

# HAVERING OVERARCHING PARTNERSHIP AGREEMENT

## SECTION 75 OF THE NATIONAL HEALTH SERVICE ACT 2006

### 1. INTRODUCTION

- 1.1. The purpose of this Agreement is to provide a robust framework within which the Partners will provide Services and by which resources will be pooled pursuant to Section 75 of the 2006 Act.
- 1.2. As at the date of this Agreement the Services which the Partners have agreed to be delivered under this new Section 75 Agreement are set out in Schedule 1. As the Partners further develop partnership arrangements the Schedules may be varied or supplemented to include other services which the Partners consider would be better provided through the partnership arrangements under this Agreement. In particular the Partners agree that they shall explore the need for additional schedules for provision of services in the longer term.
- 1.3. For the purposes of the implementation of the partnership arrangements under this Agreement the Council has agreed that the Trust may, in conjunction with exercising its NHS Functions, exercise the Council's Health Related Functions in relation to the integrated provision of the Mental Health Services.
- 1.4. The Partners have agreed to establish Pooled Funds for the following services:-
  - Mental Health
- 1.5. The Partners have given formal notification of the intention to enter into the Partnership Arrangements as required by HSC 2000/010: LAC (2000)9 to therelevant office of the Department of Health and Social Care.
- 1.6. The Partners have carried out consultation on the proposals for the Partnership Arrangements with those persons, user groups, staff and statutory and nonstatutory providers, who appear to them to be affected by the arrangement, as required by Regulation 4(2) of the 2000 Regulations.
- 1.7. The Partners have agreed to enter into this Agreement to fulfil the requirements in Regulation 8(2) of the Regulations and to record their respective rights and obligations under the Partnership Arrangements and the terms on which the Partnership Arrangements will be exercised and the Services will be delivered.

### 2. PARTNERSHIP PRINCIPLES

- 2.1. The Partners to this Agreement agree to operate the following partnership principles:
  - 2.1.1. The **objective** of this Agreement is to secure effective integrated health and Council services, including social care to people for whom

the Partners have responsibilities. The Partners aim to jointly design and deliver services around the needs of service users rather than focusing on the boundaries of their organisations. These arrangements should help eliminate gaps and duplications and result in improved outcomes and experience for service users and their carers.

- 2.1.2. The Agreement will support the Havering Health & Wellbeing Strategy in the following ways:
  - 2.1.2.1. By formalising the partnership arrangements this offers the potential to deliver savings by exploration of ways to reduce duplication and ensure resources are used to best effect
  - 2.1.2.2. By enabling resources to be used more effectively and prioritised to meet local needs, in line with the Joint Strategic Needs Assessment and local data to outline commissioning needs
  - 2.1.2.3. Quality of service can be improved by the delivery of more seamless health and social care provision that can consider a person's whole needs
- 2.1.3. Partners undertake:
  - 2.1.3.1. To deliver integrated services that are responsive to the needs of people, carers and their communities, localities and neighbourhoods within Havering in accordance with agreed priorities and service standards.
  - 2.1.3.2. To implement joint performance management arrangements as set out in the Schedule for each Service for which integrated provision is made under this Agreement.
  - 2.1.3.3. To provide the Services in accordance with both Partners' statutory duties.
  - 2.1.3.4. To take account of each other's strategic objectives as set out in Council Corporate, Directorate and Divisional Plans, Operational Plans, Local Area Agreement and NELFT Corporate Objectives and Annual Plan.
  - 2.1.3.5. To work within a rolling annually-updated Annual Plan (Section 9)
  - 2.1.3.6. To seek the agreement of the other Partner at the earliest feasible stage to any decisions which are contemplated which would significantly affect the discharge of Services, and to consult the other

Partner about decisions which would affect any other aspects of the responsibilities of the Partner with statutory responsibility for the Service

- 2.1.3.7. To apply the Eligibility Criteria applicable to Services from time to time having regard to Guidance.
- 2.1.3.8. To align initiatives with the intention of improving the health and well being of the people of Havering.
- 2.1.3.9. To establish clearly defined audit arrangements.
- 2.1.3.10. To maintain clear, identifiable procedures for use of the Pooled Funds to enable effective monitoring and reporting.
- 2.1.3.11. The Partners are committed to carrying out their functions in a manner which will ensure the best co-ordination of the functions of the Council and NELFT
- 2.1.3.12. The Partners agree to ensure continuing close co-operation in business planning and decision-making and develop agreed protocols setting out how key interfaces between them will be managed.

### **3. DURATION, REVIEW, TERMINATION OR EXTENSION OF THE AGREEMENT**

- 3.1. This Agreement is effective from the Commencement Date 1 April 2013 and, subject to the provisions for termination and extension under this section 3, will end on 31<sup>st</sup> March 2016
- 3.2. Subject to Clause 25 either Partner may at any time terminate this Agreement by giving at least 12 months' prior written notice to the other Partner (or such period as may be agreed).
- 3.3. For the avoidance of doubt all arrangements for the integrated provision of services and establishing and operating pooled funds established under this Agreement shall terminate when the notice period in a notice to terminate the Agreement has expired.
- 3.4. Subject to Clause 25 either Partner may at any time terminate this Agreement by serving at least six months written notice on the other Partner (or such other period as may be agreed) under the following circumstances:
  - 3.4.1. following a failure to resolve a dispute under the dispute resolution process of Clause 24 if there is a fundamental irreconcilable

disagreement about the objectives of this Agreement or how they should be achieved

3.4.2. there is a serious breach of this Agreement by a Partner which is either:-

- Not capable of remedy, or
- Capable of remedy but has not been remedied within a reasonable time following receipt of written notice by the Partner not in breach which required the breach to be remedied
- there is a change in law Directions or Guidance which prevents the achievement of the Agreement's objectives or a Partner fulfilling its obligations under this Agreement (but if a change only affects some objectives or obligations the Partners will seek to vary this Agreement in order to achieve its objectives as far as is practicable and enable the Partners to comply with their obligation)

3.5. The period of any notice to terminate shall be sufficiently long as to enable suitable alternative arrangements to be made for the Service Users.

3.6. On termination of this Agreement the provisions of Clause 26 (winding Down) will apply. For the avoidance of doubt, any termination of the arrangements for the delivery of a Service under this Agreement shall only terminate the agreement for the provision of that Service and not the whole of the Agreement.

3.7. The Partners may, subject to approval and any authorisations required under their internal regulations, continue this Agreement beyond the 31st March 2016 for such period or periods and on such varied terms and conditions as they agree.

#### **4. FULFILMENT OF FUNCTIONS**

4.1. The Services initially within this Agreement are set out in Schedule 1 and will be subject to ongoing review. The Partners are satisfied that the arrangements will lead to an improvement in health and well-being as set out in the Operational Plans, the Annual Service Plan, and the Commissioning Plans for the individual Services and the Havering Health & Wellbeing Strategy.

4.2. Following consultation the Partners will agree and present to their Boards an Annual Plan for each of the Services at least 4 weeks before the beginning of a Financial Year, including estimates of the required contributions for Pooled Funds for the Financial Year. The Partners' contributions will be determined on the basis of the principles set out in the Financial Framework for Services Schedule.

4.3. The resources committed by each Partner to a Pooled Fund can be used on any of the Services funded through the relevant Pooled Fund. The contributions of each Partner to the Pooled Funds for the Financial Year beginning 1st April 2013 are set out in Schedule 2

4.4. To achieve the objectives of this Agreement the Partners will:-

- 4.4.1. operate and further develop the integrated management structures for their health and social care staff,
- 4.4.2. continue the development of new service models in which health and social care services are provided as an integrated package,
- 4.4.3. pool finances and integrate resources
- 4.4.4. ensure that Services are provided on the basis of:
  - evidence of need
  - evidence of best practice in tackling need
  - principles of best value
  - robust financial planning and management
  - robust risk management
  - locally determined and agreed priorities

4.5. implement joint performance management of Service commissioning to ensure that the Partners know:

- 4.5.1. What the integrated provision arrangements are aiming for (objectives, outcomes and connection with other strategic goals);
- 4.5.2. What they have to do to meet these aims (project and implementation plans);
- 4.5.3. What the priorities are in order to ensure that there are sufficient resources
- 4.5.4. What the current performance is through monitoring and reporting
- 4.5.5. How to review progress, detect problems and risks and take action in a timely manner to ensure objectives are achieved;
- 4.5.6. Their medium term financial commitments.

## **5. COMMITMENTS OF THE PARTNERS**

5.1. The Partners undertake:

- 5.1.1. To provide services that are responsive to the needs of people, carers and their communities, localities and neighbourhoods as described in the Annual Plan in accordance with agreed priorities and service standards.
- 5.1.2. To implement joint performance management arrangements as set out in the Schedule for each Service for which integrated provision is made under this Agreement.

- 5.1.3. To provide the Services in accordance with both Partners' statutory duties.
- 5.1.4. To take account of each other's strategic objectives as set out in the Council's Corporate, Directorate and Divisional Plans, Commissioning and Operational Plans, Local Area Agreement and NELFT's Corporate Objectives and Annual Plan.
- 5.1.5. To work within a rolling annually-updated strategic framework agreement as set out in the Annual Plan
- 5.1.6. To seek the agreement of the other Partner at the earliest feasible stage to any decisions which are contemplated which would significantly affect the discharge of Services, and to consult the other Partner about decisions which would affect any other aspects of the responsibilities of the Partner with statutory responsibility for the Service
- 5.1.7. To apply the Eligibility Criteria applicable to Services from time to time having regard to Guidance.
- 5.1.8. To align initiatives with the intention of improving the health and well being of the people of Havering
- 5.1.9. To establish clearly defined audit arrangements
- 5.1.10. To maintain clear, identifiable procedures for use of the Pooled Funds to enable effective monitoring and reporting

5.2. The Partners are committed to carrying out their functions in a manner which will ensure the best co-ordination of the functions of the Trust and the Council.

5.3. The Partners agree to ensure continuing close co-operation in business planning and decision-making and develop agreed protocols setting out how key interfaces between them will be managed.

## **6. GOVERNANCE ARRANGEMENTS**

6.1. The Partners agree that Mental Health Partnership Board should oversee this Section 75 Agreement and that the Partnership Board will provide regular reports to the Havering Health and Wellbeing Board as the strategic commissioning body covering mental health

6.2. The Partners agree to keep the MHPB informed in relation to proposals relating to the delivery of the Services and to consider any representations received from

the MHPB in relation to such proposals (provided received within a reasonable time) before determining whether to implement such proposals or to refer such proposals back to the Partners for approval as the case may be

6.3. The Partners will establish an Executive Steering Group to oversee the operation of this Agreement.

6.4. The Executive Steering Group shall comprise of five members as follows:

- for NELFT the Chief Operating Officer of NELFT or their nominee
- for Havering LBC the Director of Social Care & Learning or their nominee;
- the Borough Lead (the designated Pooled Fund Manager) or any senior manager who is required to discharge the responsibilities of the Borough Lead post during any period when it is vacant - this post will not have voting rights.
- Two Finance Officers, one from NELFT and one from Havering LBC

6.4.1. The Chairman of the Executive Steering Group shall be the Director of Social Care & Learning. The Chairman shall not have a casting vote in relation to any item of business transacted by the Executive Steering Group.

6.5. The Partners agree that Executive Steering Group's purposes are:

6.5.1. to provide high level management in respect of the Services and to be responsible for agreeing the approach to all relevant issues arising from the provision and procurement of the Services including the commissioning of reports on the provision of the Services and the making of recommendations on their procurement and management;

6.5.2. to identify, where appropriate, senior managers employed by the Partners to manage the Services and to commit through delegated responsibility from the Pooled Fund Manager an agreed level of funding to them from the Pooled Fund.

6.5.3. to consider the Pooled Fund Manager's reports referred to in Clause 3.8 and to ensure that the reports take account of the respective reporting cycles of both Partners and, having regard to the contents and recommendations of such reports, to take all actions which the Executive Steering Group considers appropriate.

6.6. All decisions of the Executive Steering Group must be unanimous in order to bind the Partners.

6.7. The quorum required for the Executive Steering Group shall be one representative of each of the Partners represented on it.

6.8. The Partners shall make such arrangements as may command their unanimous agreement as to the application of all or any of the following matters to the Executive Steering Group:

- attendance requirements
- frequency of meetings (which should be at least quarterly)
- secretarial requirements
- policy and delegation framework from the Partners
- such other constitutional and related matters which are necessary to ensure of Executive Steering Group's effective operation

6.9. The Partners agree that the following responsibilities shall be assigned to the Borough Lead, in accordance with Regulation 7 (4) of the Regulations:

- management of the Pooled Fund
- management of the Budget
- day to day management of the Partnership Posts
- line management responsibility for the Partnership Resources in accordance with the provisions relating the Services
- management of the procurement of Partnership Contracts
- management of the delivery of the targets set by the Partners
- preparation of quarterly reports and annual return to the Executive Steering Group on income of and expenditure from the Pooled Fund
- preparation of quarterly reports and annual return to the Executive Steering Group on the Partnership's aims and objectives (to include achievement and forecasting of the same)
- such other responsibilities as the Executive Steering Group or the Partners may agree

## **7. POOLED FUND MANAGERS**

7.1. The Pooled Fund Manager for the Council and NELFT will:

- 7.1.1. Be responsible for the effective deployment and management of Pooled Funds
- 7.1.2. Ensure that expenditure of their Pooled Funds keeps within budgets approved by the Partnership Boards.



- 7.1.3. Be responsible for monitoring and reporting to the Executive Steering Group

## **8. MONITORING ARRANGEMENTS**

8.1. Directors for the Council and NELFT will ensure that the Council and the Trust Board are provided with the following information concerning the Services for which they are responsible:

- 8.1.1. The level of service being delivered in terms of activity and quality compared with agreed service level agreements and contracts.
- 8.1.2. Plans to address any failure to meet the time scales or the agreed levels or standards for the provision of Services. Expenditure and income on providing services compared to agreed budgets.
- 8.1.3. Reasons for any significant variation and an indication of the proposed disposition of any surplus funds.
- 8.1.4. Early warning of any forecast over spending on budgets and details of any proposed corrective action.
- 8.1.5. Indication of implications for future Financial Years.
- 8.1.6. Performance reports for each Service.

8.2. The Partners will agree the format and timetabling of those reports over time in the light of experience, changing information needs and government requirements.

## **9. ANNUAL PLAN**

9.1. The Partners will by the 1st March in each Financial Year jointly prepare an Annual Plan setting out the development objectives including performance targets and budgets for each Service in the coming Financial Year

9.2. The Annual Plan will apply for a Financial Year, though it will also, where possible, include provisional agreement about developments over the remaining period of this Agreement. The Partners may from time to time agree to amend the timetable for the preparation of the Annual Plan.

9.3. The Annual Plan will in particular:

- 9.3.1. Describe any agreed strategic changes which are planned in the Services within the integrated provider service arrangements.

- 9.3.2. Set out agreed objectives and targets, including agreed expectations about the outcomes to be achieved through the use of any additional funding or resources.
- 9.3.3. Indicate how the Partners anticipate that Services will be affected by any anticipated growth or reduction in funding or resources.
- 9.3.4. Set out the charges that the Council expects to recover for Services.
- 9.3.5. Set out such information as the Partners may require from each other to demonstrate the manner in which they are fulfilling the Annual Plan

9.4. The Plan will be reviewed quarterly by the Executive Steering Group

## **10. POOLED FUND, CONTRIBUTIONS AND BUDGET**

10.1. The Partners agree that:

- 10.1.1. their respective Contributions for the First Financial Year and relating to the Services are set out in Financial Schedule ( Schedule 4), but shall be subject to the in year adjustment provisions
- 10.1.2. for the second and all subsequent Financial Years of the Term provided the necessary information has been provided by the Host Partner to Havering LBC before the 30th March the Partners shall use reasonable endeavours to agree to commit funding for the Partnership and their respective Contributions before the 15th January. Once agreed they shall sign a record of the Contributions and these shall be formally reported to a meeting of the Executive Steering Group
- 10.1.3. NELFT's responsibility as Host Partner for managing routine upwards and downwards fluctuations in monthly expenditure from the Pooled Fund against the expected profile of expenditure shall be managed on a day to day basis by the Borough Lead.
- 10.1.4. In relation to any in year variation to the Budget which reasonably appears to the Borough Lead to be required as a result of an anticipated overspend the following provisions shall apply:
- 10.1.5. following the reporting by the Borough Lead to the Executive Steering Group of any anticipated overspend in respect of the Council's Functions the Executive Steering Group shall discuss how

such overspend shall be resolved and propose to the Partners a method of addressing the expected overspend including revising the relevant Financial Year's Budget and the Contributions of the Partners. Upon authorisation from the Partners in writing the Executive Steering Group will authorise the Borough Lead to take any appropriate remedial action within such time as is agreed between the Partners

- 10.1.6. In default of such agreement the Partner on whose account the variation is required shall have the option of either increasing its in year Contribution to the Pooled Fund proportionately to the service causing the increase, to make up any relevant deficit funding or where legally feasible of implementing a reduction in the level of Services to be provided in discharge of its particular statutory functions
- 10.1.7. The Partners agree that there shall be a 50/50 risk share to any overspend or underspend of the Havering LBC element of the Pooled Budget as set out in the Financial Schedule The risk share arrangement to be reviewed by the Executive Steering Group annually to ensure the apportionment remains suitable.
- 10.1.8. The budgetary position is to be reported quarterly at the Steering Group by NELFT to include a memorandum item on the position of the budgets that remain within Havering LBC accounts. Exception reporting shall apply should variances occur outside the quarterly reporting cycle
- 10.1.9. Savings and efficiencies are to be agreed at the Executive Steering Group where it shall be made clear how these will be reflected in each partner's books to avoid ambiguity.
- 10.1.10. In relation to any in year variations to the Budget which reasonably appear to the Borough Lead to be required as a result of any anticipated under spend the following shall apply:
- 10.1.11. Following the reporting by the Borough Lead to the Executive Steering Group of any anticipated under spend the Executive Steering Group shall discuss how such under spend shall be resolved and propose to and agree with the Partners a method of addressing the expected under spend including revising the relevant Financial Year's Budget and Partner's Contributions and shall authorise the Borough Lead to take any appropriate remedial action within such time as is agreed between the Partners

- 10.1.12. in default of such Agreement the Partner on whose account the under spend has arisen shall have the option of:-
- reducing its in year Contribution to the Pooled Fund proportionately
  - having an amount equivalent to the amount of the under spend carried forward to be netted off against the amount of its due Contribution for the following year.
- 10.1.13. The Executive Steering Group may agree from time to time to achieve an under spend in a particular year and carry it forward to the following year of the Term.
- 10.1.14. The Executive Steering Group may agree that due to budget pressures they wish to plan an under spend to enable a planned withdrawal of funds.
- 10.1.15. The Pooled Fund shall only be used for the provision of or procurement of the Services
- 10.1.16. The Partners shall pay their Contributions in 12 monthly instalments payable on the 15th of each month unless otherwise agreed.
- 10.1.17. The Partners (including the internal auditors) shall have the right of access to relevant accounting records relating to the Pooled Fund. In terms of responsibility both Partners' through their Internal Audit Sections shall be responsible for auditing the areas pertaining to their individual organizations and will work together in areas where an overlap of interest occurs
- 10.1.18. The Budget shall be calculable as the initial Budget for the previous Financial Year of the Term plus or minus any in year changes agreed by the Executive Steering Group or the Partners (where it is decided that these should be recurrent); plus any agreed inflation uplift in the coming Financial Year; plus any planned changes for the coming Financial Year; less any agreed efficiency savings.
- 10.1.19. The Executive Steering Group will apply the Host Partner's virement framework to apply to the Pooled Fund and this framework may be varied only with the Partner's consent; no other virement shall take place on any part of the Pooled Fund.
- 10.1.20. The costs which are incurred by the Partners in connection with the administration of the Partnership shall be met from the Pooled Fund except where otherwise agreed and the Partners accept the need to

make provision for these costs in determining their Contributions to the Budget.

- 10.1.21. All payments made in respect of this Partnership Agreement will be made by the Pooled Fund Manager.
- 10.1.22. For any changes of contributions to the pooled Fund by either organisation in under a six month period an emergency/immediate Executive Steering Group will be called by the Chair.
- 10.2. Responsibility for providing capital funding shall rest with the Partner owning the building or asset
- 10.3. The Partners will retain inventories of assets such as vehicles, furniture and computer equipment which are transferred between them and they will agree schedules of condition for such assets and their value as at the time of transfer.
- 10.4. All assets will continue to be owned by the Partner that owned them at the time of transfer
- 10.5. Should there be requirement for a major contribution towards a capital asset there should first be agreement of how any contribution to a capital asset will be repaid in the event of the dissolution of a pooled fund or change in the way services are provided.

## **11. CHARGING POLICIES**

- 11.1. Nothing in this Agreement shall detract from the principle that NHS services and services provided under Section 117 of the Mental Health Act 1983 are free at the point of delivery and may not be charged for.
- 11.2. Havering LBC shall be at liberty to levy charges for such elements of the Services for which legislation requires or permits them to charge provided that those charges comply with any charging policy agreed by the Executive Steering Group. The Host will be required to supply information relevant to the usage of services, as necessary to enable the Havering LBC to implement charging policies for services, which exist or may be introduced.
- 11.3. Where the distinction might be blurred between charged for and non-charged for Services in Services Users' minds, whether through the operation of assessment arrangements or arrangements for the delivery of jointly commissioned or integrated Services under this Agreement, then the Borough Lead in consultation with the Head of Operations, Adult Social Care will be responsible for identifying the Partner levying the charges and

the nature of the Services charged for making it clear to Service Users in respect of which element of the Services a charge is being levied

## **12. PLANNING AND MONITORING INFORMATION**

- 12.1. The Host Partner will ensure that it has adequate resources and expertise to collect and analyse information relevant to the management, planning and monitoring of the Services for which it is responsible, and will make any information which it collects available to the other Partner promptly on request.
- 12.2. A Partner may also request that specified classes of information be passed to it routinely.
- 12.3. The Partners will consult upon and complete all statistical returns required by Government departments and agencies.

## **13. PERFORMANCE MANAGEMENT ARRANGEMENTS**

- 13.1. The Performance Framework for service delivery will be defined for each service included in this Agreement and set out in the appropriate Schedule and will explain the performance management arrangements

## **14. SCRUTINY**

- 14.1. The Partners will make senior officers available to attend each other's committees and boards with responsibility for the development of policy and the scrutiny of decisions taken in relation to the Services.

## **15. EXTERNAL INSPECTION AND MONITORING**

- 15.1. The Partners will:
  - 15.1.1. comply with any statutory inspection requirements in relation to Services and will liaise as required with the Care Quality Commission and Monitor and/or other relevant regulatory bodies
  - 15.1.2. provide appropriate access and information to any external body empowered by statute to inspect or monitor the Partners' discharge of the Services.

## **16. ELIGIBILITY CRITERIA FOR THE PROVISION OF CARE AND HEALTH SERVICES**

- 16.1. The Partners will ensure that the Government's Guidance on "Fair Access to Care" is fully implemented for social care services and that the Eligibility Criteria Thresholds as agreed by the Council are consistently applied.
- 16.2. The Partners agree that eligibility for access to health services may not be subject to the Fair Access to Care provision.
- 16.3. The Eligibility Criteria Threshold for the provision of care Services may be changed only with the agreement in writing of the Council.

- 16.4. The Partners will ensure that the current National Framework and any regional Guidance on Continuing Care and Funded Nursing Care is fully implemented and consistently applied.

## **17. COMMUNITY ENGAGEMENT, CONSULTATION AND COMMUNICATION**

- 17.1. From the Commencement Date the Partners will retain their individual responsibility for community consultation in relation to Services.
- 17.2. Where any proposed consultation relates to services provided by the Partners outside this Agreement, they agree to work together to establish the arrangements under which such consultation takes place.
- 17.3. The Partners will consider whether they should undertake joint arrangements for statutory and other consultation which relates exclusively to Services provided under this Agreement and the responsibility for any additional costs involved.
- 17.4. The Partners will seek to co-ordinate their communications strategies and will, where practicable, consult each other before communicating with representatives of the media, Members of Parliament, Council Members and the public generally in relation to any issues which might arise in relation to the Services. Where any action or omission of NELFT or the Council relating to Services is, or is likely to be, the subject of media comment, the Partners will endeavour to consult each other prior to making any response to the media, Member of Parliament, Council Members or the public.

## **18. COMPLAINTS**

- 18.1. Each Partner and all Service Providers will be required to maintain or adopt, as the case may be complaints procedures internal to their organisation.
- 18.2. Without prejudice to the complaints procedures under section 7B of the Local Authorities Social Services Act 1970, complaints will be dealt with by the Host Partner's and/or Service Providers complaints procedures internal to their organisation which enable Service Users to be heard in respect of any complaint concerning any element of the Services which are provided by or on behalf of a particular Partner and in accordance with each Partner's statutory obligations in this regard. Nothing in this paragraph shall preclude the Service User from making a complaint to the relevant Partner
- 18.3. Complaints by third parties in respect of the provision of Services to Service Users will also be dealt with initially by the Host Partner or Service Provider within its own complaints procedures.

- 18.4. In any case where the Service User does not feel that his complaint has been adequately addressed through the Host Partner or Service Provider's procedure then he will be entitled to refer his complaint for consideration as one relating to the Partnership.
- 18.5. Any such referred complaint shall in the first instance be considered by the Borough Lead but additionally the Partners through the Executive Steering Group shall consider the establishment of a formal Complaint Review Body to act as final arbiter pursuant to Regulation 10 (2) – (3) of the Regulations and having regard to the guidance on good practice contained in paragraph 71 of the Health Act Circular.
- 18.6. The Host Partner shall be responsible for keeping a record of complaints and any action as a result on them is to be available at any time for inspection by the Contract Manager and/or Monitoring Officer for the Borough.
- 18.7. Upon notification of an investigation to be undertaken by any Ombudsman, each Partner will respond to requests for information and/or interview within time limits set by the Ombudsman and provide access to relevant records.

## **19. INSURANCE**

- 19.1. In respect of liabilities arising under any indemnity in this Agreement, NELFT shall maintain membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to time by the National Health Service Litigation Authority and the Council shall maintain sufficient insurance to cover any indemnity on its part in this Agreement.
- 19.2. The Partners shall follow the Guidance and Protocol which was issued by the Department of Health in respect of claims associated with NHS bodies and local authorities implementing partnership arrangements under Section 31 of the Health Act 1999 and any future Guidance issued under Section 75 of the 2006 Act

## **20. LEGAL LIABILITIES AND INDEMNITIES**

- 20.1. In this section reference to a Partner includes its employees, agents or subproviders/contractors and any employees of the other Partner who have been seconded to and are acting in accordance with the instructions of the Partner concerned.

### **CLAIMS WHICH RELATE TO EVENTS BEFORE THE COMMENCEMENT DATE**

- 20.2. The Partners shall not be responsible under this Agreement for any legal liabilities to third parties arising from the other's provision of Services prior



to the Commencement Date except where such responsibility is transferred by statute

#### CLAIMS WHICH RELATE TO EVENTS DURING THIS AGREEMENT

- 20.3. Save in so far as otherwise prescribed by statute each Partner will keep the other indemnified against any damages, claims, liabilities costs and expenses arising from a breach of this Agreement or from negligence in the provision of Services for which they are the responsible Host Partner save to the extent that the damages etc. arose from the other Partner's negligence or breach of this Agreement.

#### CLAIMS WHICH RELATE TO EVENTS BOTH BEFORE AND AFTER THE COMMENCEMENT DATE

- 20.4. Where a claim is made after the Commencement Date in respect of a matter that relates to events both before and after the Commencement Date, such a claim will be managed by the Host Partner for the Service concerned. Each Partner agrees to provide assistance, access to records (subject to the provisions of the Data Protection Act) and personnel free of charge within a reasonable time limit in connection with the claim. The Partners agree to use their best endeavours to reach agreement on the apportionment of any liability arising in consequence thereof and if they cannot agree the dispute resolution provisions of Clause 25 will apply.

#### OMBUDSMAN COMPLAINTS

- 20.5. Where there is a finding of maladministration by an Ombudsman in respect of Services provided under this Agreement after the Commencement Date, the Host Partner for the Service concerned shall be exclusively responsible for any compensation payable except to the extent that the maladministration was due to the fault of the other Partner.

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

- 21.1. The Executive Steering Group, NELFT as Host Partner and Havering LBC as the case may be shall in relation to information sharing between agencies, having proper regard to the principles of client confidentiality and the need to comply with the Data Protection Act 1998 observe and comply with the obligations set out in the Information Sharing Policy or any similar replacement Government guidance and the Freedom of Information Act 2000.

### **22. FREEDOM OF INFORMATION**

- 22.1. NELFT and the Council both being public bodies are subject to the Freedom of Information Act. In compliance with the Act the Partners agree that requests under the Act will be dealt with as follows:
- 22.1.1. When the request is received by a Partner (the Receiving Partner) that Partner is responsible for the reply to the request. However, if the request relates solely to information held by the other Partner the request will be transferred to that Partner for response;
  - 22.1.2. If the request relates to information being held by one Partner on behalf of another Partner the Partners will consult on the request but the responsibility for the request will remain with the Receiving Partner.
  - 22.1.3. For the avoidance of doubt the delegation of a Partner's functions under this Agreement does not include a delegation of that Partner's Chief Executive role as Qualified Person under Section 36 of the Freedom of Information Act.

### **23. VARIATIONS**

- 23.1. If any Partner proposes a variation to any of the terms of this Agreement that Partner shall initially report its proposal to a meeting of the Executive Steering Group. Variations will only be effective if agreed by all Partners through the Executive Steering Group and if agreed will be evidenced by a document confirming the details of the variation signed on behalf of each Partner by the Senior of its representatives on the Executive Steering Group. Each partner will ensure that it's own authorisation process has been complied with before any such Variation is agreed.

### **24. DISPUTES**

- 24.1. Any dispute shall in the first instance be referred to the Executive Steering Group who shall endeavour to resolve it within 28 days. If no resolution is possible within that period the dispute shall be referred to the Chief Executives of the Partners affected who shall endeavour to resolve the dispute within a further 28 days and in the event of the dispute still not having being resolved within such period the dispute shall be referred to an individual nominated by or on behalf of the Secretary of Health.

### **25. TERMINATION**

- 25.1. This Agreement shall terminate where:
- 25.1.1. One Partner gives at least twelve months written notice to the other Partner that they wish to terminate this Agreement

- 25.1.2. A Partner ceases or threatens to cease to carry on all or any part of its undertakings as constituted at the date of this Agreement where this would in the reasonable opinion of the other Partner have a material effect on the ability of the Partners to comply with this Agreement
- 25.1.3. Any Partner reasonably considers that reasonable circumstances at any time arising as a result of legislation or policy requirements of central Government results in the terms of this Agreement no longer being tenable and has given the other Partner written notice
- 25.1.4. There has been service failure as a consequence of which the continuation of the Agreement would be detrimental to client services or a Partner and at least six month's written notice is given
- 25.1.5. The Partners are unable to agree the resourcing of this Agreement either in respect of the Contributions or the Available Staff Services or the accommodation services and goods made available under Clause 5 such that the joint arrangements are no longer functional. Where such a situation arises the Partners will first have fully discussed the implications through the Executive Steering Group and agreed on a joint strategy for the dissolution for the Agreement. A minimum of three months notice will be required to determine the Agreement under this provision.
- 25.2. Where this Agreement is terminated the Partners agree to cooperate fully in ensuring that Partnership is dissolved without harm to Service Users or Services and there is an orderly transition to the arrangements that are to supersede this Agreement
- 25.3. Any costs resulting from the termination of the Agreement or from the termination of any part of the Services (including in respect of any staff redundancies) shall be paid for:
  - 25.3.1. Where that termination is agreed by the Partners, out of the Pooled Fund or in the event of termination of the agreement, by the Partners pro rata to their Contribution to the Pooled Fund;
  - 25.3.2. Where one Partner decides, without the agreement of the other Partner, to cease providing part or all of the Services, by that Partner;
  - 25.3.3. Where that termination is caused by one Partner having acted unreasonably, (which in the case of dispute shall be determined by Clause 24 Disputes) by that Partner

- 25.4. Ongoing costs which arise as a consequence of the termination of the Agreement and its replacement with new arrangements shall be borne separately by the Partners.

## **26. WINDING DOWN**

- 26.1. In the event that this Agreement is terminated (whether by effluxion of time or by notice of termination):

26.1.1. The Parties agree to co-operate to ensure an orderly wind down of their joint activities as set out in this Agreement and to avoid, or minimise the disruption of the Services to the Service Users:

26.1.2. The Parties agree to comply with any consultation requirements in the event of termination of this Agreement

26.2. Any underspend in relation to the Pooled Fund upon termination shall be apportioned between the Parties in accordance with their contributions to the Pooled Fund in the relevant Financial Year and the Parties shall make such payments to each other as shall be required to reflect this.

26.3. Any overspend existing at the date of termination shall be apportioned between the Parties in accordance with their contributions to the Pooled Fund in the relevant Financial Year and the Parties shall make such payments to each other as shall be required to reflect this.

26.4. The Parties shall continue to be responsible for any liabilities that arise following distribution of the Pooled Fund pursuant to Clause 26.3. Any liabilities that are subsequently quantified shall be apportioned between the Parties in accordance with the provisions of Clause 26.3 and the Parties shall make such payments to each other as shall be required to reflect this.

26.5. The Parties shall act in good faith and in a reasonable manner in reaching agreement on the matters referred to in Clauses 26.3 and 26.4. In default of agreement the Parties shall refer the matter to be determined in accordance with the disputes procedure specified in Clause 24. The Parties shall make such payments to each other as are necessary to reflect such apportionment of liabilities as may be agreed or determined.

## **27. ASSIGNMENT AND SUB-CONTRACTING**

- 27.1. This Agreement and all rights under it may not be assigned or transferred by either Partner without the prior written consent of the other PROVIDED THAT no such consent shall be necessary for an assignment or novation to a statutory successor in respect of the functions relevant to this Agreement of either of the Partners

- 27.2. Upon such assignment or transfer the assignor or transferor shall ensure that the assignee or transferee enters into a written undertaking to comply with the terms and conditions of this Agreement in consideration of which the other parties agree to release the assignor or transferor from further liability except in respect of liability accrued up to the date of such assignment or transfer

## **28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 28.1. This Agreement does not give rights to any other person under the Contract (Rights of Third Parties) Act 1999.

## **29. NOTICES**

- 29.1. Any notice required to be given under this Agreement shall be in writing and may be served by sending the same by hand delivery or by first class post to the other Partner at the address given in this Agreement or at such other address as a Partner may notify to the other Partner for the purpose of such service.

## **30. ANTI-DISCRIMINATION AND EQUAL OPPORTUNITY**

- 30.1. In providing the Services, the Partners shall adopt and maintain anti-discriminatory and equal opportunity policies and practices and shall provide copies of all such policies to the other Partner promptly on request; take account of the Human Rights Act 1998 and in performing the Agreement not do anything in breach of that Act.

## **31. WAIVER**

- 31.1. No forbearance or delay by either Partner in enforcing its respective rights will prejudice or restrict the rights of that Partner, and no waiver of any rights or of any breach of a contractual provision will be deemed to be a waiver of the right to subsequently enforce the same right in relation to a different matter or to enforce any other right or to be a waiver of any other breach.

## **LIST OF SCHEDULES**

**Schedule 1 – Services to be included in this Agreement**

**Schedule 2 – Financial Arrangements**

**Schedule 3 – Mental Health Services (with Appendices)**