

Appendix 5

DATED _____ **2014**

BOROUGH OF TELFORD & WREKIN (1)

and

NHS TELFORD AND WREKIN (2)
CLINICAL COMMISSIONING GROUP

AGREEMENT

**Section 75 Partnership Agreement for
a Pooled Fund for the Provision of
Intermediate Care (Beds and
Community) Services**

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THIS AGREEMENT is made on

2014 **BETWEEN:**

- (1) **NHS TELFORD AND WREKIN CLINICAL COMMISSIONING GROUP** (referred to in this Agreement as “**T&W CCG**”) of Halesfield 6, Halesfield, Telford, TF7 4BF; and
- (2) **BOROUGH OF TELFORD & WREKIN** (referred to in this Agreement as “**the Council**”) of Darby House, Lawn Central, Telford, TF3 4JA.

WHEREAS:

- (A) The Partners have agreed to enter into the Partnership Arrangements for the purposes of the provision of the Services.
- (B) The objectives of the Partnership Arrangements are to improve the Services for the benefit of Service Users through closer working between the National Health Service and Local Government and which is pursuant to the obligations for the Partners to co-operate with each other in providing the Services as referred to in Section 82 of the Act.
- (C) The Partnership Arrangements have been established pursuant to Section 75 of the Act and pursuant to the Regulations.

IT IS HEREBY AGREED BETWEEN THE PARTNERS:

1 **Definitions**

1.1 In this Agreement unless the context otherwise requires:

“**Act**” means The National Health Service Act 2006;

“**Agreement**” means this agreement together with any schedules that are attached to it;

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

“**Care Laws**” means: the Carers (Recognition and Services) Act 1995, the Carers and Disabled Children's Act 2000, the Carers Equal Opportunities Act 2004, the National Health Service and Community Care Act 1990 and the Care Act 2014 as in force from time to time;

“Chief Officers” means the Chief Executive Officer of the Clinical Commissioning Group and the Director Health Wellbeing and Care of the Council;

“Commencement Date” means 1st April 2014;

“Council” means the Borough of Telford & Wrekin;

“Council’s Functions” means such of those functions mentioned in regulation 6 of the Regulations as may be necessary to provide the Services;

“Data Protection Legislation”: means the following:

- (a) the Data Protection Act 1998 (DPA 1998);
- (b) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (c) the Regulation of Investigatory Powers Act 2000;
- (d) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699);
- (e) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;
- (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426); and
- (g) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable;

“FOIA” means 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;

“Financial Year” means the period commencing on 1st April each year and terminating on 31st March in the following year unless otherwise defined by the Council for accountancy purposes;

“Functions” means together T&W CCG Functions and the Council’s Functions;

“Health Improvement Plan” means the local NHS Health Improvement and Modernisation Plan which applies to T&W CCG prepared pursuant to the Act or any other plan known to incorporate the Aims and Outcomes;

“Host Authority” means the host partner for the Functions under this Agreement or any agreement previously entered into between the Partners or their predecessor bodies, pursuant to section 75 of the Act;

“Initial Term” means the period commencing on the Commencement Date and ending on 31st March 2015;

“Insurance Protocol” means the agreed insurance protocol in place from time to time between local authorities and NHS bodies who are partners to agreements made pursuant to section 75 of the Act;

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

“Memorandum Account” means the document referred to at clause 6.6;

“NHS England” means the National Health Service Commissioning Board;

“Partners” means together T&W CCG and the Council and each a “Partner”;

“Performance Management Framework” means the framework set out at Schedule 5;

“Partnership Arrangements” means the arrangements jointly agreed by the Partners for the purposes of providing the Services pursuant to the Regulations and Section 75 of The Act;

“Pooled Fund Arrangements” means the arrangements made by the Partners for establishing and maintaining the Pooled Fund as set out in clause 7 and Schedule 3 hereof;

“Pooled Fund” means the fund of monies maintained by the Pooled Fund Manager from contributions by the Partners made pursuant to clause 7 and Schedule 3;

“Pooled Fund Manager” means the officer appointed pursuant to clause 5.3.2 for the purposes of administering the Pooled Fund;

“Regulations” means the NHS Bodies and Local Authorities Partnership Arrangement Regulations 2000 SI No. 617 and any amendments and subsequent re-enactments;

“Regulatory Body” means those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Authority;

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

“Request for Information” means a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (SI 2004/3391) (EIR);

“RPI” means the Consumer Prices Index, from time to time, as currently maintained by the Office for National Statistics;

“Section 75 Group” means the committee established by the Partners pursuant to clause 5.1 and regulation 10(2) of the Regulations;

“Services” means the intermediate care (beds and community) services as more particularly described in Schedule 2;

“Service Provider” means any provider commissioned by the Council to provide the Services or any part of them;

“Service User” means the individuals who are eligible to receive the Services;

“T&W CCG Functions” means such of those functions mentioned in regulation 5 of the Regulations as may be necessary to provide the Services;

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

- (a) any extensions to this Agreement agreed under clause 20.1; or

- (b) the earlier termination of this Agreement in accordance with its terms.
- 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 but not 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 Unless otherwise specified, references to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2 **Commencement and Duration**

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

3 **Partnership Arrangements**

- 3.1 The Partners enter into these Partnership Arrangements under section 75 of the Act in order to commission the Services for the benefit of the Service Users.
- 3.2 The specific Aims and Objectives of the Partnership Arrangements are set out in Schedule 1.
- 3.3 The Partnership Arrangements shall comprise:

- 3.3.1 the delegation by T&W CCG to the Council of the T&W CCG Functions, so that it may exercise the T&W CCG Functions alongside the Council Functions and act as lead commissioner of the Services:
- 3.3.2 the establishment of the Pooled Fund for the Services: and
- 3.3.3 the establishment of the Section 75 Group.
- 3.4 The Council shall host and provide the financial and administrative support required to enable the effective and efficient management of the Pooled Fund.
- 3.5 In accordance with Regulation 4(2) of the Regulations, the Partners have carried out a joint consultation on the proposed Partnership Arrangements with Service Users and other individuals and groups who appear to them to be affected by the Partnership Arrangements.
- 3.6 T&W CCG is satisfied that the Partnership Arrangements fulfil the objectives set out in the Health Improvement Plan.
- 3.7 Nothing in this Agreement shall prejudice or affect:
 - 3.7.1 the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
 - 3.7.2 the powers of the Council to set, administer and collect charges for any Council Function; or
 - 3.7.3 the Council's power to determine and apply eligibility criteria for the purposes of assessment under any applicable Care Laws.

4 **Delegation of Functions**

- 4.1 For the purposes of the implementation of the Partnership Arrangements, T&W CCG hereby delegates the exercise of the T&W CCG Functions to the Council to exercise alongside the Council's Functions and act as lead commissioner of the Services.
- 4.2 Additional services may be brought within the scope of this Agreement during the Term by agreement between the Partners in writing.

5 **Section 75 Group**

- 5.1 The Partners will establish the Section 75 Group by appointing the representatives of the Partners as described in Schedule 4 and the terms of reference by which the Section 75 Group is required to comply are set out in Schedule 4.
- 5.2 Either Partner may change the representatives appointed to the Section 75 Group on its behalf at any time by notice to the other Partner in writing.
- 5.3 The obligations of the Section 75 Group in relation to the Services shall be as follows:
 - 5.3.1 to jointly manage the commissioning of the Services and to manage issues arising therefrom;
 - 5.3.2 to recommend to the Chief Officers who shall make such appointment, the appointment of an individual who shall act as Pooled Fund Manager;
 - 5.3.3 to adhere to the performance management framework set out in Schedule 5;
 - 5.3.4 to prepare and agree the timing of submission of monitoring reports to take account of the reporting cycles of the Partners and to provide copies of those reports to the Chief Officers;
 - 5.3.5 to undertake appropriate action resulting from the above reports where such action is agreed to be necessary;
 - 5.3.6 to discuss and agree approaches to issues arising from the development of Services;
 - 5.3.7 to seek to resolve disputes or, where necessary, to refer such disputes to the Chief Officers of the Partners to this agreement for resolution; and
 - 5.3.8 to perform any other obligations as may be deemed appropriate by the Partners.

6 **Council's Obligations**

- 6.1 The Council is the Host Authority for the Partnership Arrangements and agrees to act as lead commissioner of the Services.

- 6.2 The Council shall provide the Services or procure that they are provided and shall be accountable to T&W CCG for the T&W CCG Functions for the benefit of the Service Users:
- 6.2.1 to ensure the proper discharge of the Functions;
 - 6.2.2 with reasonable skill and care, and in accordance with best practice guidance;
 - 6.2.3 in all respects in accordance with the Aims and Outcomes, the Performance Management Framework, the applicable policies and requirements set out in Schedule 2 and the other terms of this Agreement;
 - 6.2.4 subject to clause 6.3, in accordance with its standing orders, standing financial regulations or other rules on contracting; and
 - 6.2.5 in accordance with all applicable Law.
- 6.3 Where T&W CCG has in place from time to time, regulations which it considers to be more stringent than those of the Council, T&W CCG may request on reasonable notice to the Council in writing, that the Council agree to adopt those regulations in order to ensure that best practice is applied to the provision of the Services. The agreement of the Council in such circumstances shall not be unreasonably withheld or delayed.
- 6.4 The Council will create a separate accounting structure within its systems in respect of the Services (including a separate cost centre).
- 6.5 The Council will develop, finance and audit arrangements taking account of guidance from the Audit Commission, the Chartered Institute of Public Finance & Accountancy and that guidance contained in “The Health Act Section 75 Partnership Arrangements” and other relevant guidance as issued by the Department of Health and NHS England from time to time.
- 6.6 As soon as practicable after the end of each Financial Year, the Council will produce a Memorandum Account in respect of the Financial Year just ended, showing income received, expenditure and any balance remaining in respect of the Pooled Fund which it shall send to the Partners for inclusion in their statutory accounts.

7 **Pooled Funding Arrangements**

- 7.1 As at the Commencement Date, the Partners have agreed during the Initial Term, to make the initial contributions to the Pooled Fund as are set out in Part 1 of Schedule 3. Unless otherwise agreed between the Partners, the Pooled Funds will be allocated as set out in Part 2 of Schedule 3.
- 7.2 The Council shall use the Pooled Funds only for the purposes of securing the commissioning of the Services and in such a way as will secure the most effective and efficient use of resources.
- 7.3 During the Term, the Partners shall confirm and agree on 1 April of each year the monies which each shall contribute to the Pooled Fund. The Pooled Fund will meet the costs of commissioning the Services to be undertaken in accordance with this Agreement including reasonable overhead costs of the Council to reflect the infrastructure support provided by it.
- 7.4 The Partners shall pay their contribution to the Pooled Fund to the Council quarterly in advance, on receipt of an invoice from the Council sent to the Partners' representative appointed to the Section 75 Group.
- 7.5 The Pooled Fund Manager shall be:
- 7.5.1 the "Service Delivery Manager" in respect of the Services and will commission the Services on behalf of the Council unless otherwise agreed by the Partners in writing;
 - 7.5.2 responsible for reporting to the Section 75 Group the expenditure against budget for the Pooled Fund on a quarterly basis;
 - 7.5.3 accountable for managing the budget and forecasting and reporting to the Partners via the Section 75 Group, on the outputs and outcomes and the achievements of targets as set out in the service plans and objectives;
 - 7.5.4 responsible for the management of the Pooled Fund within the agreed budget and will report any potential or actual variations, as soon as practically possible, to the Section 75 Group and in any event at the next meeting of the Section 75 Group following identification of any such variation; and

- 7.5.5 responsible for sending the Memorandum Account to the Partners at the Financial Year-end for T&W CCG's inclusion in their Statement of Accounts.
- 7.6 Quarterly financial monitoring reports will be sent by the Council to the designated officers to be agreed, but will include the Pooled Fund Manager and the Finance Officer within the T&W CCG. All records must be retained for six years.
- 7.7 Changes forecast to the total level of agreed budgeted expenditure for the year reported to the Section 75 Group in accordance with clause 7.5 hereof shall be dealt with by the Section 75 Group who shall agree appropriate action to contain expenditure within agreed budget or to utilise a surplus, or exceptionally, where additional funding is thought to be required, shall submit a case of need to the Partners. Where additional funding is approved the Partners will consider the appropriateness of continuing such level of funding as part of the budget-setting process for the following Financial Year, as set out in clause 8.
- 7.8 Where an unforeseen over-spend arises at the Financial Year end the Partners will need to consider how best to fund this and its implications for future years. Such additional funding will by default be in proportion to the Partners' contribution to the Pooled Fund unless otherwise agreed by the Section 75 Group.
- 7.9 Unforeseen or fortuitous under-spends at Financial Year end will be available to the Partners in the first instance if required by them in proportion to their contributions made to the Pooled Fund, or if not required, will be managed into the following Financial Year by the Council pending agreement by the Partners on future use of the funds.
- 7.10 Where an under-spend is planned and agreed with the specific aim of carrying it forward for a stated purpose in the following Financial Year then it is for the Partners to agree, if and how, this can be achieved.
- 7.11 In the event of any dispute or disagreement in relation to the liability or benefit for any over-spend or under-spend the matter may be referred by either Partner in accordance with clause 18.
- 7.12 The Partners shall comply with HM Revenue & Customs guidance on VAT in respect of the Pooled Fund. The Council shall consult with HM Revenue & Customs to agree an appropriate scheme for recovery of VAT.

8 **Budgets**

- 8.1 The Partners agree that the annual revenue budget will normally be calculated as the initial budget for the previous Financial Year plus any agreed in-year changes (where it is decided that these should be recurrent), plus any agreed inflationary uplift for the coming Financial Year, plus any agreed planned changes for the coming Financial Year, less any agreed efficiency requirements.
- 8.2 The inflationary up-lift for the revenue budget will be sufficient to meet the cost of relevant pay awards, general RPI inflation, plus any additional costs that are determined as being unavoidable by the Section 75 Group.
- 8.3 Capital and other non-recurring funding will be allocated for use within a designated Financial Year but may be rolled forward into the succeeding Financial Year by agreement of the Section 75 Group subject to the standing orders and standing financial regulations of the Council.
- 8.4 Discussions regarding the financial contributions of each Partner as detailed in clause 7 will take place at the earliest opportunity to allow sufficient time to address any implications for the Services. The Pooled Fund budget will be financially accounted for on the basis of separate budgets being established for each of the commissioning teams in relation to their particular service areas.
- 8.5 The total budget for the Pooled Fund will be the total of all of the established separate budgets as referred to in clause 8.4 above.

9 **Virement**

- 9.1 The Council's normal rules of virement will apply only between the separate budgets that total the Pooled Fund and are used to commission the Services.

10 **Audit**

- 10.1 The Council shall arrange for the audit of the accounts of the Pooled Fund in accordance with its statutory audit requirements and shall provide T&W CCG with any reports required concerning the T&W CCG Functions on reasonable notice.
- 10.2 The Partners shall co-operate in the provision of information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other

monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

11 **Health and Social Care Records**

11.1 T&W CCG shall make available to the Council its current and archived files for Service Users from the Commencement Date. The Council shall hold, and be responsible for maintaining and the safekeeping of those files for the Term, in accordance with Data Protection Legislation.

11.2 The Council shall be responsible for facilitating access by Service Users of their Personal Data under the DPA 1998.

12 **Costs**

12.1 Each of the Partners shall pay any costs and expenses incurred by it in connection with the preparation of this Agreement and the setting up of the Partnership Arrangements.

13 **Indemnities**

13.1 Without prejudice to the primary liability of each Partner for its respective functions, preserved by Section 75(5) (a) and (b) of the Act, the following indemnity provision will apply: Each Partner (**Indemnifying Partner**) shall indemnify and keep indemnified the other Partner (**Indemnified Partner**) against all actions, proceedings, reasonable 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.

13.2 References in this clause 13 to damages, claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution process.

13.3 In relation to the diagnosis, care and treatment of a Service User under T&W CCG 's functions, the provision of NHS indemnity shall apply in relation to any acts or

omissions of T&W CCG, its or any of its Representatives in consequence of which the Service User suffers harm.

- 13.4 The Partners shall use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any claim or proceedings which are, or may be, subject to an indemnity under this Agreement and any material developments relating to such claim. The Partners shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by either Partner in dealing with a complaint or in connection with any professional or disciplinary proceedings shall vitiate its right to be indemnified by the other under this Agreement.

14 **Liabilities**

- 14.1 Subject to clause 14.2, 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.

- 14.2 Liabilities arising from services provided or commissioned under any previous Section 75 Agreement shall remain with the Host Authority for the services under the relevant agreement.

- 14.3 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.

15 **Insurance**

- 15.1 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.

- 15.2 The Partners shall co-operate with each other in the defence of any claim arising under this Agreement using the Insurance Protocol agreed between Local Authorities and NHS bodies in operating Partnership Agreements under Section 75, as guidance.

16 **Complaints, Investigations and Publicity**

- 16.1 The Partners shall continue to deal with complaints falling within the ambit of their statutory functions, duties and powers in accordance with their own complaints procedures.
- 16.2 Each Partner shall ensure that the other will be kept fully informed of the progress of any complaints related to their functions and to the arrangements under this Agreement.
- 16.3 The Partners recognise the need and expediency of responding to a complaint as quickly as possible and will therefore deal with any complaints as soon as possible.
- 16.4 Prior to the issue of any press release or making any contact with the press on any issue attracting media attention the Partners shall consult with each other to agree a joint strategy for the release and handling of the relevant issue.
- 16.5 In the event of any potential legal action or complaint to the Parliamentary and Health Service Ombudsman relating to the Partnership Functions, the Partner notified of the potential legal action or complaint shall notify the other immediately and, if possible, agree a joint strategy for dealing with the action.

17 **Sharing and Handling of Information**

- 17.1 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.
- 17.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working.
- 17.3 Except as required by Law, each of the Partners agrees at all times during the Term, to keep confidential all documents or papers which it receives or otherwise acquires, in connection with the other Partner and any materials which are marked "Commercial , Confidential or in confidence" or such similar words signifying that they should not be disclosed.
- 17.4 In the event of an enquiry from a Member of Parliament about the circumstances of a Service User relating to the Services or a matter of policy, the Partner receiving the

enquiry shall consult with the other immediately and agree a joint strategy for the release of information or handling of the enquiry.

- 17.5 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.

18 **Termination and Disputes**

- 18.1 In the event of a dispute between the Partners or a change in their circumstances arising in connection with the terms of this Agreement or its performance, the matter shall, if required by either Partner, be referred in the first instance to the Chief Officers for resolution. In the event of a failure of the Chief Officers to agree upon a resolution, the matter shall be referred to a senior officer of NHS England and the Managing Director of the Council to resolve.

- 18.2 Where a resolution cannot be agreed following exhaustion of the procedure set out in clause 18.1, then either Partner may, by service of twelve months written notice in writing upon the other Partner, terminate this Agreement provided that any such notice shall expire at the end of a Financial Year.

19 **Consequences of Termination**

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

19.1.1 assets purchased from the Pooled Fund shall be disposed of by the Council 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 Council;

19.1.2 the Council shall transfer to T&W CCG all records in its possession relating to the T&W CCG Functions;

19.1.3 overspends on termination shall be met by the Partners in proportion to, their respective financial contributions to the Pooled Funds; and

19.1.4 the benefit of any underspends on termination of the Agreement shall be passed to the Partners by making refund to them of monies from the Pooled Funds in the same proportions as their respective contributions.

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

19.2.1 Clause 10;

19.2.2 Clause 11;

19.2.3 Clause 13;

19.2.4 Clause 14;

19.2.5 Clause 15;

19.2.6 Clause 17;

19.2.7 this Clause 19; and

19.2.8 Clauses 21 to 31 (inclusive).

20 **Term of the Agreement**

20.1 The Partners agree that not later than six (6) months prior to the expiry of the Initial Term, they will meet to discuss and consider the possibility of extending this Agreement for up to a further period of two years beyond the Initial Term, subject to approval of the Partners' boards.

21 **Variation**

21.1 Any variation to this Agreement, including the Schedules hereto, shall only be valid if it has been agreed in writing in accordance with the Partners' internal decision making processes.

22 **Counterparts**

22.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

23 **No Partnership**

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

24 **Third Party Rights**

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

25 **Notices**

25.1 Notices shall be in writing and shall be sent to the other Partner marked for the attention of the Chief Officer 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 this Agreement.

25.2 Notices may be sent by first class mail or facsimile transmission, provided that facsimile transmissions are confirmed within 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 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.

26 **Assignment and Subcontracting**

26.1 Neither party 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 this agreement without the prior written consent of the other party.

27 **Severability**

27.1 If any provision or part-provision of this 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 this agreement.

28 **Waiver**

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

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

29 **Entire Agreement**

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

30 **Governing Law and Jurisdiction**

30.1 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 it.

31 **Fair Dealings**

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

Schedule 1

Aims and Outcomes of the Partnership Arrangements

Part 1 Aims

- 1 The intended aims of the Agreement are:
 - 1.1 To ensure an effective and integrated approach to commissioning and delivery of intermediate care services – beds and the community;
 - 1.2 To ensure that public resources are used as efficiently and effectively as possible;
 - 1.3 To work within the priorities determined by the Partners in order to meet national and local targets;
 - 1.4 Reduce admissions to hospital;
 - 1.5 Reducing admissions to residential and nursing homes;
 - 1.6 Maintaining people at home after re-ablement and rehabilitation;
 - 1.7 Reducing delayed transfers of care from hospital;
 - 1.8 Reducing emergency admissions for people over 65; and
 - 1.9 Improve Service User and carer experience.

Part 2 Outcomes

- 2 The intended outcomes of the Partnership Arrangements are:
 - 2.1 Provide support to the ten (10) designated intermediate (enablement) beds located at Morris Care residential settings in the community. The beds will be differentiated to better match the specific needs of Service Users within the Care Pathway.
 - 2.2 Deliver interventions to people within the community to avoid hospital admission and provide early supported discharge from hospital. This may, or may not include the use of the intermediate care beds, above.

- 2.3 Produce and maintain information which demonstrates achievement of 'Expected Outcomes' listed in Schedule 2.
- 2.4 To meet the health and well-being aims listed above, in line with the Better Care Fund, the Act and applicable Care Laws.
- 2.5 To enable the Partners to improve efficiency, effectiveness, consistency and equity in addressing issues.

Schedule 2

Description of Services and Service Requirements and Standards

The Service will provide access to ten Intermediate Care Beds purchased from a company called Morris Care. The beds will provide support to individuals, helping them to maintain independence, reduce the need for care and to support the avoidance of admission/re-admission to acute services.

The Services shall further develop re-ablement and rehabilitation capacity in the Council, Community Health Services and the independent and voluntary sectors. The Services will support avoidance of un-necessary admissions, promote discharge from hospital and reduce people's dependency on social care services, both delivered directly by the Council or commissioned from other providers.

The Pooled Fund shall be used by the Council to enhance this service commitment and shall be spent on social care services. The Pooled Fund can be used to support and maintain existing services as well as investment in developing Services which also benefit health. This Service specification sets out the agreed plans for the Pooled Fund.

The Section 75 Group shall ensure that the Pooled Fund is used as effectively and efficiently as possible to ensure that Service Users receive a co-ordinated and supported discharge from hospital and/or to prevent avoidable hospital re-admissions. The Services will also address the increasing demands put on social care services and subsequently health services, arising from demographic change and levels of health funding for individuals.

INTERMEDIATE CARE SERVICE	EXPECTED OUTCOMES AND METRICS/MEASURES
<p>Purchase of 10 Intermediate Care beds from Morris Care</p> <p><u>Purpose:</u></p> <ul style="list-style-type: none"> • To support Service Users to regain their independence • To reduce the need for ongoing care. • To support safe hospital transfer of patients within 48 hours of referral from SaTH to the Enablement Team and then to the Intermediate beds. 	<p>The following information shall be provided in respect of the Services on a monthly basis (percentage and numbers):</p> <ul style="list-style-type: none"> • route of referral to intermediate bed e.g. SaTH, GP, care home • number of admissions and discharges • occupancy rate • reason for referral e.g. admission avoidance, early supported discharge • average length of stay • destination - post discharge from

	<p>bed (e.g. home, care homes, re-admission to hospital or death)</p> <ul style="list-style-type: none">• waiting lists, numbers of delays and days of delays• reason for delay of transfer• Number of additional beds purchased to support Enablement
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Schedule 3

Pooled Fund Arrangements

Part 1: Contributions during the Initial Term

The Partners will contribute the cost of the Services during the Initial Term in proportions detailed in the table below:

Partner	Total cost
Council	£46,100
T&W CCG	£277,000
Total	£323,100

Part 2: Apportionment of Pooled Fund Monies in Initial Term

Services	Total Cost	Council contribution	Health contribution
		£	£
10 Intermediate Care beds at Morris Care @ £600 per bed, per week.	312,860	46,100	266,760
Admin/Management Charges	10,240		10,240
Total	323,100	46,100	277,000

Schedule 4

Terms of Reference of the Section 75 Group

Structure and Role

1 The Section 75 Group has delegated authority from the Partners to take decisions on their behalf regarding administration of the Pooled Fund.

2 The Section 75 Group will operate within the overall framework of the Telford & Wrekin Health and Wellbeing Strategic Partnership.

3 The current members of the Section 75 Group are as follows:

The Council

- interim Assistant Director, Adult Social Services
- Assistant Director, Family, Cohesion and Commissioning
- Service Delivery Manager, Commissioning, Vulnerable People
- Service Delivery Manager, Finance

T&W CCG

- Executive Lead, Commissioning
- Head of Commissioning for Integrated Care
- CCG Finances
- Contract Manager, CSU

4 The Section 75 Group shall meet at least 4 (four) times each year, or more regularly as the needs of the Services require, and within 14 (fourteen) days if requested by either Party.

5 A quorum of the Section 75 Group shall be present when the following members are present:

The Council

- Assistant Director, Adult Social Services **or** Family, Cohesion & Commissioning
- Service Delivery Manager, Commissioning, Vulnerable People
- Service Delivery Manager, Finance

T&W CCG

- Executive Lead, Commissioning
- Head of Commissioning for Integrated Care
- CCG Finances

6 The necessary papers required for any Section 75 Group meetings will be circulated at least 5 days prior to any meeting by the Council.

- 7 Any decision to be made by the Section 75 Group shall be determined by a majority decision of the members of the Section 75 Group present and voting.
- 8 If a member of the Section 75 Group is unavailable to attend a meeting, they may send an alternative representative to the meeting. The alternative representative shall contribute to the quorum and shall be entitled to vote.
- 9 Meetings of the Section 75 Group shall be chaired by a representative agreed by the Partners. At the first meeting this matter will be discussed and planned for future meetings for the Term (options, dual chair, alternating chair).
- 10 In the event of a tied vote the chair shall have a casting vote.
- 11 The functions of the Section 75 Group shall be to:
 - (i) Operate as a link between T&W CCG and the Council;
 - (ii) Determine the use of the money within the Pooled Fund
 - (iii) Agree levels of reduction in spend in any area(s) leading to:
 - (iv) Efficiencies (shared between the Partners)
 - (v) Investment in new approaches to better secure stated objective and outcomes
 - (vi) Monitor the Services in accordance with the Performance Management Framework;
 - (vii) Provide (quarterly) reports on the Pooled Fund Budget;
 - (viii) Consider action in regard to any projected overspends or underspends and report on such to the Partners;
 - (ix) Undertake reviews of the Services;
 - (x) Produce reports to the Partners; and
 - (xi) Consider disputes referred to it pursuant to this Agreement.

Schedule 5

Performance Management Framework

Contract Reviews

T&W CCG will meet with Council colleagues (Social Care, Commissioning and Finance) on a monthly basis to receive information on progress and outcomes for Services for the period October to March 2014-15.

Contracts with Service Providers in respect of the Services, will be managed by the Contract Manager and quality assessed by the Quality Monitoring Officers.

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

EXECUTED as a DEED

By the affixing of the **COMMON SEAL** of

NHS TELFORD AND WREKIN CLINICAL COMMISSIONING GROUP

in the presence of:

Accountable Officer.....

EXECUTED as a DEED

By the affixing of the **COMMON SEAL** of

BOROUGH of TELFORD & WREKIN

in the presence of

Authorised Officer