

Partnership agreement under section 75 of the National Health Service Act 2006.

**DATED**

**10 OCTOBER 2012**

**SECTION 75 AGREEMENT**

**Between**

**EAST LANCASHIRE HOSPITALS NHS TRUST OF 31-33 KENYON RD,  
LOMESHAYE ESTATE, NELSON, BB9 5SZ (TRUST)**

**and**

**LANCASHIRE COUNTY AUTHORITY OF COUNTY HALL, PRESTON,  
LANCASHIRE, PR1 0LD (AUTHORITY)**

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THIS DEED is dated 10 October 2012

## **PARTIES**

- (1) EAST LANCASHIRE HOSPITALS NHS TRUST of 31-33 KENYON RD, LOMESHAYE ESTATE, NELSON, LANCASHIRE, BB9 5SZ (**Trust**).
- (2) LANCASHIRE COUNTY AUTHORITY of COUNTY HALL, PRESTON LANCASHIRE PR1 8XJ (**Authority**).

## **BACKGROUND**

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS Bodies to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (B) The Partners are committed to better integration of the NHS Functions and the Authority Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (C) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.

## **AGREED TERMS**

### **1. DEFINITION AND INTERPRETATION**

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

**Agreement:** this Agreement between the Trust and the Authority comprising these terms and conditions together with all schedules attached to it.

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

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

**Authority Assets:** the assets used by the Authority employees in the discharge of the Authority's Health-Related Functions have the meaning set out in Schedule 3.

**Authority Health-Related Functions:** the functions contained in the Chronically Sick and Disabled Persons Act 1970.

**Authority's Authorised Officer:** Donna Eastham, Area Operations Manager, LCC.

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

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

**Commencement Date:** 1<sup>st</sup> November 2012

**Data Protection Legislation:** this includes:

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

**Dispute Resolution Procedure:** the procedure set out in clause 33.

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

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

**First Financial Year:** 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2013.

**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. For the purposes of this Agreement any reference to the FOIA shall include a reference to the Environmental Information Regulations 2004.

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

**Health Improvement Plan:** the local NHS health improvement and modernisation plan which applies to the Trust and any other plan known to incorporate the Aims and Outcomes.

**Host Partner:** the host partner for the Functions under this Agreement.

**Information:** has the meaning given under section 84 of FOIA or paragraph 2 of the Environmental Information Regulations 2004.

**Information Sharing Protocol:** the protocol describing how the Partners will share Information contained in Schedule 10.

**Initial Term:** the period commencing on the Commencement Date and ending on 31 March 2015.

**Law:** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body.

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

**NHS Body:** shall have the meaning set out in Regulation 3(1) of the NHS Regulations 2000.

**NHS Functions:** the functions contained in:

- (a) [LIST OF FUNCTIONS WITH REFERENCE TO NHS REGULATIONS 2000]].

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

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

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

**Personal Data:** shall have the same meaning as set out in the DPA 1998.

**Pre-Existing Contracts:** as set out in Schedule 7 any existing contracts entered into by the Authority for the purposes of or in connection with the delivery of the Services.

**Quarter:** the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

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

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

**Representative:** a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.

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

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

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

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

**Term:** the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement that are agreed under clause 3; or
- (b) the earlier termination of this Agreement in accordance with its terms.

**Trust Assets:** shall have the meaning set out in schedule 3. **Trust Premises:** the Trust premises listed in schedule 3.

**Trust's Authorised Officer:** Chris Payne, Business Manager, ELHT.

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

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

**VAT Guidance:** the guidance published by the Department of Health entitled "VAT arrangements for Joint NHS and Local Authority Initiatives including Disability Equipment Stores and Welfare- Section 31 Health Act 1999".

**Working Day:** any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.7 A reference to **writing** or **written** includes faxes, but not e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

## **2. COMMENCEMENT AND DURATION**

This Agreement shall take effect on the Commencement Date of 1 November 2012 and shall continue until 31 March 2015.

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

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

## **4. PARTNERSHIP ARRANGEMENTS**

- 4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to provide integrated health and social care services to better meet the needs of the Service Users of East Lancashire than if the Partners were operating independently.
- 4.2 The specific Aims and Outcomes of the Partnership Arrangements are described in Schedule 1.
- 4.3 The Partnership Arrangements shall comprise delegation by the Authority to the Trust of the Authority Functions, so that it may exercise the Authority Functions alongside the NHS Functions and act as provider of the Services described in Schedule 2
- 4.4 The Trust shall appoint a nominated officer, who shall be responsible for:
- (a) managing the budget for the Services on behalf of the Partners;
  - (b) managing expenditure relating to the Services within the budgets set by the Partners and in accordance with the Annual Development Plan; and
  - (c) submitting quarterly reports and an annual return to the Partners, to enable them to monitor the success of the Partnership Arrangements.



4.5 The Trust is satisfied that the Partnership Arrangements fulfil the objectives set out in the Health Improvement Plan.

4.6 Nothing in this Agreement shall prejudice or affect:

- (a) the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
- (b) the powers of the Authority to set, administer and collect charges for any Authority Health-Related Function; or
- (c) the Authority's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

## **5. DELEGATION OF FUNCTIONS**

5.1 For the purposes of the implementation of the Partnership Arrangements, the Authority hereby delegates the exercise of the Authority Health Related Functions to the Trust to exercise alongside the NHS Functions and act as integrated provider of Specialist Occupational Therapy Assessment Services.

5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.

## **6. SERVICES**

6.1 The Trust is the Host Partner for the Partnership Arrangements, and agrees to act as lead provider of the Services listed in clause 5.1.

6.2 The Trust shall provide the Services or procure that they are provided and shall be accountable to the Authority for the Authority health Related Functions for the benefit of Service Users:

- (a) to ensure the proper discharge of the Partners' Functions;
- (b) with reasonable skill and care, and in accordance with best practice guidance;
- (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement, and the Trust's applicable policies as may be notified to the Authority from time to time;
- (d) in accordance with its standing orders or other rules on contracting; and
- (e) in accordance with all applicable Law.

## **7. ANNUAL DEVELOPMENT PLAN**

- 7.1 The Partners shall prepare an Annual Development Plan for each of the Services at least four weeks before the start of the Financial Year. The Annual Development Plan shall:
- (a) set out the agreed Aims and Outcomes for the specific Services;
  - (b) describe any changes or development required for the specific Services;
  - (c) provide information on how changes in funding or resources may impact the specific Services; and
  - (d) include details of the estimated contributions due from each Partner for each Service.
- 7.2 The Annual Development Plan shall commence on 1 April at the beginning of the Financial Year and shall continue for 12 months.
- 7.3 The Annual Development Plan may be varied by written agreement between the Partners. Any variation that increases or reduces the number or level of Services in the scope of the Agreement shall require the Partners to make corresponding adjustments to the Trust's Financial Contribution and the Authority's Financial Contribution.
- 7.4 If the Partners cannot agree the contents of the Annual Development Plan, the matter shall be dealt with in accordance with clause 33. Pending the outcome of the dispute resolution process or termination of the Agreement under clause 34, the Partners shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **8. PERFORMANCE MANAGEMENT**

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

## **9. FINANCIAL CONTRIBUTIONS**

- 9.1 The Authority shall pay the Authority Financial Contribution to the Trust in accordance with Schedule 3 herein to enable the Trust to manage in accordance with this Agreement and the Annual Development Plan.
- 9.2 The Trust's contribution to the integrated service arrangement shall consist of all operational and overhead costs in relation to the Services including staffing costs, premises and resources necessary to enable it to perform the Authority Health Related Functions in accordance with this Agreement and the Annual Development Plan.

- 9.3 The Trust's contribution and the Authority's Financial Contribution for the First Financial Year are set out in Schedule 3. The Authority shall pay its Financial Contributions quarterly in advance.
- 9.4 The Partners shall agree the Trust's Financial Contribution and the Authority's Financial Contribution for the following Financial Year by 31 March.
- 9.5 The Authority's Financial Contribution is deemed to include the sums it may recover from the Service Users, irrespective of whether they are actually recovered.
- 9.6 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services.
- 9.7 The Authority shall bear no responsibility for any costs incurred by the Trust in relation to the provision of the Services and all such costs shall be borne by the Trust. The VAT regime applicable to the Trust shall therefore apply to the purchase by the Trust of any goods and services procured in connection with the Services.

## **10. OVERSPENDS AND UNDERSPENDS**

- 10.1 The Trust shall use all reasonable endeavours to arrange for the discharge of the Authority Health-Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.
- 10.2 Without prejudice to the provisions of schedule 3 the Trust shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.
- 10.3 The Trust shall make the Authority aware of any potential overspend as soon as it becomes aware of this possibility. The Trust will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.
- 10.4 The Trust shall make the Authority aware of any potential underspend in relation to Financial Contributions, prior to the end of the Financial Year. The Trust shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.
- 10.5 Any overspend or underspend at the end of the Financial Year shall be dealt with in accordance with Schedule 3 herein.

## **11. CAPITAL EXPENDITURE**

The Financial Contributions shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall be

made separately and in accordance with section 256 (or section 76) of the NHS Act 2006.

## **12. SET UP COSTS**

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

## **13. PREMISES**

13.1 The Services shall be delivered from the Trust's Premises for the Term as are specified in Schedule 3 or which are otherwise agreed by the parties from time to time.

## **14. ASSETS**

14.1 The Trust shall utilise the Trust Assets in the delivery of the Services. The provisions of clause 35 shall apply on termination of this Agreement.

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

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

- (a) Relevant Transfer of staff under this Agreement; and
- (b) secondments of Authority staff to the Trust.
- (c) The Partners acknowledge that to the best of their knowledge and belief at the commencement of this Agreement no staff shall be subject to a TUPE transfer and no staff shall be seconded from the Authority to the Trust.

## **16. CONTRACTS (PRE-EXISTING AND FUTURE)**

The Partners agree that there are no Pre-Existing Contracts which fall to be novated to the Trust.

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

## **17. GOVERNANCE**

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

- 17.2 The Authority shall nominate the Authority's Authorised Officer, who shall be the main point of contact for the Trust and shall be responsible for representing the Authority and liaising with the Trust's Authorised Officer in connection with the Partnership Arrangements.
- 17.3 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to their respective senior managers or in the case of the Trust to its boards or in the case of the Authority to a cabinet or elected member.
- 17.4 The Partners shall each appoint officers to the Officer's Joint Working Group in accordance with Schedule 4. The terms of reference of the Officer's Joint Working Group are set out in Schedule 4.

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

- 18.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.
- 18.2 The Trust's nominated officer shall submit a quarterly report to the Officer's Joint Working Group setting out:
- (a) the performance of the Partnership Arrangements against the performance management framework in the preceding Quarter; and
  - (b) any forecast overspend or underspend of the Financial Contributions.
- 18.3 The Partners agree to carry out a review of the Partnership Arrangements within two months of the end of each Financial Year including:
- (a) the performance of the Partnership Arrangements against the Aims and Outcomes;
  - (b) the performance of the individual Services against the service levels and other targets contained in the relevant contracts;
  - (c) plans to address any underperformance in the Services;
  - (d) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
  - (e) review of plans and performance levels for the following year; and
  - (f) plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.
- 18.4 The Trust shall prepare an annual report following the Annual Review for submission to the Authority's senior management team.

## **19. VARIATIONS**

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

## **20. STANDARDS**

20.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:

- (a) the service standards set out in Schedule 2 and Schedule 5;
- (b) the prevailing standards of clinical governance;
- (c) the Authority's standing orders; and
- (d) the requirements specified by the Care Quality Commission and any other relevant external regulator.

20.2 The Partners shall develop operational guidance and procedures to reflect compliance with clause 20.

20.3 The Partners shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.

## **21. HEALTH AND SAFETY**

21.1 The Authority 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.

21.2 The Authority 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 Trust on request.

21.3 The Trust shall notify the Authority if any incident occurs in the performance of the Services, where that incident causes any personal injury or damage to property that could give rise to personal injury.

## **22. EQUALITY DUTIES**

22.1 The Partners acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

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

22.3 The Authority shall take all reasonable steps to secure the observance of clause 22 by all servants, employees or agents of the Authority and all Service Providers employed in delivering the Services described in this Agreement.

### **23. FREEDOM OF INFORMATION**

The Partners acknowledge that each is subject to the requirements of FOIA and the EIR, and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.

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

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

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

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

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

25.2 The Trust shall be responsible for facilitating Service Users in accessing their Personal Data under the DPA 1998.

### **26. CONFIDENTIALITY**

26.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.

26.2 Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult

with the other Partner before deciding whether the Information is subject to disclosure.

## **27. AUDIT**

27.1 The Trust shall arrange for the audit of its accounts in relation to the delivery of the Services in accordance with its statutory audit requirements.

27.2 The Trust Authority shall provide to the Authority any reports required concerning the Authority Related Health Functions on reasonable notice.

27.3 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

## **28. INSURANCE**

28.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

28.2 The Trust shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangements, as set out in Schedule 3.

## **29. INDEMNITIES**

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

## **30. LIABILITIES**

30.1 Save as may have been provided for under previous working arrangements between the Parties, neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.



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

### **31. COMPLAINTS AND INVESTIGATIONS**

- 31.1 The Partners shall deal with all complaints received concerning the Services in the first instance through the Authority's complaints procedures.
- 31.2 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

### **32. HEALTHWATCH**

- 32.1 The Partners shall promote and facilitate the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements.
- 32.2 The Authority shall ensure the effective discharge of its obligations in the establishment of Local HealthWatch and, in the interim, with the Local Involvement Network.
- 32.3 The Trust shall ensure its contracts with Service Providers require co-operation with Local HealthWatch and the Local Involvement Network.

### **33. DISPUTE RESOLUTION**

- 33.1 The members of the Officer's Joint Working Group shall use their best endeavours to resolve disputes arising out of this Agreement.
- 33.2 If any dispute referred to the Officer's Joint Working GROUP is not resolved within thirty [30] days, either Partner, by notice in writing to the other, may refer the dispute to the chief executives of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within thirty [30] days of service of the notice.
- 33.3 Subject to clause 34.4, if the chief executives fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Partner may commence legal proceedings.
- 33.4 This clause 34 shall not prevent either Partner from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 34 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

## 34. TERMINATION

- 34.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 34.2 or 34.3, either Partner may terminate this Agreement at any time by giving six [6] months' written notice to the other Partner.
- 34.2 Subject to clause 34.3, either Partner may terminate this Agreement at any time by giving 6 OR months' written notice to the other Partner, if for budgetary reasons:
- (a) it is no longer able to make its Financial Contributions or otherwise contribute sufficient resources to the Partnership Arrangements (or any part of them); or
  - (b) it is of the reasonable opinion that in light of the other's proposed Financial Contribution the Partnership Arrangements (or any part of them) are no longer viable.
- 34.3 Either Partner (for the purposes of this clause 34.3, the **First Partner**) may terminate this Agreement [in whole or part] with immediate effect by the service of written notice on the other Partner (for the purposes of this clause 34.3, the **Second Partner**) in the following circumstances:
- (a) if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement under clause 34.3, if the Second Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner (**Remediation Notice**) to do so;
  - (b) there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement; or
  - (c) following a failure to resolve a dispute under clauses 34.1 and 34.2.
- 34.4 In the event that following the re-structure of the NHS the Trust is no longer commissioned to provide the NHS Functions in the area, the Trust as soon as it becomes aware of this, shall give notice to the Authority in writing. The Authority may thereafter and within 1 month of receiving such notice give 6 months notice to the Trust to terminate the Agreement.
- 34.5 The provisions of clause 35 shall apply on termination of this Agreement.

## 35. CONSEQUENCES OF TERMINATION

- 35.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:
- (a) the Partners will comply with the exit strategy set out in Schedule 10;

- (b) premises and assets shall be returned to the contributing Partner in accordance with the terms of their leases, licences or agreed schedule of condition;
- (c) assets purchased by either Partner in connection with the delivery of the Services shall be retained by or returned to the Partner from whose Financial Contribution the purchase was made;
- (d) contracts entered into by the Trust concerning the Authority Health Related Functions shall be novated to the Authority and the Authority shall accept the novation; and
- (e) the Trust shall transfer to the Authority all records in its possession relating to the Authority Health Related Functions.

35.2 Overspends and underspends on termination of the Agreement shall be dealt with in accordance with Schedule 3.

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

- (a) Clause 23;
- (b) Clause 24;
- (c) Clause 25;
- (d) Clause 27;
- (e) Clause 29;
- (f) Clause 30; and
- (g) Clause 35.

## **36. PUBLICITY**

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

## **37. NO PARTNERSHIP**

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

### **38. THIRD PARTY RIGHTS**

- 38.1 Any persons who become to the provisions of Schedule 6 may enforce the terms of Schedule 6 subject to and in accordance with the provisions of this Agreement and the Contracts (Rights of Third Parties) Act 1999.
- 38.2 Except as provided in clause 38.1, 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.
- 38.3 Despite clause 38.1, it is expressly agreed that the parties to this Agreement may, by agreement, rescind or vary this Agreement, or any term of this Agreement (including Schedule 6) without the consent of any person who has a right to enforce this Agreement or the term in question. This is despite that the rescission or variation may extinguish or alter that person's entitlement under that right.

### **39. NOTICES**

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

### **40. ASSIGNMENT AND SUBCONTRACTING**

- 40.1 Subject to clause 41.2, this Agreement and any right and conditions contained in it may not be assigned or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.
- 40.2 The Partners recognise the upcoming changes to the structure of the NHS and agree that the Trust shall be entitled to novate, assign in whole or in part any right or condition under this Agreement to a Clinical Commissioning Group, any other NHS organisation or any other entity replacing the Trust or who has become responsible for the exercise of any or all of the NHS Functions.

**41. SEVERABILITY**

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

**42. WAIVER**

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

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

**43. ENTIRE AGREEMENT**

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

**44. GOVERNING LAW AND JURISDICTION**

Subject to clause 33, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

**45. FAIR DEALINGS**

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

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

## **Schedule 1 Aims and Outcomes**

### **General Overview**

Occupational Therapy is a profession concerned with promoting health and wellbeing through occupation. The primary goal of Occupational Therapy is to enable people to participate in the activities of everyday life. Occupational Therapists achieve this outcome by enabling people to do things that will enhance their ability to participate or by modifying their environment to better support participation.

This partnership agreement sets out the arrangements between Lancashire County Authority, Adult and Community Services and the Community Occupational Therapy Service at East Lancashire Hospitals NHS Trust in relation to specialist Occupational Therapy assessments to support the provision of equipment and adaptations.

### **Aims**

- To provide an integrated approach to the delivery of specialist assessments for equipment and adaptations and NHS funded therapy rehabilitation.
- To undertake a full assessment in order to identify the essential needs of people with physical and/or sensory disabilities.
- To provide the most appropriate solution to service users' needs by taking into account individual circumstances in a person-centred way and available resources.
- To maintain or increase the functional independence of people within their own homes by giving advice on available options and providing equipment and/or adaptations.
- To provide education, information and choice to support the individual and others involved in their care, and enable care to be provided safely.

### **Expected Outcomes**

- Improve ability and participation in everyday activities including work, leisure, community and education.
- Prevent unnecessary disability resulting from disease, illness or accidents.
- Prevent unnecessary hospital admissions e.g. falls prevention.
- Reduce anxiety and fear.
- Enable early discharge home from hospital.
- Facilitate self-management of long term conditions.
- Maximise independence, quality of life and ability of people to remain at home.

## **Schedule 2 Services in scope**

### **Services that will be provided**

The service primarily relates to the provision of specialist assessments for community equipment and adaptations, which is a statutory responsibility of the Authority under the Chronically Sick and Disabled Persons Act 1970.

The Occupational Therapy service will provide high quality assessments and interventions to adults and older people in East Lancashire who have complex needs, to include:

- Customised intervention programmes to improve ability to perform activities of daily living by the recommendation of appropriate equipment and/or adaptations.
- Comprehensive home and environmental assessments and adaptations
- Advice and information with regard to enhancing quality of life.
- Demonstrating and instructing in the use of community equipment.
- Guidance to family members and care-givers.
- Use of assistive technology e.g. telecare, environmental controls and powered mobility equipment.

This Agreement applies to all adults (18 years and above) with residency within the local Authority boundaries for Burnley, Pendle, Rossendale, Hyndburn and Ribbles Valley as identified by the Authority as being appropriate to receive an assessment under the partnership agreement.

The following types of referrals will be included:

- Long term very complex cases.
- Allocated to give consistency of Therapists.
- Referral identified by the Trust as requiring funding by the Authority for assessment for special equipment or Disabled Facilities Grant.
- Palliative or end of life cases with complex needs.
- Mental health and learning disability cases with very complex needs.
- Complex rapidly deteriorating conditions (e.g. motor neurone disease).

The Occupational Therapy Service at the Trust to be paid by the Authority to provide 100 specialist assessments per month.

Qualified Occupational Therapists who undertake work as part of this agreement will be registered with the Health Professions Council and will provide evidence on a regular basis to demonstrate that they meet the requirements for full registration. They will abide by the College of Occupational Therapists' Code of Conduct and Standards for Practice, including Professional Standards for the delegation of work to appropriately trained non-qualified Occupational Therapy staff.



The activity undertaken by the Occupational Therapy Service will include assessments, joint visits with companies and partner agencies to reach agreed outcomes, fitting and demonstration visits. Other associated work would include monitoring and development work with local authorities and housing associations to ensure the appropriate outcomes for service users.

All referrals will be managed by the Authority and allocated to the Trust based on jointly agreed protocols. As referral types and priorities will vary over time the Trust must be able to offer a flexible approach to service delivery and staff deployment.

As part of an integrated and person-centred approach to service delivery the Trust will give full consideration to the provision of NHS funded therapy rehabilitation alongside or instead of the provision of equipment and adaptations.

The management of the service will be the responsibility of the Trust.

All assessments will be completed within 28 days of referral to the Trust by the Authority. A target figure of 100% is required expect where a delay has occurred outside the control of the Trust e.g. delay due to service user choice.

Full assessments and relevant information will be recorded electronically using IT systems as directed by the Authority. The current requirement is for this to be done using the Authority's ISSIS system and OT module.

Quarterly review meetings will take place to ensure that the service is operating effectively and in accordance with the partnership agreement.

All equipment requiring fitting by the Occupational Therapy Service is to be completed within a target of 8 days, with the information being recorded using an appropriate monitoring system.

### **Eligibility for the service**

Individuals assessed as needing equipment and adaptations under the Chronically Sick and Disabled Persons Act 1970 should meet the Authority's eligibility threshold under Fair Access to Care Services currently set at 'Substantial'.

Eligibility for Disabled Facilities Grant under relevant Housing legislation.

### **Location of Service**

The Trust is free to locate its services as it sees fit as long as equality of access is maintained wherever a person may live in East Lancashire. Service assessment and delivery will take place within the service user's home environment or other appropriate environment.

## **Schedule 3 Contributions**

### **1. FINANCIAL CONTRIBUTIONS**

**1.1 THE AUTHORITY SHALL CONTRIBUTE THE SUM OF £194,112 PER ANNUM (£80,880 FOR THE PERIOD 1 NOVEMBER 2012 TO 31 MARCH 2013).**

**1.2 THE SUM REFERRED TO IN 1.1 ABOVE IS BASED UPON THE ASSUMPTION THAT 1,200 ASSESSMENTS SHALL BE CARRIED OUT BY THE TRUST DURING EACH FINANCIAL YEAR (500 FROM 1 NOVEMBER 2012 TO 31 MARCH 2013).**

**1.3 SHOULD THE NUMBER OF ASSESSMENTS CARRIED OUT BY THE TRUST EXCEED 1,200 DURING THE FINANCIAL YEAR (500 FROM 1 NOVEMBER 2012 TO 31 MARCH 2013) THE PARTIES SHALL TREAT THIS AS AN OVERSPEND AND THE AUTHORITY SHALL MAKE A FURTHER CONTRIBUTION TO THE TRUST'S BUDGET ON THE BASIS OF £161.76 PER ASSESSMENT CARRIED OUT IN EXCESS OF 1,200 ASSESSMENTS (500 FROM 1 NOVEMBER 2012 TO 31 MARCH 2013).**

**1.4 SHOULD THE NUMBER OF ASSESSMENTS CARRIED OUT BY THE TRUST IN ANY FINANCIAL YEAR FALL BELOW 1,200 (500 FROM 1 NOVEMBER 2012 TO 31 MARCH 2013) THE PARTIES SHALL TREAT THIS AS AN UNDERSPEND AND THE TRUST WILL REIMBURSE THE AUTHORITY ON THE BASIS OF £161.76 FOR EACH ASSESSMENT NOT CARRIED OUT.**

**1.5 THE TRUST'S CONTRIBUTION SHALL BE THE OPERATIONAL COSTS OF DELIVERING THE SERVICES INCLUDING WITHOUT LIMITATION, PREMISES MANAGEMENT COSTS ALL STAFFING COSTS, OVERHEADS AND ANY OTHER COSTS INCURRED IN CONNECTION WITH OR IN ASSOCIATION WITH THE DELIVERY OF THE SERVICES.**

### **2. [POOLED FUND AND/OR NON-POOLED FUND]**

**2.1 THE CONTRIBUTIONS SET OUT ABOVE WILL BE MADE UNDER A NON-POOLED FUND ARRANGEMENT.**

**3. PREMISES**

**3.1 THE TRUST WILL UTILISE ITS EXISTING PREMISES AT LOCALITY BASED OFFICES TO DELIVER THE SERVICE.**

**4. ASSETS**

**4.1 THE TRUST WILL UTILISE ITS ASSETS AS REQUIRED TO ENABLE EFFECTIVE SERVICE DELIVERY.**

**5. SUPPORT SERVICES**

**5.1 THE TRUST WILL UTILISE ITS SUPPORT SERVICES AS REQUIRED TO ENABLE EFFECTIVE SERVICE DELIVERY**

## **Schedule 4 Governance**

### **Officer's Joint Working Group – Terms of Reference**

#### **Purpose**

- To oversee the effectiveness of the partnership agreement.
- To monitor service performance against the performance framework.
- To manage the financial contributions including any payment adjustments.
- To develop and review the partnership agreement as required.
- To resolve any disputes in accordance with the partnership agreement.

#### **Membership**

- Donna Eastham, Area Operations Manager, LCC.
- Janet Allcock, Practice Development Manager, LCC.
- Craig Frost, Locality Commissioning Manager, LCC.
- Freya Sledding, Service Manager for Adult Occupational Therapy, ELHT.
- Chris Payne, Business Manager, ELHT.
- Val Sibson, Head of Business Planning, Contracts and Performance, ELHT.
- Amanda Kirk, Clinical Occupational Therapy Manager, ELHT.
- Janet Stott, Divisional Accountant, ELHT.

#### **Meeting Arrangements**

- Meetings will take place on a quarterly basis normally within 30 days of the end of each quarter.
- Meetings will be organised and chaired by the Authority's Authorised Officer and deputised by the Trust's Authorised Officer.
- An agenda will be issued prior to each meeting and summary notes of each meeting will be taken.

#### **Quoracy**

- Two members from Lancashire County Authority and three members from East Lancashire Hospital's Trust, including the chair or deputy chair.

#### **Accountability**

- The Authorised Officers are responsible for taking decision concerning the partnership arrangements, unless they indicate that the decision is one that must be referred to their respective organisations.

## **Approval and Review**

- The terms of reference were approved by members of the Officer's Joint Working Group on 4 September 2012. They will be reviewed within two months of the end of each financial year.

## **Schedule 5 Performance management framework**

The performance information listed below will be collated and made available by East Lancashire Hospital's Trust on a monthly basis using monitoring templates to be jointly agreed by both parties.

### **Quantitative**

- The number of service users referred.
- The number of assessments completed within 28 days of referral.
- The total number of completed assessments.
- The longest wait per district and the reasons for the delay.
- The number of referrals waiting to be allocated for assessment.
- The time taken from assessment to fitting by OT where applicable.
- Details of the number and nature of Comments/Complaints/Compliments.

### **Qualitative**

The production of an annual report by East Lancashire Hospitals Trust to include:

- Presentation of quantitative data in a format which will facilitate interpretation.
- Evaluation of the service
- Identification of service user and carer needs and experiences i.e. patient stories

## Schedule 6 Staffing

### TUPE

In this Schedule 6 the following terms shall have the following meanings:

“Acquired Rights Directive” shall mean EC Directive 77/187.

“Employment Liabilities” shall mean any costs, claims, losses, expenses, liabilities, proceedings, fees (including reasonable legal and other professional fees and expenses) which are suffered or incurred in relation to any employee or former employee.

“Relevant Transfer” shall mean any TUPE transfer applying to any member of the Contractor’s staff, the Authority’s staff or a New Provider’s staff engaged in the delivery of the Services set out in this Agreement.

“Replacement Service Provider” shall mean any contractor who assumes responsibility for delivering the Services to the Authority upon expiry or termination of this Agreement (or any subsequent contractor who delivers the Services upon expiry or termination of any subsequent agreement to deliver the Services).

“Transfer Date” shall mean the date on which this Agreement terminates.

“Transferring Staff” shall mean any members of the Trust’s staff, the Authority Staff or Replacement Service Provider’s Staff employed in the delivery of Services described in this Agreement whose contract of employment transfers to a different employer as a result of the operation of TUPE.

“Transferring Employees” shall mean any employee employed wholly or mainly in connection with the provision of the Services or any part at the Transfer Date or where the context so requires any person who would be so employed if the relevant transfer date for the purposes of the operation of this schedule 6 were the Transfer Date.

#### **1 Relevant Transfers**

Where the identity of a provider of the services (including the Trust) of any service which constitutes or which will constitute one of the Services , changes in anticipation of or changes pursuant to this Agreement (including the termination or expiry of this Agreement) then the change in the identity of such service provider shall constitute a Relevant Transfer. On the occasion of the Relevant Transfer the Partner procuring the Services shall procure that the new service provider of the relevant service will comply with all of its obligations under TUPE in respect of any relevant employees and that it shall offer the indemnities required in accordance with this schedule 6.

## **2 Service Provider Responsibilities**

The Replacement Service Provider shall:-

2.1 Indemnify the Partners and keep the Partners indemnified in full from and against all direct, indirect, or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Partners as a result or in connection with the employment or termination of employment of any employee on or after the date of any Relevant Transfer or the breach by the Service Provider or any of the provisions of this Schedule 6 including pursuant to regulation 10 of TUPE and Article 6 of the Acquired Rights Directive.

2.2 Provision of Details and Indemnity

The Replacement Service Provider shall immediately upon request by either Partner provide to that Partner details of any measures which the Replacement Service Provider envisages it will take in relation to any employees who are or who will be the subject of a Relevant Transfer and shall indemnify the Partners against all injury, claims, cost and expenses (including legal expenses) and/or damages resulting from any failure by the Replacement Service Provider to comply with this obligation.

3 In the event that TUPE or the Acquired Rights Directive applies on the termination of this Agreement such that the contracts of employment of the Transferring Employees engaged at the date, or any of them, shall be transferred from the Trust to the Replacement Services Provider to provide the Services or a relevant part of the Service the provisions of Schedule 6 paragraphs 5-14 below shall apply.

4 The Trust shall indemnify the Authority and the Replacement Service Provider and keep them fully and effectively indemnified from and against all Employment Liabilities which the Replacement Service Provider or the Authority may suffer or incur which relate to or arise in respect of (whether directly or indirectly) any person engaged or employed or formerly engaged or employed by the Trust or any of its Sub-Contractors for which it may be alleged that the Authority or the Replacement Service Provider is liable by virtue of the operation of this Agreement and/or TUPE and/or the Acquired Rights Directive in respect of or in any way relating to any period up to and including the Transfer Date.

5 The Replacement Service Provider shall indemnify the Partners and keep each of them fully and effectively indemnified from and against all Employment Liabilities which either of the Partners may suffer or incur and which relate to or arise in respect of (whether directly or indirectly) any Transferring Employee for which it may be alleged that the Replacement Service Provider is liable by virtue of the operation of this Agreement where such liability arises after the Transfer Date.

6 The Trust shall and shall procure that its sub-contractors shall and the prior to the transfer of employment of any staff pursuant to TUPE and/or the Acquired Rights Directive comply with its respective obligations to inform



and consult with appropriate representatives (as such term is defined in Regulation 10 of TUPE) or affected Transferring Staff and shall carry out such provision of information to, or consultation with, such representatives as is required of it by law.

- 7 The Trust shall indemnify and hold the Authority and Replacement Service Provider indemnified and harmless in respect of all Employment Liabilities arising out of any failure of the Trust and/or its sub-contractor to comply fully with its respective obligations pursuant to clause 7 of schedule 6 save where and to the extent only that, failure to do so is attributable to the default or failure on the part of the Authority or Replacement Service Provider to provide relevant information to the Trust (as the case may be) as is required of the Authority; or the Replacement Service Provider by law.
- 8 Following the service of a notice of termination of this Agreement or prior to six months from the date of expiry of the Agreement the Trust shall not without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed) carry out any of the following:
- (i) The termination of the employment or engagement of any Transferring staff;
  - (ii) the alteration or change (or the making of any binding promise to alter or to change) in any way any material terms and conditions of employment, or terms of engagement, of any of the Transferring Staff (whether with or without the consent of the Transferring Staff) other than in order to give effect to wage or salary awards in line with those offered generally for similar status individuals within the Trust's (or its sub-contractor's) workforce; and
  - (iii) the recruitment of any employees, self employed consultants or other personnel to perform any of the Services (except as replacement for any Transferring Staff whose employment is terminated and where the replacement is recruited on terms not materially better than the terms of the Transferring Staff member being replaced.
  - (iv) the re-assignment of any of the Transferring Staff to or from other duties connected with the Services.
- 9 Following the service of a notice of termination of this Agreement under clause 34 or six (6) months prior to the expiry of the Agreement within thirty (30) days of receipt of a written request from the Authority the Trust shall, and shall procure that each of its sub-contractors shall subject to the provisions of the Data Protection Act 1998 provide to the Authority such information concerning the Transferring Staff as the Authority may reasonably stipulate ("Staffing Information") including but not limited to:
- (i) the number of Transferring Staff;

- (ii) their status as employees, self employment contractors, agency workers or otherwise;
- (iii) their ages, dates of commencement of employment or engagement and gender;
- (iv) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures and contractual redundancy payment schemes;
- (v) the wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (vi) details of other employment related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schemes applicable to them;
- (vii) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including personal injury claims);
- (viii) details of any such individuals on long term sickness absence, maternity or parental leave; and
- (ix) copies of relevant contracts of employment, collective agreements, employee handbooks, manuals, policies and procedures.

**10** The Trust shall provide Staffing Information to the Authority as at the Transfer Date.

**11** The Trust shall indemnify the Authority and the replacement Service Provider and keep the Authority and the Replacement Service Provider fully and effectively indemnified from and against all Employment Liabilities which the Authority or as the case may be, the Replacement Service Provider may suffer or incur which relate to or arise in respect of (whether directly or indirectly) any failure to provide the Staffing Information in accordance with this schedule 6 and/or any such information being inaccurate or misleading in any respect.

**12** The Trust expressly consents and shall procure that its sub-contractor shall consent subject to the Data Protection Act 1998 to any Staffing Information being provided to third parties including a Replacement Service Provider or any prospective replacement service provider, subject to the third party agreeing to respect the confidentiality of the Staffing Information, and to only use such Staffing Information for the purpose for which it was provided.

**13** The Partners hereby acknowledge that it is their intention that the benefit of this schedule 6 shall be assigned to the Replacement Service Provider and the Partners each agree do all acts and things necessary to give effect to such assignment including execution of all documents required. The

Contracts (Rights of Third Parties) 1999 shall apply in relation to this schedule 6 for the benefit of any Replacement Service Provider.

- 14** In the event that upon termination or expiry of this Agreement the Authority replaces the Trust as the provider of the Services any reference in this schedule 10 to the Authority or the Replacement Service Provider shall be taken to mean the Authority and reference to the Replacement Service Provider alone shall be taken to mean the Authority.

## SECONDMENT

THIS AGREEMENT is made on 10 October 2012

Between

Lancashire County Authority of County Hall, Fishergate, Preston, Lancashire, PR1 8XJ (" Authority")

AND

East Lancashire Hospitals NHS Authority of 31-33 Kenyon Road, Lomeshaye Industrial Estate Nelson, Lancashire ("Authority")

### Background

This Agreement relates to the Secondment to THE Trust of employees of THE AUTHORITY on the terms and conditions below.

### 1. Definition and Interpretations

1.1 In this Agreement the following words and expressions shall have the following meanings unless the context otherwise requires:

<b>"Agreement"</b>	This Agreement including its schedules and annexes and any variation of its terms and conditions in accordance with Clause 8.3 of this Agreement
<b>"Commencement Date"</b>	Has the meaning given to it in the s.75 Agreement
<b>"Duties"</b>	The duties set out in Schedule 1 to this Agreement
<b>"Management Issues"</b>	All those matters under the Secondees' employment contracts requiring action, investigation and/or decisions by THE AUTHORITY as the employer, including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the employment contracts; periods of annual, sick or other leave; absence of the Secondees for any other reason; any complaint about the Secondees (whether or not that would be dealt with under the THE AUTHORITY's disciplinary procedure) and any complaint or grievance raised by the Secondees (whether or not that would be dealt with under the THE AUTHORITY's grievance procedure)
<b>"Policies and Procedures"</b>	The policies and procedures listed in Annexe 2 to this Agreement

<b>"Remuneration"</b>	All sums paid to or in respect of the Secondees by THE TRUST including but not limited to salaries, bonuses, benefits in kind and all other emoluments and outgoings.
<b>s.75 Agreement</b>	The Agreement between the Parties made pursuant to s.75 of the National Health Service Act 2006 dated    day of    2012.
<b>"Secondees "</b>	THE AUTHORITY's employees and who are listed in Schedule 2 to this Agreement and any replacement or additional employees seconded to THE TRUST as agreed under the terms of this Agreement.
<b>"Secondment"</b>	The secondment to THE TRUST of the Secondees by THE AUTHORITY for the purposes of carrying out the Duties on the terms set out in this Agreement.
<b>"Secondment Statement"</b>	The Secondment Statement in the form of the statement in Schedule 3 to this Agreement.
<b>"Services"</b>	Has the meaning given to it in the S.75 Agreement.
<b>"Statement of Responsibilities"</b>	Those responsibilities defined within Schedule 4 of this Agreement.
<b>"Trade Unions"</b>	Those trade unions, notified by THE TRUST to THE AUTHORITY as being recognised by THE AUTHORITY for the purposes of individual and collective representation, consultation and negotiation.

- 1.2 Words denoting the singular only shall include the plural and vice versa. Words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa.
- 1.3 Unless the context otherwise requires reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule (as the case may be) of or to this Agreement.
- 1.4 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

## **2. Duration**

This Agreement will begin on the Commencement Date and save insofar as the parties agree otherwise will end on the date of termination of the s.75 Agreement.

### **3. Obligations**

- 3.1 The purpose of this Agreement is to allow employees (current and future) of THE AUTHORITY, who are seconded under the terms of the Agreement, to:
- 3.1.1 maintain their local government continuous service;
  - 3.1.2 retain their membership of the Local Government Pension Scheme;
  - 3.1.3 enjoy additional local benefits; and
  - 3.1.4 work within a partnership that blends the best resources, skills and knowledge of both the local authority and health sectors and which recognises the roles and importance of all of its stakeholders, in particular its staff.
- 3.2 The Secondees will be seconded from THE AUTHORITY to THE Trust under the terms of this Agreement. The Secondees will remain subject to the employment terms and conditions including Policies and Procedures associated with THE AUTHORITY.
- 3.4 THE AUTHORITY shall during the term of this Agreement:
- 3.4.1 From the Commencement Date provide the Secondees as listed in Schedule 2 of this Agreement for the purposes of the Secondment; and
  - 3.4.2 Perform its obligations in accordance with the provisions of this Agreement.
  - 3.4.3 If the secondment of any Secondee ceases, then if any additional or replacement Secondees are required by the Trust they shall be recruited by the Trust in accordance with the Authority's recruitment and selection procedures provided always that no such recruitment process shall be commenced without the prior approval of the Authority in writing.
- 3.5 THE Trust shall during the term of this Agreement:
- 3.5.1 Perform its obligations in accordance with the provisions of this Agreement;

### **4. Employment Status of the Secondees**

- 4.1 THE TRUST and THE AUTHORITY agree that all Secondees remain employees of THE AUTHORITY and will continue to enjoy terms and conditions that they enjoy prior to their secondment, with the exception of any variances implemented as provided for within this Agreement. Any subsequent change to a Secondee's terms and conditions (whether temporary or permanent) will be in accordance with statutory and normal procedures and their contract of employment with THE AUTHORITY and subject to normal consultation processes.
- 4.2 THE AUTHORITY will notify each Secondee of the Secondment arrangements in substantially the form of the Secondment Statement appended to this Agreement. Nothing in this Agreement is intended to create an employment or worker relationship between THE TRUST and the Secondees.

- 4.3 THE TRUST will to pay the Remuneration of the Secondees and will be responsible for PAYE deductions, pensions and NI contributions. THE AUTHORITY will if appropriate apply the results of its job evaluation exercise to Secondees and will notify the TRUST of the results of any such exercise.
- 4.4 Any increases to salary or provision of additional bonus payments made by THE TRUST during the secondment will be of a temporary nature and, except where this represents a permanent amendment agreed in accordance with clause 4.1, upon the termination of the Secondment, the Secondee shall revert to the equivalent grade and salary payable under their contract of employment immediately prior to the secondment.
- 4.5 Should any temporary increases be agreed for a Secondee by THE TRUST, THE TRUST will pay THE AUTHORITY a sum equivalent to the increased applicable employment on costs and employer's pension contributions.
- 4.6 THE TRUST shall reimburse a Secondee for any agreed additional hours or overtime premiums incurred in the performance of the agreed duties during the period of secondment, and shall pay THE AUTHORITY a sum equivalent to the increased salary on costs and pension contributions.
- 4.7 The Secondment Agreement will apply to the Secondees for the duration of their secondment with the TRUST, with the exception of those Policies and Procedures detailed in the Appendix below.

## **5. Management of the Secondees**

- 5.1 Following the Secondment of the Secondees by THE AUTHORITY to the TRUST the Secondees will be under the day-to-day management and supervision of the TRUST as regards the performance of the Duties. THE AUTHORITY and THE TRUST will comply with the Statement of Responsibilities contained in Schedule 4 to this Agreement. During the term of this Agreement THE TRUST will ensure that it manages the Secondees in accordance with the agreed contractual obligations, policies and procedures, including those set out in the annexe to this agreement.
- 5.2 THE TRUST will be responsible for compliance with all duties relating to health, safety and welfare at work imposed upon an employer by relevant statutory provisions as if it were the employer of the secondee.
- 5.3 THE TRUST will ensure that in relation to the Secondees it has adequate provision to cover all public liability and employer's liability for the purposes of the Secondment consistent with its normal risk management practices.
- 5.6 The term of an individual Secondment may be ended by THE AUTHORITY in consultation with the TRUST with immediate effect without notice for any of the following reasons:
- (a) As a consequence of dismissal resulting from a finding of gross misconduct or cumulative misconduct; or
  - (b) Capability (performance or ill-health), ill-health incapacity or permanent unfitness for work through the relevant and agreed procedures and protocols; or

- (c) The Secondee acts in a way which is harmful to the business or reputation of THE AUTHORITY/or the TRUST; or
  - (d) Health or disability related redeployment following an occupational health recommendation to consider such redeployment; or
  - (e) The restructuring of the seconded workforce, following consultation and in accordance with the agreed relevant policies and related provisions; or
  - (f) If THE TRUST terminates or varies its arrangements with THE AUTHORITY;
  - (g) If THE AUTHORITY terminates or varies its arrangements with the TRUST ; or
  - (h) If the Secondee's employment with THE AUTHORITY is terminated for whatever reason or the Secondee resigns for any reason
- 5.7 The term of a Secondee's Secondment may be ended by THE AUTHORITY or the TRUST providing the Secondee with one months' notice of its intention to end that Secondee's Secondment.

## **6. Confidentiality**

- 6.1 Each party agrees that it is bound by the confidentiality provisions contained in the S.75 Agreement and such confidentiality provisions apply to this Agreement.
- 6.2 This Clause 6 will survive the end of this Agreement.

## **7. Notices**

- 7.1 Any notice to be served one party on the other shall be in accordance with the notice provisions set out in the S.75 Agreement.

## **8. General**

- 8.1 The termination of this Agreement will not affect the rights of the parties accrued up to the date on which this Agreement terminates.
- 8.2 The failure by any party to enforce at any time or for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 8.3 This Agreement may not be varied except in writing by a document signed by the parties.
- 8.4 Each party agrees that they will not induce any employee of the other to terminate his contract of employment with his employer.
- 8.5 In the event of any dispute arising between the parties in respect of this Agreement, the matter shall be dealt with in accordance with clause 33 of the S.75 Agreement



## **9. Law**

- 9.1 This Agreement is subject to English Law and each party agrees to submit to the exclusive jurisdiction of the English courts.

## **10. Third Party Rights**

- 10.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

## **Schedule 1**

### **Duties**

The duties specified and notified in writing to THE AUTHORITY, from time-to-time by THE TRUST and as agreed by the AUTHORITY as being necessary for the performance of the TRUST's obligations under the S.75 Agreement.

## **Schedule 2**

### **The Secondees at the Commencement Date**

- 2.1 On the date of this agreement THE AUTHORITY has provided THE TRUST with the following information in relation to the Secondees.

- 2.1.1 Post number;
- 2.1.2 Description and title of post;
- 2.1.3 Post grade and spinal column point range;
- 2.1.4 Name of current post holder (if any);
- 2.1.5 Current spinal column point of any post holder;
- 2.1.6 Current salary (in pounds) of any post holder;
- 2.1.7 Any special payments in respect of the post; and

- 2.2 On the 1<sup>st</sup> June each year, THE AUTHORITY will provide THE TRUST with a list of all Secondees as per 2.1 above.

[List of THE AUTHORITY Secondees to be inserted]

### Schedule 3

#### Secondment Statement

[ ] 20 [ ]  
**Secondment from Lancashire County Authority ("THE AUTHORITY") to The East Lancashire Hospitals NHS Trust ("THE TRUST ")**

**This statement sets out the arrangements for your Secondment to THE TRUST from THE AUTHORITY.**

1. Your Secondment with THE TRUST will begin on or such later date as agreed by THE AUTHORITY with you and will last for a minimum period of six months.
2. Your Secondment will end when THE TRUST ceases providing services to THE AUTHORITY, which is anticipated as being [ ] (this will be years although THE AUTHORITY and THE TRUST could agree to extend or shorten this period ), unless otherwise ended in accordance with the terms of this Statement or as agreed between you, THE AUTHORITY and THE TRUST. At the end of your Secondment, you will remain employed by THE AUTHORITY, although if the Secondment lasts for a lengthy period, THE AUTHORITY cannot guarantee that you will return to exactly the same job as you had immediately prior to your Secondment. If your current position is not available, THE AUTHORITY and THE TRUST will do all that they can to find you alternative employment, through the redeployment agreements in place at the time of the secondment across THE Authority and the Trust.
3. During the period of your Secondment from THE AUTHORITY to the TRUST you will be under the day-to-day management of the TRUST as regards the organisation and performance of your work. At all times you will remain an employee of THE AUTHORITY and the period of your Secondment will count as part of your continuous employment with THE AUTHORITY. You will not be an employee of the TRUST at any time during the Secondment.
4. Your terms and conditions of employment remain the same and you will continue to be bound by agreed policies and related provisions and the terms of your contract of employment. Any subsequent change to your terms and conditions will be in accordance with statutory and normal procedures and your contract of employment with THE AUTHORITY and subject to normal consultation processes.
5. Any increases to your salary or provision of additional bonus payments made during the secondment will be of a temporary nature and, except where this represents a permanent amendment agreed in accordance with clause 5, upon the termination of your Secondment, you shall revert to the equivalent grade and salary payable under your contract of employment immediately prior to the secondment.
6. THE AUTHORITY will apply the results of the ongoing job evaluation exercise to your post and implement any grade changes in line with any agreed protocols should these be outstanding on the date your secondment begins.
7. During the course of your Secondment from THE AUTHORITY to the TRUST:-

- (a) THE TRUST will pay your salary, employer's national insurance contributions and pension contributions. You will receive the payment of your salary and your payslip from THE TRUST;
  - (b) Your membership of the local government pension scheme will be unaffected by your Secondment;
  - (c) Any expenses incurred by you in the course of your work with the TRUST are subject to agreement with the TRUST;
  - (d) During your Secondment your duties and work location will be determined by the TRUST and you will be paid by the TRUST any excess travel costs incurred as a result of a change of work location in accordance with THE AUTHORITY's excess travel policy.
9. The term of your individual Secondment may be ended by THE AUTHORITY with immediate effect without notice for any of the following reasons:
- 9.1 As a consequence of dismissal resulting from a finding of gross misconduct or cumulative misconduct; or
  - 9.2 Capability (performance or ill-health), ill-health incapacity or permanent unfitness for work through the relevant and agreed procedures and protocols; or
  - 9.3 You act in a way which is harmful to the business of THE AUTHORITY, and/or the TRUST; or
  - 9.4 Health or disability related redeployment following an occupational health recommendation to consider such redeployment; or
  - 9.5 The restructuring of the seconded workforce, following consultation and in accordance with the agreed relevant policies and related provisions; or
  - 9.6 If THE AUTHORITY terminates or varies its arrangements with THE TRUST;
  - 9.7 If THE TRUST terminates or varies its arrangements with the AUTHORITY; or
  - 9.8 If your employment with THE AUTHORITY is terminated for whatever reason or you resign for any reason.
10. The term of your individual Secondment may be ended by THE AUTHORITY or the TRUST providing you with one months' notice of its intention to end your Secondment.
11. Should you wish to leave the employment of THE AUTHORITY or secure a new position elsewhere in THE AUTHORITY, normal contractual notice provisions will apply.
12. On the termination of the Secondment, you will forthwith return to THE TRUST any property belonging to TRUST, including without limitation, any

documents, equipment and information and you will not retain copies of any information relating to THE TRUST including on any hard drive, laptop, computer, disk, memory stick or card or other media.

Please sign and return a copy of this statement in the enclosed pre paid envelope, to acknowledge receipt.

-----  
I acknowledge receipt of my copy of the Secondment Statement and confirm my agreement to these arrangements

Signed:.....Date:.....

Name :.....( Please Print)

## **Schedule 4**

### **Statement of Responsibilities**

#### **1. Trade Unions**

- 1.1 THE TRUST will acknowledge THE AUTHORITY Trade Union recognition, procedures, facilities agreements and practices and will use reasonable endeavours to facilitate THE AUTHORITY's adherence to these in respect of the Secondees. THE TRUST will provide reasonable support to facilitate consultation and negotiation with the Trade Unions in terms of agreed time off, facilities, information provision and dissemination, subject to operational and business needs at all times. THE TRUST will also allow the reasonable attendance of Secondees at meetings in a supportive capacity where required which will be unpaid. THE AUTHORITY will inform THE TRUST of its consultative and negotiating arrangements and any changes to them. The cost of paid convenor (or similar) will remain the responsibility of THE AUTHORITY.

#### **2. Day to Day Management Responsibility for Seconded Staff**

- 2.1 During the period of the secondment to the TRUST, the TRUST on behalf of THE AUTHORITY will be responsible for the day to day management of the Secondees and for their performance in respect of the delivery of Services in accordance with the Secondees' contractual and statutory rights and obligations and any relevant Policies and Procedures. THE AUTHORITY will remain the employer.
- 2.2 TRUST Managers are authorised to instruct Secondees in respect of their conduct and performance and to exercise managerial rights and responsibilities as set out in the various contractual or non-contractual Policies and Procedures. This responsibility extends to all operational management including, but not limited to, matters of discipline, capability, suspension, grievance, dispute, claim and appeal. The dismissal of a Secondee may only be decided upon in accordance with THE AUTHORITY's Policies and Procedures and, specifically, by the following THE AUTHORITY officers – the Chief Executive, Directors or Heads of Service. All actions taken will be in line with applicable agreed Policies and Procedures.
- 2.3 When a trust Manager does not have the authority to act in respect of a particular stage of a relevant policy or related provisions, they will immediately refer the issue to THE AUTHORITY for decision and appropriate action including facilitating access to appropriate appeals' procedures. Should there be a need for immediate precautionary suspension from work of a Secondee then a TRUST Manager has that authority. In exercising this authority the TRUST Manager will always offer the Secondee the right to have their trade union representative present. In the case of trade union representatives' suspensions and the issuing of instructions to leave the Company's premises the matter will be discussed with the full time official of the appropriate trade union, preferably beforehand but if not possible, as soon as possible afterwards. THE AUTHORITY will be informed of any such action as soon as is reasonably practicable.
- 2.4 The TRUST Manager will be responsible for ensuring the issuing all relevant correspondence to the format and standards required in accordance with the

agreed Policies and Procedures. The TRUST Manager will be responsible for recording all formal actions taken under an appropriate policy or related provisions so that records can be retained in accordance with statutory and contractual employment obligations and providing copies of any correspondence to THE AUTHORITY for recording purposes.

- 2.5 THE TRUST shall provide all reasonable information, training and guidance to the TRUST Managers in the exercise of the day to day management of Secondees.
- 2.6 In exercising their responsibilities TRUST Managers will observe all formal representational rights and informal practices.
- 2.7 Each party will provide reasonable co-operation with the other in the implementation of any relevant Policy and Procedures where either party is seeking action in respect of a Secondee's terms and conditions of employment or where a Secondee is pursuing a grievance or dispute in relation to his terms of employment. This will include reasonable assistance with the preparation and presentation of cases to THE AUTHORITY's panels and committees and provincial or national joint employer/employee dispute resolution bodies (if applicable) and in any legal proceedings.

## **Schedule 7 Pre-Existing Contracts**

**Not applicable.**

## **Schedule 8 Previous Section 75 Agreements**

**Not applicable.**



**Schedule 9 Information Sharing Protocol**

**NORTH WEST AND PARTNERS INFORMATION  
SHARING CODE OF PRACTICE**

**Information Sharing Code of Practice  
Operational Guidance for Staff  
(Tier Two)**

**For the provision of Specialist Occupational Therapy  
Services between**

**East Lancashire Hospitals NHS Trust  
&  
Lancashire County Authority**

**Date Approved: 10 October 2012**

**Review Date: At renewal of the Section 75 agreement**

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A Tier Two Information Sharing Protocol gives guidance to operational practitioners on the production of a protocol for the safe sharing of information. These protocols should show what information should be shared and how and under what circumstances and by whom, and should be tailored to individual partnerships. This document will require authorisation of the participating partnership organisations.

A copy of this document should be lodged with the Information Governance section. Guidance would suggest that the following are included:

- Fair processing notices
- Consent leaflets
- Social Care Record Guarantee
- Confidentiality statement
- Subject Access
- Privacy Impact Assessment.

## **1. Introduction**

### a. Organisation / Parties involved

This is an Information Sharing Protocol between East Lancashire Hospitals NHS Trust (ELHT) and Lancashire County Authority (LCC).

### b. Purpose of the Information Sharing

The purpose of this Information Sharing Protocol is to enable LCC to provide access to Service user details via the Occupational Therapy Module to appropriate ELHT staff, and for ELHT staff to provide updated information via the LCC ISSIS system to be held as a common integrated record in the occupational therapy module of the ISSIS system provided by LCC.

### c. Benefits of Sharing the Information

The benefits for staff and patients are as follows:

- a. Patient/Service user data will be accurate and up-to-date
- b. Clinicians have up-to-date information on the patients referred
- c. Reduction in transcription / input errors
- d. Secure information transfer, and reduction in paper records requirement.

### d. Information / Data Items / Data Subjects to be shared

The information shared will consist of the information contained in the Occupational therapy module provided by LCC, and input by ELHT Staff.

### e. Statutory and Legislative Requirements

The Data Protection Act 1998 is not a barrier to sharing information but provides a framework to ensure that personal information is shared appropriately. All parties should adhere to and abide by the Data Protection Act 1998 and the Common Law Duty of Confidence. Information shared under the terms of this agreement must not be disclosed without the written consent of information data controller.

Information shared and received may only be made accessible within each partner organisation for the purpose for which it was requested or provided and only to those individuals or role-holders with a legitimate relationship to access.

f. Processes and Procedures

Processes and procedures for use of the ISSIS system are maintained by LCC and where relevant ELHT will be provided with revised and updated processes to ensure safe and effective use of the system.

## **2. Fairness and transparency**

The Code of Practice is a sign of commitment and a demonstration to the public about how information is used.

When at all possible the patient will be informed at first contact of the purpose of collecting information and how it will be stored, used and shared. Consent to share should also be gained at the first suitable opportunity.

The partnership organisations will:

- Ensure service users permission is sought or that they are aware that information is being shared between LCC and ELHT.
- Explain why they are using the patient's/service user information, and will only use it for those purposes.
- Explain who will see it and limit access to the patient's/service user information only to persons who need it.
- Collect minimum personal and sensitive information to meet the identified needs of the patient and not ask for information which is not relevant.
- Record and share patient's/service user needs with partner organisations as appropriate.
- Keep information about the patients as accurate and up-to-date as possible – with the patient's help.
- Respect patient's/service user rights under the Data Protection Act 1998 – including the patient's/service user right to see the information which has been recorded about them.
- Protect patient's/service user information with the highest standards of security and confidentiality.
- Tell patients how they can get more information, including:
  - How they safeguard their personal information;
  - How patients can check and correct any information they hold;
  - How to raise a query or a complaint.
- Only keep the information for as long as needed or as required by statute.
- There may be occasions when information is shared without consent. In these cases the Data Protection Act 1998 will apply.

### **3. Information Standards**

Errors in the data will be rectified by the original data controller organisation, therefore service user data errors will be highlighted by ELHT staff to LCC when issues are identified in line with the user instruction.

### **4. Retention of shared information**

The data within the database will be retained according to the Record Retention Policy for LCC. Paper records held by ELHT will be retained in line with ELHT Record retention policy for patient records.

### **5. Security of shared Information**

All Partner Organisations must ensure they have sufficient levels of security in place to access the LCC ISIS system.

ELHT and LCC must ensure access to the ISIS system is made via a secure network connection and system access authorised and approved by LCC.

LCC staff will provide ISIS System access to all ELHT staff requested by the OT Service Management in line with the ISIS system access policy in place with LCC.

All system users who are accessing the system must ensure that they do not disclose their username and password and that they access the system in a safe and secure manner.

LCC System audit processes will ensure where appropriate that an audit trail in place for any interactions on the system. This will ensure that if a discrepancy or issue is found this can be traced back to the originator.

Any breach of confidentiality must be reported to the appropriate Caldicott Guardian and Information Governance lead using the appropriate incident reporting process within the respective organisations for appropriate investigation and action.

### **6. Access to personal Information**

Requests for information should be referred to LCC as the data controller of the ISIS system as the Data Controller. Data subjects are entitled to know what information is held about them. If any of their details are wrong, they should tell the relevant organisation and it will be corrected.

If data subjects would like access to their information they should apply in writing. Applications should be sent to LCC.

LCC will follow their Subject Access Procedure. Where specific Occupational Therapy information is being sort, the Occupational Therapy service manager must be made aware.

## **7. Review**

This Information Sharing Protocol will be reviewed in line with the review of the section 75 agreement or if the occupational Therapy module of ISSIS is changed or amended.

## **8. Complaints**

Each partner organisation will deal with any complaints in accordance with their own organisational procedures which will ensure that:

- service users are aware that they can complain and of how to go about it
- complaints are resolved at first contact if possible
- complaints are acknowledged promptly in writing
- the complaint is investigated fairly and thoroughly
- service-users are given an appropriate written response
- if appropriate the appeals procedures are explained to the service-user.

For ELHT complaints about data sharing between partner organisations should be made to:

East Lancashire Hospitals NHS Trust  
Trust Headquarters  
Royal Blackburn Hospital  
Haslingden Road  
Blackburn  
BB2 3HH

For LCC complaints about data sharing between partner organisations should be made to:

Lancashire County Authority  
County Hall,  
Preston  
Lancashire  
PR1 8XJ

## **9. Non Compliance and Partner Disagreement**

If one of the Partner Organisations suspects another has failed to comply with this Protocol, it must notify the Partner Organisation suspected in writing giving details of

the breach. The suspected Partner Organisation must ensure that an adequate investigation are carried out and recorded.

Whether a breach has been identified or not the investigating Partner Organisation must report their findings to the other Partner Organisation in writing, detailing:

- Outcome of the investigation
- All remedial action taken immediately and further actions
- Notifications made to parties affected by the breach detailing likely consequences and remedial actions for them.

Partner Organisations will make every effort to resolve disagreements between them about personal information use and sharing. When doing so they should refer to the Tiered Agreements and Associated Documents. However, they recognise that ultimately each organisation must exercise its own discretion in interpreting and applying this Agreement in line with guidance from the Information Commissioner.

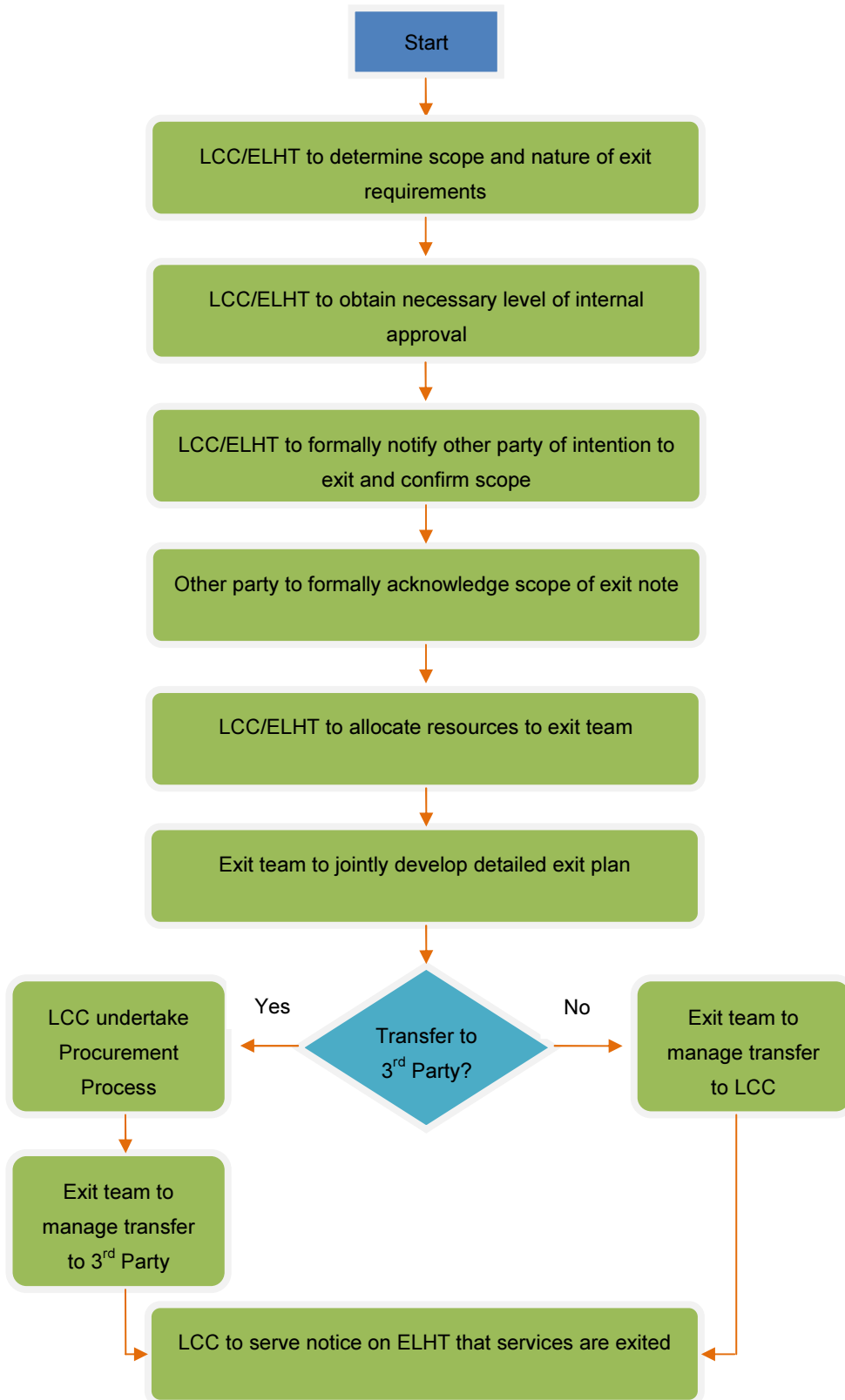
Disputes between ELHT and LCC will be co-ordinated as identified in the main agreement

## **10. Signatures**

Information Sharing Protocol between East Lancashire Hospitals NHS Trust and LCC for the sharing patient/ service user data referred for the provision of Specialist Occupational Therapy services using the Occupational therapy module in ISSIS

Signatories as identified in the main Schedule 75 agreement between ELHT and LCC.

## Schedule 10 Exit Strategy





EXECUTED as a DEED

by the affixing of the COMMON SEAL of

[NAME] AUTHORITY

in the presence of:

---

Authorised Signatory

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

[NAME] TRUST

in the presence of:

---

Authorised Signatory