safeguarding pathways for referrals and investigations as notified to it from time to time.

6.4 The NHS Body shall ensure that staff and contractors delivering Adult Mental Health Services are suitably trained and supervised in relation to Adult Safeguarding.

## **7. ANNUAL DEVELOPMENT PLAN**

7.1 The Partners shall prepare an Annual Development Plan for each of the Services at least four (4) weeks before the start of the Financial Year. The Annual Development Plan shall:

- (a) set out the agreed Aims and Outcomes for the specific Services;
- (b) describe any changes or development required for the specific Services;
- (c) provide information on how changes in funding or resources may impact the specific Services; and
- (d) include details of the estimated contributions due from each Partner for each Service and its designation to the Pooled Fund or the Non-Pooled Fund.

7.2 The Annual Development Plan shall commence on 1 April at the beginning of the Financial Year and shall continue for twelve (12) months.

7.3 The Annual Development Plan may be varied by written agreement between the Partners. Any variation that increases or reduces the number or level of Services in the scope of this Agreement shall require the Partners to make corresponding adjustments to the NHS body's Financial Contribution and the Authority's Financial Contribution.

7.4 If the Partners cannot agree the contents of the Annual Development Plan, the matter shall be dealt with in accordance with clause 34 (*Dispute Resolution*). Pending the outcome of the dispute resolution process or termination of this Agreement under clause

**Error! Reference source not found.** (*Termination*), the Partners shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **8. PERFORMANCE MANAGEMENT**

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

## **9. FINANCIAL CONTRIBUTION**

9.1 The Authority shall pay the Authority's Financial Contribution to the NHS Body to allocate to the Pooled Fund and Non-Pooled Fund and to manage in accordance with this Agreement and the Annual Development Plan.

9.2 The NHS Body shall contribute the NHS body's Financial Contribution to the Pooled Fund and Non-Pooled Fund and shall manage the Pooled Fund and Non-Pooled Fund in accordance with this Agreement and the Annual Development Plan.

9.3 The NHS body's Financial Contribution and the Authority's Financial Contribution for the First Financial Year are set out in Schedule 3.

9.4 The Partners shall pay the Financial Contributions into the Pooled Fund and Non-Pooled Fund monthly on receipt of a schedule of costs.

9.5 The Partners shall agree the NHS body's Financial Contribution and the Authority's Financial Contribution for the following Financial Year by 31 March.

9.6 The Authority's Financial Contribution is deemed to include the sums it may recover from the Service Users, irrespective of whether they are actually recovered.

9.7 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the relevant Pooled and Non-Pooled Fund.

9.8 Each Partner will follow appropriate VAT rules that apply to its sector.

## **10. OVERSPENDS AND UNDERSPENDS**

10.1 The NHS Body shall use all reasonable endeavours to arrange for the discharge of the Authority Health-Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.

10.2 The NHS Body shall endeavour to manage any in-year overspends within its staffing and commissioning arrangements for the Services. Posts that fall within the Pooled Fund should not be appointed to on a permanent or temporary basis that would give rise to an overspend without the written authority of the NHS Body's Authorised Officer and Authority's Authorised Officer.

- 10.3 The NHS Body shall make the Authority aware of any potential overspend in Pooled Fund and the Non-Pooled Fund as soon as it becomes aware of this possibility. The NHS Body will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.
- 10.4 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 in the Pooled Fund that has not been previously authorised, the Partners shall meet the overspend proportionately to their respective Financial Contributions. Overspends in Non-Pooled Funds shall be met by the party holding that fund.
- 10.5 The NHS body shall make the Authority aware of any potential underspend in relation to Financial Contributions, prior to the end of the Financial Year. The NHS Body shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.
- 10.6 The benefit of any underspend at the end of the Financial Year or on termination or expiry of this Agreement (whichever is appropriate) shall:
- (a) in the Pooled Funds:
    - (i) if the Partners agree, be applied to the Services, as the Mental Health Integration Board shall determine;
    - (ii) if the Partners agree, be deducted proportionately from the Partners' Financial Contributions for the following Financial Year; or
    - (iii) if the Partners cannot agree, be returned to the Partners in proportion to their Financial Contribution for the Financial Year.

## **11. CAPITAL EXPENDITURE**

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

## **12. SET UP COSTS**

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

### **13. PREMISES**

The NHS Body shall make available the NHS Body's Premises to the Partnership Arrangements.

### **14. ASSETS**

The NHS Body shall make the NHS Body's Assets available to the Partnership Arrangements.

### **15. STAFFING (TUPE, SECONDMENT AND PENSIONS)**

15.1 The Partners agree that the provisions of Schedule 6 shall apply to any:

- (a) Relevant Transfer of staff under this Agreement; and
- (b) Secondments of Authority staff to the NHS Body.

### **16. CONTRACTS**

16.1 The Authority appoints the NHS Body to act as agent for the Authority from the Commencement Date for any Pre-Existing Contracts. As this is a follow-on agreement, the contracts concerned are those let by the NHS Body in the preceding agreement or have been accepted by the NHS Body on the commencement of the preceding agreement.

16.2 The NHS Body shall enter into such contracts with third parties as it sees fit for the purpose of facilitating the discharge of the Functions. The NHS Body shall ensure that all contracts entered into concerning the Authority Health-Related Functions are capable of assignment or novation to the Authority and any successor body.

### **17. GOVERNANCE**

17.1 The NHS Body shall nominate the NHS Body's Authorised Officer, who shall be the main point of contact for the Authority and shall be responsible for representing the NHS Body and liaising with the Authority's Authorised Officer in connection with the Partnership Arrangements.

17.2 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the NHS Body and shall be responsible for representing the Authority and liaising with the NHS Body's Authorised Officer in connection with the Partnership Arrangements.

17.3 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to their respective boards.

17.4 The Partners shall each appoint officers to the Mental Health Integration Board in accordance with 0. The terms of reference of the Mental Health Integration Board are set out in 0.

## **18. QUARTERLY REVIEW AND REPORTING**

18.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within thirty (30) days of the end of each Quarter.

18.2 The Pooled Fund Manager shall submit a quarterly report to the Mental Health Integration Board setting out:

(a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and

(b) any forecast overspend or underspend of the Financial Contributions.

## **19. ANNUAL REVIEW**

19.1 The Partners agree to carry out a review of the Partnership Arrangements within three months of the end of each Financial Year (**Annual Review**), including:

(a) the performance of the Partnership Arrangements against the Aims and Outcomes;

(b) the performance of the individual Services against the service levels and other targets contained in the relevant contracts;

(c) plans to address any underperformance in the Services;

(d) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;

(e) review of plans and performance levels for the following year; and

(f) plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

19.2 The NHS Body shall prepare an annual report following the Annual Review for submission to the Partners' respective boards.

## **20. VARIATIONS**

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



## **21. STANDARDS**

- 21.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:
- (a) the service standards set out in Schedule 2 and Schedule 5;
  - (b) the prevailing standards of clinical governance;
  - (c) the Authority's standing orders; and
  - (d) the requirements specified by the Care Quality Commission and any other relevant external regulator.
- 21.2 The Partners shall develop operational guidance and procedures to reflect compliance with this clause 21.
- 21.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **22. HEALTH AND SAFETY**

- 22.1 The NHS Body shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the Services and persons working on the Services.
- 22.2 The NHS Body 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.
- 22.3 The NHS Body 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.

## **23. EQUALITY DUTIES**

- 23.1 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.
- 23.2 The NHS Body agrees to adopt and apply policies in its carrying out of the Authority Health-Related Functions and NHS Functions, to ensure compliance with their equality duties.

- 23.3 The NHS Body shall take all reasonable steps to secure the observance of clause 23 by all servants, employees or agents of the NHS Body and all Service Providers employed in delivering the Services described in this Agreement.

## **24. FREEDOM OF INFORMATION**

The Partners acknowledge that each is subject to the requirements of FOIA 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.

## **25. DATA PROTECTION AND INFORMATION SHARING**

- 25.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

- 25.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working. The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

- 25.3 The Partners will comply with the provisions of Schedule 8 (Information Sharing Protocol).

## **26. HEALTH AND SOCIAL CARE RECORDS**

- 26.1 The Authority shall make available to the NHS Body its current and archived Service User files from the Commencement Date. The NHS Body shall hold, and be responsible for maintaining and the safekeeping of the Service User files for the Term, in accordance with Data Protection Legislation.

- 26.2 The NHS Body shall ensure that the records of social care Service Users are maintained in a timely manner on the Authority's social care case management system.

- 26.3 The NHS Body shall be responsible for facilitating Service Users in accessing their Personal Data under the Data Protection Legislation.

## **27. CONFIDENTIALITY**

- 27.1 Each Partner agrees to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.

- 27.2 Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.

## **28. AUDIT**

- 28.1 The NHS Body shall arrange for the audit of the accounts of the Pooled Fund in accordance with its statutory audit requirements.
- 28.2 The NHS Body shall provide to the Authority any reports required concerning the Authority Health-Related Functions on reasonable notice.
- 28.3 The NHS Body shall cooperate with the Authority's internal audit arrangements in carrying out any audit of the arrangements and use of funds.
- 28.4 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.

## **29. INSURANCE**

- 29.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.
- 29.2 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements, as set out in Schedule 3.

## **30. INDEMNITIES**

Each Partner (**Indemnifying Partner**) shall indemnify and keep indemnified the other Partner (**Indemnified Partner**) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself, the Indemnifying Partner's employees, or any of its Representatives or sub-contractors, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its Representatives.

## **31. LIABILITIES**

- 31.1 Subject to clause 31.2, 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.
- 31.2 Liabilities arising from Services provided or commissioned under the Previous Section 75 Agreements shall remain with the Host Partner for the Service under the relevant agreement.

31.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

## **32. COMPLAINTS AND INVESTIGATIONS**

32.1 Complaints regarding the Service shall in the first instance be directed to the NHS Body and if they cannot be dealt with under the NHS Complaints Procedure, they will be investigated jointly by the Partners (with the NHS Body taking the lead) and a decision will be made regarding which complaints procedure should be followed. The complaint will then be managed according to the Authority's Complaints Procedure or the NHS Complaints Procedures as appropriate. The nominated officer responsible for handling of complaints will ensure that all Service Users and their carers or established representatives are advised and provided with information on how to complain, which will be made known at the point of commencement of assessment and after referral to the Service for any potential service or support.

32.2 The NHS Body will report the data regarding complaints to the Authority by means of a quarterly report or more frequently if requested by the Authority. The data must be sent in accordance with the Authority's policy and procedures in force from time to time.

32.3 All complaints from Service Users should be dealt with and resolved appropriately by the NHS Body. Any serious complaint that cannot be resolved shall be notified to the Authority as soon as reasonably practicable so that the Partners can co-operate and endeavour to satisfy the complainant

32.4 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to information and making staff available for interview.

## **33. HEALTHWATCH**

33.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.

33.2 The Authority shall ensure the effective discharge of its obligations in the establishment of Local HealthWatch and the NHS Body shall ensure its contracts with Service Providers require co-operation with Local HealthWatch as appropriate.

## **34. DISPUTE RESOLUTION**

34.1 The members of the Mental Health Integration Board shall use their best endeavours to resolve disputes arising out of this Agreement.

34.2 If any dispute referred to the Mental Health Integration Board is not resolved within ninety days, either Partner, by notice in writing to the other, may refer the dispute to the

chief executives (or equivalent) of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within ninety days of service of the notice.

- 34.3 Subject to clause 34.4, if the chief executives (or equivalent) fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Partner may commence legal proceedings.
- 34.4 This clause 34 shall not prevent either Partner from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 34 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

## 35. TERMINATION

- 35.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 35.2 or 35.3, either Partner may terminate this Agreement at any time by giving twelve (12) months' written notice to the other Partner.
- 35.2 Subject to clause 35.3, either Partner may terminate this Agreement at any time by giving twelve months' written notice to the other Partner, if for budgetary reasons:
- (a) it is no longer able to make its Financial Contributions or otherwise contribute sufficient resources to the Partnership Arrangements (or any part of them); or
  - (b) it is of the reasonable opinion that in light of the other's proposed Financial Contribution the Partnership Arrangements (or any part of them) are no longer viable.
- 35.3 Either Partner (for the purposes of this clause 35.3, the **First Partner**) may terminate this Agreement in whole or part with immediate effect by the service of written notice on the other Partner (for the purposes of this clause 35.3, the **Second Partner**) in the following circumstances:
- (a) if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement under clause 35.3, if the Second Partner has failed to remedy the breach within one hundred and eighty days of receipt of notice from the First Partner (**Remediation Notice**) to do so;
  - (b) there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or
  - (c) following a failure to resolve a dispute under clauses 34.1 and 34.2.

## 36. CONSEQUENCES OF TERMINATION

- 36.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:
- (a) the Partners will comply with the exit strategy set out in Schedule 9;
  - (b) premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed Schedule of condition;
  - (c) assets purchased from the Pooled Fund shall be disposed of by the NHS Body and the proceeds of sale allocated according to the Partners' Financial Contributions or, if otherwise agreed and subject to the conditions of such agreement, shall be retained by the NHS Body; **AND/OR**
  - (d) assets purchased from the Non-Pooled Funds shall be returned to the Partner from whose Financial Contribution the purchase was made;
  - (e) contracts entered into by the NHS Body concerning the Authority Health-Related Functions shall be novated to the Authority and the Authority shall accept the novation; and
  - (f) the NHS Body shall transfer to the Authority all records in its possession relating to the Authority Health-Related Functions.
- 36.2 Overspends on termination of this Agreement shall be dealt with in accordance with clause 10.4.
- 36.3 Subject to clause 36.4, underspends on termination of this Agreement shall be dealt with in accordance with clause 10.6.
- 36.4 Subject to clause 30 (Indemnities), the NHS Body shall be entitled to direct any underspends to the following purposes:
- (a) to meet obligations under existing contracts;
  - (b) to defray the costs of making any alternative arrangements for Service Users; and
  - (c) to meet the costs of any redundancies arising from the termination of the Partnership Arrangements.
- 36.5 The provisions of the following clauses shall survive termination or expiry of this Agreement:
- (a) clause 24 (Freedom of Information);

- (b) clause 25 (Data Protection and Information Sharing);
- (c) clause 26 (Health and Social Care Records);
- (d) clause 28 (Audit);
- (e) clause 30 (Indemnities);
- (f) clause 31 (Liabilities); and
- (g) clause 36 (Consequences of Termination).

**37. PUBLICITY**

The Partners shall use reasonable endeavours to consult one another before making any press announcements concerning the Services or the discharge of either Partner's Functions under this Agreement.

**38. NO PARTNERSHIP**

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.

**39. THIRD PARTY RIGHTS**

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

**40. NOTICES**

- 40.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the chief executive (or equivalent) or another person duly notified by the Partner for the purposes of serving notices on that Partner, at the address set out for the Partner in the Agreement.
- 40.2 Notices may be sent by first class mail or facsimile transmission, provided that facsimile transmissions are confirmed within twenty-four (24) hours by first class mailed confirmation of a copy. Correctly addressed notices sent by first class mail shall be deemed to have been delivered seventy-two (72) hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out above.

**41. ASSIGNMENT AND SUBCONTRACTING**

Neither Partner shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the other Partner.

**42. SEVERABILITY**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

**43. WAIVER**

43.1 The failure of either Partner to enforce any of the provisions of the 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.

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

**44. ENTIRE AGREEMENT**

The 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 Partners relating to that subject matter.

**45. GOVERNING LAW AND JURISDICTION**

Subject to clause 34 (Dispute Resolution), 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.

**46. FAIR DEALINGS**

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 the



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.

DRAFT

THE COMMON SEAL of the MAYOR AND )  
BURGESSES OF THE LONDON BOROUGH )  
OF MERTON was hereunto affixed in the )  
presence of: )

Authorised Signatory .....

**EXECUTED AS A DEED BY**  
**SOUTH WEST LONDON AND ST GEORGE'S MENTAL HEALTH NHS TRUST**  
acting by and under the signatures of:

(1) .....

Director

(2) .....

Director OR Secretary

## Schedule 1 Aims and Outcomes

### 1 Introduction

The primary aim of the Partners in establishing the Partnership Arrangements under this Agreement is to maximise the effectiveness and efficiency of mental health provision through the implementation of Section 75 Health Act 2006 flexibilities (Pooled budget and integrated provision) for adults with mental health needs.

### 2 Strategic Aims

2.1 The strategic aims listed below, provide the overall context for integration and support the delivery of the social care agenda by the NHS Body on behalf of the Authority. The core strategic aims of the Partners are to:

- Improve the mental health and well-being of the people we serve.
- Employ and manage staff to ensure they meet their potential at work to achieve the best possible outcomes for people we serve.

The Partners will achieve these aspirations by continually:

- Improving the quality and robust governance of the services they deliver.
- Engaging service users and carers in the development of policies, strategies, plans and evaluations of services.
- Providing evidence of need and best practice to inform integrated commissioning in the future and the development of the wider market of support offers.
- Increasing efficiency, value for money and financial decision making.
- Innovating and seeking new service delivery models.
- Developing their staff to offer the full potential.
- Providing evidence of the agreed performance outcomes.

## 2.2 Ensuring professional governance structures

Ensuring services are delivered from appropriate local and non-stigmatising environments. For the people the Partners serve, this will involve.

- Ensuring that adults of working age and older people within the Borough of Merton who have eligible health and social care needs can access and use personalised, specialist mental health services and resources.
- Ensuring that adults with mental health problems are safeguarded from harm.
- Ensuring that carers (family and friends) of the eligible adults are identified and offered a carer's assessment, information and advice and support services.
- Contributing to the safety and wellbeing of families and the wider community in the Borough of Merton through effectively managing risks arising from mental health problems.
- Using Health and Social care performance data in a timely manner to inform priorities for action and continuous improvement and development.
- Working with Merton health commissioners to ensure the on-going development of an integrated, preventive, and personalised led recovery-focused mental health system.
- Working effectively within a system of multiple NHS providers of mental health care.
- Working with relevant private voluntary and independent sector providers.

The main focus of this is to achieve an integrated approach to enabling person-centred services through a range of developments including:

- Working together to improve physical and mental health for people with long term mental health conditions.
- Increasing the numbers of people who are able to live independently including people living in supported living services and reducing the numbers of people living in registered (residential/nursing) care.
- To intervene early and to encourage people to access the community and mainstream services to support their wellbeing.
- To enable more people when they become acutely unwell to stay in their own homes as opposed to being admitted to hospital if safe to do so.
- To increase choice and control by enabling personalised services and increasing the

number of people with eligible social care needs to have a Direct Payment for their care and support.

- To work with commissioners to ensure that the needs of people in Merton are met and that they have a local offer that promotes social inclusion, independence and integration into our community.
- To increase the identification of carers, carers assessments, advice and information and subsequent support offered to carers.

**This will involve**

- Delivering high quality care and support for both those with mental health problems and their carers throughout an integrated, seamless and robust care pathway.
- Developing a whole system approach for incorporating Health, Social Care, third sector and service users and their carers.
- Increasing the Choice and Control that People with Mental Health issues have over their lives.

**3 Service Improvement and Objectives**

The Partners will work together:

- to manage demand within available resources, and will do this through promoting prevention, earlier intervention, self-management and by ensuring that pathways are integrated and effective.
- to ensure that mental health is part of the wider integration landscape and that it is at the heart of the Merton Health & Care Together Partnership.
- with the Clinical Commissioning Group and other provider Trusts to minimise delayed transfers of care.
- To promote the importance of good mental health in wellbeing and supporting healthy life expectancy. This will include seeking to address the health inequalities in Merton, including the east/west divide in health life outcomes.
- to bring services into Merton borough boundaries as the opportunity arises, to better enable access and early intervention, effective pathways and to meet mental health need.

## Schedule 2 Services in Scope

### 1. The NHS Body's Health Care Functions

- (i) The functions of providing services pursuant to arrangements made by a Clinical Commissioning Group or the NHS Commissioning Board under sections 3, 3A and 3B of, and paragraphs 9 to 11 of Schedule 1 to, the National Health Service Act 2006, including rehabilitation services and services intended to avoid admission to hospital but excluding surgery, radiotherapy, termination of pregnancies, endoscopy, the use of Class 4 laser treatments and other invasive treatments and emergency ambulance services;
- (ii) the functions of providing services pursuant to arrangements made by a clinical commissioning group or the NHS Commissioning Board under Section 117 of the Mental Health Act 1983; and
- (iii) the functions under Schedule A1 of the Mental Capacity Act 2005.

### 2. The Authority's Health Related Functions

The Authority's Health Related Functions are as defined in The NHS Act 2000 as amended by The Health and Social Care Act 2012

For the avoidance of doubt notwithstanding the terms of this Agreement, Approved Mental Health Professionals shall continue to carry out functions under Section 115 of the Mental Health Act 1983 as amended. The provision of such functions does not form part of the Partnership Arrangements and will be regulated by the Authority directly and outside of the Partnership Arrangements.

The NHS Body will support the Authority in carrying out its duties and functions under Section 115 but will not be accountable for the quality of that service.

### 3 Scope of Service

The Service will provide integrated Specialist Mental Health and Social Care Services to adults of working age and older people who have one or more of the following:

- Serious mental health problems where not served by primary care.
- Care Act 2014 eligible social care needs.

Additionally:

- Social care or health services may be provided exclusively by social care or health professionals where eligible for one set of services and not the other and where that service is deemed most appropriate in the wider context of the health or social care systems.

#### **4 Eligibility For Services**

Service eligibility is based on assessed need for these specialist mental health services. Social care services are provided or enabled for any person for whom the Care Act 2014 assessment indicates the need for appropriate social care services.

#### **5 Community Mental Health Services**

The details of the staffing levels and funding for each post in these services will be agreed by the Partners from time to time and incorporated into Schedule 6.

The Managers of these services are required to deliver integrated health and social care services.

Social Care and Trust performance measures will be reported on regularly to the relevant Partner alongside an integrated performance framework for the Partnership Arrangements as described in Schedule 5 of this Agreement.

### **Merton Assessment Team**

**Location: Wilson Hospital**

#### **Summary**

The Merton Assessment Team provides the main assessment gateway to adult mental health services to residents of London Borough of Merton, who are experiencing mental health problems that are not responding to Primary Care intervention.

The service provides a one point of access assessment, advice and signposting function for all referrals. The assessment function will begin on receipt of referral, and dependent on the outcome, provides the gateway for accessing the range of adult mental health services.

The team will refer and signpost to other agencies, both statutory and non-statutory where required.

<b>Access Criteria</b>	The service is for people aged 18-75 who are experiencing a mental disorder and reach a health assessment criteria and fair access to services care act criteria of critical and substantial need.
<b>Referrals</b>	Merton residents aged 18-75 can be directly referred from the GP's, liaison psychiatry and Home treatment teams, social care, police, partner agencies, a self-referral is appropriate.
<b>Operational Policy</b>	Available on request from the relevant service line.

### **The Recovery and Support Teams: Mitcham, Wimbledon and Morden**

**Location: Wilson Hospital**

#### **Summary**

The Recovery and Support Teams (RSTs) provide the main treatment, recovery and support functions within adult mental health services to residents of London Borough of Merton, who are experiencing mental health problems that are not responding to Primary Care intervention or require more specialist interventions where there is no clear diagnosis of a psychosis or mood disorder.

The RSTs are aligned to GP practices and this is overseen through regular GP link meeting. Treatment will be provided on an outpatient or domiciliary basis by the most appropriate member of the team and offer short term focused interventions to those with severe mental illness on an individual or group basis and long-term care co-ordination.

The teams will also provide specific education and employment advice/support to enable service users to re-integrate within wider society. The teams will work with other agencies, both statutory and non-statutory where required.



<b>Access Criteria</b>	The service is for people aged 18-75 who are experiencing a mental disorder and reach a health assessment criteria foreword as above of critical and substantial need.
<b>Referrals</b>	Referrals will come through the Merton Assessment Team, Home Treatment teams, or CAMHS services and same criteria will apply.
<b>Operational Policy</b>	Available on request as above.

<b>Merton Early Intervention Service</b>	
<b>Location: Wilson Hospital</b>	
<b>Summary</b>	<p>The Sutton and Merton EIS works for working age adults with first episode psychosis young people living in Sutton and Merton aged between 18 and 65 with first episode of suspected psychosis – the Merton apportionment of this service will be subject to partnership arrangements.</p> <p>The service aims to engage clients at the earliest possible opportunity and provides:</p> <ul style="list-style-type: none"> <li>• Specialist help for people and their carers for up to three (3) years of contact with mental health services.</li> <li>• Education to increase public awareness, detection and referral of people with early signs of psychosis.</li> <li>• Employment advice and support.</li> <li>• Support and education to Primary Care and agencies to help recognise early signs and encourage young people to access help early.</li> </ul>
<b>Access Criteria</b>	The service is for working age adults who are experiencing or have experienced their first episode of psychosis, who are resident in the London Borough of Merton. For young people aged 16-17 acceptance by EIS would only follow discussion with CAMHS.
<b>Referrals</b>	Referrals will come through the Merton Assessment Team, Recovery and

	Support Teams, Home Treatment Teams, Inpatient services or Liaison Psychiatry and same criteria will apply.
<b>Operational Policy</b>	Available on request from the relevant service line

<b>Merton Crisis &amp; Home Treatment Team - (C&amp;HTT) 24 hrs service</b>	
<b>Location: Springfield Hospital</b>	
<b>Summary</b>	<p><b>Interventions:</b></p> <ul style="list-style-type: none"> <li>• Rapid assessment of needs, mental state, mood and risks both at A &amp; E department and community and determine suitability for home treatment intervention or inpatient acute admission. Response time to A &amp; E usually within one hour.</li> <li>• Provide crisis intervention based on clinical and safety need of patient via daily or twice daily visit at home environment. Crisis intervention includes administration of medication, monitoring efficacy and or side effect and risk as well as psychosocial intervention as necessary 24 hours daily.</li> <li>• Undertake face to face assessment for all requests for admission to acute inpatient bed from all sources e.g. Merton Assessment Team, Recovery &amp; Support Teams, St. Helier Hospital, Kingston Hospital, St Georges Hospital, police and other emergency services.</li> <li>• Where hospitalisation is required, established the purpose of admission and facilitates admission by allocating a bed, thereby ensuring face to face gate keeping to all admissions.</li> <li>• Facilitate early discharge, particularly through discharge coordinator working closely with inpatient services to ensure patients are discharged within the earliest possible time.</li> <li>• Initiate Clozapine in the community thereby reducing the pressure on inpatient bed acute bed.</li> <li>• Ensure joint discharge meeting with RSTs thereby ensuring</li> </ul>

	<p>clarity of role.</p> <ul style="list-style-type: none"> <li>To work in an integrated manner with Merton AMHP service to offer least restrictive option where feasible.</li> </ul>
<b>Access Criteria</b>	C&HTT works with Adults (18 and above) with severe mental illness (e.g. Schizophrenia, Manic Depressive Disorder, Severe Depressive Disorder) in acute psychiatric crisis with such severity that without the involvement of the CR/HTT, hospitalisation would be necessary ( <b>Department of Health CR&amp;HTT Implementation Guideline, NIMHE 2004</b> ).
<b>Referrals</b>	Merton C&HTT receives referrals made by the Merton Assessment Team; R&STs; Complex Needs Service: Early Intervention Service; Psychiatric Liaison Services, GP Surgery (Out of office hours); EDT, Sec.136 suite; London Ambulance Services, Self-referral via the Mental Health Support Line, Street Triage Service and from other home treatment teams.
<b>Operational Policy</b>	Available on request from the Acute Care Service Line.

**Merton Placement Review Team Location: Springfield Hospital**

<b>Summary</b>	<p>The Merton Placement Review Team works closely with RSTs in order to assess needs of those who require social care commissioned care packages, to best meet identified and eligible need in a manner that best promotes choice and recovery, and within available resources.</p> <p>In addition to this, an identified Placement Officer will manage a caseload of complex and high cost placements</p>
<b>Access Criteria</b>	All people with care act identified needs eligible needs from a mental health condition.
<b>Referrals</b>	Referrals are potentially from all mental health services following assessment/review of social care needs.
<b>Operational Policy</b>	Available on request from the adult community service line.

## **6 Approved Mental Health Professional (AMHP)**

### **6.1 The Role, Responsibilities and Approval**

The Authority is responsible for ensuring that sufficient Approved Mental Health Professionals (AMHPs) are available in the Borough to carry out their roles under the Mental Health Act 1983.

The Authority is responsible for approving individual AMHPs. This responsibility cannot be delegated to an NHS organisation through the Partnership Arrangements.

Although AMHPs carry out statutory functions under the Act on behalf of the local authority, this does not mean that the AMHP has to be employed by the local authority who approved them or on whose behalf they are acting. Under this Agreement, the Authority is entering into an arrangement with the NHS Body, whereby the NHS Body may employ an AMHP in their substantive role, but the Authority will retain the ultimate legal responsibility for the service.

The NHS Body will release staff for their AMHP duties and for initial and refresher AMHP training. The Authority is responsible for ensuring AMHP's are sufficiently and appropriately trained. The NHS Body will work in partnership with the Authority to enable sufficient AMHPs to be available from the integrated health and social care services managed under this Agreement.

AMHPs are professional staff with a registered qualification (either Social Workers, Community Mental Health Nurses, Occupational Therapists or Chartered Psychologists) specifically approved and appointed under Section 114 of the Mental Health Act 1983 by a local Social Services authority '*for the purpose of discharging the functions conferred upon them by this Act*'. Among these, one of the most important is to carry out assessments under the Act and to function as applicant in cases where compulsory admission is deemed necessary. Before being appointed, AMHPs must undertake post-qualifying training accredited by the Health and Care Professions Authority. Warranting of AMHP's is undertaken by the local authority.

There is a rota arrangement for the deployment of AMHPs between weekday working hours. AMHPs are released from their substantive community team roles while they undertake AMHP duties.

The minimum agreed number of warranted AMHPs is ten (10).

As recommended by the advice note issued by the Association of Directors of Adult Social Services (ADASS) in July 2008, the Authority will enter into contractual arrangements with all trust employed AMHPs setting out the Authority's responsibility for their practice. The Authority will remain responsible for:

- Ensuring that all AMHPs have access to professional supervision and support in their role as AMHPs.
- Providing a minimum of eighteen (18) hours of refresher training, relevant to the AMHP role each year – as determined by the local authority.
- the health and safety of AMHPs whilst they are undertaking assessments on their behalf.
- professional competence of those working in their role as AMHP, and for removing or suspending their warrant as necessary.
- Legal indemnity whilst undertaking the AMHP role.
- Access to legal advice whilst carrying out AMHP duties.

## **6.2 AMHP Legal Support**

Legal advice will be provided by the South London Legal Partnership. Under this Agreement, the NHS Body will work in Partnership with the Authority to ensure a sufficient quantity of AMHPs by enabling its staff to be released for AMHP training and deployment on the AMHP rota, maintained by the Authority.

## **6.3 AMHP Supervision**

The following supervision and support arrangements will be in place, including access to senior support from within the Authority, where issues related to conflicts of interest arise:

- (i) The Authority's Director, Community and Housing Services, will ensure that AMHPs have access to independent advice and support and to act as the senior responsible officer for the AMHP service within the Authority.
- (ii) The Associate Director of Social Work in Mental Health will act as professional lead and supervisor to highlight any problems identified by AMHPs and to protect the role's independence where the source of the problem may be within the substantive employer's control.

Information on AMHP activity will be reported to the Authority's Community & Housing Departmental Management Team regularly as a part of its Performance Reporting Framework to be agreed and attached at Schedule 5.

## **7 Services not subject to the Integration Arrangements, but which can be accessed by the Integrated Teams include:**

- **Adult Inpatient Service:** inpatient services for working age adults, based on Jupiter Ward but other wards accessed as required.
- **Older Adult Inpatient Service:** inpatient services for older adults, based on Crocus Ward but other wards accessed as required.
- **Psychiatric Intensive Care Unit:** short term intensive care for those patients who are very acutely ill.
- **Challenging Behaviour Team:** provide treatment support and advice to care homes in managing older people with dementia manifesting in challenging behaviour.
- **Liaison Psychiatry Services:** A&E assessment and input into acute wards at St. George's, St. Helier and Kingston Hospitals.
- **Complex Needs Team:** providing structured treatments for people with complex personality disorder
- **Service User Network:** open access group-based support and treatment for people with personality disorder.
- **Sutton and Merton Improving Access to Psychological Therapies:** psychological treatments for people with anxiety and depression.
- **SWLSTG Specialist Services:** e.g. Forensic, Eating Disorders, OCD, Deaf.
- **Housing/accommodation:** General Needs Housing, Housing Needs Team, including Floating Support, Homeless Persons Unit, Registered Providers for Supported Living, Shared Lives, Health Continuing Care
- **Safeguarding adults:** Safeguarding adults team, Complex Needs team (virtual).
- **Financial assessments:** Financial assessments team, Finances services.
- **Commissioning/contracts:** Brokerage.
- **Children's Services:** Child protection CIN. LAC, Supporting Families.

## 8 Commissioned Social Care Services Needs

The NHS Body will be responsible for putting in place access to social care services in order to meet the assessed eligible needs of service users assessed by the integrated staff teams described in this agreement.

Additionally, the Authority will commission a range of social care services directly and make these contracts available for access by the NHS Body managed integrated staff teams.

At Commencement these services are as follows:

- A range of services commissioned from the voluntary sector including Carer Support, Advocacy and Community Advice Services.
- Services available to all customers in Access and Assessment for example Community OT, services to support Direct Payments, Safeguarding, and Housing Needs.

The Authority will retain responsibility for strategic commissioning which will include population needs analysis, service development, contracting, procurement, brokerage and quality assurance.

## **9 NHS Body's arranged services from the Non-Pooled Fund**

The NHS Body will be responsible for making arrangements for Service Users to meet their assessed eligible care and support needs from those services contracted directly by the Authority.

### **Schedule 3 Contributions**

#### **1. Financial Contributions**

- 1.1 The contributions of the NHS Body and the Authority at the commencement date are as set out below at paragraph 2.1 and paragraph 2.2.
- 1.2 Contributions in future years shall be agreed annually taking account of pay awards, general inflation, efficiencies, savings and changes to national funding.

#### **2. Pooled Fund and Non-Pooled Fund**

- 2.1 The pooled funds for 2019/20 are set out below and include the staff costs for the integrated teams. The total contributions for 2019/20 are the Authority £1,566,000 and the NHS Body £2,789,000.
- 2.2 The non-pooled budget covers the costs of social care packages of care and this is funded and held by the Authority. It is £1,855,730 for 2019/20.
- 2.3 These sums are varied and agreed each year by the parties to this Agreement.

#### **3. Premises**

- 3.1 The NHS Body shall provide accommodation for the integrated teams as locations as agreed by the Mental Health Integration Board.

**4. Support Services**

- 4.1 The NHS Body shall provide administration and support services to the integrated teams as required. An allocation for administrative support is included in the pooled staffing budget.

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Schedule of Pay and Non-Pay Budgets and FTE at 2019-20  
Trust contribution to Pooled Fund 2019-20

Table 1

Budget FTEs	Merton Assessment Team	Wimbledon R&S Team	Mitcham R&S Team	Morden R&S Team	Merton OP CMHT	Merton Adult HTT	Merton EIS	Merton DART (Exc CDS&SL)	Placement Review Team	Merton Mgmt	Total SWLST G fte
Admin		1.00	1.00		2.29	2.00	0.50	1.00			7.79
AHP	1.00	1.00	1.00	1.00	1.00		1.50				6.50
Assistant Care Manager											0.00
Employment Specialists											0.00
Lead Social Worker											0.00
Managers	1.00			1.00	0.75	0.50	0.50	0.50		0.75	5.00
Nursing	1.00	2.50	3.00	2.52	5.00	10.00	2.00	5.00			31.02
Psychology		1.00	1.00	0.80	1.00		0.50				4.30
Snr Practitioners											0.00
Social Worker AMHP											0.00
Social Workers											0.00
Support Workers		2.00	2.00		1.00	2.00	0.50				7.50
<b>Total FTE (exc Medical &amp; Recharges to LBM)</b>	<b>3.00</b>	<b>7.50</b>	<b>8.00</b>	<b>5.32</b>	<b>11.04</b>	<b>14.50</b>	<b>5.50</b>	<b>6.50</b>	<b>0.00</b>	<b>0.75</b>	<b>62.11</b>
<b>Budget £k</b>											<b>£000</b>
<b>Total Pay (exc Medical &amp; Recharges to LBM)</b>	<b>141</b>	<b>319</b>	<b>332</b>	<b>271</b>	<b>504</b>	<b>651</b>	<b>252</b>	<b>261</b>	<b>0</b>	<b>58</b>	<b>2,789</b>
<b>Trust Contribution</b>	<b>141</b>	<b>319</b>	<b>332</b>	<b>271</b>	<b>504</b>	<b>651</b>	<b>252</b>	<b>261</b>	<b>0</b>	<b>58</b>	<b>2,789</b>

Local Authority contribution to the Pooled Fund 19-20

Table 2

Budget FTEs	Merton Assessment Team	Wimbleton Recovery & Support Team	Mitcham Recovery & Support Team	Morden Recovery & Support Team	Merton Crisis Home Treatment Team	Merton Early Intervention Team	Placement Review	AMPH Team	Merton Mgmt.	Bradshaw Close	Total LBM FTE
Associate Director of Social Work									1.00		1.00
Clerical Assistant ( Admin)	1.00	1.00	1.00						1.00		4.00
Team Manager			1.00	1.00	0.50						2.50
Employment Specialists		1.00	1.00	1.00		1.00					4.00
Clinical Manager									0.25		0.25
Placement Review Lead							1.00				1.00
Snr Social Worker							1.00				1.00
Snr Practitioners	1.00		1.00		1.00	1.00		1.00			5.00
Social Worker AMHP		2.00	1.00			1.00		1.00			5.00
Social Workers				2.00				1.00			3.00
Recovery Support Worker				1.00	4.00	1.00					6.00
S&R Worker			1.00							0.50	1.50
<b>Total FTE</b>	<b>2.00</b>	<b>4.00</b>	<b>6.00</b>	<b>5.00</b>	<b>5.50</b>	<b>4.00</b>	<b>2.00</b>	<b>3.00</b>	<b>2.25</b>	<b>0.50</b>	<b>34.25</b>
<b>Pay Budget £k</b>											<b>£'000</b>
<b>Total Pay</b>	<b>82</b>	<b>196</b>	<b>277</b>	<b>234</b>	<b>218</b>	<b>157</b>	<b>110</b>	<b>148</b>	<b>55</b>	<b>18</b>	<b>1,496</b>
<b>Total Non-Pay</b>									<b>70</b>		<b>70</b>
<b>Local Authority Budget</b>	<b>82</b>	<b>196</b>	<b>277</b>	<b>234</b>	<b>218</b>	<b>157</b>	<b>110</b>	<b>148</b>	<b>55</b>	<b>18</b>	<b>1,566</b>

## Schedule 4 Governance

### 1 Mental Health Integration Board

#### 1.1 MHIB Membership

The MHIB will be administered by the Authority. The voting members of the MHIB will be as follows: -

- The NHS Body's Chief Executive or a deputy to be notified in writing (or email) in advance of any meeting.
- The Authority's Director of Adult Social Care or a deputy to be notified in writing (or by email) in advance of any meeting.

Non-voting members will be as follows: -

- The HOSD for the NHS Body.
- The Clinical Managers for the NHS Body.
- A finance representative of the NHS Body.
- The Assistant Director for Adult Social Care.
- A finance representative of the Authority.
- The Managing Director of Merton CCG or a deputy to be notified in advance of any meeting.

The role of the Pool Fund Manager (non-voting) will be fulfilled by the Service Director, Head of Service Delivery of the adult community and CMHA service lines for the NHS Body (unless otherwise agreed) and who will also provide the Secretariat function to the MHIB.

#### 2.1 Role of MHIB

The MHIB shall: -

- Review for agreement annually an Annual Development Plan and Risk Assessment to be prepared by the NHS Body including consulting further where necessary on the Aims and Objectives at Schedule 1.
- Review and agree annually the integrated performance framework attached at Schedule 5 to this Agreement.
- Receive and review the most recent monthly reports on finance and performance, making recommendations for actions where required.

- Ensure the Pooled Fund is being managed so as to achieve the aims and objectives set out in Schedule 1 in the manner specified in Schedule 3.
- Make such variations to this Agreement from time to time as it thinks necessary to deliver the NHS Health Care Functions in accordance with the NHS Commissioner Contract.
- Make such variations to this Agreement from time to time as it thinks necessary to service delivery arrangements in order to ensure delivery of the activities delegated by the Authority.
- Agree any arrangements for the appointment of new Staff to the Service.
- Set such protocols and guidance as it may consider to be necessary to enable the effective management of the Pooled Fund and the Service.
- Review on an on-going basis and annually the operation of this Agreement and the Secondment Agreement.
- Review and agree annually the revised budgets and finance procedures to be set out in Schedule 3 for the following year following confirmation by the Partners of their respective contributions.
- Review the operation of the Single Assessment Process for all services where it applies and in particular (but without limitation) to ensure that it complies with all legal requirements.
- Provide an annual report on outcomes to the NHS Body's Board and the Authority's Cabinet and Health and Wellbeing Board on the operation of this Agreement.

### **2.3 MHIB Support**

The MHIB will be supported by officers from the Authority and the NHS Body from time to time and they may be involved in assisting the MHIB in implementation of the Aims and Objectives set out in Schedule 1 and the preparation of annual revisions to Schedule 3 and the Performance Framework attached here at Schedule 5. In particular the meetings of the MHIB shall be supported by nominated finance officers of both Partners.

### **2.4 Meetings**

- (a) The MHIB will meet three times a year, normally being:
  - October for a review of the year to date and to discuss the emerging planning requirements of the Authority and the NHS Body, and the commissioning intentions of the CCG;

- February to receive the draft annual report and to confirm the budget and priorities for the year ahead;
  - July to review progress.
- (b) The quorum for meetings of the MHIB shall be a minimum of both voting members, not counting the Pool Fund Manager who will be a non-voting member.
- (c) Minutes of all decisions shall be kept and copied by the Pool Fund Manager to the Authorised Officers and the NHS Body's Board Secretary for inclusion on the next Trust Executive Team agenda, within five (5) Working Days of every meeting.

## **2.5 Limitations on Authority**

The MHIB is authorised within the limits of delegated authority for its members (which is received through their respective organisations own scheme of delegation) to agree: -

- the respective contributions of the Partners for the budget and the revised Schedule 3;
- solutions to commitments which exceed or are reasonable likely to lead to exceeding the contributions of the Partners to the aggregate contributions of the Partners to the Pooled Funds, to be confirmed or agreed by the Partners;
- changes to the service delivery model ensuring that the proposed changes continue to deliver the activities delegated by the Authority:
  - in any arrangements for the appointment of New Staff.
- the Annual Development Plan comprising the services, objectives, contributions and performance monitoring arrangements.

The MHIB shall not be responsible for the direct management of any NHS staff or Authority staff who are not accounted for in Schedule 6 as amended from time to time, such staff remaining accountable to and the responsibility of their respective current employer at all times.

Staff accounted for in Schedule 6 shall be managed in accordance with arrangements set out in Schedule 6 and the Secondment Agreement.

## **3 Pool Fund Manager**

The Pool Fund Manager may delegate the day-to-day management of pooled funds in accordance with the NHS Body's Standing Financial Instructions, provided that the Pool Fund Manager remains responsible at all times for the obligations set out for the Pool Fund Manager in this Agreement.

#### **4 Information and Reports**

The MHIB members will be supplied with the financial and activity information, on a monthly basis as outlined in this Schedule 5 subject to any amendment in light of agreement of the Annual Development Plan as referred to above. These reports will have first been agreed by finance representatives of both Partners. The financial and performance reports will be received at the Community & Housing Departmental Management Team meeting, to which the NHS Body's Service Director will be invited.

The Annual Development Plan, as revised annually thereafter, will be the basis for delivery by the NHS Body against the Agreement.

This will include appropriate action to redress any shortfall in achieving any agreed national and local standards for service delivery. Any variation from it will need to be agreed by MHIB.

The MHIB will submit an annual report to the NHS Body's Board and the Authority's Cabinet via the Authorised Officers.

In other circumstances and where any one MHIB member requests, information received or a query raised at a meeting on matters of operational or financial performance will be directed in the form of a written briefing by the Pool Fund Manager to the MHIB and where requested to the Authorised Officers with a view to the Authorised Officers meeting and considering the issue before the date of the next subsequent scheduled meeting of MHIB.

#### **5 Plans and Review**

The Pool Fund Manager will refine any remaining Aims and Objectives set out in Schedule 1 into targets and performance measures to be agreed by MHIB from time to time and in any event by 30th April of the First Financial Year and annually thereafter each March following a review to be led by the MHIB to include an annual workforce plan on the scope and coverage and skill mix proposed for the integrated teams.

#### **6 Performance Reporting**

Performance reporting will be aligned to financial reporting with different levels of reporting to ensure that performance is reported at the right level of detail to the various levels within the overall partnership governance framework, with exception reporting and escalation to the Mental Health Integration Board in order to provide assurance that the required actions are being taken to improve performance where targets are not being met. The MHIB will be responsible for working to resolve any issues.

## **Schedule 5 Performance Management Framework**

### **1 Integrated Performance Framework**

A performance framework will be developed on an annual basis in order to measure progress against targets at Schedule 1.

The MHIB will review other performance of the Partners according to their individual Key Performance Indicators (KPIs) where these have a bearing upon performance of the Partners or individual Partner's performance rating as affected by the Partnership Arrangements.

### **2 Key Performance Indicators**

The Pool Fund Manager will provide regular monthly reporting to the Authority on the Authority's KPIs to assist in tracking performance and to highlight matters for additional MHIB discussion.

The Authority's KPIs will be agreed at least annually by the Authority for the NHS Body to provide reports on.

Key Performance Indicators will include:

- Financial reporting on spend and forecast.
- Integrated Performance Indicators to be agreed from time to time between the Partners.

They are developed in order to meet statutory reporting requirements to the Department of Health & Social Care and management information required for Authority officers and members. The measures are to be reviewed annually.

Monthly finance returns will be made within 15 working days of each period end. These returns will highlight any changes in forecast spend and any forecast variances.

### **3 Performance Management and Other Matters**

3.1 The performance reporting will be agreed each year and will be compliant with the requirement of the NHS Information Centre, NHS England and the Department of Health & Social Care.

3.2 The Partners' leads on performance management will develop a performance schedule and proposed annual targets for agreement by MHIB.

3.3 The performance schedule shall be reported quarterly and will include the following:

1. Data on referrals, assessments and reviews, and their outcomes;
2. Data on s136 AMPH MHA assessments, including numbers, timeliness and outcomes.
3. Data on safeguarding referrals, investigations and outcomes.
4. Data on carers referrals, assessments and outcomes.
5. Data on the make-up of current service users with regard to protected characteristics.

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## Schedule 6 Staffing

### 1. TUPE

1.1 Not applicable.

### 2. Pensions

2.1 Staff shall be eligible to join the pension scheme of their employer.

### 3. Secondment Arrangements and management of staff

3.1 The Authority shall second the Seconded Staff for the purposes of this Agreement. A full list of the staff fulfilling these roles as at the Commencement Date and any other information as may be required by Law will be provided to the NHS Body by the Authority and the full list shall be amended for notification to the NHS Body whenever new staff are appointed by the Authority which are to be subject to any secondment to the NHS Body under the terms of this Agreement.

3.2 The Partners have agreed that, subject to having consulted and obtained their written consent to the terms of the secondment, the Seconded Staff will remain in the employment of the Authority after the Commencement Date and be seconded to the NHS Body on their existing terms and conditions as varied to give effect to the secondment.

3.3 All staff within the integrated services will be managed on a day-to-day basis in accordance with the line management structure. Within a service, an employee of either organisation may provide formal line management.

3.4 Line managers within the service may act for either organisation in administering HR policies and procedures, including the formal stages of any procedure, in consultation with the relevant HR staff.

3.5 Managers will undertake supervision of staff and hold them accountable for their actions.

3.6 All staff will be expected to comply with all reasonable instructions and directions given to them by managers of either Partner within the integrated provider scheme. There will be agreed arrangements for professional accountability and supervision. Staff from both organisations must ensure that they undertake appropriate training in relevant policies and procedures around people management.

- 3.7 Managers from both organisations will be involved in a joint process of assessing performance for progression between grades in relation to link graded posts where this applies.
- 3.8 Each Partner must ensure that its managers are aware of and familiar with the people management policies and procedures of both organisations, including acting upon advice from HR Advisors, Occupational Health and other specialist advisers from the employing organisation. Managers must make sure that all management actions, including management of absence, disciplinary action or terminations, are carried out in line with the employing organisation's policies and procedures and in accordance with this protocol.
- 3.9 The identification of training needs will be the responsibility of the line managers within the integrated services, working with colleagues in the two Training and Development departments where appropriate. Training programmes will be available to all staff from either Partner.
- 3.10 All staff within the integrated services will be expected to have personal development plans. The processes for agreeing personal development plans will be considered alongside consideration of the supervision processes and the appropriate appraisal scheme which fits in with the business plan of the service.
- 3.11 Where there is an identified need within an integrated team the two organisations will jointly decide how best to meet the need.

**Schedule 7 Previous Section 75 Agreements**

Section 75 National Health Service Act 2006 Partnership Agreement in respect of integrated provisions from a pooled fund for Adult Mental Health Services 2014.

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## Schedule 8 Information Sharing Protocol

### 1. Introduction

- 1.1 The aim of this schedule is to facilitate the access to and, where lawful, the sharing of all Personal Data (including Special Categories of Personal Data), information which is not Personal Data and other confidential data between the Partners so that the employees of the Partners can access the information and where relevant, systems of the Partners for the purposes of carrying out their roles in accordance with this Agreement.
- 1.2 Organisations involved in providing services to the public have a legal responsibility to ensure that their use of Personal Data is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share Personal Data to provide a quality service and protection of confidentiality is often a difficult one to achieve.
- 1.3 The legal situation regarding the protection and use of Personal Data can be unclear. This situation may lead to information not being readily available to those who have a genuine need to know in order for them to do their job properly.
- 1.4 There are fewer constraints on the sharing of information which is not Personal Data.
- 1.5 Each Partner should ensure that all of its staff working in the Partnership Arrangements are aware of the contents of both this Schedule 8 and the obligations in it and also any other information sharing agreements which are created between the Partners.

### 2. Glossary

- 2.1 For the purposes of this Information Sharing Protocol the following terms shall have the meaning as stated below:

**Data Controller:** shall have the same meaning as set out in the Data Protection Legislation.

**Data Processor:** shall have the same meaning as set out in the Data Protection Legislation.

**Data Subject:** shall have the same meaning as set out in the Data Protection Legislation.

**Personal Data:** shall have the same meaning as set out in the Data Protection Legislation.

**Special Categories of Data:** shall have the same meaning as set out in the Data Protection Legislation.

### **3. Aims and Objectives**

3.1 The aim of this Information Sharing Protocol is to provide a framework for the Partners to, where lawful, access and share information. This Information Sharing Protocol also provides guidance to ensure the secure transfer of information between the Partners, and to ensure that, where information is shared, this is for justifiable legal purposes.

3.2 This aim includes:

- Guiding the Partners on how to share Personal Data lawfully.
- Explaining the security, confidentiality and principles of information sharing.
- Increasing awareness and understanding of the key issues.
- Supporting a process that will monitor and review all information flows.
- Encouraging flows of information where this is appropriate.
- Helping to protect the Partners from accusations of wrongful use of Personal Data.
- Identifying the legal basis for information sharing.

3.3 The Partners by agreeing this Information Sharing Protocol are making a commitment to apply the Information Commissioner's Data Sharing Code of Practice and to comply with the Data Protection Legislation.

3.4 The Partners are expected to promote the awareness of staff working in the Partnership of the major legal requirements as regards accessing and sharing information. This will be supported by the production of appropriate guidelines, where required, that will be made available to such staff.

### **5. Purpose of Data Sharing**

Information, including Personal Data, is shared under this Agreement and pursuant to this Information Sharing Protocol, for the purpose of facilitating joint working between the Partners in relation to improving the effectiveness and efficiency of services provided to Service Users. The information will be used for monitoring of the services provided, reporting of the Key Performance Indicators and other agreed indicators of performance, monitoring data quality, producing reports for monitoring the Services, and providing data for any necessary National Indicators.

## 6. Information covered by this Protocol

- 6.1 This Information Sharing Protocol, covers all information, including Personal Data and Special Categories of Personal Data as defined in the Data Protection Legislation.
- 6.2 The term 'Personal Data' includes **any** data held as either manual or electronic records, or records held by means of audio and/or visual technology. The Data Protection Legislation also defines certain classes of Personal Data as Special Categories of Personal Data. Additional conditions must be met for that information to be used and shared lawfully.
- 6.3 In order to reduce the risks of non-compliance with Data Protection Legislation and avoid security breaches, where possible, anonymised data should be used. Where information is anonymised the Partners must ensure the anonymised data, even when combined with other information available to them, **does not** identify an individual, either directly or by summation. Fully anonymised data about an individual can be shared between the Partners without consent being obtained from the individual in a form where the identity of the individual cannot be recognised i.e. when:
- reference to any data item that could lead to an individual being identified has been removed; and
  - the data cannot be combined with any data sources held or likely to come into the hands of the Partners (or which is in the public domain) to produce personal identifiable data.
- 6.4 The types of data which will be shared pursuant to this Information Sharing Protocol are as follows:
- a) Datasets, which can be identified as:
- Client (Demographic data),
  - Referral episode data,
  - Triage episode data,
  - Assessment episode data,
  - Review episode data,
  - Support plan data,
  - Exit episode data,
  - Exit Survey Data,
  - Services extract (what services are offered to service users).
- b) Data from the datasets which is used to calculate performance against the relevant performance indicators.

The data that falls within the datasets includes, but is not limited to, names, NHS Numbers, dates of birth, age, gender, marital status, ethnicity, religion, sexual orientation, addresses, post codes, details as to GP registration, information relating to physical and mental health conditions, information relating to hospital stays, care workers, names of any contact information, and prescription information.

## **7. The legal basis for sharing**

- 7.1 The Partners will share information in compliance with the principles set out in this Information Sharing Protocol and any relevant information sharing agreement.
- 7.2 Personal Data will only be shared for the purposes set out in paragraph 5 of this Information Sharing Protocol. All shared information, personal or otherwise, must only be used for the purpose(s) specified at the time of its sharing unless the Partners agree otherwise, or a Partner is obliged to do otherwise by law, for example under statute or regulation, or further to the instructions of a court or tribunal.
- 7.3 Staff should only be given access to Personal Data where there is a legal right, in order for them to perform their duties in connection with the services they are there to deliver.
- 7.4 Where a Data Subject has given consent for their data to be shared with the other Partner, this justifies that sharing. Consent has to be signified by some communication between the Partner and the Data Subject. When using Special Categories of Personal Data, if consent is being relied upon, explicit consent must be obtained. In such cases the Data Subject's consent must be clear and must cover items such as the specific details of processing, the data to be processed and the purpose for processing.
- 7.5 Consent is not the only means by which Personal Data can be shared. Under the Data Protection Legislation, in order to disclose Personal Data or Special Categories of Personal Data at least one of a number of conditions must be met. Consent is one of these conditions, but there are others such as processing necessary for medical purposes which is undertaken by a health professional or a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if they were a health professional. Where there is any doubt as to the legal basis for sharing, legal advice should be sought.
- 7.6 Where one Partner has a statutory obligation to disclose Personal Data, then the consent of the Data Subject is not required but the Data Subject should normally be informed that such an obligation exists.
- 7.7 If consent is used as the justification for sharing, the Data Subject must have the right to withdraw consent for this at any time. If consent for sharing is withdrawn, this should be communicated to the other Partner and sharing cease as soon as possible. If another justification for sharing is relied upon, where consent has been withdrawn legal advice

should be sought prior to any sharing and, where the information is already shared, legal advice may be needed in relation to whether the sharing should be discontinued.

- 7.8 Information that is not Personal Data can still be sensitive (such as confidential or legally privileged information) and may not necessarily be freely shared between the Partners. It could also be commercially sensitive or cause prejudice to others by sharing, and this should be considered when such information is shared. If in doubt the information's original owner should be consulted and legal advice obtained prior to the sharing.

## **8. Responsibilities when sharing information**

### **8.1 General**

- 8.1.1 The Partners will ensure that their contracts with external service providers include a condition that they abide by that Partner's rules and policies in relation to the protection and use of confidential information and Personal Data.

### **8.2 Security**

- 8.2.1 Each Partner is responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this Information Sharing Protocol. The Partners will ensure an appropriate level of security for supplied information, whether Personal Data or otherwise, and will process the information accordingly.
- 8.2.2 The Partners should ensure that the minimum standards of security that they require are put in place with anyone with whom this information will be shared or by whom it will be accessed.

### **8.3 Transfer of data**

- 8.3.1 Transfer of data between the Partners

All data transferred between the Partners must be:

- Sent by secure email;
- Sent by encrypted hard drive or encrypted USB Flash Drive;
- Preferably not faxed at all;
- Faxed using a safe haven fax if there is no other alternative;
- Any paper records should preferably be scanned and emailed via secure email.

- 8.3.2 Personal Data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the Data Subject in relation to the processing of Personal Data, without legal advice having first been obtained and appropriate assurances about data protection being obtained.



## 9. Breaches of the Data Protection Act and reporting

9.1 All breaches of the Data Protection Legislation and the terms of this Information Sharing Protocol need to be flagged and reported immediately by staff of each Partner to their relevant Information Governance teams. The Information Governance teams of both Partners shall liaise with one another in order to investigate, remedy any breach to the extent possible, learn from the experience and, where appropriate, to report any incidents to the Information Commissioner.

9.2 If there is a security breach or any other breach of confidentiality relating to information received from/ shared by a Partner, the Partner originally supplying the information will be notified at the earliest opportunity. This also applies to any incident involving a risk of breach of the security of information.

9.3 Suggested leads and contact persons for this paragraph 9 are:

Name	Organisation	Contact Details
Head of Information Governance	The Authority	Address: Civic Centre, Morden Email: Data.Protection@merton.gov.uk Telephone: 02085454182
	The NHS Body	Position: Address: Email: Telephone:

9.4 Any changes to the lead individual specified in clause 9.3 shall be notified to the other Partner.

## 10 Staff

10.1 This Agreement and this Information Sharing Protocol do not give licence for employees to have unrestricted access to information that each Partner may hold. It sets out the parameters for the safe and secure sharing of information for a justifiable need to know purpose.

10.2 Only staff who are authorised and have a need to know should have access to the data.

- 10.3 The Partners are responsible for ensuring every member of their respective staff is aware and complies with the obligation to protect confidentiality and a duty to disclose information only to those who have a right to see it.
- 10.4 The Partners should ensure that any of their staff accessing information is trained and fully aware of their responsibilities to maintain the security and confidentiality of Personal Data and all other information accessed.
- 10.5 The Partners should ensure that any of their respective staff accessing information follow the procedures and standards that have been agreed and incorporated within this Information Sharing Protocol and any associated information sharing agreements.

## **11. Access to information by Data Subjects and the public**

- 11.1 This paragraph 11 applies where either Partner (pursuant to this Agreement) receives a Data Subject Access Request under the Data Protection Legislation or a request for information under the Freedom of Information Act 2000 (FOIA) in respect of any data shared between the Partners (for the purposes of this paragraph 11 either being called an "Information Request"). The NHS Body (the "Responding Partner") shall take the lead in responding to the Information Request.

This, however, does not mean that the other Partner becomes exempt from any responsibility in regards to the Information Request. As both Partners are Data Controllers and are contributors to the shared information, the other Partner has a duty to fully support and help the Responding Partner in dealing with the Information Request in a timely manner and in accordance with the Data Protection Legislation or FOIA, as applicable.

- 11.2 If an Information Request is received by the Partner who is not the Responding Partner, it shall be forwarded to the relevant lead at the Responding Partner within three (3) Working Days.
- 11.3 The Responding Partner shall liaise with the other Partner before responding to an Information Request. Such liaison shall take place at least seven (7) Working Days before the deadline for response to the Information Request.
- 11.4 The information being shared in accordance with this Protocol may need to be disclosed from time to time in response to a request for information made under FOIA. Where information is released in response to such a request, that information may be included in the Partner's publication scheme.
- 11.5 Any non-compliance and non-supportive actions with regard to this paragraph 11 need to be addressed by appropriate senior members of the Partners and relevant steps taken to address any situation that arises or is identified.

11.6 The Responding Partner and the Authority’s suggested leads for this paragraph 11 are.

Name	Organisation	Contact Details
Head of Information Governance	The Authority	Address: Civic Centre, Morden  Email: Data.Protection@merton.gov.uk  Telephone: 02085454182
	The NHS Body	Address:  Email:  Telephone:

11.7 Any changes to the lead individual specified in clause 11.6 shall be notified to the other Partner.

**12. Notice to Cease Processing**

12.1 If, in respect of information shared pursuant to this Information Sharing Protocol, either Partner receives a request under Data Protection Legislation to cease processing (whether sharing or any other processing) Personal Data on the grounds that it is or is likely to cause unwarranted damage or distress, the Partners will liaise in determining a response to the request. However, the NHS Body (the “Responding Partner”) shall take the lead in responding to the request.

12.2 If a request of the type set out in clause 12.1 is received by the Partner who is not the Responding Partner, it shall be forwarded to the relevant lead at the Responding Partner within three (3) Working Days.

12.3 The leads for this paragraph 12 are the same as those named in paragraph 11 above.

**13. Information Quality**

13.1 Information needs to be accurate and of a standard fit for the purpose it is to be used for, including being complete and as up to date as required for the purposes for which it is being shared. Without this any decision made on the information may be flawed and inappropriate actions may result. The Partners are expected to ensure that the Personal Data and Special Categories of Personal Data that they hold is processed in accordance with the principles set out in the Data Protection Legislation: this includes ensuring that the Data is accurate, complete and up-to-date and is not kept any longer than is necessary.

- 13.2 The Partners are expected to give undertakings that information meets a reasonable quality level for the proposed purposes for which it is being shared and be able to evidence this.
- 13.3 Annual internal records audits need to be carried out to ascertain the quality and accuracy of the records shared by both Partners. These audits are to be carried out by a team comprising of members of staff from both Partners' audit teams. The final report shall be sent out to both Partners.
- 13.5 In addition to the annual internal records audit, "Data Quality Reports" shall also be produced. Details of this are mentioned in the Performance monitoring schedule.

#### **14 Data Retention**

- 14.1 Subject to clause 14.2, the Partners shall hold, process and destroy all of the information shared between them further to this Agreement in line with the Records Management NHS Code of Practice (or any successor code of practice or NHS policy in place from time to time).
- 14.2 In respect of social care records, the Authority may develop processes to hold social care records in a manner inconsistent with the Records Management NHS Code of Practice. If this is the case, the manner in which social care records are held by the Authority will be communicated in writing to the NHS Body and the Partners will agree how to resolve any inconsistencies in the way shared information is held, processed and destroyed.

#### **15. End of Contract and the data**

- 15.1 Once the Agreement comes to an end both Partners will be subject to the following provisions of this paragraph. A committee comprising of the key senior members of the Partners responsible for this Agreement shall make sure that the following terms are complied with in line with current data protection laws at that time.
- In respect of the information shared between them further to this Agreement, the Partners shall continue to comply with the Records Management NHS Code of Practice (or any successor code of practice or NHS policy in place from time to time);
  - Any sub-contractors appointed pursuant to this Agreement shall also comply with the Records Management NHS Code of Practice (or any successor code of practice or NHS policy in place from time to time), until necessary transfers of Personal Data and confidential or commercially sensitive data is completed;
  - The Partners shall follow the provisions of the Exit Strategy in respect of shared data, as set out in Schedule 10.

## **16. Individual Responsibilities**

- 16.1 Every individual working within the Partnership Arrangements is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.
- 16.2 Every individual working within the Partnership should know how to obtain, use and share information they legitimately need to do their job.
- 16.3 Every individual working within the Partnership has an obligation to request proof of identity, or take steps to validate the authorisation of another before disclosing any information requested under this protocol.
- 16.4 Every individual working within the Partnership Arrangements should uphold the general principles of confidentiality, follow the guide-lines set out in this Information Sharing Protocol and seek advice when necessary.
- 16.5 Every individual working within the Partnership Arrangements should be aware that any violation of privacy or breach of confidentiality is unlawful and a disciplinary matter that could lead to their dismissal. Criminal proceedings might also be brought against that individual.

## **17. General Principles**

- 17.1 The principles outlined in this Information Sharing Protocol are recommended good standards of practice or legal requirements that should be adhered to by the Partners.
- 17.2 This Information Sharing Protocol sets the core standards applicable to the Partners and should form the basis of all information sharing established to secure the flow of Personal Data.
- 17.3 This Information Sharing Protocol has been written to set out clear and consistent principles that satisfy the requirements of the law that all staff must follow when using and sharing Personal Data.
- 17.4 This Information Sharing Protocol will be reviewed as and when it is deemed necessary by the Partners to reflect the experience of its application in practice, substantial changes which may affect the actual transfer, sharing or retention of data or information.

## Schedule 9 Exit Strategy

- 1 The Mental Health Integration Board will agree a detailed exit strategy within twelve (12) months of the Commencement Date to facilitate the orderly winding down or efficient handover, or other arrangements, in respect of the Services being part of this Agreement.

The exit strategy will address all the consequences of termination including the impact on the following categories:

- Service Users;
- Service Providers;
- Staffing;
- The financial impact of termination;
- All other relevant issues.

- 2 The Exit Strategy shall, as a minimum, contain the following information:

- for each of the Services and related positions or functions a timeline, plan (including relevant milestones) and procedure for each Partner and/or a Third-Party Service Provider assuming or reassuming responsibility for the provision of the Services;
- identification of the software and hardware that will need to be replaced and/or will require transition (as applicable) and an overview of a timeline, plan and procedure for that replacement and/or transition to the relevant Partner and/or a Third-Party Service Provider;
- an overview of the procedures and timeline for communication and consultation with relevant personnel to be transferred under TUPE if relevant;
- if relevant, identification of the roles/functions for which or for which it is likely that the relevant employees will be transferred under TUPE and a timeline for such transfer;
- identification of any third-party contracts, licences and/or leases which relate to the provision of the terminating Services and a timeline, plan and procedure for such contracts, licences and/or leases to be transferred to the Partners or a Third-Party Provider;

- identification of any equipment or other assets which are used exclusively in the provision of the terminating Services and a timeline, plan and procedure for such Equipment and assets to be transferred to the Partner taking on the provision of the relevant part of the Services or a Third-Party Service Provider;
- assessment of the impact of termination with respect to existing and planned services and support activities;
- dealing with Personal Data and other data following termination or expiry of this Agreement.

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