

Dated

2018

WIRRAL BOROUGH COUNCIL (1)

-and-

CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST (2)

Section 75 Agreement

for

All Age Disability Services

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DRAFT

THIS DEED is dated [.....]

BETWEEN:

- (1) **WIRRAL BOROUGH COUNCIL** of Town Hall, Brighton Street, Seacombe, Wirral CH44 8ED (“the **Council**”)
- (2) **CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST** of Trust Headquarters, Redesmere, Countess of Chester Health Park, Liverpool Road, Chester, CH2 1BQ (“the **Trust**”)

(each a “**Party**” and together the “**Parties**”)

PRELIMINARY BACKGROUND:

- (A) Regulations made under Section 75 of the National Health Service Act 2006 enable certain NHS bodies and certain local authorities to enter into arrangements for or in connection with the exercise of prescribed health related functions of local authorities if the arrangements are likely to lead to an improvement in the way in which these functions are exercised.
- (B) The Council and the Trust consider that entering into this arrangement is likely to lead to an improvement in the way in which the functions which are the subject of this Agreement are exercised

Substantive

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless otherwise provided or the context otherwise requires, the following expressions shall have the following meanings:

- 2008 Act** the Health and Social Care Act 2008
- 2012 Act** the Health and Social Care Act 2012
- Acquired Rights Directive** the European Council Directive 77/187/EEC as amended and consolidated in the European Council Directive 2001/23) on the approximation of laws of European member states relating to the safeguarding of employees; rights in the event of transfers of undertakings businesses or parts of undertaking of businesses as amended or re-enacted from time to time
- Administering Authority** Wirral Borough Council acting in its capacity as the administering authority of the Scheme for the purposes of the Pension Regulations
- Admission Agreement:** the agreement to be entered into by which the Trust agrees to participate in the Scheme substantially and materially in the form at Annex B of Schedule 10;
- Affected Party:** means a Party the performance of whose obligations under this Agreement is affected by an Event of Force Majeure;

Aims and Outcomes:	the aims and outcomes set out in Schedule 1 as varied in accordance with the terms of this Agreement;
Alternative Trust Premises	premises that are different from those in Schedule 12 used by the Trust to accommodate staff delivering the Services;
Annual Service Review	has the meaning set out in clause 8.3;
Authorised Person	<ul style="list-style-type: none"> (a) the Council; (b) any body or person concerned with the treatment or care of a Service User approved by the Council; (c) for the purposes permitted by Law any authorised representative of Local Healthwatch; (d) any body or person appointed by the Council in connection with the investigation of bribery, fraud, corruption or security incidents
Best Value Duty	the general duty set out in section 3 (1) of the Local Government Act 1999;
Business Day	a day other than a Saturday Sunday or a day designated as a bank holiday in England;
Caldicott Guardian	the senior health professional responsible for safeguarding the confidentiality of patient information;
Carers	a person within the definition set out in the Care Act 2014 section 10;
Care Budget Fund	the amount allocated by the Council in its yearly budget cycle as the care spend for the Service Users in respect of whom the Trust is to exercise the Health Related Functions in accordance with this Agreement;
Case Management Application	the IT software application sharing the IT Infrastructure known as Liquid Logic by which staff engaged in delivery of the Services currently and in the future will record assessment, review support planning and arrange care packages;
Commissioner Deliverables	means all documents, products and materials developed by the Council in relation to the Services in any form and submitted by the Council to the Trust under this Agreement, including data, reports, policies, plans and specifications

Confidential Information

any information or data in whatever form disclosed, by which its nature is confidential or which the disclosing Party acting reasonably states in writing to the receiving Party is to be regarded as confidential, or which the disclosing Part acting reasonably has marked "confidential" (including financial information, or marketing or development or workforce plans and information, and information relating to services or products) but which is not information relating to a particular Service User, or Personal Data or information which is disclosed in accordance with clause 19 (Freedom of Information), in response to an FOIA request, or information which is published as a result of government policy in relation to transparency.

Consent

- (a) any permission consent approval certificate licence permit statutory authorisation exception or declaration required by law for or in connection with the Services and/or
- (b) any necessary consent or agreement from any third party needed for the provision by the Trust of the Health Related Functions

Council Assets

the equipment identified in Schedule 14

Council Premises

the property described in Schedule 13 Part 1

CQC

the Care Quality Commission established under Section 1 of the 2008 Act

Data Controller

has the meaning given to it in the Data Protection Legislation

Data Protection Legislation

means all applicable data protection and privacy legislation including Regulation (EU) 2016/679 (the "General Data Protection Regulation" or GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations and any guidance or codes of practice issued by any Regulator from time to time (all as amended, updated or re-enacted from time to time)

Data Processor

has the meaning given to it in the Data Protection Legislation

Data Subject

has the meaning given to it in the Data Protection Legislation

Data Subject Access Report

a request made by the Data Subject in accordance with rights granted pursuant to the Data Protection Legislation;

DBS	the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012;
DPA	Data Protection Act 1998
Due Diligence Information	the information supplied to the Trust by or on behalf of the Council prior to the Effective Date relating to the Services listed in Schedule []
Effective Date	[insert]
EIR	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by an Information Regulator or any central government body in relation to such regulations
Eligible Employee	any Transferring Employee who at the Effective Date is a member of the Scheme
Employee Liabilities	<p>all claims, actions, proceedings, orders, demands, complaints, investigations, (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments (b) unfair, wrongful or constructive dismissal compensation (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay (d) compensation for less favourable treatment of part-time workers or fixed term employees (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions (f) employment claims whether in tort contract or statute or otherwise

- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement regulatory or supervisory body and of implementing any requirements which may arise from such investigation

Employee Liability Information

the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE including without limitation:

- (a) the identity and age of the employee
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996)
- (c) Information about any disciplinary action taken against the employee, and any grievances raised by the employee where a Code of Practice issued under Part IV of the Trade Union and Labour Regulations (Consolidation) Act 1992 related exclusively or primarily to the resolution of disputes applied, within the previous two years
- (d) Information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the transferor arising out of the employee's employment with the transferor
- (e) Information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date as the case may be in relation to the employee under regulation 5(a) of TUPE

Employment Checks

those checks required to ensure that persons engaged in delivery of the Services are able to work in the United Kingdom without limitation and have the qualification necessary for the professional and/or other role they are to fulfil

Employment Regulations

the Transfer of Undertakings (Protection of Employment) Regulations 2005 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive

Event of Force Majeure

means an event or circumstance which is beyond the reasonable control of the Party claiming relief under

clause 50 (Force Majeure) including war, civil war, armed conflict for terrorism, but excluding strikes and lock outs and which directly causes that Party to be unable to comply with all or a material part of its obligations under this Agreement in relation to the Services

Exception Report	a report issued in accordance with clause 37
Financial Year	the period from 1 April in one year to 31 March in the immediately following year
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
GDPR	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC
Good Industry Practice	at any time the exercise of that degree of care skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Council and to customers having the characteristics of or characteristics similar to the Service Users, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws
Governance Board	the working group to be established for oversight of this Agreement as set out in Schedule 18
Health Related Functions	solely the functions described in [cross reference to be inserted] of the Service Specification which are functions of the Council (and are specified in Schedule 1 to the Local Authority Social Service Act 1970) and which are delegated to the Trust to exercise
Healthy Wirral Objectives	the objectives set out at https://www.wirralccg.nhs.uk/healthy-wirral/
HRA	Human Rights Act 1998
Immediate Action Plan	a plan setting out immediate actions to be undertaken by the Trust to protect the safety of Services to Service Users, the public and/or Staff
Indemnity Arrangements	either

- (a) a policy of insurance
- (b) an arrangement made for the purposes of indemnifying a person or organisation or
- (c) a combination of (a) and (b)

Indirect Losses

loss of profits (other than profits directly and solely attributable to provision of the Services) loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature whether arising in tort or on any other basis

Information Commissioner

the officer appointed to act as such under section 6 of the Data Protection Act 1998

Information Regulator

the Information Commissioner and the European Data Protection Board or any successor body to either of them from time to time and any other supervisory authority with jurisdiction over either party

Information Governance Lead

the individual responsible at the Trust for information governance and for providing the Trust's Governing Body with regular reports on governance matters, including details of all incidents of data loss and breach of confidence

Information Sharing Protocol

the protocol in Schedule 15

Insolvency Event

- (a) the Trust suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts
- (b) the Trust commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986
- (c) a person becomes entitled to appoint a receiver over the assets of the Trust
- (d) a creditor or encumbrancer of the Trust attaches or takes possession of or a distress execution or other such process is levied or enforced on or sued against the whole or any part of the Trust's

assets and such attachment or process is not discharged within 14 days

- (e) the Trust suspends or ceases or threatens to cease carrying on all or a substantial part of its activities

IPR means inventions, copyright, patents, database right, trademarks, designs and confidential know-how and any similar rights anywhere in the world whether registered or not, including applications and the right to apply for any such right

IT Infrastructure [physical services using the Windows 2012 Operating System hosting Citizen Practitioner and Client portals; Physical servers using the Windows Server 2008 Operation System running SQL Server Database 2008 Release 2, virtual servers using the Windows Server 2008 operating system running the Case Management Application and an associated payment application

Joint Investigation an investigation into the matters referred to in a Performance Notice in accordance with clauses 35.9-35.11

JI Report a report detailing the findings and outcomes of a Joint Investigation

KPIs the key performance indicators set out in:
(a) [insert details] of Schedule 2 in relation to KPIs to be achieved by the Trust in its performance of the Services (**Trust KPIs**); and
(b) [insert details] of Schedule 7 in relation to KPIs to be achieved by the Council in its performance of the Support Arrangements (**Council KPIs**),
each, a **KPI**.

Law any applicable law, statute, byelaw, regulations, 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

Legal Guardian an individual who, by legal appointment or by the effect of a written law, is given custody of both the property and the person of one who is unable to manage their own affairs

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

Losses	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
NHS Licence	a licence granted by the relevant regulatory body under section 87 of the 2012 Act
NHS Digital	the internal NHS IT provider whose website is at NHS Digital http://digital.nhs.uk an arm's length body of the Department of Health (formerly HSCIC)
NHS Functions	the functions carried on by the Trust falling within the scope of Regulation 5(aa) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000/617
Ombudsman	the Local Government Ombudsman or any other office given jurisdiction under the Local Government Act 1974 to investigate complaints relating to services similar to the Services
Open Book Accounting Principles	the structured management and sharing of costing information that is open transparent complete accurate current and accessible between the Trust and the Council (including data which would traditionally have been kept confidential by each party) so as to facilitate the Council and the Trust and any supply chains to jointly manage costs
Parties and Party	have the meanings set out earlier in this Agreement
Pension Regulations	the Local Government Pension Scheme Regulations 2013 (2013 SI 2356) as amended from time to time
Performance Notice	a notice served under clause 35
Personal Data	has the meaning given to it in the Data Protection Legislation
Process	has the meaning given to it in the Data Protection Legislation and Processed and Processing shall be construed accordingly
Provisional Exit Arrangements	the arrangements in Schedule 16
Quarter	each periods ending on 31 March, 30 June, 30 September and 31 December
Regulatory Body	any body carrying out regulatory functions in relation to the Trust and/or the Services

Relevant Transfer	a transfer of employment to which the Employment Regulations apply
Relevant Transfer Data	the date upon which the Relevant Transfer takes place
Remedial Action Plan	a plan to rectify a breach of or performance failure by a Party containing the information set out in Clause 35.7
Replacement Provider	any party appointed by the Council from time to time to provide the Replacement Services or if the Council themselves provide the Replacement Services then the Council
Replacement Services	any services substantially similar to or the same as the Services following the expiry or termination of these arrangements whether those are provided by the Council or any a third party or combination of third parties and/or the Council
Restricted Country	<p>(a) any country outside the European Economic Area and</p> <p>(b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC</p>
Scheme	the local government pension scheme of which Wirral Borough Council is the administering authority as governed by and within the meaning of the Pension Regulations
Senior Information Risk Owner	the Trust's nominated person, being an executive, director on the Trust Board, whose role it is to take ownership of the Trust's information risk policy, act as champion for information risk on the Trust Board and provide written advice to accountable officers on the content of the organisation's statement of internal control in regard to information risk
Services	any and all and each of the services to be provided by the Trust under this Agreement as described in the Service Specification
Service Payment	the annual payment from the Council to the Trust set out in or calculated in accordance with Schedule 3 and reviewed as set out in Schedule 3
Service Specification	the specification in Schedule 2 with its accompanying appendices
Service Transfer	any transfer of the Services for whatever reason from the Trust to a Replacement Provider

Service Transfer Date	the date of a Service Transfer
Service User	a person for whom the Council has statutory responsibility and who is within the Service User Criteria
Service User Criteria	the criteria for accessing the Health Related Functions set out in Schedule 4
Staff	all persons (whether qualified or not) employed or engaged by the Trust (including volunteers, agency, locums, casual or seconded personnel) in the provision of the Services
Succession Plan	<p>a plan for the transition of the Services on the expiry or termination of these arrangements to include:</p> <ul style="list-style-type: none"> (a) details of Service Users (b) the date on which the successor will take responsibility for the Services (c) data migration of Service User records and all records relevant to the provision of the Services (d) an information technology plan (e) a plan for Staff consultation (f) obtaining any Consents
Support Arrangements	the support to be provided by the Council to the Trust set out in Schedule 7 which is required by the Trust to facilitate the delivery of the Health Related Functions by the Trust
Term	the period from and including the Effective Date up to 11.59pm on 18 August 2023 subject to earlier termination of this Agreement in accordance with the terms of this Agreement
Trust's Board	the board of directors of the Trust
Transferring Employees	means those employees of the Council to whom the Employment Regulations apply on the Effective Date or those employees of the Trust to whom the Employment Regulations apply on the Service Transfer Date as the context requires
Trust's Final Personnel List	a list provided by the Trust of all the Staff who will transfer under the Employment Regulations on the Service Transfer Date

Trust Premises	the premises listed in Schedule 12
Trust's Provisional Personnel List	a list of the Staff who are engaged in or wholly or mainly assigned to the provisions of the Services
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006
VAT	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994

- 1.2 In this Agreement unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes reference to the other genders;
 - 1.2.3 references to a law include a reference to that law as amended, extended, consolidated or re-enacted from time to time;
 - 1.2.4 the words 'including', 'other', 'in particular', 'for example' and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words 'without limitation';
 - 1.2.5 reference to 'writing' including typing, printing, and emails and expressions referring to writing shall be construed accordingly;
 - 1.2.6 headings, whether of schedules, clauses and/or paragraphs are for ease of reference only and do not affect the interpretation or construction of this Agreement;
 - 1.2.7 the schedules to this Agreement and their annexures form part of it and have effect as if set out in full in the main body of this Agreement;
 - 1.2.8 reference to clauses and schedules are unless otherwise provided, references to the clauses and schedules of this Agreement and references in any schedule to paragraphs and parts are, unless otherwise provided, references to the paragraphs and parts of the schedule or part of the schedule in which the references appear; and
 - 1.2.9 any obligation in this Agreement on a person not to do something includes an obligation not to agree, permit, authorise or allow that thing to be done.
- 1.3 Where a standard policy or document is referred to in this Agreement by reference to a hyperlink then if the hyperlink is changed or no longer provides access to the relevant standard policy or document the Trust shall notify the Council and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 In case of any conflict between the clauses, the Schedules and/or Annexes the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 the clauses
 - 1.4.2 Schedule 2 - Service Specification;

- 1.4.3 the Appendices to Schedule 2 – Service Specification; and
- 1.4.4 any other Schedule and their Annexes/ Appendices.

2 DUE DILIGENCE

- 2.1 The Trust acknowledges that:
 - 2.1.1 it has made its own enquiries and satisfied itself as to the accuracy and adequacy of the Due Diligence Information; and
 - 2.1.2 it has satisfied itself on all relevant details relating to:
 - 2.1.2.1 the Service Specification;
 - 2.1.2.2 the ownership, functionality, capacity, condition and sustainability for use in the Services of the Council Assets
 - 2.1.2.3 the capacity, functionality and sustainability of the Case Management Application;
 - 2.1.2.4 the capacity and sustainability of the IT Infrastructure.
- 2.2 The Trust shall not be excused from performance of any of its obligations under this Agreement arising as a result of any failure by it to satisfy itself as the accuracy and/or adequacy of the Due Diligence Information

3 WARRANTIES

- 3.1 The Council represents and warrants that:
 - 3.1.1 it has full capacity and authority to enter into and to perform this Agreement;
 - 3.1.2 this Agreement is executed by its duly authorised representative;
 - 3.1.3 it has all necessary Consents and regulatory approvals to enter into this Agreement; and
 - 3.1.4 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound or for it to exceed its powers.
- 3.2 The Trust represents and warrants that:
 - 3.2.1 it has full capacity and authority to enter into and to perform this Agreement;
 - 3.2.2 this Agreement is executed by its duly authorised representative;
 - 3.2.3 it has all necessary Consents and regulatory approvals to enter into this Agreement; and
 - 3.2.4 its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound.

- 3.3 The representations and warranties set out in clause 3 shall be deemed to be repeated by the Council or the Trust (as relevant) on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in clause 3 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under clause 3 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which a Party may have in respect of breach of that provision by the other Party.

4 **COMMENCEMENT AND DURATION**

- 4.1 This Agreement shall:
- 4.1.1 come into force on the Effective Date; and
- 4.1.2 unless terminated at an earlier date by operation of law or in accordance with the provisions of clause 38, expire at 11.59pm on the last day of the Term.

5 **SECTION 75 ARRANGEMENTS**

- 5.1 The Council and the Trust enter into these arrangements under Section 75 of the National Health Service Act 2006.
- 5.2 The agreed Aims and Outcomes of these arrangements are set out in Schedule 1.
- 5.3 The payments to be made are set out in Schedule 3.
- 5.4 The persons in respect of whom the Health Related Functions which are delegated and the subject of these arrangements are exercised are the Service Users.

6 **DELEGATION OF HEALTH RELATED FUNCTIONS**

- 6.1 The Council delegates the exercise of the Health Related Functions to the Trust so that the Trust can exercise these alongside the NHS Functions to provide a better integrated service for Service Users.
- 6.2 Schedule 4 sets out the persons in respect of whom the Health Related Functions must be exercised.
- 6.3 The arrangements in place for determining the services in respect of which a Service User may be charged and for informing users about such charges are set out in Schedule 5 and the Service Specification.
- 6.4 The Council holds the Care Budget Fund out of which payments may be made in accordance with the terms of this Agreement towards expenditure for Service Users incurred in the exercise of the Health-Related Functions.

6.5 The Council provides the financial administrative system for the Care Budget Fund and hosts the underpinning IT Infrastructure.

6.6 In accordance with Regulation 4(2) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 the Parties have carried out a joint consultation of the arrangements effected by this Agreement with the Service Users and other individuals and groups who appear to them to be affected by these arrangements.

6.7 Nothing in this Agreement shall prejudice or affect:

6.7.1 the rights and powers, duties and obligations of the Parties have in the exercise of their functions as public bodies or in any other capacity;

6.7.2 the power of the Council to set, administer and collect charges for any Health Related Function.

7 PROVISION OF SERVICES BY THE TRUST

7.1 The Trust agrees to exercise the Health Related Functions delegated under this Agreement and to provide the Services in accordance with the Service Specification.

7.2 The Trust shall provide the Services and shall be accountable to the Council for the exercise of the Health Related Functions for the benefit of Service Users:

7.2.1 to ensure the proper discharge of the Health Related Functions;

7.2.2 with reasonable skill and care, and in accordance with best practice guidance;

7.2.3 in all respects in accordance with the Aims and Outcomes, the performance management framework described in the Service Specification, the provisions of this Agreement and the Service Specification; and

7.2.4 in accordance with all applicable Law.

7.3 The Trust shall:

7.3.1 allocate sufficient resources with the appropriate skills and professional expertise to deliver the Health Related Functions and to provide the Services;

7.3.2 provide the Council with such assistance as the Council may reasonably require during the Term in respect of the provision of the Services;

7.3.3 gather, collate and provide such information and co-operation as the Council may reasonably request for the purposes of ascertaining compliance by the Trust with its obligations under this Agreement;

7.3.4 notify the Council in writing within 10 working days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any regulator, court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;

7.3.5 ensure that it does not bring the Council into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public placed in the Council

regardless of whether or not such act or omission is related to the Trust's obligations under this Agreement.

7.4 Subject to Clause 50 the Trust shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding the existence of an unresolved dispute.

8 REVIEW AND GOVERNANCE

8.1 In addition to the finance and performance monthly meetings provided for in [section 4 of the Service Specification, the Parties shall meet at least once every Quarter to:

- 8.1.1 review progress on the agreed Aims and Outcomes for the specific Services;
- 8.1.2 review any changes or development required for any part of the Services;
- 8.1.3 review information on how changes in funding or resources may impact the Services;
- 8.1.4 review draw down on the Care Budget Fund;
- 8.1.5 establish any additional or alternative aims and outcomes for the following financial year;
- 8.1.6 monitor the working arrangements and costs of the support arrangements set out in Schedule 7;
- 8.1.7 review changes in costs in accordance with Open Book Accounting Principles and in the context of the strategic and legislative landscape at the time of review consider service redesign; and
- 8.1.8 review the continued availability of the funding known as Better Care Funding which contributes to the resources available to fund the Service Payment.

8.2 The Council and the Trust will report regularly to the Governance Board described in Schedule 18.

8.3 The Parties agree to carry out a review of these arrangements within 2 months of the end of each Financial Year (the "Annual Service Review"), including,

- 8.3.1 the performance of these arrangements against the Aims and Outcomes;
- 8.3.2 the performance of the Services against the service levels and other targets contained in the Service Specification;
- 8.3.3 plans to address any underperformances in the Services;
- 8.3.4 actual costs of staffing and staffing levels and the costs of providing the Service any Support Arrangements in accordance with Open Book Accounting Principles
- 8.3.5 actual spend of the Care Budget Fund on the Service Users as against the budget;
- 8.3.6 review of plans and performance levels for the following year; and
- 8.3.7 plans to respond to any changes in policy or legislation applicable to the Services or these arrangements.

- 8.4 The Trust shall prepare at its cost an annual report which will incorporate the findings of the Annual Service Review for submission to the Trust's board and for submission to the Council and the Governance Board submission to be within 4 months of the end of the relevant Financial Year to which the Annual Service Review relates. The report will include performance data of a type and in a format agreed by the Parties.

9 **QUARTERLY STRATEGIC REVIEW AND REPORTING TO THE GOVERNANCE BOARD**

- 9.1 In addition to the regular meetings under clause 8 the Parties shall carry out a strategic quarterly review of these arrangements within 30 days of the end of each Quarter.
- 9.2 The review which will be prepared jointly by the Director of Adult Social Services and the Chief Executive Officer of the Trust shall be presented to the Governance Board and the Parties shall keep their respective organisations appropriately informed.
- 9.3 The quarterly review is intended to give an open and transparent assessment of performance of the Trust as against the matters set out in clause 8 and is intended to review any increases or decreases in the cost of providing the Services identified by either Party. The Parties agree to review changes in costs in relation to the provision of the Services in accordance with Open Book Accounting Principles and in the context of the strategic and legislative landscape at the time of the review.

10 **PAYMENT FOR SERVICES**

- 10.1 The Council shall pay to the Trust the Service Payment in consideration of the Trust agreeing to provide the Services.
- 10.2 Subject to Schedule 3 Part 1, the Service Payment will be paid by BACS monthly in accordance with this Clause 10 in twelve equal instalments 1.
- 10.3 The Trust shall send to the Council a monthly invoice no later than 5 Business Days before the month to which the invoice relates. The invoice must be addressed to the Assistant Director For Health and Care Outcomes.
- 10.4 Subject to Clause 10.5, the Council will pay the amount indicated on the invoice to the Trust by BACS (using the information provided by the Trust from time to time) and no later than, the fifteenth Business Day after the date of the invoice.
- 10.5 Following the resolution of any dispute referred to in accordance with this Clause, insofar as any amount shall be agreed or determined to be payable the Trust must immediately issue an invoice or credit note (as appropriate) for such amount. The Council must pay any sum due.
- 10.6 The Service Payment is exclusive of VAT which shall if relevant be added at the prevailing rate if any and paid by the Council subject to receipt of a valid VAT invoice.
- 10.7 The Service Payment will be reviewed annually as set out in Schedule 3 Part 2 and may be subject to review at any point during the Term in accordance with the procedure set out in Schedule 3 Part 3.

11 **CARE BUDGET FUND**

- 11.1 The Council shall hold the Care Budget Fund and will establish and maintain the financial and administrative support necessary to meet any auditing regulations applicable to the Council

- 11.2 The Care Budget Fund is calculated on a gross basis by the Council irrespective of recovery of charges from Service Users and is held by and under the sole control of the Council.
- 11.3 The Trust may only commission services to be funded from the Care Budget Fund to the extent that such services are commissioned in accordance with the terms of this Agreement and to meet the needs of Service Users or to prevent needs arising.
- 11.4 The Trust will use reasonable endeavours to ensure the expenditure on Health Related Functions, the exercise of which is delegated to it, is within the available Care Budget Fund for the relevant Financial Year to the extent that such expenditure is within the Trust's reasonable control. To avoid doubt, the Trust shall not be liable for any overspend against the Care Budget Fund in any Financial Year.
- 11.5 The total Care Budget Fund for the Financial Year 1 April 2018 to 31 March 2019 is set out in Schedule 6.
- 11.6 The Council will allocate the Care Budget Fund for each following Financial Year of the Term by the 31 March immediately preceding the commencement of the relevant Financial Year. Allocation is done as part of the Council's overall annual budget cycle and is not subject to veto or consent of the Trust.

12 SPENDING OF THE CARE BUDGET FUND

- 12.1 The Council will keep the Trust informed of the amount available out of the Care Budget Fund for the packages of care to be commissioned in relation to the Services. This information will be available at the meeting referred to in clause 8 and the quarterly review of this Agreement but in addition will be independently available to the Trust as they are responsible for arranging care.
- 12.2 The Trust will operate a scheme of delegation for single Service Users that meet the Eligibility Criteria in Part 1 and Part 2 of Schedule 4 when requesting that care packages are arranged as follows:
- 12.2.1 care packages of up to £100 per week exclusive of VAT to be commissioned by a member of Staff at Grade Band G or above or the equivalent grade in the NHS;
 - 12.2.2 care packages up to £200 per week exclusive of VAT to be commissioned by a member of Staff at Grade PO8 or above or the equivalent grade in the NHS;
 - 12.2.3 care packages up to £750 per week exclusive of VAT to be commissioned by a member of Staff at Grade EPO10 or above or the equivalent grade in the NHS; and
 - 12.2.4 care packages up to £1500 per week exclusive of VAT by a member of Staff at Grade HS2 or above or the equivalent grade in the NHS.
- 12.3 The Trust may only request arrangement of care packages for a single Service User meeting the criteria in Schedule 4 Parts 1 and 2 in excess of £1500 per week exclusive of VAT with the prior written authorisation of the Council which in this instance must be given by the person holding the statutory office of Director of Adult Social Services
- 12.4 The Trust may only request arrangement of care packages (excluding those including accommodation) for a single Service User meeting the criteria in Part 3 of Schedule 4 in accordance with the following scheme
- 12.4.1 care packages of up to £250 per week exclusive of VAT by a member of Staff at **Grade []** or above or the equivalent grade in the NHS

- 12.4.2 care packages of up to £2000 per week exclusive of VAT by a member of Staff at **Grade []** or above or the equivalent grade in the NHS
- 12.4.3 care packages of up to and including £ 5000 per week exclusive of VAT by a member of Staff at **Grade []** or above or the equivalent grade in the NHS
- 12.5 The Trust may only request arrangement of care packages meeting the criteria in Schedule 4 Part 1 and 2 in excess of £5000 per week exclusive of VAT and/or packages including accommodation with the prior written authorisation of the Council which in this instance must be given by the person holding the statutory office of Director of Children's Services or their immediate Deputy.
- 12.6 Changes to the scheme set out in this clause 12 require the written approval of the person holding the statutory office of Director of Adult Social Services.
- 12.7 Where an overspend on the Care Budget Fund is anticipated (as identified through the provision of cumulative and monthly actual spend data by the Council to the Trust in accordance with Clause 8.1.4), the Director of Adult Social Services and the Chief Executive at the Trust will meet to consider how the overspend may be mitigated without prejudice to:
- 12.7.1 the fact that the responsibility for the Care Budget Fund and liability for any overspend against the Care Budget Fund in any Financial Year ultimately remains with the Council; and
- 12.7.2 any contention on the part of the Council that the resulting overspend is due to a breach of the Trust's obligations set out in this Agreement, in which case it would be open to the Council to take action pursuant to clauses 35-38 .

13 **SUPPORT ARRANGEMENTS**

In order for the Trust to carry out the Health Related Functions and in recognition of the interface between the Health Related Functions and the duties retained by the Council, the Council will provide the Support Arrangements to the Trust. For the avoidance of doubt, this contribution has a cost to the Council and an impact on its central corporate services which will be taken into account in any review of the Service Payment pursuant to the provisions of Schedule 3.

14 **PREMISES**

- 14.1 The Trust will provide the Services from the Trust Premises and the Council Premises subject to the remaining provisions of this clause 14.
- 14.2 The Council is providing to the Trust the Council Premises for the Term (subject to earlier determination as set out in Schedule 13 Part 2) on terms set out in Schedule 13 Part 2 for enabling the arrangements contemplated by this Agreement.
- 14.3 From time to time throughout the Term the Trust may need to or desire to provide Alternative Trust Premises for accommodating Staff delivering the Services. The principles set out in clause 14.4 shall apply where this is the case.
- 14.4 Where Alternative Trust Premises are proposed the Parties will seek to agree where Staff are to be based from time to time and will work in line with the following principles (both parties acting reasonably):
- 14.4.1 the Services are to be provided throughout the administrative boundaries of the Council;

- 14.4.2 the Services are intended to achieve the Aims and Outcomes so that Health Related Functions and community nursing and/or therapy activities are delivered to an end user on a seamless basis with staff delivering on these aspects being co-located;
- 14.4.3 services are to be delivered in line with Healthy Wirral Objectives
- 14.4.4 not all staff will be allocated a desk as a) not all staff will be office based simultaneously and good practice in respect of staffing desk space to staffing numbers will apply and b) mobile working should be encouraged and facilitated; and
- 14.4.5 premises costs are to be taken into account in assessing the contributions made by each party to facilitating delivery of the Health Related Functions so that the burdens are not borne disproportionately and any benefits are likewise shared through adjustment to the Service Payment.

15 ASSET TRANSFER

- 15.1 On the Effective Date, the Council will transfer to the Trust for £1 (receipt of which is hereby acknowledged) the Council Assets in their then existing state of repair and condition. No warranty is given as to their usefulness, life, functionality or otherwise and any warranty implied by Law is excluded to the maximum extent lawfully possible.
- 15.2 If the Trust considers necessary for the provision of the Services, the Trust will maintain the Council Assets as often as is necessary at its own cost to enable Staff to operate and for the Services to be delivered. The Trust may replace any of the Council Assets at any time if the Trust acting reasonably considers that any of the Council Assets are obsolete or at the end of their useful life. Where the Trust replaces any Council Assets the replacement item is owned by the Trust and is not considered as a Council Asset.
- 15.3 The Trust will supply all equipment needed for delivery of the Services at its own cost except as expressly set out in this Agreement under this clause 15 and clause 16.
- 15.4 On termination of this Agreement the Trust will, if the Council so requests, transfer to the Council free of cost and deliver in an appropriate manner any Council Assets that transferred to the Trust under clause 15.1 (and that the Trust has not disposed of or replaced prior to termination of this Agreement on the basis that the Council Assets were obsolete or at the end of their useful life). No warranty shall be given by the Trust as to the condition or fitness for purpose of any such Council Assets
- 15.5 The Council shall indemnify the Trust and keep it so indemnified in full and on demand from and against all demands, costs, expenses, claims or fines of whatsoever nature relating to and payable in respect of the Council Assets which are attributable to the period prior to the Effective Date.

16 IT INFRASTRUCTURE AND SOFTWARE

- 16.1 The Parties have agreed that the appropriate case management system for an effective integrated service to deliver the Health Related Functions is the Case Management Application colloquially known as "Liquid Logic" purchased by the Council. This is because the system interfaces with internal and external providers of adults and children's services and provider portals so the pathway for transition for users is effective and the interface between Service User and provider is managed and maintained and spend is appropriately tracked.

16.2 The Council will host the Case Management Application on its servers with each member of Staff delivering the Services being given access rights to it in accordance with the protocols set out in Schedule 17

17 STAFFING AND TUPE

17.1 The Parties agreed that the provisions of TUPE apply to the arrangements effected by this Agreement and the provisions of Schedule 9 apply.

17.2 The provisions of Schedule 10 apply to the pension arrangements for the Transferring Employees.

18 CONTRACT COMMISSIONING

18.1 The Council has responsibility for commissioning third parties to supply care packages that the Trust must make arrangements for following assessments for Services and the Council will enter into such contracts in its absolute discretion in compliance with the Law. At the date of this Agreement the Council has appointed a third party to arrange care packages as its agent for Service Users within PART 1 and PART 2 of Schedule 4. The Trust will comply with the operating protocols for such commissioning arrangements as prescribed by the Council from time to time so that the Trust liaises directly with that third party appropriately and the Trust will in requesting arrangement of care packages operate within the financial limits set out in Clause 12. For those care packages needed for Service Users meeting the criteria set out in PART 3 of Schedule 4 the Council will commission these through its internal commissioning arrangements and the Specification sets out the operational protocol at the time of this Agreement. The Trust has no authority to place care packages directly or settle any disputes with any contractor and must not act or omit to act any way that would waive the Council's rights under contracts it or its agents have in place.

18.2 The Council will be liable to the Trust for, and must indemnify and keep the Trust indemnified against, any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever that result from or arise out of or in connection with the arrangement of care packages by third parties as described in this clause 18.

19 FREEDOM OF INFORMATION

19.1 Both Parties acknowledge that both Parties are subject to the requirements of FOIA and EIR. Each Party must assist and co-operate with the other Party to enable it to comply with its disclosure obligations under FOIA and EIR. Each Party agrees:

19.1.1 that this Agreement and any other recorded information held by it on the other Party's behalf for the purposes of these arrangements are subject to the obligations and commitments of the other Party under FOIA and EIR;

19.1.2 that the decision on whether any exemption under FOIA or exception under EIR applies to any information held by the Party to whom the request for information is addressed is a decision solely for the Party to whom request for information is addressed;

19.1.3 the Party to whom a request for information is addressed, acting in accordance with the codes of practice issued and revised from time to time under Section 45 of FOIA and Regulation 16 of EIR, may disclose information that it holds concerning the other Party but must first use reasonable endeavours to consult with the other Party;

19.1.4 to assist the other Party in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA or EIR) in accordance with a records management system that complies with all applicable records management recommendation and codes of conduct issued under Section 46 of FOIA; and,

19.1.5 that, in assisting the other Party in responding to a request for information, if the assisting Party considers that no exemption under FOIA or exception under EIR applies to the relevant information that it holds and which is requested by the other Party, it provides copies of all information requested by the other Party within 7 Business Days of that request and without charge.

19.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provision of FOIA, or for which an exception applies under EIR or the DPA the content of these arrangements is not confidential information.

19.3 Notwithstanding any other term of this Agreement, the Parties consent to the publication of this Agreement in its entirety (including variations excluding Personal Data), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of FOIA or for which an exception applies under EIR.

19.4 In preparing a copy of this Agreement for publication under clause 19.3, the Parties will consult each other to inform decision-making regarding any redactions.

20 DATA GENERAL

20.1 The Council shall make available to the Trust its current Service User files from the Effective Date.

20.2 The Council holds paper records and archives pre-dating the Case Management Application. Retrieval and sharing of those will be done in accordance with the Information Sharing Protocol.

21 PROTECTION OF PERSONAL DATA

21.1 The Parties shall observe and perform their respective obligations under the Data Protection Legislation. In respect of the Personal Data processed to perform the Services the parties agree that they are joint Data Controllers .Each Party shall comply with its obligations as a Data Controller under the Data Protection Legislation

21.2 Details of the Personal Data to be shared under this Agreement are recorded in Schedule 15. The Parties shall process the data in accordance with Schedule 15.

21.3 When one party is transferring Personal Data (the "Disclosing Party") to the other Party (the "Receiving Party"), the Disclosing Party shall ensure that any Personal Data that is transferred:

21.3.1 has been collected in accordance with the Data Protection Legislation; and

21.3.2 the fair processing notice given to the relevant Data Subject entitles the Receiving Party to Process such Personal Data for the purposes set out in this Agreement

21.4 Neither Party shall Process Personal Data transferred under this Agreement for any purposes other than those set out in this Agreement.

- 21.5 Without Limitation to Clause 21.1, each Party shall:
- 21.5.1 Implement and maintain appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data;
 - 21.5.2 not disclose or transfer the Personal Data to any third party or Staff unless necessary to perform the Services or in the case of disclosure or transfer by the Council its other statutory duties which are not delegated by these arrangements and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the other party (save where such disclosure or transfer is specifically authorised under the Information Sharing Protocol);
 - 21.5.3 take all reasonable steps to ensure the reliability and integrity of any employees who have access to the Personal Data and ensure that the employees:
 - 21.5.3.1 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless permitted by this Agreement; and
 - 21.5.3.2 have undergone adequate training in the Data Protection Legislation and use, care, protection and handling of Personal Data;
 - 21.5.4 notify the other Party promptly of any known breach of technical and organisational security measures where the breach has affected or could have affected Personal Data transferred under this Agreement.
 - 21.5.5 notify the other Party promptly if a request is received from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; and
 - 21.5.6 notify the other Party promptly of any complaint, communication or request regarding the Processing of Personal Data pursuant to this Agreement and provide full cooperation and assistance (within a reasonable timescale) to assist the receiving party in responding to the complaint within any relevant deadlines set out in the Data Protection Legislation.
- 21.6 On receipt of any request or enquiry from an Information Regulator that relates to Personal Data transferred under this Agreement, each Party shall notify the other and shall provide the other with all reasonable assistance to allow the Party in receipt of the request to respond.
- 21.7 Each Party shall allow access to its premises and reasonable notice and provide all reasonable assistance to the other Party to provide the other Party with reasonable assurance that this Agreement is being complied with.
- 21.8 In the event of a request relating to Personal Data transferred under this agreement from a Data Subject:
- 21.8.1 for subject access, the Party who has received the request shall notify the other Party promptly. The other Party shall provide reasonable assistance to allow the Party who has received the request to respond to the Data Subject within the timescales set out in the Data Protection Legislation;

21.8.2 for the rectification or erasure of Personal Data or restriction of Processing, the Party who has received the request shall determine whether such request is valid under the Data Protection Legislation. In the event that the Party which has received the request determines that the relevant Personal Data should be rectified or erased or that any Processing shall be restricted, it shall notify the other Party promptly. The Party receiving the notification shall rectify or erase the Personal Data or restrict Processing (as applicable) promptly.

21.9 The Parties shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Effective Date, a Party wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:

21.9.1 the Party wishing to transfer the Personal Data shall submit a request to the other Party which, if agreed, shall be dealt with in accordance with Clause 21.9.2.1 to 21.9.2.4

21.9.2 the Party wishing to transfer the Personal Data shall set out in its request details of the following:

21.9.2.1 the Personal Data which will be transferred to and/or Processed in any Restricted Country;

21.9.2.2 the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in;

21.9.2.3 any sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries; and

21.9.2.4 how the Party wishing to transfer the Personal Data will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the other Party's compliance with the Data Protection Legislation;

21.9.3 In providing and evaluating the request under Clause 21.9.1, the Parties shall ensure that they have regard to and comply with then current Council, Central Government Bodies and Information Regulator policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Country; and

21.9.4 The Party wishing to transfer the Personal Data shall comply with such other instructions and shall carry out such other actions as the other Party may notify in writing, including;

21.9.4.1 incorporating standard and/or model clauses (which are in line with Good Industry Practice and offer adequate safeguards under the Data Protection Legislation) into this Agreement or a separate data processing agreement between the Parties; and

21.9.4.2 procuring that any sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:

21.9.4.2.1 a direct data processing agreement with the other party on such terms as may be required by the other Party; or

21.9.4.2.2 a data processing agreement with the Party wishing to transfer the Personal Data on terms which are equivalent to those agreed between the other party and the sub-contractor relating to the relevant Personal Data transfer;

and in each case the Party wishing to transfer the Personal Data acknowledges such agreements may include the incorporation of model contract provisions (which are in line with Good Industry Practice as offering adequate safeguards under the Data Protection Legislation) and technical and organisation measures which the other Party deems necessary for the purpose of protection of Personal Data.

21.10 The Trust must nominate an Information Governance Lead, a Caldicott Guardian and Senior Information Risk Owner and advise the Council of the identities and contact details of those individuals.

21.11 The Trust must report any serious data security breaches it makes to the Information Regulator in accordance with the NHS Information Governance Toolkit and the Council must report any serious data security breaches it makes to the Information Regulator in accordance with its policy governing information security incidents from time to time which takes account of the guidance published by the Information Regulator for the public sector on self-reporting. Where a Party has reported in this way, it must consider the mitigating measures that are to be put in place to minimise damage to all affected and potentially affected parties. Each Party shall use its reasonable endeavours to assist the other Party in complying with its obligations under the Data Protection Legislation. Each Party shall not perform its obligations under this Agreement in such a way as to cause the other Party to breach its obligations under the Data Protection Legislation to the extent it is reasonably aware or ought reasonably to have been aware, that the same would be a breach of such obligations.

21.12 The Parties acknowledge their respective obligations arising under the Data Protection Legislation, EIR and HRA, and under the common law duty of confidentiality, and must assist each other as necessary to enable each other to comply with these obligations.

22 CONFIDENTIALITY

22.1 Without prejudice to the obligations of the Parties in relation to Confidential Information each Party must, except as permitted by this Clause 22,

22.1.1 keep confidential all Confidential Information disclosed to it by the other Party in connection with this Agreement;

22.1.2 use all reasonable endeavours to prevent their staff from making any disclosure to any person of that Confidential Information; and

22.1.3 use the disclosing Party's Confidential Information only in connection with the receiving Party's performance under this Agreement.

22.2 Clause 22.1 will not apply to disclosure of Confidential Information that:

22.2.1 is in or comes into the public domain other than by breach of this Agreement

- 22.2.2 the receiving Party can show by its records was in its possession before it received it from the disclosing Party; or
- 22.2.3 the receiving Party can prove it obtained or was able to obtain from a source other than the disclosing Party without breaching any obligations of confidence.
- 22.3 The Council may disclose, with the Trust's prior written consent, the Trust's Confidential Information where the Council judges that necessary in the context of public accountability whether or not disclosure is required under the applicable law.
- 22.4 A Party may disclose the other Party's Confidential Information:
 - 22.4.1 to comply with applicable law;
 - 22.4.2 to any appropriate Regulatory Body;
 - 22.4.3 in connection with any dispute resolution or litigation between the Parties; and
 - 22.4.4 as permitted under any other express arrangement or other provision of this Agreement.

23 **HEALTH AND SAFETY**

- 23.1 The Trust 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.
- 23.2 The Trust 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 Council on request.
- 23.3 The Trust shall notify the Council 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.

24 **ACCESS AND EQUALITY**

- 24.1 The Parties must not discriminate between or against Service Users, on the grounds of age, disability, gender reassignment, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by the Law.
- 24.2 In performing the obligations on it under this Agreement the Trust must comply with the Equality Act 2010 and have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to:
 - 24.2.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act 2010;
 - 24.2.2 advance equality of opportunity between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it; and
 - 24.2.3 foster good relations between persons who share a relevant protected characteristic (as defined in the Equality Act 2010) and persons who do not share it,

24.3 The Trust must provide to the Council as soon as reasonably practicable, any information that the Council reasonably requires to:

24.3.1 monitor the equity of access to the Services; and

24.3.2 fulfil the Council's obligations under the Law.

25 LIABILITY AND INDEMNITY

25.1 Without affecting its liability for breach of any of its obligations under this Agreement the Trust will be liable to the Council for, and must indemnify and keep the Council indemnified against:

25.1.1 any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:

25.1.1.1 any loss of or damage to property (whether real or personal); and

25.1.1.2 any injury to any person, including injury resulting in death; and

25.1.2 any Losses of the Council, that result from or arise out of the Trust's negligence or breach of contract in connection with the performance of this Agreement except to the extent that loss, damage or injury has been caused by an act or omission by or on the part of, or in accordance with the instructions of, the Council or their employees.

25.2 Without affecting its liability for breach of any of its obligations under this Agreement the Council will be liable to the Trust for, and must indemnify and keep the Trust indemnified against:

25.2.1 any loss, damages, costs, expenses, liabilities, claims, actions and/or proceedings (including the cost of legal and/or professional services) whatsoever in respect of:

25.2.1.1 any loss or damage to property (whether real or personal); and

25.2.1.2 any injury to any person, including injury resulting in death; and

25.2.2 any Losses of the Trust that result from or arise out of the Council's negligence or breach of contract in connection with the performance of this Agreement except to the extent that loss, damage or injury has been caused by an act or omission by or on the part of or in accordance with the instructions of the Trust or their employees.

25.3 Each Party (the **Indemnifying Party**) must put in place and maintain in force until its liability may reasonably be considered to have ceased, at its own cost (and not that of any employee), appropriate Indemnity Arrangements in respect of:

25.3.1 employers' liability to a minimum of £10 million per event;

25.3.2 public liability to a minimum of £10 million per event; and

25.3.3 professional negligence to a minimum of £2 million per event.

25.4 Within 5 Business Days following written request from one Party (the **Indemnified Party**) to the other (the Indemnifying Party), the Indemnifying Party must provide documentary evidence that Indemnity Arrangements required under clause 25.3 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.

- 25.5 No later than 3 months prior to the expiry of these arrangements or within 10 Business Days following the date of service of the notice to terminate or of agreement to terminate (as appropriate) each Indemnifying Party must provide to the Indemnified Party satisfactory evidence in writing of its arrangements to satisfy the requirements of clause 25.3 in respect of any ongoing liability it has or may have in negligence to any Service User or the Indemnified Party arising out of a Service User's care under this Agreement. If the Indemnifying Party fails to do so the Indemnified Party may themselves procure appropriate Indemnity Arrangements in respect of such ongoing liabilities and the Indemnifying Party must indemnify and keep the Indemnified Party indemnified against the costs incurred by them in doing so.
- 25.6 If the proceeds of any Indemnity Arrangements are insufficient to cover the settlement of any claim relating to this Agreement the Indemnifying Party must make good any deficiency. Nothing in this Agreement will exclude or limit the liability of the Indemnifying Party for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation.

26 ANTI-BRIBERY PROVISION

- 26.1 Neither Party shall do any of the following:
- 26.1.1 offer, give, or agree to give the other Party (or any of its officers, employees or agents) any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining of performance of this Agreement or any other contract with the other Party, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the other Party; and
- 26.1.2 in connection with this Agreement, pay or agree to pay any commission, other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the other Party,
- (together "**Prohibited Acts**").
- 26.2 If either Party or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Bribery Act 2010 with or without the knowledge of the other Party in relation to this Agreement, the non-defaulting Party shall be entitled:
- 26.2.1 to exercise its right to terminate under clause 38 (Termination) and to recover from the defaulting Party the amount of any loss resulting from the termination; and
- 26.2.2 to recover from the defaulting Party the amount or value of any gift, consideration or commission concerned; and
- 26.2.3 to recover from the defaulting Party any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.
- 26.3 Each Party must provide the other Party upon written request with all reasonable assistance to enable that Party to perform any activity required for the purposes of complying with the Bribery Act 2010. Should either Party request such assistance the Party requesting assistance must pay the reasonable expenses of the other Party arising as a result of such request.
- 26.4 Each Party must have in place an anti-bribery policy for the purposes of preventing any of its staff from committing any act prohibited under the Bribery Act 2010. Such policy must be disclosed to the other

Party within 5 Business Days of the other Party requesting it and enforced by the relevant Party where applicable.

26.5 Should either Party become aware of or suspect any breach of this clause 26, it will notify the other Party immediately. Following such notification, the notifying Party must respond promptly and fully to any enquiries of the notified Party, co-operate with any investigation undertaken by the notified Party and allow the notified Party to audit any books, records and other relevant documentation.

27 COUNTER FRAUD

27.1 The Trust must put in place and maintain appropriate counter fraud and security management arrangements.

27.2 The Trust must take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and the Trust in connection with the receipt of monies from the Council and/or any payments from a Service User and/or defrauding a Service User.

27.3 The Trust must notify the Council immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

27.4 If the Trust or its Staff commits fraud in relation to this Agreement, the Council may terminate this Agreement by written notice to the Trust with immediate effect and recover from the Trust the amount of any Loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services, that is over and above the cost that the Council would have paid the Trust had the Agreement not been terminated, for the remainder of the term of this Agreement had it not been terminated.

28 ENGAGEMENT AND INVOLVEMENT

28.1 The Trust shall engage, liaise and communicate with Service Users, their Carers and Legal Guardians in an open and clear manner in accordance with the Law, Good Industry Practice and their human rights.

28.2 The Trust must supply the data to enable the Council to supply the statutory returns the Council is obliged to complete and in particular the returns for Service Users and Carers satisfaction experience ratings. The data must be supplied regularly by appropriate case management details being completed in the Case Management Application. In addition the Trust shall carry out any other surveys reasonably required by the Council in relation to the Services. The form, and method of reporting such surveys shall be in the form prescribed in the Service Specification and if not so prescribed shall be agreed between the Parties in writing from time to time and if not prescribed or agreed then in such form as is consistent with Good Industry Practice.

29 STAFF

29.1 At all times, the Trust must ensure that:

29.1.1 each of the Staff is suitably qualified and experienced, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

29.1.2 there is an adequate number of Staff to provide the Services properly in accordance with the provisions of the applicable Service Specification and shall conduct regular reviews of staffing levels and resources and in planning take account of possible increased seasonal demand;

29.1.3 where applicable, Staff are registered with the appropriate professional regulatory body;
and

29.1.4 the Trust has procedures and guidance for Staff that will safeguard children and vulnerable adults in receipt of Services and disciplinary policies and procedures that reflect the importance of safeguarding children and vulnerable adults in receipt of Services and their families. Written guidance must be provided to all Staff, which explicitly states that Staff are not allowed to:

29.1.4.1 act as appointees;

29.1.4.2 act as executors or witness to the Service Users will or other legal documents;

29.1.4.3 borrow from or loan money to the Service User;

29.1.4.4 receive money or any gifts from the Service User without informing his/her manager. The reporting of such gifts is essential and must be recorded by the Trust;

29.1.4.5 use the Service User's phone or other devices to make or receive calls except for urgent calls relating to the Service User's welfare; and/or

29.1.4.6 take members of their own family or friends to the Service User's home.

29.2 The Trust must have in place adequate systems for training and development of Staff, seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives proper and sufficient continuous professional and personal development, training and instruction each in accordance with Good Industry Practice and the standards of any applicable relevant professional body.

29.3 Save in respect of the Transferring Employees, before the Trust engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Trust must without limitation, complete:

29.3.1 the Employment Checks; and

29.3.2 such other checks as required by the DBS.

30 SERVICE IMPROVEMENTS AND BEST VALUE DUTY

30.1 The Trust must to the extent reasonably practicable co-operate with and assist the Council in fulfilling its Best Value Duty.

30.2 During the Term of this Agreement at the reasonable request of the Council, the Trust must:

30.2.1 demonstrate how it is going to secure continuous improvement in the way in which the Services are delivered having regard to a combination of economy, efficiency and effectiveness; and

30.2.2 implement such improvements.

30.2.3 where improvements are implemented, identify the cost savings if any and how if at all those might also benefit the Council .

31 **SAFEGUARDING CHILDREN AND VULNERABLE ADULTS AND WHISTLEBLOWING PROCEDURES**

- 31.1 The Trust shall adopt safeguarding policies and procedures that comply with the Council's safeguarding policy as amended from time to time.
- 31.2 At the written request of the Council and by no later than 5 Business Days following receipt of such request, the Trust must provide evidence to the Council that it is addressing any safeguarding concerns.
- 31.3 If requested by the Council, the Trust shall participate in the development of any local multi-agency safeguarding quality indicators and/or plan.
- 31.4 The Trust will ensure all Staff engaged in delivery of the Services are aware that they have a duty to report any suspicions, allegations, observations or disclosures of abuse to their line manager or, if their line manager is not available another manager engaged in delivery of the Services who is senior to the person who has the duty to make the report, as soon as reasonably practicable.
- 31.5 The Trust will remove from delivery of Services any person against whom an allegation of abuse is made until such time (if at all) as such allegation is investigated and all appropriate measures following such investigation taken effect.
- 31.6 The Trust must have a confidential reporting procedure allowing Staff and others to raise matters concerning possible malpractice on a confidential basis that protects so far as practicable that member of Staff being identified.

32 **COMPLAINTS**

- 32.1 The Trust must respond promptly with all requisite information and in any event within 10 Business Days to requests made by the Council (or its nominee) for information to enable the Council to respond to a complaint made regarding the Services and must in all respects act and assist the Council so as to enable the Council to respond substantively to complaints and to enable the Council to comply with its complaints procedure from time to time relating to the Services .
- 32.2 The Trust must respond promptly with all requisite information to requests from the Council to enable the Council to address political queries raised whether at Councillor level or M.P. level and in all respects act and assist the Council so as to enable the Council to respond substantively to those queries within any timescales set out and agreed with Councillors under any member protocols and otherwise promptly and no later than 5 Business Days
- 32.3 In addition to and separate from the processes in clause 32.1 and 32.2 the Trust must have a complaints process and a compliments process and will report to the Council on the inputs and outputs of such processes on a quarterly basis.

33 **AUDIT AND INSPECTION**

- 33.1 The Trust must comply with all reasonable written requests made by CQC, OFSTED, the National Audit Office or any other Regulatory Body or any Authorised Person, for entry to the Trust Premises or such other premises as may be relevant for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services, and for information relating to the provision of the Services. The Trust may (subject to any overriding obligations duties or requirements of the Law) refuse

such request where it would adversely affect the provision of the Services or, the privacy or dignity of a Service User providing it makes arrangements as soon as reasonably practical for the request to be met.

33.2 Subject to Law and notwithstanding clause 33.1, an Authorised Person may enter the Trust Premises without notice for the purposes of auditing, viewing, observing or inspecting such premises and/or the provision of the Services. During such visits, subject to Law and Good Industry Practice the nature of the Services and the effect of the visit on Service Users, the Trust must not restrict access and must give all reasonable assistance and provide all reasonable facilities to the Authorised Person.

33.3 Within 10 Business Days of the Council's reasonable request to do so, the Trust must send the Council a verified copy of the results of any audit, evaluation, inspection, investigation or research in relation to the Services, or services of a similar nature to the Services delivered by the Trust, to which the Trust has access and which it can disclose in accordance with the Law.

33.4 The Council shall use its reasonable endeavours to ensure that the conduct of any audit does not unreasonably disrupt the Trust or delay the provision of the Services.

33.5 During any audit undertaken under clause 33.1 or 33.2, the Trust must provide the Council with all reasonable co-operation and assistance in relation to that audit, including:

33.5.1 all reasonable information requested within the scope of the audit;

33.5.2 reasonable access to the Trust Premises; and

33.5.3 access to the Staff

33.5.4 reasonable access to the Council Premises.

34 OMBUDSMAN

34.1 The Trust must co-operate with any investigation of the Ombudsman investigating a complaint by any Service User or Carer and must respond substantively to requests for information that the Council raise in connection with such investigations within such timescale as enables the Council to comply with the request and timescale of the Ombudsman. The Council shall notify the Trust of the timescale and request in sufficient time to enable the Trust to address the matter. The Trust shall pay the cost of any payment awarded to such complainant where and to the extent that there is a finding of maladministration causing injustice as a result of fault attributable to the Trust.

35 ISSUE OF PERFORMANCE NOTICE

35.1 If the Parties have agreed a consequence in relation to a Party failing to meet a KPI (the **Defaulting Party**) and the Defaulting Party fails to meet the KPI, the other Party (the **Non-Defaulting Party**) will be entitled to exercise the agreed consequence immediately and without issuing a Performance Notice, irrespective of any other rights it may have under clauses 35-37.

35.2 The provisions of this clause 35 do not affect any other rights and obligations the Parties may have under this Agreement.

35.3 Clauses 35-37 will not apply to a failure of the Trust to meet a KPI if the Trust's failure to agree or comply with a Remedial Action Plan (as the case may be) is as a result of an act or omission or the unreasonableness of the Council (including a failure to comply with its obligations to provide Support Arrangements) or an act or omission of a third party appointed by the Council or the Trust as agent for the Council as described in clause 18.

- 35.4 If the Council considers that the Trust has failed or is failing to comply with any obligation on its part in this Agreement the Council may issue the Trust with a Performance Notice in addition to all other remedies under this Agreement and/or in common law and/or otherwise.
- 35.5 If the Trust believes that the Council has failed or is failing to comply with any obligation on its part in this Agreement the Trust may issue the Council with a Performance Notice in addition to all other remedies under this Agreement and/or in common law and/or otherwise.
- 35.6 The Trust and the Council will meet to discuss any Performance Notice issued under clauses 35.4 or 35.5 within 5 Business Days of its issue (**Contract Performance Meeting**).
- 35.7 At the Contract Performance Meeting the Council and the Trust will endeavour to agree either:
- 35.7.1 that the Performance Notice is withdrawn; or
 - 35.7.2 to implement an appropriate Remedial Action Plan.
- 35.8 If following the issue of a Performance Notice, the Defaulting Party does not attend a Contract Performance Meeting within 5 Business Days of the issue of a Performance Notice, the Performance Notice will apply and Non-Defaulting Party will advise the Defaulting Party within 10 Business Days of the scheduled Contract Performance Meeting of the Remedial Action Plan that is required.
- 35.9 At the Contract Performance Meeting the Council and the Trust must agree either:
- 35.9.1 that the Performance Notice is withdrawn; or
 - 35.9.2 to implement an appropriate Immediate Action Plan and/or Remedial Action Plan.
- If the Council and the Trust cannot agree on either course of action, they must undertake a Joint Investigation.
- 35.10 If a Joint Investigation is to be undertaken:
- 35.10.1 the Council and the Trust must agree the terms of reference and timescale for the Joint Investigation (being no longer than 2 months) and the appropriate clinical and/or non-clinical representatives from each relevant Party to participate in the Joint Investigation; and
 - 35.10.2 the Council and the Trust may agree an Immediate Action Plan to be implemented concurrently with the Joint Investigation.
- 35.11 On completion of a Joint Investigation, the Council and the Trust must produce and agree a JI Report. The JI Report must include a recommendation to be considered at the next review meeting (held in accordance with [section 4 of the Service Specification]) that either:
- 35.11.1 the Performance Notice be withdrawn; or
 - 35.11.2 a Remedial Action Plan be agreed and implemented.

Remedial Action Plan

- 35.12 If a Remedial Action Plan is to be implemented, the Council and the Trust must agree the contents of the Remedial Action Plan within:

- 35.12.1 5 Operational Days following the Contract Performance Meeting; or
- 35.12.2 5 Operational Days following the review meeting in the case of a Remedial Action Plan recommended under clause 35.11.2.
- 35.13 A Remedial Action Plan will set out:
 - 35.13.1 action required, which Party has to complete the action and the date by which the action is to be completed; and
 - 35.13.2 the improvements in outcomes and/or other key indicators required, the date by which each improvement must be achieved and the period over which that improvement must be sustained (if not the remainder of the period of this Agreement)
 - 35.13.3 in the event that the Defaulting Party is the Trust, any agreed reasonable and proportionate financial sanctions on the Trust for failing to
 - 35.13.3.1 complete any action stipulated in the Remedial Action Plan and/or
 - 35.13.3.2 failing to achieve and maintain any stipulated improvement.
- 35.14 Any financial sanctions stipulated in a Remedial Action Plan are subject to the following caps:
 - 35.14.1 where the Remedial Action Plan is agreed (and not set unilaterally by the Non-Defaulting Party because clause 35.8 applies) the sanction will not exceed in aggregate 5% of one twelfth of the Service Payment payable in the Financial Year in which the non-performance occurs;
 - 35.14.2 where the Remedial Action Plan is set unilaterally by the Non-Defaulting Party because clause 35.8 applies the sanction will not exceed 10% of one twelfth of the Service Payment payable in the Financial Year in which the non-performance occurs
- 35.15 The Parties agree that, where a Non-Defaulting Party sets the Remedial Action Plan unilaterally under Clause 35.8, the actions set out in the Remedial Action Plan and/or the improvements in outcome and other key indicators will not require the Defaulting Party to exceed the standard of Services or Support Arrangements (as appropriate) or the outcome or other KPIs set out in the Agreement at the time the Remedial Action Plan is notified to the Defaulting Party.
- 35.16 The Trust and the Council (as relevant) must implement the actions and achieve and maintain the improvements applicable to them within the timescales set out in and otherwise in accordance with the Remedial Action Plan.
- 35.17 The Council and the Trust must record progress made or developments under the Remedial Action Plan in accordance with its terms. The Council and the Trust must review and consider that progress on an ongoing basis and in any event at the next review meeting held pursuant to section 4 of the Service Specification.

36 **WITHHOLDING OF PAYMENT**

If the Trust fails to complete any action required of it or to deliver the improvement required by a Remedial Action Plan within the timescales set out in the Remedial Action Plan for the relevant action or improvement unless withdrawn the Council may notify the Trust of its intention to withhold the amounts set out in the Remedial Action

Plan as financial sanctions from the next instalment of the Service Payment due. After issue of the notification the Council may deduct and permanently withhold and retain the relevant amount.

37 EXCEPTION REPORT

If a Defaulting Party fails to complete any action required of it or to deliver the improvement required by a Remedial Action Plan within the timescales set out in the Remedial Action Plan for the relevant action or improvement then the Non-Defaulting Party may issue an Exception Report to the a Defaulting Party in respect of any such failure following the expiry of such period. This means there may be multiple Exception Reports in respect of the same Remedial Action Plan served at different points.

38 TERMINATION PROVISIONS

38.1 This Agreement may be terminated by the Council in whole or in part by service of not less than 12 months' notice in writing to terminate this Agreement, such notice to expire no earlier than 31 March 2020.

38.2 This Agreement may be terminated by the Trust in whole or in part by service of not less than 12 months' notice in writing to terminate this Agreement, such notice to expire no earlier than 31 March 2020.

38.3 Either Party may terminate this Agreement by written notice, with immediate effect, if and to the extent to which either Party suffers an Event of Force Majeure and that Event of Force Majeure persists for more than 40 Business Days without the Parties agreeing alternative arrangements.

38.4 Subject to clause 38.5, the Council may terminate this Agreement with immediate effect (or at its discretion on giving a period of notice) by written notice to the Trust if:

38.4.1 the Trust loses any Consent;

38.4.2 the Trust has any Consent varied or restricted;

38.4.3 there is an Insolvency Event;

38.4.4 the Trust has been served with 4 or more Performance Notices (and at least 4 have not been withdrawn) in any rolling period of 3 months;

38.4.5 the Trust breaches Clause 21 (Protection of Personal Data) Clause 24 (Access, Equality and Discrimination) or Clause 31 (Safeguarding Children and Vulnerable Adults and Whistleblowing Procedures) and such breach materially and adversely affects a Service User, except that where the breach is capable of remedy, the Council shall only be entitled to terminate where:

38.4.5.1 the Council has, by written notice, required the Trust to remedy the breach within 30 days of the date of such notice (or other timescale agreed by the Parties); and

38.4.5.2 the Trust has not taken and completed such remedial action to the satisfaction of the Council (acting reasonably);

38.4.6 the Trust is in breach of Clause 7.2.4 (to provide Services in compliance with all applicable Law), the Council has notified such breach to the Trust and the Trust has not taken action

- to the satisfaction of the Council (acting reasonably) to comply with the applicable Law within 40 Business Days;
- 38.4.7 the Trust is in material breach of any regulatory compliance standards issued by any Regulatory Body;
- 38.4.8 the Council has issued 2 or more Exception Reports in any rolling period of 3 months;
- 38.4.9 the Trust has breached the terms of Clause 26 [Prohibited Acts];
- 38.4.10 the NHS licence for the Trust is revoked or varied in a way that materially and adversely affects it or is likely to affect it or is likely to affect its ability to deliver Services, or restrict its ability to deliver the Services,
- 38.4.11 the Trust has assigned the benefit of this Agreement in breach of Clause 43;
- 38.4.12 the Trust has breached any of its obligations under TUPE; and/or
- 38.4.13 the Trust has failed to comply with any of its obligations to the Scheme.
- 38.5 The Council shall not be entitled to terminate this Agreement pursuant to clause 38.4 where the Trust's alleged breach of this Agreement has been caused by or in connection with:
- 38.5.1 the Council's breach of its obligations to provide Support Arrangements pursuant to clause 13 and Schedule 7; or
- 38.5.2 the act or omission of a third party appointed by the Council or the Trust as agent for the Council as described in clause 18.
- 38.6 The Trust may terminate this Agreement with immediate effect (or at its discretion on giving a period of notice) by written notice to the Council if:
- 38.6.1 the Council loses any Consent;
- 38.6.2 the Council has any Consent varied or restricted;
- 38.6.3 the Council has been served with 4 or more Performance Notices (and at least 4 have not been withdrawn) in any rolling period of 3 months;
- 38.6.4 the Trust has issued 2 or more Exception Reports in any rolling period of 3 months;
- 38.6.5 the Council has breached the terms of Clause 13 (Support Arrangements);
- 38.6.6 the Council has breached the terms of Clause 26 [Prohibited Acts];
- 38.6.7 the Council has breached any of its obligations under TUPE; or
- 38.6.8 any payment of Service Payment due (in full or part) is not made as soon as reasonably practicable after receipt of an appropriately addressed invoice which has not been contested as set out in clause 1.1; and
- 38.6.8.1** the relevant amount of the Service Payment referred to in clause 38.6.8 is not made within 10 Business Days of receipt of a written notice from the Trust requiring payment to be made; and

38.6.8.2 and if VAT is due on the amount then a VAT invoice has been raised.

39 CONSEQUENCES OF TERMINATION

- 39.1 Expiry or termination of this Agreement, or termination of the Services, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination.
- 39.2 If, as a result of termination of this Agreement following service of notice by the Council pursuant to clause 38.4, the Council procures any terminated Service from an alternative provider, and the cost of doing so (to the extent reasonable) exceeds the amount that would have been payable to the Trust for providing the same Service, then the Council will be entitled to recover from the Trust (in addition to any other sums payable by the Trust to the Council in respect of that termination) the excess cost and all reasonable related administration costs it incurs (in each case) in respect of the period of 6 months following termination.
- 39.3 On or pending expiry or termination of these arrangements or termination of the Services, the Council and the Trust and if appropriate any successor Trust and any co-commissioner of services with the Council for health functions, will agree a Succession Plan. In the absence of any agreement 6 months prior to expiry or termination then the Provisional Exit Arrangements will apply.
- 39.4 For a reasonable period before and after termination of these arrangements or of the Services or any part of them and before and after the expiry of these arrangements the Trust must:
- 39.4.1 co-operate fully with the Council and any co-commissioner of services with the Council for health functions or any co-funder of the Services and any successor provider of the terminated Services in order to ensure continuity and a smooth transfer of the expired or terminated Services, and to avoid any inconvenience or any risk to the health and safety of Service Users or employees of the Council or members of the public; and
 - 39.4.2 at the reasonable cost of the Council and where the Council reasonably requests:
 - 39.4.2.1 promptly provide all reasonable assistance and information to the extent necessary to effect an orderly assumption of the terminated Services by a successor;
 - 39.4.2.2 deliver to the Council all materials, papers, and documents used by the Trust in the provision of any terminated Services; and
 - 39.4.2.3 use all reasonable efforts to obtain the consent of third parties to the assignment, novation or termination of existing contracts between the Trust and any third party which relate to or are associated with the terminated Services.
- 39.5 On the pending expiry or termination of these arrangements, or termination of any Service, the Parties must:
- 39.5.1 implement and comply with their respective obligations under the Succession Plan; and
 - 39.5.2 use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Service Users or prospective Service Users as a result of the expiry or termination of these arrangements or the Services.

- 39.6 On expiry or termination of these arrangements or termination of any Services:
- 39.6.1 the Trust must stop accepting any referrals for Service Users that require any expired or terminated Services; and
- 39.6.2 subject to any appropriate arrangements made under clause 39.4 and 39.5, the Trust must immediately cease its services to Service Users requiring the expired or terminated Service, and/or arrange for their transfer or discharge as soon as is practicable in accordance with Good Practice and the Succession Plan.
- 39.7 If termination of these arrangements or any Service takes place with immediate effect in accordance with clause 38 (Termination Provisions), the Trust is unable or not permitted to continue to provide any affected Service under any Succession Plan, or implement arrangements for the transition to a successor provider, the Trust must co-operate fully with the Council to ensure that any affected Services are commissioned without delay from an alternative provider.

40 DISPUTES

- 40.1 Disputes relating to whether or not a person meets the Service User criteria and therefore is a person to whom the Trust shall supply the Services or not may only be escalated by an Associate Director of The Trust who will refer it to the Director of Adult Social Services at the Council or his delegated officer who will be the final arbiter and whose decision will be binding on both Parties to this Agreement.
- 40.2 Disputes other than those arising in respect of the matters set out in clause 40.1, shall be dealt with as follows:
- 40.2.1 In the event of a dispute between the Council and the Trust arising out of this Agreement, either Party may serve written notice of the dispute on the other Party, setting out full details of the dispute.
- 40.2.2 The Council's Assistant Director of Adult Social Care and the Trust's [] (or their respective nominees who shall not hold any grade lower than themselves) shall meet in good faith as soon as possible and in any event within five (5) Business Days of notice of the dispute being served pursuant to clause 40.2.1, at a meeting convened for the purpose of resolving the dispute.
- 40.2.3 If the dispute remains after the meeting detailed in Clause 40.2.2 has taken place, the Council's Director of Adult Social Care and the [] of the Trust (or their respective nominees who shall not hold any grade lower than themselves) shall meet in good faith as soon as possible after the relevant meeting and in any event with ten (10) Business Days of the date of the meeting, for the purpose of resolving the dispute.
- 40.2.4 If the dispute remains after the meeting detailed in clause 40.2.3 has taken place then the Chief Executive of the Council and the Chief Executive of the Trust shall meet in good faith as soon as possible after the relevant meeting and in any event within five (5) Business Days of the date of the meeting for the purpose of resolving the dispute
- 40.2.5 Nothing in the procedure set out in this clause 40 shall in any way affect any other rights a Party may have in relation to a breach of this Agreement and/or their rights to take immediate legal action.

41 **PROVISIONS SURVIVING TERMINATION**

Any rights, duties or obligations of any of the Parties which are expressed to survive, or which otherwise by necessary implication survive, the expiry or termination for any reason of this Agreement, together with all indemnities, will continue after expiry or termination, subject to any limitations of time expressed in this Agreement.

42 **BUSINESS CONTINUITY**

42.1 The Trust must comply with the Civil Contingencies Act 2004 and with any applicable national and local civil contingency plans. The Council has certain obligations relating to civil contingency and emergency planning which are being delegated to the Trust and are in more detail in the Specification.

42.2 The Trust has a business continuity plan Parties will work together to ensure business continuity plans are in place throughout the life of this Agreement and meet both Parties' needs and the needs of Service Users.

43 **ASSIGNMENT**

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

44 **THIRD PARTY RIGHTS**

No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement except as stated in Schedule 9 (TUPE provisions) and Schedule 10 (Pension Provisions)

45 **CAPACITY OF COUNCIL NOT FETTERED**

Without prejudice to the contractual rights and/or remedies of the Trust expressly set out in this Agreement, the obligations of the Council under this Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon the Council or in any way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability on the part of the Council under this Agreement (howsoever arising) in any capacity other than as contracting counterparty.

46 **SEVERABILITY**

If any provision or part of any provision of this Agreement is declared invalid or otherwise unenforceable, the provision or part of the provision as applicable will be severed from this Agreement and this will not affect the validity and/or enforceability of the remaining part of that provision or other provisions of this Agreement.

47 **WAIVER**

Any relaxation or delay by either Party in exercising any right under this Agreement will not be taken as a waiver of that right and will not affect the ability of that Party subsequently to exercise that right.

48 **EXCLUSION OF PARTNERSHIP, JOINT VENTURE OR AGENCY**

Nothing in this Agreement creates a partnership or joint venture or relationship of employer and employee between the Council and the Trust. The Parties agree that, except for the matters set out in clause 18, nothing in this Agreement creates a relationship of principal and agent between the Council and the Trust.

49 **INTELLECTUAL PROPERTY**

- 49.1 Except as set out expressly in this Agreement no Party will acquire the IPR of any other Party.
- 49.2 The Council grants the Trust a fully paid-up, non-exclusive licence to use the Commissioner Deliverables for the sole purpose of providing the Services.
- 49.3 If the Trust creates any new IPR through the delivery of the Services or otherwise in connection with its obligations under this Agreement, the Trust shall own such IPR and shall grant to the Council a fully paid up non-exclusive licence to use the new IPR for the sole purpose of the fulfilment of the Council's obligations under this Agreement.

50 **FORCE MAJEURE**

- 50.1 Nothing in this Agreement relieves the Trust from its obligations to provide the Services in accordance with this Agreement and the Law (including the Civil Contingencies Act 2004) if the Services required arise as a consequence of or relate to an Event of Force Majeure
- 50.2 If an Event of Force Majeure occurs, the Affected Party must:
- 50.2.1 take all reasonable steps to mitigate the consequences of that event;
 - 50.2.2 resume performance of its obligations as soon as practicable; and
 - 50.2.3 use all reasonable efforts to remedy its failure to perform its obligations under this Agreement.
- 50.3 The Affected Party must serve an initial written notice on the other Party immediately when it becomes aware of the Event of Force Majeure. This initial notice must give sufficient detail to identify the Event of Force Majeure and its likely impact. The Affected Party must then serve a more detailed written notice within a further 5 Business Days. This more detailed notice must contain all relevant information as is available, including the effect of the Event of Force Majeure, the mitigating action being taken and an estimate of the period of time required to overcome the event and resume full delivery of Services. The Parties shall if notice is served consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable for those steps to enable continued provision of the Services affected by the Event of Force Majeure
- 50.4 The Affected Party shall notify the other Party as soon as practicable after the Event of Force Majeure ceases or if earlier no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
- 50.5 Subject to the overriding provision of Clause 50.1 if it has complied with its obligations under Clauses 50.2 and 50.3, the Affected Party will be relieved from liability under this Agreement if and to the extent that it is not able to perform its obligations under this Agreement due to the Event of Force Majeure.

51 **COSTS AND EXPENSES**

Each Party is responsible for paying its own costs and expenses incurred in connection with the preparation negotiation and execution of this Agreement

52 **VARIATIONS**

- 52.1 Except as otherwise set out elsewhere in this Agreement, a Party wishing to vary this Agreement must send a notice of variation to the other Party setting out in detail the proposed variation including proposed

amendments to this Agreement. The Party receiving such notice of variation will respond to the notice within 14 Business Days indicating its agreement or otherwise to the notice of variation, acting reasonably and in accordance with the Law.

52.2 Except as otherwise set out elsewhere in this Agreement, no variation to this Agreement will be valid without the prior written consent of both Parties. Any variation shall be recorded at the next following strategic quarterly review meeting.

53 **ENTIRE CONTRACT**

This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement, except for any contract entered into between the Council and the Trust to the extent that it relates to the same or similar services and is designed to remain effective until the Effective Date.

54 **GOVERNING LAW AND JURISDICTION**

This Agreement will be governed by and interpreted in accordance with English Law and will be subject to the exclusive jurisdiction of the Courts of England and Wales.

55 **NOTICES**

55.1 Any notices given under this Agreement must be in writing and must be served by hand, or post to the address below:

55.1.1 For the Trust:

[insert name/address]

55.1.2 For the Council:

[insert name/address]

55.2 Notices:

55.2.1 by post will be effective upon the earlier of actual receipt, or 5 Business Days after mailing;
or

55.2.2 by hand will be effective upon delivery.

56 **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which will be regarded as an original, but all of which together will constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

SCHEDULE 1

AGREED AIMS AND OUTCOMES OF THE SECTION 75 ARRANGEMENT

- 1 The agreed aims of the Section 75 arrangements are:
 - 1.1 improving the quality of the Services (including outcomes that are achieved from the provision of the Services);
 - 1.2 reducing inequalities between persons with respect to their ability to access the Services; and
- 2 reducing inequalities between persons with respect to the outcomes achieved for them by provision of the Services
The agreed outcomes of the Section 75 arrangements are:
 - 2.1 an improved health & wellbeing experience to all referred persons, Service Users and Carers, in all health, community and social care settings;
 - 2.2 focus on people's assets, not deficits in assessing and care planning, supporting people to help themselves and promoting health, wellbeing and independence;
 - 2.3 reduction in the frequency and necessity for emergency admissions and for care in hospital, residential and nursing home settings;
 - 2.4 more people enabled to access appropriate and effective services closer to home;
 - 2.5 improved satisfaction levels for workforce across health, community and social care settings;
 - 2.6 people enabled to live longer, healthier lives;
 - 2.7 increased numbers of persons with ability to self-manage; and
 - 2.8 improved information and signposting.

SCHEDULE 2

SERVICE SPECIFICATION

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SCHEDULE 3

SERVICE PAYMENT

See rider 2

DRAFT

SCHEDULE 4

SERVICE USERS - DESCRIPTIONS

1 PART 1

People who are suffering from a severe or persistent mental health disorder, associated with a high level of mental distress, which impacts on their level of functioning in the community.

2 PART 2

2.1 People with a disability that has been developed before the age of 18, who have a need for ongoing social care case management and review and also meet the following criteria:

2.1.1 their needs are assessed as being complex*; and/or

2.1.2 their support needs, and carer's needs, are regularly changing requiring intervention and reassessment.

2.2 *Complex - it is difficult to completely define what complex needs are. The following characteristics would be expected

2.2.1 regular and significant challenging behaviour where the person is deemed to lack capacity

2.2.2 needs that will regularly change and require a swift response from qualified social work staff (this could be changes due to their condition, difficulties with managing their care with a high risk of provider breakdown)

2.2.3 People who require frequent or sustained intervention from Mental Health and/or Learning Difficulties health colleagues.

2.2.4 People that, due to the nature of their complex disability, are frequently in need of safeguarding interventions

3 PART 3

3.1 Children young people and their families where the child has a severe or substantial disability (i.e. a physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out day to day activities) and specifically

- A severe or profound learning disability
- A severe physical disability.
- A substantial degree of visual impairment/moderate and severe hearing loss.
- A complex Autistic Spectrum Condition with severe learning difficulty, (a diagnosis of Autism or Autism Spectrum Condition does not itself meet the criteria for the service).
- A complex medical health condition, (for the youngest children with complex health needs or technological dependence there will usually be involvement from the Continuing Care Co-ordinator).

Children whose primary identified needs are emotional and behavioural difficulties, children/young people with mental health problems or attention deficit disorder (ADD) or attention hyperactivity disorder (ADHD) ARE NOT included within PART 3 of this Schedule .

The specialist social work and support services for children with disabilities within this PART 3 are prioritized for children with substantial levels of disability only. Children with more moderate disabilities will only be within this PART 3 where the family's circumstances or the multiple nature of the child's condition present real obstacles to their receiving appropriate services through other children in need services.

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SCHEDULE 5

PROCEDURES REGARDING WHO MAY BE CHARGED AND INFORMATION ABOUT CHARGES

- 1 The Council is not delegating to the Trust its functions under section 14 of the Care Act (function of making a charge for meeting needs) and section 17 of the Care Act (function of carrying out a financial assessment in relation to the making of the charge) in respect of meeting needs for care and support under sections 18 or 19 of the Care Act; or (b) its functions under regulations made under section 2(3) of the Care Act (function of making a charge for the provision, or arranging the provision, of services, facilities or resources or taking other steps under section 2(1) of the Care Act) and the agency arrangements described elsewhere in the agreement will apply instead. The Council retains the sole right to recover charges owing to it and write off debt

- 2 The Trust will:
 - 2.1 ensure appropriate business processes are in place to underpin application of all policies (e.g. pre-service financial requests are being sent);
 - 2.2 support review of policies and factsheets for charging as required;
 - 2.3 assist the Council in conducting any general charging policy consultation required;
 - 2.4 attend meetings, as required, with the Council to ensure full compliance with legislation and other matters;
 - 2.5 promote alternative access channels and speed of response;
 - 2.6 provide the public with high quality and user-friendly information on deferred payments, top-ups and charging;
 - 2.7 ensure staff attend training when any changes are made to controcc or liquid logic;
 - 2.8 provide information to the Assistant Director for Health and Care Outcomes on the numbers of referrals to the Council for financial assessment;
 - 2.9 promote the use of online care and financial assessment;
 - 2.10 ensure publication and circulation of all policies regarding fees and charges to all stakeholders;
 - 2.11 provide up-to-date fact sheets for easy access. ensure factsheets are updated annually (using information provided by the Council), to reflect changes;
 - 2.12 provide factsheets (using information provided by the Council) for easy access through the internet this must include (but is not limited to): deferred payments, top ups, charges for residential and non-residential clients and paying for charges;
 - 2.13 conduct any general charging policy consultation (in collaboration with the Council) required;
 - 2.14 ensure that all potential service users are informed there is a charge for care, and that Service Users have responsibilities in regards to paying for that care;
 - 2.15 will provide information to the Assistant Director for Health and Care Outcomes on the numbers of referrals to the Council for assessment;

- 3 The Trust will:
- 3.1 ensure the capacity of any client to deal with their financial affairs at the outset of dealing with the client and that a suitable representative is identified if the client does not have capacity;
 - 3.2 ensure the representative, where one exists, is aware of their financial responsibilities, i.e. if a service user, after assessment, is considered able to pay (either in full or in part) for care received, they will be expected to make those payments. if appropriate, the Trust will ensure the representative has power of attorney, or is a court-appointed deputy;
 - 3.3 work collaboratively with the Council on the implementation of legislative changes to charging and assessment;
 - 3.4 inform the Council (pfu) on any financial matters pertaining to client charging and debt recovery, relating to service users;
 - 3.5 promote the take-up of direct debits as the preferred means for clients to pay contributions;
 - 3.6 respond to Council requests as to the capacity of clients to deal with their own financial affairs;
 - 3.7 signpost individuals or their representatives to independent advocacy services and to independent financial advice.

- 4 The Trust will:
- 4.1 ensure the information on Liquid Logic is up to date, in relation to address of service user, date service user care started and date of death (where known). Liquid Logic should be updated within 5 Business Days of the notification;
 - 4.2 request pre-service financial assessment to enable completion of financial assessments ahead of service commencement;
 - 4.3 record details of financial agent;
 - 4.4 ensure that information relating to variations to and breaks in care services is gathered from care providers and is recorded promptly and accurately in liquid logic;
 - 4.5 ensure chargeable services are activated on Liquid Logic within a maximum of 5 Business Days post service commencement;
 - 4.6 ensure detail of service users and their third party top up support is entered into Liquid Logic for all top up cases within 5 Business Days of a client being placed in care and a third party agreement being made. This must include all relevant legal and financial documentation, which will highlight liability for payment and address, contact telephone and email address.

- 5 The Trust will:
- 5.1 hold meetings as required with the council, to ensure alleged financial abuse is acted upon through investigation;
 - 5.2 if a client does not have mental capacity, ensure the representative has power of attorney, or is a court-appointed deputy. Any instances where a service user does not have mental capacity and the suitable

representative has neither taken power of attorney nor is a court-appointed deputy should be referred to the safeguarding team;

5.3 as part of safeguarding vulnerable adults, identify any cases which trigger concern of financial abuse and raise a safeguarding alert in line with ASC Safeguarding Procedures.

6 The Trust will:

6.1 play an active role in the debt panel that convenes quarterly and is chaired by an officer of the Council;

6.2 provide evidence to support any review of any debt that is being presented to the Council panel;

6.3 respond promptly to information requests from the Council relating to debt recovery;

6.4 work with the Council to minimise the level of outstanding debt.

6.5 provide information to the Council to support decisions on debt recovery that this will include individual casework;

6.6 respond promptly to information requests from the Council, to enable debt to be recovered and correctly accounted for;

6.7 attend 'legal surgeries', where required, over and above the quarterly panel meetings, as a forum for discussing specific legal cases and agreeing next actions.

7 Support for the Client Finance Team

7.1 The Council's Finance Support Team is responsible for:

7.1.1 administering and co-ordinating the provision of direct payments to people who are eligible under the Care Act and who choose to receive their support in this way;

7.1.2 financial protection (appointeeship and Court of Protection);

7.1.3 providing a co-ordinated response to deaths in the community.

7.2 An overview of the processes is described in Appendix [] of the Specification.

7.3 The Trust will carry out the relevant procedural tasks and actions to enable the Council to administer direct payments, financial protection measures and responses to death in the community. Indicative arrangements are set out in paragraphs 74 and following but these will change from time to time in line with good practice and guidance

Direct Payments

7.4 The Trust's qualified social worker Staff will:

7.4.1 use professional judgement as to when it's best to involve the Council's Client Finance Support Team – generally the earlier the better;

7.4.2 provide full information to service users on the purpose of a direct payment, how it can be used ,and identify support on a care plan that is funded by a direct payment

- 7.4.3 involve the Council's client finance support team using the team referral process before the plan is finalised;
- 7.4.4 work collaboratively with the Council's Finance Support Team.

Financial Protection

- 7.5 The Trust's qualified social worker Staff will:
 - 7.5.1 where an individual is admitted to hospital or a residential setting and no next of kin has been identified, use professional judgment as to when it's best to involve the Council's Client Finance Support Team - generally, the earlier the better;
 - 7.5.2 make referral as soon as possible to avoid the individual incurring any debt;
 - 7.5.3 contact the Council's Client Finance Support Team to undertake a joint protection of property visit to collect information about the individual's finances;
 - 7.5.4 where an individual is assessed as lacking capacity to manage their own finances within the community and there is no other person willing or suitable to manage on their behalf use professional judgement on whether a referral to the Council's Client Finance Support Team is appropriate;
 - 7.5.5 complete a mental capacity assessment specifically in relation to the individual's ability to manage their finances and a referral (form FPT1) to the Council's Client Finance Support Team where necessary. The referral must have details of the national insurance number, bank account details and all incoming money and outgoing expenses as a minimum. This is especially important if the individual remains in the community as utility bills etc. will need to be known;
 - 7.5.6 where the individual has capital assets or a property, the Trust must give consideration as to whether an application will be necessary to the Court of Protection and complete the capacity assessment on a cop 3 form;
 - 7.5.7 request a pre-financial assessment via Liquid Logic at the earliest opportunity;
 - 7.5.8 work collaboratively with the Council on issues that arise both during and after the application;
 - 7.5.9 authorise any spending requested by the individual or their support workers.

Deaths in the community

- 7.6 The Trust's social worker Staff will:
 - 7.6.1 where a person dies within a community setting (i.e. residential home, hospital A&E department, at home or any other community setting) and there is no next of kin willing to undertake the funeral arrangements and no known assets, the social worker should use their professional judgement as to whether a referral to the Council Client Finance Support Team is necessary;
 - 7.6.2 enter the date of death on Liquid Logic.

SCHEDULE 6

CARE BUDGET FUND

1 Care Budget Fund

1.1 For the Financial Year 2018/19 the Care Budget Fund is £

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SCHEDULE 7

SUPPORT ARRANGEMENTS

PART 1

- 1 The Council is hosting professional standards support, hosting the IT Infrastructure, hosting support for the Case Management Application, and providing support where input and expertise from practitioners in the field of Mental Health cases may be needed. The Council holds the Care Budget Fund and the Case Management Application interfaces with the portal accessible to providers of services and this interface amongst other matters facilitates monitoring of the total spend by the Council not only those functions are delegated by this agreement]
- 2 The Council is retaining the responsibility for completing statutory returns and uses its business intelligence units to do this. The Trust will be able to access data via the business intelligence reporting as it will have its own software licences to do so which in turn will assist the Trust in delivering on its obligations.
- 3 Parts 2 – 5 of this Schedule 7 set out the way in which these support arrangements will function and interact.

PART 2

IT support

1 SUMMARY OF THE SERVICE

- 1.1 This Part 2 of Schedule 7 sets out the current interface and how that is to be provided in Financial Year 2018/2019. In subsequent years the Council and the Trust will review with the input of appropriate officers including those officers actively involved at the Council providing IT Support. For the purposes of this Part 2 of Schedule 7, the IT Support Service is referred to as the "Digital Service" or just "Digital".
- 1.2 The aim of the Digital Service is:
 - 1.2.1 to provide IT Support for the applications listed in the Service Specification; and
 - 1.2.2 to respect and safeguard confidentiality of data and equipment in accordance with the Council's Information Security Policy, the Data Protection Act 1998 and other relevant legislation.

2 SERVICE SPECIFICATION

- 2.1 The list of services to be provided as part of Business as Usual is set out in the table at paragraph 11 of this part 2 of this schedule.
- 2.2 The following sections describe in more detail the functions carried out by Digital.

3 PROVISION OF LIQUIDLOGIC ADULTS

- 3.1 Backups
 - 3.1.1 Digital to ensure backups of Liquidlogic Adults data and infrastructure are taken on a regular basis. These will be held on-site and off-site.
 - 3.1.2 Maintenance.

- 3.1.3 Digital will undertake regular maintenance of Liquidlogic Adults. This can include:
 - 3.1.3.1 software upgrades undertaken by third-party suppliers;
 - 3.1.3.2 Windows Updates;
 - 3.1.3.3 hardware configuration (memory/disk space/CPU's etc); and
 - 3.1.3.4 network/firewall changes.
- 3.1.4 Details of Planned Maintenance will be shared in advance and the date/time of any outages required will be agreed.
- 3.1.5 Unplanned Maintenance may be required at very short notice and Digital will use reasonable endeavours to inform the Trust as soon as possible and report back progress at regular intervals
- 3.1.6 During outages (planned or otherwise) a copy of the LIVE application will normally be made available with data as of the previous day. This is for read-only purposes and any information recorded in it will be lost the next time it is copied over. Digital is not responsible for such loss of data and all Liquidlogic users (including the Trust) must ensure that they do not update this read-only system.
- 3.2 Business Continuity
 - 3.2.1 Digital will maintain an emergency system (known as Offline Liquidlogic) for DASS that is independent of the main Liquidlogic infrastructure that will allow, in extreme circumstances, for key information to be made available on request to DASS until such times that the normal service is resumed.
 - 3.2.2 The Trust is to ensure that they make suitable arrangements so that their staff can still provide basic services in the event that Wirral's systems are available but the Trust staff cannot access them.
- 3.3 Integration
 - 3.3.1 Allow Liquidlogic Childrens users to be able to search for Adults in the Liquidlogic Adults database.
 - 3.3.2 Allow ContrOCC Adults users to integrate with the Liquidlogic Adults database.
 - 3.3.3 Integration with externally hosted system e.g. Marketplace by Oxford Computer Consultants.
- 3.4 Out of Scope
 - 3.4.1 Access to the Wirral Intranet.
 - 3.4.2 Offline Liquidlogic emergency system for Adults which cannot be made available on PC's not on the Wirral network.
 - 3.4.3 Direct access to the Liquidlogic Childrens and ContrOCC Childrens systems

3.4.4 Access to any historical archived systems e.g. Swift / ESCR.

3.4.5 Access to any other Wirral applications not part of the Liquidlogic Adults delivery

The following sections describe in more detail the functions carried out by IT Services.

4 DESKTOP PC AND LAPTOPS

4.1 IT equipment will be installed and supported by the Trust's IT Department

4.2 Any persons requiring access to the Council's network for service provision will be provided with Wirral equipment and a Wirral domain account for this purpose

5 POINTS OF CONTACT

Digital Service Desk – 0151 666 4080

Hours of service: Monday to Friday: 8:00 – 17:00 (subject to the Council's working arrangements) Saturday and Sunday and public holidays and enforced unpaid leave: Closed Messages can be left outside these times for action the next working day.

All calls will be allocated a unique reference number and users are able to track the progress of their calls via the "E-Log a job" portal

Application specific issues should be logged directly with the mid office Liquid Logic team (see support arrangement in Part 3 of this Schedule) via the E-Log a job portal

Work required outside normal working hours will be charged in accordance with HR policy on out of hours working.

6 FAULT RESOLUTION

6.1 Outline of Support Process

6.1.1 All requests for assistance should first be logged with the Digital Service Desk which will manage the calls to resolution. Calls will be categorised as either Incidents or Service Requests (Tasks). In general, resolution of incidents takes precedence over fulfilment of Service Requests (Tasks).

6.1.1.1 Incidents. An Incident is where an error or disruption to an existing service has occurred that requires resolution to enable normal working to continue. Incidents are allocated priorities according to the business impact and urgency of the situation.

6.1.1.2 Service Requests (Tasks). Requests for a service such as installing a new computer, providing access to a computer application or installing a software application for a user.

6.1.2 Digital Support comprises four main elements:

6.1.2.1 First line support (entry point) – Digital Service Desk provides the first line support and they can be contacted by Support Portal or telephone.

6.1.2.2 Second line support – If first line supports are unable to resolve the fault the call will be passed to second or third line support depending on the nature of the fault.

6.1.2.3 Third line support – The third line teams include technical specialists who are responsible for development of IT Services. Third line support will resolve in-depth support issues which cannot be resolved by first and second line teams.

6.1.2.4 Fourth line support – Where the support will be provided by a 3rd party or by an outside agency.

7 SERVICE AVAILABILITY AND RESPONSE TIMES

7.1 Digital will aim to have 99% service availability.

7.2 The priority given to an incident is determined by a combination of its impact and urgency.

7.3 The definitions below are used to establish the priority.

Severity	Description
Priority 1	Complete loss of Network or Major application and no work around available
Priority 2	Partial loss of Network or Major application but with some work around available
Priority 3	Low Priority incidents
Priority 4	Service requested
Priority 5	Lowest priority requests and project initiations

8 INCIDENT RESPONSE AND RESOLUTION

8.1 Response and resolution times will be on a reasonable endeavours basis according to the priorities the incident listed below. It is important to note that these are maximum times rather than standard or normal times and that all incidents will be resolved as quickly as possible. The times relate to the normal service hours of the Digital Service Desk, i.e. from 8:00 to 17:00 Monday to Friday.

Severity	Maximum Response Time	Target Fix
Priority 1	15 minutes	9 hours
Priority 2	2 hours	18 hours
Priority 3	6 hours	45 hours
Priority 4	18 hours	By negotiation
Priority 5	45 hours	180 hours

- 8.2 The Maximum Response Time for Service Requests and Project Initiations can include investigation and research by IT services or 3rd party providers.

9 RESPONSIBILITIES OF BOTH PARTIES:

- 9.1 This section sets out the key responsibilities for Digital and the Trust.

9.2 Digital will:

- 9.2.1 take responsibility for provision of the it infrastructure, e.g. servers, LAN, WAN and internet connections;
- 9.2.2 provide access to the Digital Service Desk within advertised hours;
- 9.2.3 reserve the right to take systems out of service for upgrades and other changes if necessary as outlined in the Digital Services Change policy. This will be agreed with the Trust & communicated by the Line of Business Manager for Digital;
- 9.2.4 publicise the proposed downtimes for all services for customers' reference as outlined in Digital Services Change policy. This information will be communicated by the line of business manager for digital;
- 9.2.5 inform the Trust customers (named contact) and other people likely to be affected by serious faults affecting services. This information will be communicated by the Line of Business Manager for Digital;
- 9.2.6 ask that changes to major IT services provided go through the ICT change management process;
- 9.2.7 install operating system and application security patches in a timely manner;
- 9.2.8 provide software and hardware so that critical data which is held on the network is backed up;
- 9.2.9 provide systems and services in accordance with the Council's IT Security Policy.
- 9.2.10 establish that all support activity is completed within the Council's Health and Safety requirements;

9.3 The Trust will:

- 9.3.1 provide feedback to Digital Services on Customer Service requirements;
- 9.3.2 provide a specific contact to receive the communications from the Line of Business manager for Digital;
- 9.3.3 follow the appropriate procedures for contacting the Digital Service Desk in order to receive the levels of service specified in this document;
- 9.3.4 when requesting services from Digital, provide a named contact that has the necessary authority to make decisions about the work;
- 9.3.5 conform to the Council's Information Security Policy;

- 9.3.6 provide reasonable access to support IT staff in order for them to complete their work to meet service level targets. Inability to give reasonable access may result in requests being delayed or closed;
- 9.3.7 provide reasonable resources to help with testing of service changes when asked.
- 9.3.8 notify Digital Services in advance of events or requirements that might require a higher than normal level of support - BUSINESS CASE REQUIRED;
- 9.3.9 notify Digital in advance of any event likely to affect service availability (e.g. electrical power down);
- 9.3.10 ensure that all support activity requested is within the Council's Health and Safety requirements;
- 9.3.11 SIGN OFF CONTACT FOR User Acceptance Testing (UAT);
- 9.3.12 make staff available for UAT in accordance with the requirements of IT Services.

9.4 Additional work outside of the scope of this Part 2 will be charged based on the following:

Role	Daily rate	Half day rate
Project Manager		
Information Security Officer		
IT Officer		

10 CONTACT DETAILS

10.1 The Trust's main contact details

Post: Managing Director

Address xxxxx

xxxxx

xxxxx

xxxxx

Telephone xxxxx

10.2 Digital main contact details

Post: (Chief Information Officer)

Address Treasury Link Building

Cleveland Street

Birkenhead

CH41 6BU

Telephone

0151 666 3029

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System ID	Application Name	Description	Platform	Information Asset Owner
1 DIGITAL Core Services	Data Networks (WAN/LAN)	Corporate Wirral Network	Communications	DIGITAL Infrastructure Manager
2 DIGITAL Core Services	Storage	Corporate Storage Area Network	Hardware	DIGITAL Infrastructure Manager
3 DIGITAL Core Services	Server Infrastructure (VMware/Windows)	Windows Virtual Server Farm	Hardware	DIGITAL Infrastructure Manager
4 DIGITAL Core Services	Service Infrastructure (UNIX)	Unix Servers	Hardware	DIGITAL Infrastructure Manager
5 DIGITAL Core Services	Storage Backup/Restore	All DIGITAL disaster recovery files and processes	Hardware/ Software	DIGITAL Infrastructure Manager
1. DIGITAL Supporting Services	Internet Services	Council Website and Associated Services	Communications	Line of Business Manager
1. Application Services	Liquidlogic Adults	Social Care Application	Hardware/ Software	DASS Manager
2. Application Services	ContrOCC Adults	Social Care Financial Application	Hardware/ Software	DASS Manager
3. Application Services	E-Log a job	Helpdesk web portal	Hardware/ Software	DIGITAL Applications Manager

PART 3

Liquid Logic assistance

1 OVERVIEW

This Part 3 sets out the roles and responsibilities for the Core Services provided by the Council's Systems Management Team. These services provide specific support for staff and departments.

2 GLOSSARY

2.1 Helpdesk – Systems Support Team, Adults – Liquidlogic & ContrOCC;

2.2 User/Customer – Staff member using Information Systems;

2.3 LL – Liquidlogic;

2.4 ContrOCC – Oxford Computer Consultants;

2.5 Autonomy – Online services linked to Liquidlogic & ContrOCC

2.6 External URL (Uniform Resource Locator) – External website link

3 CORE SERVICES

3.1 Core Services form a standard overall Systems Service for the organisation to manage, convert, store, protect, process, transmit and retrieve information securely.

3.2 Core Services provided by Systems Management are:

3.2.1 **Authentication:** Privileged Accounts, Generic Identities, External User Access, Password Allocation, Account Activation, Movers & leavers.

3.2.2 **Software:** Standard Liquidlogic & ContrOCC Application.

3.2.3 **Application Development:** Data exports; Maintenance plans Inc. Data Cleansing; Configuration Management; Change Management; Release Management; Problem Management; Process Design; forms; documents; templates; alerts; optional settings; tray management.

3.2.4 **Helpdesk:** Software Support Requests relating to Liquidlogic & ContrOCC Application; Account Management; Access Control; Telephone Support; Incident Management (pertaining to core services); Software fault resolution (standard software and operating systems); Desk-side Support; Remote Support.

3.2.5 **Training:** Training Programme; Training Delivery; Training Material.

3.2.6 **Reporting:** Standard and bespoke.

3.2.7 **Security:** To use the information systems securely and ensure that access is controlled to specific areas.

3.2.8 **Project Services:** Project Management; Planning; Worksteams; Financial Planning.

- 3.2.9 **Information Governance:** Process & Procedure; Asset Management; Access Control & Security; Audit; Compliance; Continuity Management.
- 3.2.10 **Licencing:** Wirral Council retain the license of the Liquidlogic Software; Wirral Council will allow authorised access to use the Adults Social Care functionality only; Wirral Council will maintain adequate security measures to safeguard the systems data.
- 3.2.11 **Backup/Restore:** Provision of current and up to date backups and the ability to retrieve lost, deleted or previous versions of files.
- 3.2.12 **Scan & Printing:** Ability to print information or scan information into Liquidlogic & ConroCC.
- 3.2.13 **Internet:** Ability to access Adults Liquidlogic via the Internet; Online Services Management.

4 USER ACCESS

4.1 User Access Policy

- 4.1.1 Access to Liquidlogic & ConroCC will be maintained in line with the User Access Policy.

4.2 New User Request

- 4.2.1 A request for access to Liquidlogic or ConroCC must be submitted using the online 'Apply for a Liquidlogic or ConroCC account' electronic form. On receipt of the electronic form the Helpdesk will check with the identified line manager that access levels applied for are commensurate with the role of the individual.
- 4.2.2 A record of all access rights is maintained within Liquidlogic and system reports will be available to identify current users and their allocated privileges.
- 4.2.3 Access will not be granted until the authorisation process is completed. Post authorisation access will be initially granted as 'Read-Only' pending attendance at a mandatory systems induction course, upon completion of this course the account will be activated as 'Read-Write' where appropriate. The Systems Support Team will aim to set up and train all new users within 5 working days from the date a new user request form is submitted.

5 MOVERS AND LEAVERS

- 5.1 If a user moves teams it is the manager's responsibility to report the move via the Helpdesk. Once a job has been logged, the support team will rebuild the profile in the new team. It is the losing manager's job to reassign any work prior to logging the job.
- 5.2 If a user is leaving and no longer requires access then it is the Manager's responsibility to contact the Helpdesk to close down the account. All tasks in the leavers work tray are the responsibility of the Line manager to reassign prior to the account closure.

6 HELPDESK

- 6.1 Aim & Objectives

6.1.1 To provide system support to the user for Liquidlogic & ContrOCC. This covers all issues and incidents relating to user access, system processes, case recording, amendments, errors, administration and configuration.

6.2 Hours of Operation

The Liquidlogic & ContrOCC Helpdesk is open during normal office hours and is closed during weekends and bank holidays unless prior arrangements for support have been made via a separate Operational Level Agreement (OLA).

Monday - Friday	09:00hrs – 17:00hrs
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6.3 Contact Method

6.3.1 All support calls should be logged electronically via the e-log a job system.

E-Log a Job	Awaiting IT confirmation
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6.3.2 A unique reference is allocated and an automatic confirmation email is sent to the user.

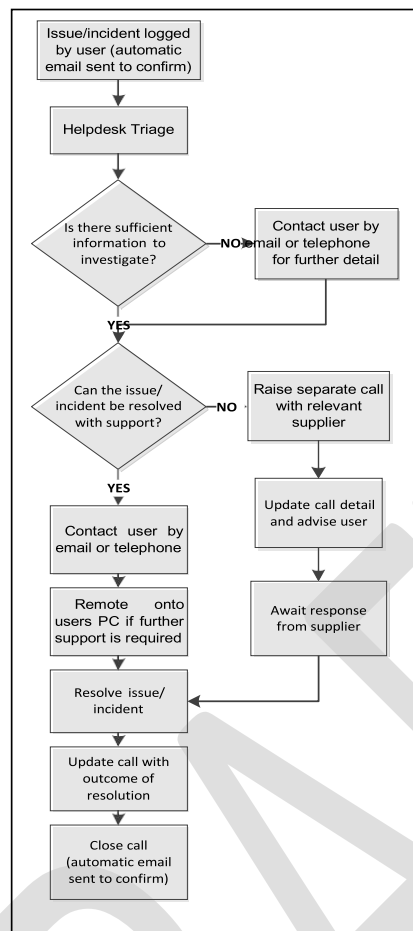
6.3.3 Direct contact can be made with the Systems Support Team regarding any other issues.

Telephone	0151 666 3656
Email	systemssupportteamdass@wirral.gov.uk

6.4 Incident Reporting

Requests for support logged via the e-log a job system are categorised based on the issue/incident subject. These categories are pre-defined for the user to select when logging the call. They must provide their email address, contact telephone number, description of the issue/incident and detail which record this relates to.

6.5 The call will then be assigned to a dedicated Training, Helpdesk and Systems Support Officer who will follow the below process:



6.6 Target Resolution

6.6.1 The Helpdesk aim to provide the following target resolution timescales:

6.6.1.1 2 Hours – standard response and investigation/ support

6.6.1.2 4 Hours – full resolution of issue/incident

6.6.2 These timescales can only be achieved for issues/incidents that are resolvable by an administrator/member of the Systems Support Team.

6.6.3 If the issue/incident has to be referred to the system supplier for resolution, the timescale will vary depending on the work required to resolve.

6.6.4 If the user who has raised the call is not available to provide a response following investigation of the issue/incident or the full required details are not provided as part of logging the call, this will delay the resolution timescale.

6.7 Reporting

6.7.1 On a monthly basis a summary report of all Helpdesk calls will be provided which details the following:

- 6.7.1.1 Total number of calls
- 6.7.1.2 Total number of calls per category
- 6.7.1.3 Total number of calls per team
- 6.7.1.4 Total number of calls per user
- 6.7.1.5 Total resolution time per call
- 6.7.1.6 Average resolution time

7 TRAINING

7.1 Aim & Objectives

- 7.1.1 To provide appropriate training to all users on the use of Liquidlogic & ContrOCC relevant to their role to ensure an adequate understanding of the system requirements to fulfil their duties.

7.2 Training Programme

- 7.2.1 A full rolling training programme will be available to all users detailing the relevant training sessions available. The Systems Support Team will ensure the programme contains sessions covering the main functions and processes of the systems.
- 7.2.2 A standard online training request form will need to be submitted electronically to be allocated a place on a session.
- 7.2.3 An appointment will be sent via email with confirmation once a place has been allocated. This will detail the date, time and location of the session.
- 7.2.4 Additional training sessions can be developed and delivered on an ad-hoc basis following requests for the relevant manager and following approval for the Systems Support Team Manager.

7.3 Training Delivery

- 7.3.1 Training will be delivered by a Training, Helpdesk and Systems Support Officer either in a group session or on a 1:1 basis depending on number of delegates.

- 7.3.2 A dedicated training suite for the Systems Support Team to deliver training is currently available at the following location:

Conway Centre,

Conway Street,

Birkenhead

CH41 6JD

- 7.4 Training Materials
 - 7.4.1 Bespoke user guides and video guidance will be available covering the main functions and processes for Liquidlogic & ContrOCC.
 - 7.4.2 All user guides and video guidance will be updated following any configuration or process changes and will be reviewed following any system upgrades.
 - 7.4.3 User guides and video guidance will be held in a central location for users to access and will be maintained by the Systems Support Team.

7.5 Reporting

- 7.5.1 On a monthly basis a summary report of all Training Sessions delivered will be provided which details the following:
 - 7.5.1.1 Training sessions delivered
 - 7.5.1.2 Detail of delegates attended
 - 7.5.1.3 Detail of non-attendance
 - 7.5.1.4 Feedback summary

8 UPGRADES

8.1 Roadmap Releases

- 8.1.1 On an annual basis, Liquidlogic & ContrOCC issue a roadmap containing details regarding upgrades and future releases.
- 8.1.2 Release notes are also distributed containing the relevant information on fixes enhancements future requirements and configuration changes/options.
- 8.1.3 These release notes will be reviewed by the Systems Support Team prior to planning and testing.

8.2 Planning & Testing

- 8.2.1 The Systems Support Team will plan and book the relevant slots with the supplier based on availability to upgrade the testing environments.
- 8.2.2 User Acceptance Testing will be conducted which will require involvement from end users covering all areas of the systems functions and processes.
- 8.2.3 Any enhancements and configuration changes will be thoroughly tested and will require approval/sign off in line with change control.

8.3 Live Upgrades

- 8.3.1 Following testing, the Systems Support Team will plan and book the relevant slots with the supplier based on availability to upgrade the live environment.

- 8.3.2 Live upgrades are usually completed during normal working hours and will require downtime.
- 8.3.3 Advance notice of service disruption will be provided along with a backup version of the live environment to be referred to during the downtime. This will be a 'read-only' system to support any urgent information requests.
- 8.3.4 The usual downtime to perform an upgrade is approximately 4 hours.

9 CHANGES

9.1 Communication

- 9.1.1 A briefing will be circulated by email to all users affected by any changes made to Liquidlogic or ContrOCC.
- 9.1.2 Consideration will be given to update any relevant training materials and further training needs may be identified. Additional training sessions may be added to the training programme.

10 AUTONOMY

10.1 Online Services

- 10.1.1 Service users are able to complete self-assessments online, financial assessments and submit these directly into Liquidlogic & ContrOCC.
- 10.1.2 These online services are accessible through the council website or via the following URL:

Online Services	http://www.wirral.gov.uk/health-and-social-care/adult-social-care
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- 10.1.3 A full implementation plan containing the detail regarding the roll out of any additional functionality will be provided.

10.2 Marketplace (Livewell)

- 10.2.1 The Marketplace is an online service directory which covers the Liverpool City Region (Wirral, Liverpool, Sefton, Knowsley & St Helens). It contains information on all support available from commercial and community sectors.
- 10.2.2 The MarketPlace is accessible through the council website or via the following URL:

MarketPlace	https://www.thelivewelldirectory.com
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10.3 Additional Modules

- 10.3.1 Additional modules have been purchased including a Brokerage Module and the Systems Support Team will be working to develop and implement these.

11 MONITORING ARRANGEMENTS

11.1 Performance

Monthly performance reports will be provided as referenced in this section relating specifically to the performance of the Systems Support Team services. Any requests for additional information outside of this Part 3 will need to be made to the Systems Support Team Manager.

12 LIAISON & ESCALATION ARRANGEMENTS

12.1 Liquidlogic User Group

12.1.1 On a bi-monthly basis a Liquidlogic User Group is held with members of the Systems Support Team and nominated officers from each team which will now include a nominated representative of the Trust using the system.

12.1.2 The group is a forum to discuss any system or business changes, system issues, Helpdesk, Training, Upgrades and any other business in relation to Liquidlogic.

12.2 Liaison

12.2.1 The Systems Support Team Manager will be the liaison officer in relations to Liquidlogic & ContrOCC.

12.3 Escalation

12.3.1 Any issues that require escalation regarding Liquidlogic or ContrOCC beyond the liaison officer should be raised with the Assistant Director of Integrated Care.

13 EXCLUSIONS

13.1 Emergency maintenance and issues relating directly to National Health Service Information Technology are excluded from the support the Council is agreeing to contribute.

SCHEDULE 8

NOT USED

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SCHEDULE 9

TUPE PROVISIONS

- 1 The Council and the Trust agree that:
 - 1.1 the commencement of the provision of the Services will be a Relevant Transfer in relation to the Transferring Employees and the Trust will be the employer of the Transferring Employees; and
 - 1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Council and the Transferring Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Trust and each such Transferring Employee.
- 2 The Council shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Council; and (ii) the Trust. The Council shall provide and where necessary update the Employee Liability Information for the Transferring Employees as required by the Employment Regulations. The Council shall warrant that such information is complete and as accurate as it is aware or should reasonably be aware as at the date it is disclosed and shall provide a final version of the complete and accurate list as at the Relevant Transfer Date to the Trust within 10 Business Days of the Relevant Transfer Date.
- 3 COUNCIL INDEMNITIES
 - 3.1 Subject to paragraph 3.2, the Council shall indemnify the Trust against any Employee Liabilities in respect of any Transferring Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 3.1.1 any act or omission by the Council occurring before the Relevant Transfer Date or any other matter, event or circumstances occurring on or before the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Council before the Relevant Transfer Date of:
 - 3.1.2.1 any collective agreement applicable to the Transferring Employees; and/or
 - 3.1.2.2 any custom or practice in respect of any Transferring Employees which the Council is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing the Transferring Employees arising from or connected with any failure by the Council to comply with any legal obligation to such trade union, body or person arising before the Effective Date;
 - 3.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- 3.1.4.1 in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - 3.1.4.2 in relation to any employee who is not a Transferring Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Council to the Trust to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 3.1.5 a failure of the Council to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employees arising before the Relevant Transfer Date;
 - 3.1.6 any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employee relating to any act or omission of the Council in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Trust to comply with regulation 13(4) of the Employment Regulations.
 - 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Trust whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
 - 3.2.1 arising out of the resignation of any Transferring Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Trust to occur in the period from (and including) the Relevant Transfer Date; or
 - 3.2.2 arising from the failure by the Trust to comply with its obligations under the Employment Regulations.
 - 3.3 The Council has identified the persons set out in Annex A as Transferring Employees and the Service Payment has been calculated taking their gross salary amongst other facts (including payments to agency staff and other temporary workers) into account.
- 4 TRUST INDEMNITIES AND OBLIGATIONS
- 4.1 Subject to paragraph 4.2, the Trust shall indemnify the Council against any Employee Liabilities in respect of any Transferring Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 4.1.1 any act or omission by the Trust whether occurring before, on or after the Relevant Transfer Date;
 - 4.1.2 the breach or non-observance by the Trust on or after the Relevant Transfer Date of:
 - 4.1.2.1 any collective agreement applicable to the Transferring Employees; and/or

- 4.1.2.2 any custom or practice in respect of any Transferring Employees which the Trust is contractually bound to honour;
- 4.1.3 any claim by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Trust to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 4.1.4 any proposal by the Trust made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Employees to their material detriment on or after their transfer to the Trust on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 4.1.5 any statement communicated to or action undertaken by the Trust to , or in respect of, any Transferring Employee before the Relevant Transfer Date which has not been agreed in advance with the Council in writing;
- 4.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 4.1.6.1 in relation to any Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- 4.1.6.2 in relation to any employee who is not a Transferring Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Council to the Trust, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 4.1.7 a failure of the Trust to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Employees in respect of the period from (and including) the Effective Date; and
- 4.1.8 any claim made by or in respect of a Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Employee relating to any act or omission of the Trust in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Council's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Council whether occurring or having its origin before, on or

after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Council's failure to comply with its obligations under the Employment Regulations.

4.3 The Trust shall comply with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, all its obligations in respect of the Transferring Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Council and the Trust.

5 During the period of these arrangements, the Trust shall provide to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

5.1 the numbers of employees engaged in providing the Services;

5.2 the percentage of time spent by each employee engaged in providing the Services; and

5.3 a description of the nature of the work undertaken by each employee by location.

6 EMPLOYMENT EXIT PROVISIONS

6.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Council or Replacement Service Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

6.2 The Trust shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Trust or any Sub-Contractor in the provision of the Services, the Trust's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Trust shall notify the Council of any material changes to this information as and when they occur.

6.3 At least 28 days prior to the Service Transfer Date, the Trust shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Service Provider, the Trust's Final Staff List, which shall be complete and accurate in all material respects. The Trust's Final Staff List shall identify which of the Trust's and Sub-Contractor's personnel named are Relevant Employees.

6.4 The Council shall be permitted to use and disclose the Trust's Provisional Staff List, the Trust's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Service Provider for any services that are substantially the same type of services as (or any part of) the Services.

6.5 The Trust warrants to the Council [and the Replacement Service Provider] that the Trust's Provisional Staff List, the Trust's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Trust's Final Staff List.

6.6 The Trust shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

6.7 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place

without the Council's prior written consent, unless such changes are required by law. The Trust shall procure that any Sub-contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.

[6.8](#) In the six months prior to termination of this Agreement, the Trust shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Trust's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent.

[6.9](#) The Trust shall indemnify and keep indemnified in full the Council [and at the Council's request each and every Replacement Service Provider] against all Employment Liabilities relating to:

[\(a\)](#) any person who is or has been employed or engaged by the Trust or any Sub-Contractor in connection with the provision of any of the Services; or

[\(b\)](#) any trade union or staff association or employee representative,

6.10 arising from or connected with any failure by the Trust and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

[6.11](#) The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

6.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Trust or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

[6.12](#) It is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

SCHEDULE 9 - ANNEX A

TRANSFERRING EMPLOYEES

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SCHEDULE 10

PENSION PROVISIONS

1 PENSION PROVISIONS

1.1 The Trust and the Council shall, comply with the pensions provisions in paragraph 2 to paragraph 7 of this Schedule, which, in the event of any inconsistency or conflict, shall take precedence over any other provision in this Agreement.

1.2 The provisions of paragraphs 2 to 7 shall be directly enforceable by an affected employee who will be an Eligible Employee only against the Trust and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Trust under those paragraphs in his own right under section 1 of the Contracts (Rights of Third Parties) Act 1999.

2 PARTICIPATION IN THE SCHEME

2.1 The Trust undertakes to enter into the Admission Agreement.

2.2 The Council undertakes to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Trust to participate in the Scheme in respect only of the Eligible Employees The Trust shall bear its own costs in connection with the negotiation, preparation and execution of documents to facilitate the Trust participating in the Scheme.

2.3 The Council will have a right to set off against any payments due to the Trust under the terms of this Agreement an amount equal to any overdue employer and employee contributions and other payments including interest due from the Trust under the Admission Agreement

2.4 The actuarial cost of determining the contribution rate for the Trust under the Admission Agreement is to be met by the Council

2.5 The Trust will:

2.5.1 maintain such documents and information as is reasonably required to manage the pension rights of any person employed by the Trust including the Eligible Employees on any onward transfer of such persons on the expiry or termination of these arrangements

2.5.2 promptly provide to the Council such documents and information as the Council or the Administering Authority may reasonably request in advance of the expiry or termination of these arrangements and will

2.5.3 fully co-operate with the reasonable requests of the Council and/or the Administering Authority relating to any administrative tasks necessary to deal with the pension rights of the Eligible Employees

3 FUTURE SERVICE BENEFITS

3.1 The Trust shall procure that the Eligible Employees, shall be admitted into, or offered continued membership of, the Scheme that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Trust shall procure that the Eligible Employees continue to

accrue benefits in accordance with the provisions governing the Scheme for service from (and including) the Relevant Transfer Date.

- 3.2 The Trust undertakes that should it cease to participate in the Scheme for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Council, provide to any Eligible Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the administering authority of the Scheme in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Scheme at the relevant date.

4 FUNDING

- 4.1 The Trust undertakes to pay to the Scheme all such amounts as are due under the Admission Agreement and shall deduct and pay to the Scheme such employee contributions as are required by the Scheme.
- 4.2 The Trust shall indemnify and keep indemnified the Council on demand against any claim by, payment to, or loss incurred by, the Scheme in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Trust to or in respect of the Scheme.
- 4.3 The Scheme is deemed to be fully funded as at the Effective Date and the Council will be responsible for any underfunding prior to the Effective Date. Any underfunding will be established by the actuarial valuation of the Scheme at the date the Trust enters into the Admission Agreement in respect of the Eligible Employees. The arrangements for payment by the Council to the Scheme for that underfunding if any will be agreed between the Council and the Administering Authority
- 4.4 At the expiry of these arrangements or their earlier termination the Trust will obtain or procure that the Administering Authority obtains at the cost of the Trust an actuarial valuation of the Scheme (or revised version of it). If the Trust has to pay any contribution to the Scheme representing any deficit ("Exit Contribution") the Council will repay to the Trust the full amount of the Exit Contribution except so far as stated in 4.5. The reimbursement due if any will be made within 28 Business Days of the relevant actuarial valuation being completed.
- 4.5 The Trust accepts responsibility for any contribution or payment required as part of any Exit Contribution to the extent that it specifically results from one or more of the following:
- 4.5.1 the grant by the Trust of early retirement requests for Eligible Employees under Regulation 30 of the Pension Regulations;
 - 4.5.2 granting an augmentation of benefits to any Eligible Employee in relation to the Scheme;
 - 4.5.3 the reduction or waiver of any contribution due from an Eligible Employee
 - 4.5.4 the award of pay increases to Eligible Employees;
 - 4.5.5 the termination of any employment contract of any Eligible Employee by reason of redundancy or in the interests of efficiency under Regulation 30(7) of the Pension Regulations or otherwise allowing an employee to retire on those grounds;
 - 4.5.6 bringing the deferred or active benefit of an Eligible Employee into payment through consent to retiring voluntarily on or after the age of 55;

4.5.7 exercising any discretion to extend any statutory time frames;

4.5.8 waiving any reduction to benefits.

5 CONTRIBUTION RATES

The Trust shall pay to the Administering Authority the contributions required for the Eligible Employees

6 INDEMNITY IN RESPECT OF ELIGIBLE EMPLOYEES

The Trust undertakes to the Council to indemnify and keep indemnified the Council on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Eligible Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under the Scheme.

7 SUBSEQUENT TRANSFERS

The Trust shall:

7.1 not take any action that adversely affects the pension rights accrued by any Eligible Employee under the Scheme in the period beginning on the Relevant Transfer Date and ending on the date of the relevant future transfer;

7.2 provide all such co-operation and assistance as the Scheme and the Replacement Provider and/or the Council may reasonably require to enable the Replacement Provider to participate in the Scheme in respect of any Eligible Employee and to give effect to any transfer of accrued rights required by law; and

7.3 for the period either

7.3.1 from the date on which notice (for whatever reason) is given, in accordance with the other provisions of these arrangements, to terminate them, or, if earlier,

7.3.2 from the date which is one (1) year prior to the date of expiry of these arrangements,

ensure that (i) no change, is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Provider or the Council, (ii) no category of earnings which were not previously pensionable are made pensionable and (iii) the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Council (such approval not to be unreasonably withheld). This sub-paragraph 7.3 shall not apply to any change made or occurring as a consequence of participation in an Admission Agreement.

SCHEDULE 10 - ANNEX B

ADMISSION AGREEMENT

Insert

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SCHEDULE 11

NOT USED

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SCHEDULE 12

TRUST PREMISES

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SCHEDULE 13

COUNCIL PREMISES

PART 1

The area shown edged red on the Licence Plan which comprises part of Millennium Centre, Leasowe (the "Building") ***[Await floor plans. Check include the office space and meeting rooms and shared space].***

PART 2

Licence for Council Premises

"Authorised Use" use for the accommodation of staff providing the Services.

["Designated Hours" means Monday – Friday [] or such other hours or days as may be agreed between the parties from time to time]

"Licence Fee" means one peppercorn if demanded which includes for the avoidance of doubt general waste removal environment cleaning window cleaning security lighting heating provision of water electricity and drainage general maintenance and maintenance for statutory compliance ***[Await Instructions]***

"Licence Plan" means the plan attached in this Schedule

- 1 **"Shared Space"** means the area shown hatched black on the Licence Plan which the Tenant may use in common with the Council ***[Ensure toilets kitchen meeting rooms and car parking areas are hatched black on Plan]*** Subject to the Trust observing the terms of this Licence so far as to be observed and performed by them and paying the Licence Fee the Council permits the Trust to use the Council Premises and the Shared Space during the Licence Term for delivery of the Services for the period from the Effective Date for the Term ("Licence Period")
- 2 The Council permits the Trust to occupy the Council Premises [during the Designated Hours] to gain access to and egress from the Council Premises and use all services servicing the Council Premises.
- 3 The Trust must keep the Council Premises clean and tidy and clear of rubbish and leave them in a clean and tidy condition and free of furniture equipment goods and chattels at the end of the Licence Period [however it is accepted that the Trust shall not be expected to put the Council Premises in any better condition than evidenced in the attached schedule of condition.]
- 4 Signs and notices shall not be placed on the outside of the Council Premises without the written consent of the Council (such consent not to be unreasonably withheld or delayed).
- 5 The Trust must use the Council Premises only for the Authorised Use [during the Designated Hours]. If use is refused outside the Designated Hours the Council shall be notified and ensure that the council Premises are made available to the Trust. ***[Await confirmation from the Council re: procedure and hours etc.]***
- 6 The Trust must not knowingly do anything that will or might constitute a breach of any statutory requirement affecting the Council Premises or that will or might vitiate any insurance effected in respect of the Council Premises from time to time.
- 7 The Trust must indemnify the Council and keep the Council indemnified against all losses claims demands actions proceedings damages costs or expenses or other liability arising in any way from its occupation of the Council

Premises and any breach of any of the terms of this Licence or the exercise or purported exercise of any of the rights given to it to occupy the Council Premises.

8 The Trust will not obstruct any common areas within the Building and will comply with any reasonable regulations applicable to the use of the Council Premises and the building they form part of including regulations relating to access hours security and parking arrangements and which have been notified to the Trust.

9 Permission to occupy the Council Premises is personal to the Trust and not assignable and the permission is exercisable only by the Trust and its employees

10 The Council is not liable for any damage to any property of the Trust or its employees and/or customers or for any losses claims demands actions proceedings damages costs or expenses or other liability incurred by them in the exercise or purported exercise of the permission to occupy the Council Premises for the purposes of the Services.

11 The Trust will not carry out any alterations or additions to the Council Premises

12 The Trust will make good any damage caused by it to the Council Premises in the course of the Licence Period.

13

13.1 The Council may determine the Licence of the Council Premises at any time upon serving not less than 6 months prior written notice on the Trust. If notice is served the Trust will vacate the Council Premises and give up vacant possession of them on or before the date required by the Council.

13.2 The Council may require the Trust to locate to alternative (but reasonably comparable and suitable) space within the Building as the Council Premises by serving not less than 6 weeks' prior written notice on the Trust and if so notified the Trust will comply with that requirement.

14 The Trust acknowledges that:

14.1 it is occupying as licensee and no relationship of landlord and tenant is created by this Licence;

14.2 the Council has control possession and management of the Council Premises and the Trust cannot exclude the Council from the Council Premises.

15 When this Licence ends it will end without affecting the rights to the Council or the Trust in respect of any antecedent breach.

16

16.1 Subject to paragraph 16.2 of this Schedule 13 the Council is not liable for damage to any property of the Trust or the Trust's employees or invitees to the Council Premises nor for the death or injury of any employees or invitees of the Trust to the Council Premises nor any losses claims demands actions proceedings damages costs expenses or other liability incurred by the Trust or their employees or invitees to the Council Premises in the exercise or purported exercise of any rights granted by this Licence.

16.2 Nothing in 16.1 limits or excludes the Council's liability for

16.2.1 death or personal injury or damage to property caused by negligence on the part of the Council its employees or agents; or

16.2.2 any matter in respect of which it would be unlawful for the Council to exclude or restrict liability.

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SCHEDULE 14

COUNCIL ASSETS

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SCHEDULE 15

INFORMATION SHARING PROTOCOL

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SCHEDULE 16

PROVISIONAL EXIT ARRANGEMENTS

- 1 On exit of these arrangements the Parties will keep as their priority objective a smooth transfer for Service Users.
- 2 The Parties will work in the first 6 months of this Agreement to produce an exit plan that addresses the following key areas. This exit plan will also serve as a template for a Succession Plan.

Key Area	Responsible for Area Trust	Responsible for Area Council	Lead in period needed for task	Time for completion	Sign off process
Key officer contacts supplied for areas to be addressed on exit including employees data protection issues Service User Communications	x	x			
Service User Information accurate and can be transferred in an appropriate format to ensure service continuity	x				
Employee Liability information for TUPE supplied accurately	x				
Equipment inventory done	x				
Office accommodation	x	x			
Communications handling with Service Users	x	x			
Communications with external bodies	x	x			
Legal cases outstanding reviewed for whether proceedings to be transferred					
Outstanding payments due either way					
System access lockdown process					
Data transfer structured/ unstructured					
Future operating model if relevant					

Key Area	Responsible for Area Trust	Responsible for Area Council	Lead in period needed for task	Time for completion	Sign off process
Outstanding complaints by Service users Ombudsman M.Ps	x	x			

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SCHEDULE 17

PROTOCOLS FOR ACCESS TO CASE MANAGEMENT APPLICATION

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SCHEDULE 18

GOVERNANCE BOARD

- 1 The Council will coordinate a partnership Governance Board to oversee the delivery of integrated care as envisaged by this Agreement across Wirral .The Governance Board is not a contract monitoring group and does not input into the day to day working of this Agreement.
- 2 The Governance Board will receive reports and may make recommendations to the Parties to this Agreement
- 3 The Board will be chaired by the Council's Cabinet portfolio holder for Adult Social care.
- 4 The Board will comprise:
 - 4.1 from the Council:
 - 4.1.1 Chair (as above)
 - 4.1.2 AD Health and Care Outcomes
 - 4.1.3 Principal Social Worker
 - 4.1.4 Senior officer for Safeguarding
 - 4.1.5 AD Adult and Disability Services (Delivery)
 - 4.2 from the Trust
 - 4.3 from the CCG - Director of Quality and Patient Safety
- 5 The Governance Board shall hold its first meeting within 2 months following transfer, and shall meet quarterly as a minimum.
- 6 The Governance Board shall agree Terms of Reference at its first meeting.
- 7 The Governance Board reports to the Wirral Health and Wellbeing Board.
- 8 The purpose of the Governance Board is:
 - 8.1 to check quality of service user experience is improved compared to pre-integration; and
 - 8.2 to consider quality of service outcomes.