

Dated

14<sup>th</sup> December 2022

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**SURREY COUNTY COUNCIL**

and

**NHS SURREY HEARTLANDS INTEGRATED CARE BOARD**

and

**NHS FRIMLEY INTEGRATED CARE BOARD**

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**PARTNERSHIP AGREEMENT RELATING TO THE  
COMMISSIONING AND DELIVERY OF HEALTH AND  
SOCIAL CARE SERVICES**

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**Legal Services  
Surrey County Council  
Woodhatch Place  
11 Cockshot Hill  
Reigate  
Surrey  
RH2 8EF  
(Legal Ref: 111210)**

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**THIS AGREEMENT** is made on 14<sup>th</sup> day of December 2022

**BETWEEN PARTIES**

- (1) **SURREY COUNTY COUNCIL** of Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey RH2 8EF (the "Council")
- (2) **NHS SURREY HEARTLANDS INTEGRATED CARE BOARD** of 58 Church Street, Weybridge, Surrey KT13 8DP ("Surrey Heartlands ICB")
- (3) **NHS FRIMLEY INTEGRATED CARE BOARD** of Aldershot Centre for Health, Hospital Hill, Aldershot GU11 1AY ("Frimley ICB")

each a "Partner" and together referred to as "the Partners".

**BACKGROUND**

- (A) There is shared ambition for the future of health and care services and the health and care system across Surrey. The Council, Surrey Heartlands ICB and Frimley ICB share a joint commitment to integrate health and social care services where doing so will improve outcomes for Surrey's residents and support the sustainability of the local health and social care system.
- (B) The Council and Surrey's NHS organisations have a strong history of partnership and joint working in Surrey, working together to deliver the Community Vision 2030 and the Health and Wellbeing Strategy.
- (C) The Health and Care Act 2022 introduces new measures to promote and enable collaboration in health and care. The Health and Care Act 2022 will make it simpler for health and care organisations to work together to deliver more joined up care and focus on improving health rather than simply the provision of services. The Health and Care Act 2022 establishes Integrated Care Systems (ICS) as legal entities that will assume the statutory responsibilities previously held by Integrated Care Boards. This builds on pilot work underway in Surrey since 2017.
- (D) Each new ICS consists of the Integrated Care Board and the Integrated Care Partnership. The Integrated Care Board's core functions will include planning to meet population health needs, allocating resources, ensuring that services are in place to deliver against ambitions, facilitating the transformation of services, coordinating and improving people and culture development, and overseeing delivery of improved outcomes for their population. The core functions of the Integrated Care Partnership is to align the ambitions, purpose and strategies of partners across each ICS.
- (E) This Agreement is not intended to change the respective accountability and statutory responsibilities of each Partner. Partners will retain respective accountability and statutory responsibilities.
  - a) The Council has responsibility for commissioning and/or delivering social care and public health services on behalf of the population of the county of Surrey.
  - b) Surrey Heartlands ICB and Frimley ICB are responsible for the planning and commissioning of health care services for their local area. Historically, Surrey Health commissioning organisations have worked under a memorandum of understanding for collaborative commissioning with each organisation retaining its sovereign responsibilities. The ICBs also have responsibility for providing certain types of health services within their local areas.
- (F) The Partners have a shared duty of collaboration. The content of this Agreement is intended to recognise the Partners already established relationships and build upon existing joint arrangements and formalise ways of working.
- (G) The Agreement also demonstrates a foundation to the Partners wider commitment to achieve shared ambitions for integrating health and care services through the transformation of commissioning and truly joint commissioning.

- (H) The purpose of this Agreement is to set out the terms and principles through which the Partners have and will bring Staff and resources together in Joint Posts or to work in integrated teams to achieve the aims and outcomes.
- (I) Section 113 of the Local Government Act 1972 permits a local authority to enter into an agreement to place their staff at the disposal of another local authority, for the purposes of their functions. Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions pursuant to the NHS Regulations 2000. The Partners, pursuant to the powers contained in Section 113 of Local Government Act 1972 and Section 75 of the National Health Service Act 2006, are entering into this Agreement in exercise of those powers and agree to each placing at the disposal of the other the Staff and confirm that they have carried out any necessary consultation with the Staff in accordance with the requirement contained in the said Section 113. The Partners are committed to better integration of the NHS functions and the Council's health-related functions, and therefore wish to enter into the arrangements under this Agreement.
- (J) This Agreement does not set out specific mechanisms that will be used by the Partners to commission services and is not a means through which the Partners will commission services. Individual projects or schemes will be governed by separate arrangements.
- (K) The aim of the Partners in entering into this Agreement are to provide a legal foundation for operating together in joint posts and integrated teams, including specific arrangements related to finance, HR, Information Governance etc.

This is part of a wider ambition to realise the opportunities and benefits of integrated commissioning to improve outcomes for residents and ensure value for money. This wider ambition is set out in more detail in the Integrated Commissioning Collaborative Memorandum of Understanding

The expected benefits of the Partners in entering into this Agreement are to:

- a) improve outcomes for Service Users, Residents, and communities in Surrey;
- b) improve service user experiences;
- c) improve quality and consistency of health and care services;
- d) have more seamless, joined up care and prevention services;
- e) provide clarity to and for staff working in joint posts; and
- f) have more effective use of resources and increased efficiency from improved co-ordination.

## **IT IS AGREED as follows**

### **1 DEFINED TERMS AND INTERPRETATION**

- 1.1** In this Agreement, save where the context requires otherwise, the following words, terms and expressions shall have the following meanings:

#### **GENERAL TERMS**

**Agreement** means this agreement between the Partners including its Schedules.

**ICBs** means Surrey Heartlands ICB and Frimley ICB and permitted assignees.

**ICB Statutory Duties** means the Duties of the ICB pursuant to Sections 14P to 14Z2 of the NHS 2006 Act.

**Commencement Date** means 1st April 2021.

**Commissioning** refers to the commitment of resource to meet health and care needs. This includes processes of assessing, planning, prioritising, purchasing, and monitoring services to get the best outcomes. For health and care commissioning teams in Surrey, commissioning means understanding need, planning for the population, contract management and assurance and decision-making, and can encompass procurement, planning for individuals, delivery and co-design. Commissioning can be done by different people, it is done differently across different parts of the commissioning system

**Commissioning Responsibilities** means the statutory responsibilities that Partners have for commissioning health and care services.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a Partner or its Representatives to the other Partners and that Partners' Representatives in connection with this Agreement, including but not limited to:

- (a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (b) any information developed by the Partners in the course of carrying out this Agreement;
- (c) Personal Data;
- (d) any Commercially Sensitive Information.

**Council** means Surrey County Council and its successors and permitted assignees.

**Council Statutory Duties** means the duties of the Council pursuant to the Children's Act 2004 and the Care Act 2014.

**Exit Costs** means the exit costs detailed in the Exit Plan.

**Exit Plan** means the exit plan prepared in accordance with Clause 15.

**Fundamental Breach** means a default which is not capable of remedy in accordance with Clause 16 (Defaults) and which has or will have a material adverse impact on the delivery of the Services.

**Service Users** means those individuals receiving the Services from the Partners.

**Intellectual Property Rights** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Integrated Commissioning** means arrangements where Partners act together to co-ordinate commissioning of the Services. It can also mean joint commissioning or aligned commissioning. It does not involve the delegation of any functions pursuant to Section 75 of the NHS Act 2006.

**Integrated Care System** refers to the health and care partnerships that are created by the Health and Care Act 2022. In Surrey this is Surrey Heartlands ICS [Surrey Heartlands Health and Care Partnership] and Frimley ICS [Frimley Health and Care Partnership]. The Integrated Care System comprises two components:

- Integrated Care Board is a statutory NHS body, unitary in nature, responsible for ensuring the body plays its role in achieving the four purposes of ICSs - working alongside an Integrated Care Partnership (Surrey Heartlands ICP), that brings the NHS together locally to establish shared strategic priorities within the NHS, connecting to wider partnerships across the ICS, and to improve population health.

Integrated Care Partnerships is a local group of health and care organisations, including borough councils and voluntary/community sector members, working across local geographic boundaries. It will develop its own priorities, reflecting the different needs of each local population with the aim of working differently in the future to promote and improve the health and well-being of the population.

**Law** means the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Partners are bound to comply.

**Losses** means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law.

**Representatives** means, in relation to a Partner, its Staff, employees, officers, contractors, sub-contractors, representatives and advisors.

**Residents** means any person who lives in the county of Surrey.

**Services** means the health and social care services commissioned and delivered by the Partners.

**Term** means the period contained in Clause 2.2 of this Agreement.

**Unexpected Event** means an event or circumstance which is both beyond the control of whichever Partner is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight and only affects the delivery of the Service to one Partner.

## **FINANCE TERMS**

**Better Care Fund (BCF)** means the local single pooled budget that facilitates integrated working between health, social care and wider partners. The associated plan sets out the areas of spend that will support joint working to deliver integrated, holistic health and care services for Surrey Residents. The BCF is one of the government's national vehicles for driving health and social care integration. It requires Integrated Care Boards and local government to agree a joint plan, owned by the Surrey Health and Wellbeing Board. These are joint plans for using pooled budgets to support integration, governed by an agreement under Section 75 of the NHS Act 2006.

**Finance Lead** means the finance staff member delegated by the Partner organisation to act as their lead.

**Financial Year** means each financial year running from 1 April in any year to 31 March in the following calendar year.

**Host Organisation or Host Partner** means the Partner who will manage the Pooled budget for the shared funding of posts.

**Non-Pay Costs** means the costs set out in Schedule 6 – Section 75 Schedule.

**Pay Costs** means the costs set out in Schedule 6 – Section 75 Schedule.

**Pooled budget(s)** means that different organisations contribute funds, but one Host Organisation accounts for the money. Less formally, budgets can be aligned. This occurs when different organisations effectively keep their money in their own accounts but align the money toward agreed joint outcomes (Lorgelley et al 2009).



**Pooled Budget Manager** means the pooled budget manager appointed by the Host Organisation or Host Partner to manage the Pooled budget.

**Quarter** means each of the following periods in a Financial Year: 1 April to 30 June, 1 July to 30 September, 1 October to 31 December, 1 January to 31 March and "**Quarterly**" shall be interpreted accordingly.

## **DATA SHARING AND INFORMATION GOVERNANCE TERMS**

**Data Protection Impact Assessment (DPIA)** means the process that identifies and mitigates the potential risks to privacy and compliance with data protection law when processing personal data.

**Data Protection Legislation** means all applicable data protection and privacy legislation, regulations, and guidance including the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA18) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any guidance issued by the information Commissioner.

**DPA18** means the Data Protection Act 2018 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**EIR** means the [Environmental Information Regulations 2004](#) and any subordinate legislation made under the Regulations from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**FOIA** means the [Freedom of Information Act 2000](#) and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. **Personal Data** shall have the meanings given to it in the Data Protection Legislation.

**Surrey Heartlands Health and Social Care Information Sharing Agreement (ISA)** means the agreement that supports the sharing and use of personal confidential data in order to take forward key transformational activities and achieve planned improvements in care delivery and financial efficiency. The Agreement is available publicly on the Surrey Heartlands website: <https://www.surreyheartlands.uk/about/information-sharing-agreement/>

**UK GDPR** means the [UK General Data Protection Regulation](#) which sets out the key principles, rights and obligations for processing of personal data.

## **GOVERNANCE TERMS**

**Surrey-Wide Commissioning Committees in Common (CiC)** means the committees that exercise oversight for health and social care commissioning across Surrey including responsibilities for taking commissioning decisions within the scope / set of functions delegated to it from local and national partners.

**Surrey Strategic Health and Care Commissioning Collaborative** means the primary leadership forum that brings together strategic commissioners from the Council and the Surrey Integrated Care Boards.

The membership and terms of reference are set out in the Integrated Commissioning Memorandum of Understanding.

## **STAFF AND ROLES TERMS**

**Joint Posts** mean posts where Staff may undertake responsibilities for the Partners and have appropriate delegated authority. See Section 4.8 for details of types of scenarios for Joint Posts

**Matrix Managed** means Staff that have more than one reporting line including formal line management.

**Section 113** means Section 113 of the Local Government Act 1972.

**Staff** means those employees engaged by the Partners.

## **IT AND DIGITAL TERMS**

**Acceptable Use Policy** means a policy to establish acceptable and unacceptable use of digital electronic devices and resources, reflecting ethical and lawful behaviour and organisational attitudes to openness, trust, and integrity.

- 1.2** In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 1.3** Any headings to Clauses, together with the front cover and the index are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses and Schedules shall mean the clauses and schedules of this Agreement.
- 1.4** Any reference to the Partners shall include their respective statutory successors, employees and agents.
- 1.5** In the event of a conflict, the conditions set out in the Clauses to this Agreement shall take priority over the Schedules.
- 1.6** Where a term of this Agreement provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.7** In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
- 1.8** In this Agreement, words importing the singular only shall include the plural and vice versa.
- 1.9** In this Agreement, "staff" and "employees" shall have the same meaning and shall include reference to any full or part time employee or officer, director, manager and agent.
- 1.10** Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Partners shall be in writing. A reference to writing or written includes email.
- 1.11** Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 1.12** All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.
- 1.13** 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.

## **2 TERM**

- 2.1** This Agreement shall come into force on the Commencement Date.
- 2.2** This Agreement will continue for a period of 3 years unless it is terminated earlier in accordance with Clause 15.

## **3 GENERAL PRINCIPLES**

- 3.1** Nothing in this Agreement shall affect:
- 3.1.1 the liabilities of the Partners to each other or to any third parties for the exercise of their respective functions and obligations; or
  - 3.1.2 any power or duty to recover charges for the provision of any services (including the Services) in the exercise of any local authority function.
- 3.2** The Partners agree to:
- 3.2.1 bring together teams and directorates comprising Staff who carry out responsibilities for commissioning services and supporting the commissioning and/or delivery of Services as defined in Schedule 3 of the Integrated Commissioning Memorandum of Understanding.
  - 3.2.2 work together in good faith and in an open, co-operative and collaborative manner,
  - 3.2.3 treat each other with respect and an equality of esteem,
  - 3.2.4 provide early information and notice about relevant problems.
- 3.3** The Partners acknowledge that they are accountable for their own actions in accordance with the responsibilities set out in this Agreement and agrees to act in accordance with the principles of this Agreement, all statutory requirements, and best practice at all times.
- 3.4** The Partners agree to encourage their Staff to operate through partnership in the spirit of mutual trust and good faith, ensuring regular dialogue between leaders and deploying capacity where it is most needed to optimise resources.

## **4 STAFFING AND JOINT POSTS**

- 4.1** The Partners, pursuant to the powers contained in Section 113, agree to each placing Staff at the disposal of the other.
- 4.2** The Partners acknowledge and agree that from the Commencement Date this Agreement will cover Staff who:
- 4.2.1 work in an integrated Directorate or integrated team which is undertaking responsibilities to commission or support the commissioning and/or delivery of health or social care services, as defined in Schedule 3 of the Integrated Commissioning Memorandum of Understanding, on behalf of Residents.
- 4.3** The Partners agree that the terms and conditions of the contractual employer will apply. Staff will be employed by one Partner organisation and will be subject to the terms and conditions set out in their contract of employment.
- 4.4** The Partners agree that there will be Staff in Joint Posts that will undertake line management responsibilities for Staff that have a different contractual employer. The Partners agree that they will delegate responsibilities to Staff employed by the Partners for posts identified and agreed as joint, as set out in Schedule 4 - Joint Posts of this Agreement.

- 4.5** The Partners will develop the infrastructure to support greater integration and will make sure that the leadership models fit the direction of travel.
- 4.6** The Partners acknowledge that it is the responsibility of each Partner to ensure that they obtain the appropriate internal approval to allow authority to be delegated to staff that are not employed by the Partners within the agreed constitution / scheme of delegation of the Partners.
- 4.7** The Partners acknowledge and agree that this Agreement will cover all Staff in Joint Posts and Partners will not need to produce separate agreements, such as secondment agreements for them. Staff will receive a letter setting out the expectations for them in practice; this would not be a contractual variation.
- 4.8** The Partners have documented and agreed a process, contained in Schedule 4 - Joint Post and Shared Funding Process of this Agreement, to identify, assess, and approve requests for a number of different scenarios:
- 4.8.1 to create a new post with joint responsibilities across the Partners (funded by one organisation or more than one),
- 4.8.2 to change a post to have joint responsibilities across the Partners,
- 4.8.3 to create a new post with shared funding arrangements across Partners,
- 4.8.4 to change the employing organisation and funding of a post,
- 4.8.5 to change existing shared funding arrangements of a post,
- 4.8.6 for additional expenditure for a Joint Post including one-off recruitment costs with an external party.
- 4.8.7 The Partners agree as far as possible to avoid making decisions regarding joint and / or shared funding posts that lead to financial and / or operational pressures falling unevenly on one Partner. The reasonable assumption is that any costs associated with termination of employment will be met by partners in line with the funding split for each impacted role. The Partners commit to ensuring the implications of such decisions on all Partners are clear and considered before enacting the decisions.
- 4.9** At the Commencement Date of this Agreement the Partners have identified and agreed the Joint Posts set out in Schedule 4 - Joint Posts of this Agreement. The Schedule 4 - Joint Posts will be amended and updated from time to time by the agreement of the Partners.
- 4.10** Where Partners agree to add or remove a Joint Post from this Agreement any variation of Schedule 4 - Joint Posts will be made in accordance with the variation procedure set out in Clause 25.

## **5 HR PRINCIPLES**

- 5.1** The Partners HR functions have developed a set of terms and principles for the management of Staff. The Partners agree to the terms and principles set out in Schedule 3 - Staff Management Protocol and that they may be amended or varied by written agreement of the Partners from time to time.
- 5.2** The Partners confirm that they have carried out any necessary consultation with the Staff in accordance with the requirement contained in Section 113.
- 5.3** Staff will be managed in accordance with the agreed principles set out in Schedule 3 - Staff Management Protocol.
- 5.4** Recruitment of new Staff shall be undertaken in accordance with the agreed principles set out in Schedule 3 - Staff Management Protocol.

## **6 ACCOMMODATION AND PROVISION OF FACILITIES**

- 6.1** The Partners agree that, irrespective of which Partner employs the Staff, Staff will have access to work in specified and agreed Partner building locations.
- 6.2** The Partners agree that the Partner responsible for the specified buildings will make available necessary accommodation, working space and associated facilities and services to Staff free of charge. Partners will agree in collaboration and in writing the specified buildings, outside of this Agreement.
- 6.3** By entering into this Agreement, the Partners acknowledge and will ensure that Staff will adhere to the relevant Partner's policies for accessing and working at that Partner's building location(s).

## **7 IT & DIGITAL PROVISION**

- 7.1** The Partners' IT and Digital functions have developed a set of principles for the provision of IT. The Partners agree to the terms and principles set out in Schedule 5 - IT Principles and that they may be amended or varied by written agreement of the Partners from time to time.

### **7.2 ACCESS TO PARTNER APPLICATIONS AND SYSTEMS**

- 7.3** Staff working in joint teams, across the partnership and / or undertaking joint responsibilities may need access to Partners' applications and systems.
- 7.4** The Partners will arrange access to relevant applications and systems for Staff in Joint Posts to enable them to undertake their joint responsibilities for the Partners.
- 7.5** The Partners will give Staff working in joint teams and across the partnership access to certain applications and systems for Staff to support collaborative working and integrated activity.
- 7.6** The Partner employing the Staff is responsible for providing equipment and appropriate access to their Staff. Staff working across the partnership and / or undertaking joint responsibilities may need to be provided with additional IT equipment by the Partners to access required applications and systems.
- 7.7** In the county of Surrey there is an ambition and wider programme of work to align digital infrastructure and join up potential systems to support efficient and effective working across organisational boundaries. The Partners acknowledge that until that ambition is realised there will need to be other arrangements in place to provide the access that enables Staff to work together and such access and arrangements will be given in accordance with Clauses 7.4, 7.5 and 7.6 of this Agreement.

### **7.8 ACCEPTABLE USE POLICY**

- 7.9** The Partners will ensure that Staff are made aware of their responsibilities for the proper use of IT equipment, systems and applications, as well as data. All Staff must comply with their employer's policies, procedures, and published guidance.
- 7.10** The Partners agree that each Partner's Acceptable Use Policy, or related Acceptable Use and Cyber and Information Security Policies, in principle, mutually covers the use of each Partner's IT equipment, systems and applications, and related services. Any key differences will be recorded and notified to Staff in writing as appropriate.

## **8 FINANCIAL PRINCIPLES**

- 8.1** The Partner Finance functions have developed principles for joint and shared funding arrangements. The Partners agree to the principles, set out in Schedule 1 - Finance Principles and that they may be amended or varied by written agreement of the Partners from time to time.
- 8.2** This Agreement does not change any existing governance Partners have for funding decisions.

### **8.3 FINANCIAL AND BUDGET RESPONSIBILITIES**

**8.4** The financial and budget responsibilities agreed in this Agreement pertain only to the financial and budget responsibilities associated with the employment of Staff in Joint Posts and integrated teams. To support integrated teams and Joint Posts:

8.4.1 The Partners will maintain separate budgets and manage their respective budgets, funding and expenditure, unless specific arrangements are made between the Partners and confirmed in writing.

8.4.2 The Partners acknowledge that it is the responsibility of each Partner to ensure that they obtain the appropriate internal approval to allow financial authority to be delegated to staff that are not employed by the Partners. This includes ensuring that the Partners respective Constitutions and / or Schemes of Delegation are updated if required.

8.4.3 The Partners acknowledge that it is the responsibility of each Partner to manage budgets in line with their internal governance procedures, including their Constitutions and Schemes of Delegation, and any existing or future collaborative agreements (e.g between Frimley ICB and Surrey Heartlands ICB)

8.4.4 The Partners acknowledge that it is the responsibility of each Partner to manage conflict of interest when making cross-partner decisions. Where possible funding is to follow the end user, rather than create a cost pressure to the Partners or third parties to the gain of another (unless by specific written agreement of the Partners).

8.4.5 The Partners agree that any new costs/cost pressures/benefits or decisions regarding service decommissioning will be taken through the Partners' appropriate governance procedures.

8.4.6 The Partners agree that any efficiencies generated by Joint Posts making commissioning and delivery decisions are funded/distributed according to the original budgetary contribution made by the Partners, so the Partners do not gain or lose out financially, operationally or contractually.

8.4.7 The Partners agree that all commissioning and delivery decisions are made by Staff on assessment of effects on the Partners.

**8.5** Further financial and budget responsibilities may be agreed by Partners to support collaborative commissioning arrangements such as host or lead commissioning arrangements and shared funding arrangements for jointly managed contracts and services. The Integrated Commissioning Memorandum of Understanding is a first step to broaden collaborative commissioning arrangements and Partners may agree to enter into a formal pooled or shared funding arrangement for services further to this MoU and the Section 75 for Joint Posts.

### **8.6 FINANCIAL REPORTING**

**8.7** As part of Partners' ambitions to integrate health and social care services where it makes sense to do so, Finance Leads from each Partner will work together to develop joint financial reporting based on an open book approach to ensure that:

8.7.1 post holders with budgetary responsibilities can see a consolidated summary of their combined budget positions; and

8.7.2 the Partners are clear on the financial position of the Partners for each of the service areas managed by Joint Posts that fall within the service areas set out in Schedule 3 of the Integrated Commissioning Memorandum of Understanding.

**8.8** The Partners will work together to create a greater understanding of each Partner's financial position, direction and language, key financial issues and future impact of those issues. This will help identify opportunities and inform commissioning and delivery plans and decision making between the Partners.

**8.9** Finance Leads from each Partner will act as business partners and work with commissioning and/or delivery teams to facilitate this.

#### **8.10 SHARED FUNDING AND POOLED BUDGET FOR POSTS**

**8.11** The Partners have agreed to set up a Pooled budget for agreed joint posts with shared funding arrangements, details of which are set out in Schedule 6 – Section 75 Schedule of this Agreement. The Council will be the Host Organisation and will manage the Pooled budget on behalf of the Partners.

#### **8.12 NON-FINANCIAL CONTRIBUTIONS**

**8.13** Each Partner shall provide the non-financial contributions as required to comply with its obligations under this Agreement in respect of joint working. These contributions shall be provided at no charge to the other Partners.

**8.14** The Partners have agreed the non-financial contributions of each Partner necessary to perform its obligations pursuant to this Agreement. These include, but are not limited to:

8.14.1 Premises; (Accommodation and provision of facilities, as detailed in Clause 6.)

8.14.2 IT support;

8.14.3 HR support - to include advisory support for managers needing to undertake formal HR employee relations processes and access to organisational development and strategic HR input via a senior member of the Partner's HR teams.

**8.15** The Partners acknowledge and agree that in cases where costs are incurred in order for Staff to fulfil their duties and comply with the obligations of this Agreement, they will be resolved collaboratively.

**8.16** The Partners have documented and agreed a process, provided in Schedule 4 - Joint Post and Shared Funding Process of this Agreement, that will ensure that financial implications of changing or creating new posts and / or shared funding arrangements are considered and agreed.

#### **8.17 BETTER CARE FUND**

**8.18** This Agreement does not affect or impact existing arrangements in respect of the Better Care Fund.

### **9 GOVERNANCE**

**9.1** The Partners will operate within the governance arrangements set out in our Integrated Commissioning Memorandum of Understanding. The arrangements provide the framework in which the Partners will operate to ensure clarity of accountability and transparent, effective and efficient decision-making.

**9.2** The Partners acknowledge that they have reporting arrangements and procedures in place to ensure the standards of accountability and probity required by each Partner's own statutory duties and procedures are complied with.

**9.3** Where there are decisions that partners cannot agree on and/or require further escalation to the senior leadership across Surrey County Council and ICSs, these will be escalated by both or one of the partners to the relevant ICS Executive (Surrey Heartlands and Frimley Health and Care) and Executive Director for Children, Families and Lifelong Learning as an urgent risk with potential options for resolution at the next appropriate meeting of the relevant Executive.

#### **9.4 COMMITTEES IN COMMON (CiC)**

**9.5** CiC is established. CiC exercises oversight for health and social care commissioning across Surrey including any responsibilities delegated from local and national partners. CiC may only make decisions

that the Surrey Integrated Care Systems Governing Bodies (Surrey Heartlands ICB and Frimley ICB) and the Council's Cabinet has delegated to it. It is responsible for oversight of this Agreement.

## **10 REVIEW / MONITORING AND REPORTING**

- 10.1** The Partners will produce an annual report about the implementation and ongoing working of this Agreement, including implementation of the Pooled budget. The report will be provided to the CiC.
- 10.2** If there is an issue with this Agreement or the implementation of this Agreement, Partners will contact the Secretariat of CiC. Issues will be raised with CiC for review, discussion and resolution.

## **11 DATA PROTECTION, DATA SHARING AND INFORMATION GOVERNANCE**

- 11.1** Each Partner will comply with their obligations under the Data Protection Legislation and will assist each other to comply with their obligations under the Data Protection Legislation, which arise in connection with this Agreement.
- 11.2** Surrey Heartlands ICB and Surrey County Council have signed the Surrey Heartlands Health and Social Care Information Sharing Agreement (ISA) and Sharing Schedules relating to activity covered by this Agreement. This includes activities which Surrey Heartlands ICB deliver on behalf of Frimley ICB. Access to and sharing of confidential business data and Staff / personal data will be managed via the ISA framework. Information about the ISA and Schedules for the activities covered by this Agreement are available publicly on the Surrey Heartlands website: <https://www.surreyheartlands.uk/about/information-sharing-agreement/>.
- 11.3** The Surrey Heartlands Data Governance Group (DGG) manages the ISA on behalf of the members. The Administrator (Surrey Heartlands ICB at the time of writing) maintains and publishes the agreement documentation and supporting schedules and registers on behalf of the member organisations and the DGG.
- 11.4** The Partners will comply to the Processing and Sharing Specification schedules that have been agreed and approved for Integrated Commissioning. The Processing and Sharing Specification schedules for integrated commissioning are available publicly on the Surrey Heartlands ICS website.
  - 11.4.1 ICT001 – Surrey Heartlands Integrated Care Board Childrens
  - 11.4.2 ICT002 – Surrey Heartlands Integrated Care Board Adults
  - 11.4.3 ICT003 – Surrey County Council Children's Commissioning
  - 11.4.4 ICT004 – Surrey County Council Adults' Commissioning
- 11.5** Additional Sharing Schedules for other activities that fall within the scope of this Agreement may be put in place by the Partners where they consider this to be necessary to meet their obligations under Data Protection Legislation.
- 11.6** The Partners have committed to use the personal confidential data identified in the Processing and Sharing Specification schedules in a manner compliant with the ISA and solely for the purposes defined in those specifications.
- 11.7** Partners will adhere to the schedules within the Surrey Heartlands ISA, which sets out the sharing indemnity arrangements for the organisations sharing, accessing and processing information made available under the ISA. In the event of a data breach, each Partner will follow their respective Information Governance incident management and reporting procedures. Surrey Heartlands ICB, as lead controller, will formally notify the Information Commissioner's Office.
- 11.8** The Partners have completed a DPIA for the processing and sharing activities approved under the Schedules for Integrated Commissioning. The DPIA applies to the sharing of both Children's and Adult's data. Deputy SIRO for Surrey Heartlands and Caldicott Guardians for SCC reviewed the DPIA.



Copies of summary DPIAs are available on request from [syheartlandsICB.isaadmin@nhs.net](mailto:syheartlandsICB.isaadmin@nhs.net). Partners will:

11.8.1 implement the measures identified in the DPIA.

11.8.2 keep the DPIA under annual review and revisit it when necessary when there is any significant change to the nature, scope, context or purposes of the processing.

**11.9** Additional Data Protection Impact Assessments for other activities that fall within the scope of this Agreement may be completed by the Partners where they consider this to be necessary to meet their obligations under Data Protection Legislation.

**11.10** Each Partner is legally obliged under Data Protection Legislation to provide a Privacy Notice explaining how information is used. As part of the Surrey Heartlands ISA Partners will ensure their organisational Privacy Notices are kept up to date to cover the sharing activity between Partners. This includes Privacy Notices pertaining to sharing Children's and Adult's data. Privacy notices are available on the Partners' websites.

**11.11** The Partners will ensure that Staff are made aware of their responsibilities for the proper use of data. All Staff must comply with their employer's policies, procedures, and published guidance.

**11.12** The Partners will provide joint guidance about data sharing within the collaborative platform. This will be issued to managers and Staff who have access to the collaborative platform.

## **12 FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

**12.1** Each Partner is subject to the requirements of the FOIA and the EIR and their own FOIA and EIR processes and procedures shall apply.

**12.2** The Partners agree that they will each cooperate with each other to enable any Partner receiving a request [Receiving Partner] for information under the FOIA or the EIR to respond to a request promptly and within the statutory timescales. This cooperation shall include but not be limited to finding, retrieving, and supplying information held, directing requests to other Partners as appropriate and responding to any requests by the Receiving Partner for comments or other assistance. This cooperation may also include acting as a Point of Contact/Handler or as an agreed Approver for FOIA and EIR requests made to either Partner.

## **13 CONFIDENTIALITY**

**13.1** Subject to clause Clause 13.2, each Partner shall keep the other Partner's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 13.

**13.2** The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential Information:

- (a) which the other Partners confirm in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;

- (c) which a Partner is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including FOIA or EIR;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this Agreement;
- (e) which a Partner can demonstrate was lawfully in its possession prior to receipt from the other Partners; or
- (f) which is disclosed by the Council on a confidential basis to any central government or regulatory body.

**13.3** A Partner may disclose the other Partner's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Partner's obligations under this Agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this Clause as if they were a party to this Agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Clause 13.

**13.4** The provisions of this Clause 13 shall survive:

- 13.4.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
- 13.4.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

**13.5** On or before the date of expiry or termination of this Agreement the Partners shall ensure that all documents and/or electronic/digital records in its possession, custody or control which relate to personal information of the other Partners' employees or Service Users are delivered up to the Partners or securely destroyed.

## **14 COMPLAINTS**

**14.1** The Partners shall deal with all complaints received concerning the Services through their own respective complaints' procedures. The Partners agree to assist one another in the management of complaints arising from this Agreement or as a result of the Services. Partners will keep records of all complaints and provide the same for review by CiC, that is responsible for oversight of this Agreement.

## **15 TERMINATION OF THIS AGREEMENT & DEFAULT**

**15.1** Any Partner may give at least six (6) months' notice to terminate ("Notice of Termination") to the other Partners.

**15.2** Any Partner may terminate this Agreement with immediate effect by serving notice at any time upon the Partner committing a Fundamental Breach of this Agreement. Such notice can only be served when the process set out in Clause 17 has been exhausted.

**15.3** This Agreement may be terminated upon the mutual consent of the Partners by giving Notice of Termination, such Notice of Termination to expire on an agreed date.

- 15.4** Where any change in law or other reason not attributable to the fault of the Partners prohibits or prevents one of the Partners from giving effect to their obligations under this Agreement, any Partner may terminate this Agreement so as to avoid the Partner from breaching legislative or otherwise binding obligations upon it by written notice effective on receipt to the other Partners, provided that the terminating Partner has first entered into discussion in good faith with the other Partners and used all reasonable endeavours to negotiate a solution with the other Partners, whereby the intent and purpose of this Agreement may be fulfilled by another mechanism.
- 15.5** On expiry of this Agreement or if this Agreement is terminated in whole or in part for any reason, the provisions of the Exit Plan shall come into effect and the Partners shall co-operate fully to implement the Exit Plan and ensure an orderly migration of the Services to the respective Partners.
- 15.6** The Partners have agreed to draft and agree an Exit Plan within 18 (eighteen) months of the Commencement Date setting out how the arrangements in this Agreement will be ended and such Exit Plan shall include but not limited to:
- 15.6.1 that continuation and quality of service delivery are paramount and options should be assessed in this light;
  - 15.6.2 separation of Staff including all associated access;
  - 15.6.3 that any contract(s) with third parties and Service Users entered into jointly by the Partners would continue to be delivered jointly by the Partners until the end of the said contract(s);
  - 15.6.4 separation of integrated structures including integrated management arrangements;
  - 15.6.5 that all data and other material belonging to the Partners or created by the Partners during this Agreement (and all media of any nature containing information and data belonging to a Partner or relating to the Services) shall be delivered and returned to the Partners;
  - 15.6.6 separation of all equipment and assets accepting that the Partners will own any equipment and assets purchased by them; and
  - 15.6.7 separation of costs associated with new staffing posts and structures.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1** The Partner who exercises its right to terminate under Clause 15.1 of this Agreement shall fully indemnify the other Partners against all Exit Costs (which the other Partners shall take all reasonable steps to mitigate) arising out of such termination.
- 16.2** In the event of termination of this Agreement under Clause 15.2 all Exit Costs and Losses to the Partners arising out of such termination shall be borne by the Partner that has committed the Fundamental Breach of this Agreement.
- 16.3** In the event of termination of this Agreement under Clause 15 the Partner terminating this Agreement shall also be at liberty to pursue all remedies available to it at law.
- 16.4** In the event of termination of this Agreement under Clauses 15.3 and 15.4 each Partner shall bear its own losses, provided however that if the terminating Partner has not entered into discussions in good faith with the other Partners and/or not used all reasonable endeavours to negotiate a solution with the other Partners, whereby the intent and purpose of this Agreement may be fulfilled by another mechanism, the terminating Partner shall indemnify the other Partners against all Exit Costs and Losses (which the other Partners shall take all reasonable steps to mitigate) incurred as a result of such termination.

## **17 DISPUTE RESOLUTION**

- 17.1** The Partners agree that they will seek to operate this Agreement through consensus wherever possible and resolve issues locally. If something cannot be resolved locally Partners will refer any issues, concerns or complaints arising in relation to the operation of this Agreement to the Commissioning Collaborative.
- 17.2** If there is a dispute between the Partners concerning the interpretation or operation of this Agreement or the Commissioning Collaborative is unable to resolve the issues, concerns or complaints arising under Clause 17.1, then any Partner may notify the others in writing that it wishes the dispute to be referred to the CiC, to resolve, negotiating on the basis of good faith. The CiC, shall not make any decision until twenty-eight days have lapsed since the notice of the dispute was received.
- 17.3** If the dispute cannot be resolved by the CiC, in accordance with Clause 17.2, it shall be escalated to the separate Boards of the Integrated Care Boards and Cabinet. The Chair of these Governing Bodies and the Leader of the Council shall arrange a meeting within fourteen (14) days of such escalation in order to resolve the dispute.
- 17.4** If the dispute cannot be jointly resolved by Partners following referral to each Partner organisation's internal governance mechanism in Clause 17.3, any Partner may notify the other that it wishes the dispute to be referred to mediation in accordance with Clause 17.5.
- 17.5** The following provisions shall apply to any such reference to mediation:
- 17.5.1 The mediation shall be in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Partners, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Partner must serve notice in writing (ADR notice) to the other Partners to the dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.
- 17.5.2 The commencement of mediation shall not prevent the Partners commencing or continuing court proceedings in relation to the dispute under Clause 33.1 which Clause shall apply at all times.
- 17.6** Without prejudice to any rights to seek redress in court, the Partners shall continue to provide the Services and to perform their obligations under this Agreement notwithstanding any dispute or the implementation of the procedures set out in this Clause 17.

## **18 INSURANCE**

- 18.1** Each Partner shall at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance to cover all operational risks associated with this Agreement and will produce evidence of such policy or policies and cover to each Partner on request. Each Partner will maintain the following cover:
- 18.1.1 Employers Liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
  - 18.1.2 Public liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
  - 18.1.3 Professional Indemnity insurance with a limit of indemnity of not less than £5m in relation to any one claim or series of claims.
- 18.2** Each Partner will hold the other Partners harmless in relation to claims arising under the said policies. This will apply both to claims made by one Partner directly against another Partner, and / or costs recoverable from a third party claimant.
- 18.3** For the purposes of the said insurances, each Partner will consider all members of Staff (irrespective of their employing Partner) to be directly employed by their own Partner apart from employers liability insurance claims where the employing Partner of a claimant will deal with any claim under their own insurance cover irrespective of where the claim arose.
- 18.4** Where possible, all claims and associated costs should be handled and accounted for by the Partner against whom the claim is made, or who is the appropriate Partner to handle the claim, or whosoever shall be nominated by such Partner's insurer to handle the claim.
- 18.5** If there is an increased cost to the insurance premium as a result of this Agreement, the Partners shall agree the share of the additional costs to be borne by the Partners.
- 18.6** All Partners assets used to deliver the Services shall be insured by the Partner who provided them.
- 18.7** The Partners shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) allow anything to occur (including a failure to disclose any fact) which would entitle any insurer to refuse to pay any claim under an insurance policy in which the Partners are assured, co-insured or an additional person or which may make such a claim wholly or partly repayable.

## **19 LIABILITIES AND INDEMNITY**

- 19.1** No **PARTNER** limits its liability for:
- 19.1.1 death or personal injury caused by its negligence, or that of its Staff, agents or sub-contractors;
  - 19.1.2 fraud by it or its Staff;
  - 19.1.3 breach of any obligation as to title implied by statute; or
  - 19.1.4 any other act or omission, liability for which may not be limited under applicable law.
- 19.2** Each Partner remains responsible for performing and exercising its statutory duties and functions.
- 19.3** Each Partner recognises and agrees that the Partners will:
- 19.3.1 each be separately and solely liable to providers for payment for services delivered to its population, and/or on its behalf either through this Agreement or otherwise, save to the

extent that a contrary position is agreed in writing between the Partners as part of any risk-sharing arrangement;

19.3.2 adhere to any collective rules agreed in relation to the Services which are agreed to be operated on a pooled-risk basis, in accordance with the principles set out in Schedule 4 – Joint Posts as may be agreed in writing by the Partners from time to time;

19.3.3 not be responsible for payment of relevant liabilities for the Services appropriated by a decision of a Partner who has failed to act in accordance with this Agreement.

**19.4** Each Partner undertakes to indemnify each other against any liability to the extent that it arises out of or in connection with any breach by the indemnifying Partner of any provision, or obligation under this Agreement, any breach of a relevant services contract entered into pursuant to this Agreement, or to the extent arising out of or in connection with any negligent act or omission of the indemnifying Partner.

**19.5** 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(s) under this Agreement.

**19.6** Actions regarding any overspend are specified within the Section 75, Schedule 6.

## **20 STANDARDS OF CONDUCT AND SERVICE**

**20.1** The Partners will, at all times, comply with Law and ensure good corporate governance in respect of each Partner (including the Partners' respective Standing Orders and Standing Financial Instructions).

**20.2** The Council is subject to the duty of Best Value under the Local Government Act 1999. This Agreement and the operation of the Section 75 is therefore subject to the Council's obligations for Best Value and the other Partners will co-operate with all reasonable requests from the Council which the Council considers necessary in order to fulfil its Best Value obligations.

**20.3** The ICB is subject to the ICB Statutory Duties and these incorporate a duty of clinical governance, which is a framework through which they are accountable for continuously improving the quality of its services and safeguarding high standards of care by creating an environment in which excellence in clinical care will flourish. This Agreement and the operation of the Section 75 are therefore subject to ensuring compliance with the ICB Statutory Duties and clinical governance obligations.

**20.4** The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, with the aim of developing a joint strategy for all elements of the Service.

**20.5** By entering into this Agreement, the Partners acknowledge and will ensure that Staff will adhere to the relevant Partner's standards at all times.

## **21 CONFLICTS OF INTEREST**

**20.1** The Partners will immediately disclose and declare any conflict(s) of interest or potential conflict(s) of interest in respect of this Agreement or the Services to the other Partners.

## **22 FORCE MAJEURE**

**22.1** If an event of Force Majeure occurs then the Partners shall meet to discuss how best to provide the Services until the Force Majeure event ceases.

**22.2** If any Partner fails to carry out its respective obligations under this Agreement as a result of Force Majeure then whichever Partner is affected shall not be liable under this Agreement for any such failure.

**22.3** In this Clause Force Majeure includes but not limited to:

- 22.3.1 acts of war;
- 22.3.2 acts of God;
- 22.3.3 decrees of Government;
- 22.3.4 riots;
- 22.3.5 civil commotion; and
- 22.3.6 act of terrorism;
- 22.3.7 fire, flood, storm or earthquake and any disaster.

**22.4** Force Majeure shall not include any labour dispute between any Partners and their Staff, any other staffing problem or the failure to provide the Services by any of the Partners' sub-contractors.

**22.5** In the event that any Partner is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty (30) days, the other Partners may terminate this Agreement by notice in writing giving fourteen (14) Days' notice.

**22.6** The Partners shall at all times following an act of Force Majeure use all reasonable endeavours to mitigate the effects of the event of Force Majeure and facilitate the continued performance of this Agreement.

**22.7** If an Unexpected Event occurs the Partners shall meet within 3 working days of the event being notified to them to discuss the delivery of the Services, unless agreed otherwise. If an Unexpected Event occurs:

22.7.1 The Partner to which the event relates to shall be wholly liable for any additional liability and costs arising out of the Unexpected Event unless otherwise agreed in writing between the Partners;

22.7.2 The Partners to which the Unexpected Event does not relate shall use all reasonable endeavours to facilitate the delivery of the Services.

## **23 NOTICES**

**23.1** Any notice or other communication to be served under this Agreement shall be delivered or sent by first class post or electronic communication to the nominated representative at the Partner to be served at its address or email address.

**23.2** Subject to Clause 23.3 and in the absence of earlier receipt, any notice or communication shall be deemed to have been served:

23.2.1 if delivered personally, at the time of delivery;

23.2.2 if sent by first class recorded post or other next working day delivery service, two (2) working days after the date of posting; and

23.2.3 if sent by email, forty eight (48) hours after the time of sending to the Partners' authorised representatives at the email addresses specified by the Partners.

**23.3** Any notice or communication served under this Agreement after 4.30pm in the place to which it is addressed shall be deemed not to have been served until the start of the next working day in such place.

**23.4** This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any method of dispute resolution. For the purpose of this Clause “writing” shall include email.

## **24 AUDIT**

**24.1** All Partners shall promote a culture of probity and sound financial discipline and control. The Host Partner shall arrange for the audit of the accounts of the relevant Section 75 and shall require the appropriate person or body appointed to exercise the functions of the Audit Commission under Section 28(1)(d) of the Audit Commission Act 1998, by virtue of an order made under section 49(5) of the Local Audit and Accountability Act 2014 to make arrangements to certify an annual return of those accounts under Section 28(1) of the Audit Commission Act 1998.

**24.2** All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member of the relevant Partner in order to carry out their duties. This right is not limited to financial information or accounting records and applies equally to premises or equipment used in connection with this Agreement. Access may be at any time without notice, provided there is good cause for access without notice.

**24.3** The Partners shall comply with relevant NHS finance and accounting obligations as required by relevant Law and/or National Guidance.

**24.4** The Partners shall implement recommendations arising from these inspections, where appropriate.

## **25 VARIATION**

**25.1** No variations to this Agreement will be valid unless they are recorded in writing and signed for and on behalf of each of the Partners.

## **26 CHANGE IN LAW**

**26.1** The Partners shall ascertain, observe, perform and comply with all relevant Laws, and shall do and execute or cause to be done and executed all acts required to be done under or by virtue of any Laws.

**26.2** On the occurrence of any Change in Law, the Partners shall agree in good faith any amendment required to this Agreement as a result of the Change in Law subject to the Partners using all reasonable endeavours to mitigate the adverse effects of such Change in Law and taking all reasonable steps to minimise any increase in costs arising from such Change in Law.

**26.3** In the event of failure by the Partners to agree the relevant amendments to the Agreement (as appropriate), Clause 17 shall apply.

## **27 WAIVER**

**27.1** No failure or delay by any Partner to exercise any right, power or remedy provided under this Agreement or by law will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **28 SEVERANCE**

**28.1** If any provision or part-provision of this Agreement, not being of a fundamental nature, shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not thereby be affected.

**28.2** If any provision or part-provision of this Agreement is deemed deleted under Clause 27.1, the Partners shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.



**29 EXCLUSION OF PARTNERSHIP AND AGENCY**

**29.1** Nothing in this Agreement shall create or be deemed to create a partnership under the Partnership Act 1890 or the Limited Partnership Act 1907, a joint venture or the relationship of employer and employee between the Partners or render either Partner directly liable to any third party for the debts, liabilities or obligations of the other.

**29.2** Except as expressly provided otherwise in this Agreement or where the context or any statutory provision otherwise necessarily requires, neither Partner will have authority to, or hold itself out as having authority to:

29.2.1 act as an agent of the other Partners;

29.2.2 make any representations or give any warranties to third parties on behalf of or in respect of the other Partners; or

29.2.3 bind the other Partners in any way.

**30 THIRD PARTY RIGHTS**

**30.1** Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

**31 ENTIRE AGREEMENT**

**31.1** The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreements and any representations promises or conditions not incorporated herein shall not be binding on any Partner.

**31.2** No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of the Partners. Each Partner agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**32 COUNTERPARTS**

**32.1** This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all Partners shall constitute a full original of this Agreement for all purposes. No counterpart shall be effective until each Partner has executed at least one counterpart.

**33 ASSIGNMENT**

**33.1** Subject to Clause 32.2, the Partners shall not assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other Partners.

**33.2** The Partners shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Partners.

**34 COSTS**

**34.1** Each Partner shall bear its own legal costs and expenses incurred by them in connection with the preparation of this Agreement.

**35 INTELLECTUAL PROPERTY RIGHTS**

**35.1** Any Intellectual Property Rights created by the Partners or their employees or agents or acquired in relation to this Agreement and the Services shall vest in all the Partners on creation.

**36 PUBLICITY**

36.1 The Partners shall use reasonable endeavours to consult one another before making any press announcements concerning the Services or this Agreement.

**37 GOVERNING LAW AND JURISDICTION**

**37.1** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

37.2 Subject to Clause 17, the Partners irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceedings, dispute or claim, which may arise out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

**38 OMBUDSMAN**

38.1 The Partners will co-operate with any investigation undertaken by the Parliamentary and Health Service Ombudsman or the Local Government and Social Care Ombudsman (or both) in connection with this Agreement.

**39. FAIR DEALINGS**

39.1 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 any of them and that if in the course of the performance of this Agreement, unfairness to any of them does or may result then the other Partner shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

**IN WITNESS WHEREOF** this Agreement has been executed by the Partners on the date of this Agreement

**EXECUTED** as a **DEED**  
by the affixing of the **COMMON SEAL** of  
**SURREY COUNTY COUNCIL**  
in the presence of:-

Authorised Signatory.....

**EXECUTED** as a **DEED**  
by the affixing of the **COMMON SEAL** of  
**NHS SURREY HEARTLANDS**  
**INTEGRATED CARE BOARD**  
in the presence of:-

Authorised Signatory.....

**EXECUTED** as a **DEED**  
by the affixing of the **COMMON SEAL** of  
**NHS FRIMLEY**  
**INTEGRATED CARE BOARD**  
in the presence of:-

Authorised Signatory.....

## **SCHEDULE 1 – FINANCE PRINCIPLES FOR INTEGRATED WORKING, INCLUDING FUNDING OF JOINT POSTS AND INTEGRATED TEAMS**

### **1 INTRODUCTION**

- 1.1** This Schedule outlines the principles that should be followed when considering new financial arrangements and agreements for joint activity, including funding for health or social care related services and shared funding of posts related to health or social care related services.
- 1.2** These principles reflect a scope wider than this Agreement, which solely relates to the terms and principles through which the Partners will bring Staff and resources together to work together.
- 1.3** The principles are not intended to provide complete information about processes and procedures for establishing financial arrangement and agreements but to guide financial planning and help signpost Staff.

### **2 TYPES AND FORMAT OF AGREEMENTS**

- 2.1** Agreements may be created for:

- 2.1.1 new contracts/extending contracts/deeds of variation/variation agreements,
- 2.1.2 procurements,
- 2.1.3 pooling budget for staffing,
- 2.1.4 pooling budget for commissioning and delivery activity, and/or
- 2.1.5 other agreed funding arrangements.

- 2.2** There are different models and options available for joint funding and place-based budgets, these include, but are not limited to, joint arrangements such as a Pooled budget using a Section 75 Agreement (between health bodies and local government), local bespoke risk/gain share arrangements and delegating budgets to a group of bodies.

- 2.3** Pooled budgets are not normally applied towards any one-off expenditure on goods and/or services, which will provide continuing benefit and would historically have been funded from the capital budgets of one of the parties. If a need for capital expenditure is identified this must be agreed in writing by the Partners.

### **3 GENERAL**

- 3.1** The following general principles apply:

- 3.1.1 before establishing any financial arrangements and joint funding agreements, including Pooled budgets for the commissioning and delivery of services:
- i) Staff should contact their Finance Lead. Finance Leads across the Partners will liaise directly and work together and with Staff to establish appropriate arrangements,
  - ii) the appropriate formal approval must be obtained from all participating Partners. An agreed process has been established for considering and initiating new financial arrangements and agreements for joint activity.
- 3.1.2 the Financial Year will run from 1st April of any year to 31st March in the following calendar year.
- 3.1.3 quarter means each of the following periods in a Financial Year:
- iii) 1 April to 30 June;

- iv) 1 July to 30 September;
- v) 1 October to 31 December; and
- vi) 1 January to 31 March.

3.1.4 financial arrangements or agreements are fixed over a specified period agreed in writing by all parties.

3.1.5 any required element(s) of inflation will be clearly identified and agreed by all parties in advance of any final approval, but in line with national guidance.

#### **4 POOLED BUDGETS**

**4.1** For the purpose of this Schedule and this Agreement, the term Pooled budget will be used throughout. A Pooled budget means “a pooled fund comprising the Local Authority's Financial Contribution and the NHS Body's Financial Contribution for agreed Services where one Host Organisation accounts for the money. Less formally, budgets can be aligned. This occurs when different organisations effectively keep their money in their own accounts but align the money toward agreed joint outcomes (Lorgelley et al 2009).”

**4.2** Formal Pooled budgets, where required, can be operated via a Section 75 Agreement. Section 75 of the NHS Act 2006 allows partners (NHS bodies and councils) to contribute to a common fund which can be used to:

4.2.1 commission health or social care related services.

4.2.2 share funding of posts related to health or social care related services.

#### **5 POOLED BUDGET FOR THE SHARED FUNDING OF AGREED POSTS**

**5.1** The Section 75 Schedule contained in Schedule 6 of this Agreement governs shared funding arrangements between the Council, Surrey Heartlands ICB and Frimley ICB. The Section 75 Schedule is based on existing expenditure within the respective organisations remaining under current arrangements. It articulates the way monies between the three organisations are being managed and accounted for solely in respect of jointly funded posts.

**5.2** The Section 75 Schedule covers posts with agreed shared funding arrangements. Agreed posts include:

5.2.1 Posts identified in this Agreement as Joint Posts, where Staff will undertake responsibilities across the Partners and have appropriate delegated authority. Many, but not all, Joint Posts will have shared funded arrangements.

5.2.2 Posts not identified as Joint Posts in this Agreement. This could include posts that carry out work as part of a project or group for a distinct period.

**5.3** An agreed process has been established to add a post to or remove a post from the Section 75 Schedule contained in Schedule 6 and this Agreement. The agreed single process will ensure that:

5.3.1 there is the right agreement and approval between the Partners; and

5.3.2 this Agreement and associated Schedules, including the Section 75 Schedule contained in Schedule 6 for shared funding, are amended and updated.

**5.4** For the Section 75 Schedule the process will identify, assess, and approve requests:

5.4.1 to create a new post with shared funding arrangements.

5.4.2 to change existing shared funding arrangements of a post.

5.4.3 to change the employing organisation of a post where this has financial implications.

5.4.4 to agree any additional expenditure for a post including one off recruitment costs with an external party.

**5.5** Any changes to the Section 75 Schedule and/or this Agreement will be dealt with in accordance with the procedures set out in the variation clause of this Agreement.

## **6 ESTABLISHING AND MANAGING POOLED BUDGET**

**6.1** The following principles should be used to guide the establishment of a Pooled budget, including roles and responsibilities.

**6.2** Documentation for a joint funding agreement, such as a Pooled budget, would usually outline:

6.2.1 aims and objectives of the Pooled budget, and expected benefits,

6.2.2 relevant functions and / or services in scope,

6.2.3 parties involved and the role of each one,

6.2.4 how the Pooled budget will be funded,

6.2.5 respective financial contributions and other non-financial resources provided,

6.2.6 how the Pooled budget will be managed,

6.2.7 the duration of the arrangements, including the provision and mechanisms for review, renewal and termination,

6.2.8 technical matters such as treatment of VAT, legal issues, complaints, dispute resolution and risk sharing, as well as treatment of overspends and underspends.

**6.3** Any joint funding arrangements should receive appropriate approval in line with each parties governance processes. Before establishing any Pooled budget, appropriate approval must be obtained from all participating organisations in line with their governance processes.

### **6.4 FINANCIAL CONTRIBUTIONS**

**6.5** For joint funding arrangements, including Pooled budgets, parties will need to determine and agree the financial contributions of each party and the allocation of expenditure.

**6.6** Expenditure falls into two main categories, staffing and non-staffing:

6.6.1 Direct staffing expenditure would include costs such as salary and associated on costs such as National Insurance (NI) and pension contributions.

6.6.2 Non-staffing expenditure would include any other type of incurred expenditure.

**6.7** For both staffing and non-staffing expenditure it is important that the basis for allocating expenditure is agreed in advance of any costs being incurred participating organisations.

**6.8** Allocation of expenditure should be based on an agreed metric that represents the spread of the work being undertaken. This could include time spent working for a participating organisation (known or estimated) or population or user numbers depending on the type of service.

### **6.9 MANAGING POOLED BUDGETS**

**6.10** Each Pooled budget shall be managed and maintained in accordance with the terms established and agreed between participating organisations, however the main principles are:

6.10.1 Parties will appoint a Host Organisation for each of Pooled budget set up. The Host Organisation will be the party responsible for:

- (a) holding all budget / monies contributed to the Pooled budget on behalf of itself and the other parties,
- (b) providing the financial administrative systems for the Pooled budget,
- (c) appointing a Pooled Budget Manager, and
- (d) ensuring that the Pooled Budget Manager complies with the agreed obligations.

6.10.2 When introducing a Pooled budget, the parties will agree:

- (a) which party will act as the Host Partner and provide the financial administrative systems for the Pooled budget, and
- (b) which officer of the Host Partner shall act as the Pooled Budget Manager.

6.10.3 The Pooled Budget Manager for each Pooled budget will have defined duties and responsibilities in the agreement, which will usually include:

- (a) the day-to-day operation and management of the Pooled budget,
- (b) ensuring that all expenditure from the Pooled budget is in accordance with what has been agreed between the parties
- (c) maintaining an overview of all joint financial issues affecting the parties in relation to the Services and the Pooled budget,
- (d) ensuring that full and proper records for accounting purposes are kept in respect of the Pooled budget,
- (e) preparing and submitting reports to the agreed governance body/bodies and for the agreed periods, complying with any reporting requirements as may be required by relevant national guidance,
- (f) ensuring action is taken to manage any projected under or overspends relating to the Pooled budget in accordance with the agreement.

6.10.4 In carrying out their responsibilities the Pooled Budget Manager will:

- (a) have regard to national guidance,
- (b) adhere to associated governance requirements, and
- (c) be accountable to the parties of the agreement for delivery of those responsibilities.

## **6.11 BILLING AND PAYMENT PROCESSES**

**6.12** Within any agreement the parties will commit to an agreed set of payment terms. Payments by parties:

6.12.1 should take place at agreed intervals, usually be monthly or quarterly; and

6.12.2 should be made in line with the agreed allocations at the start of the year, with a reconciliation taking place at agreed intervals, such as in months 3, 6 and/or 12 to identify and action any necessary adjustments.

**6.13** Each joint funding agreement, including joint budgets, will have a Host Organisation. The Host Organisation will ensure:

6.13.1 invoices are issued and sent to the correct contact in the participating organisation, and

6.13.2 payment is issued and paid to the correct payee in the participating organisation.

**6.14** Within any agreement the parties will agree the treatment of each Pooled budget for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.

**6.15** In line with standard practice, VAT would be charged on any invoices for contractors. It should be noted, NHS Bodies / Integrated Care Boards are not able to reclaim VAT on Staff recharges so this may need to be considered to make any 'Host' arrangements as financially efficient as possible for all the parties.



## SCHEDULE 2 – JOINT POSTS

### 1 INTRODUCTION

- 1.1** For the purpose of this Schedule 4 – Joint Posts, the reference(s) to the Partners is a reference to the Council, Surrey Heartlands ICB and where applicable Frimley Health and Care ICB.
- 1.2** The Partners agree that there will be some Staff employed in Joint Posts and these will be roles that are required to operate both in and across the Council or Surrey Heartlands ICB. Staff in Joint Posts will have one or more joint responsibilities across the Council or Surrey Heartlands ICB. The Partners that they will delegate responsibilities to and Staff employed by the other Partner for posts identified and agreed as Joint Posts.
- 1.3** Staff in Joint Posts will have one or more joint responsibilities across the Partners.
- 1.3.1 Joint strategic / professional responsibilities e.g., Executive Directors of Adult Social Care and Joint Commissioning.
- 1.3.2 Joint line management responsibilities e.g., Staff employed by the Council managing Surrey Heartlands ICB Staff or overall line management for teams/services with integrated teams
- 1.3.3 Joint financial management responsibilities e.g., Staff in Surrey Heartlands ICB hosted post managing spend of the Council's budget.
- 1.4** The Joint Posts agreed by the Partners and covered by this Agreement are set out below.

Post	Department	Employer	Grade	Responsibilities			Joint Funded (Y/N)
				Strategic / Professional	Line Mngmt	Finance / budget	
Executive Director for Adult Social Care and Joint Commissioning	ICS Executive and Adult Social Care	Surrey County Council	PS18	Yes	Yes	Yes	Y
Joint Executive Director for Public Service Reform	ICS Executive and Adult Social Care	Surrey County Council	PS18	Yes	Yes	Yes	Y
Joint Strategic Chief Digital Officer	ICS Executive	Surrey County Council	PS16	Yes	Yes	Yes	Y
Assistant Director - Health Estates	Public Service Reform	Surrey County Council	PS15	Yes	Yes	Yes	Y
Head of Research	Public Service Reform	Surrey County Council	PS13	Yes	Yes	Yes	Y
Research Officer (SHHCP)	Public Service Reform	Surrey County Council	PS9	No	No	No	N

Strategic Lead – Research	Public Service Reform	Surrey County Council	PS11	No	Yes	Yes	N
Joint Director, Strategic Business intelligence and Analytics	Public Service Reform	NHS Surrey Heartlands ICB	9	Yes	Yes	Yes	Y
Strategic System Convener	Mental Health	NHS Surrey Heartlands ICB	PS16	Yes	No	No	Y
Strategic System Convener	Focus on Children’s and Mental Health	NHS Surrey Heartlands ICB	PS16	Yes	No	No	Y
Strategic System Convener	Focus on Learning Disabilities & Autism and Mental Health	NHS Surrey Heartlands ICB	PS16	Yes	No	No	Y
Health Integration Policy Lead	Public Service Reform	NHS Surrey Heartlands ICB	8d	Yes	Yes	Yes	Y
Director for Integrated Commissioning	Adult Social Care – Commissioning	Surrey County Council	PS16	Yes	Yes	Yes	N
Head of Commissioning – Disabilities	Adult Social Care – Commissioning	Surrey County Council	PS14	Yes	Yes	Yes	N
Head of Continuing Healthcare	Adult Social Care – Commissioning	Surrey County Council	PS14	Yes	Yes	Yes	Y
Deputy Director of Mental Health Commissioning	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	9	Yes	Yes	No	N
Head of Mental Health Commissioning	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8c	Yes	Yes	No	N
Specialist Commissioner for S117	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8b	No	Yes	No	N
Specialist Commissioner for S117	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8a	No	No	No	N
S117 Administrator	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	4	No	No	No	N
MH Commissioner for East Surrey	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8a	No	Yes	No	N

MH Commissioner for North-West Surrey	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8a	No	Yes	No	N
MH Commissioner for Guildford	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8a	No	Yes	No	N
MH Commissioner for Surrey Downs	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8a	No	Yes	No	N
Business Support for Mental Health Commissioning	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	5	No	No	No	N
NHS Partnerships Manager (Carers)	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8b	No	Yes	No	N
Senior Programme Lead (Carers)	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	8b	No	Yes	No	N
Senior Commissioning Manager (Carers)	Adult Social Care – Commissioning	Surrey County Council	PS13	No	No	No	N
Primary Liaison and Engagement Officer (Carers)	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	5	No	No	No	N
Programme Support Officer (Carers)	Adult Social Care – Commissioning	NHS Surrey Heartlands ICB	4	No	No	No	N
Commissioning Manager (Carers)	Adult Social Care – Commissioning	Surrey County Council	PS11	No	No	No	N
Director - Commissioning	Children, Families and Lifelong Learning – Commissioning	Surrey County Council	PS16	Yes	Yes	Yes	N
Associate Director of Children's Community Commissioning	Children, Families and Lifelong Learning – Commissioning	NHS Surrey Heartlands ICB	8d	Yes	Yes	Yes	Y
Programme Director for Learning Disabilities, Autism & Children's Complex Health Needs	Children, Families and Lifelong Learning – Commissioning	NHS Surrey Heartlands ICB		Yes	Yes	Yes	N
Head of Integrated Learning Disability & Autism Commissioning	Learning Disabilities & Autism and Mental Health	NHS Surrey Heartlands ICB	8c	Yes	Yes	Yes	Y

Designated Clinical Officer for SEND	Children, Families and Lifelong Learning – Commissioning	NHS Surrey Heartlands ICB	8b	Yes	Yes	No	Y
Head of Emotional Wellbeing and Mental Health Commissioning	Children, Families and Lifelong Learning – Commissioning	NHS Surrey Heartlands ICB	8c	Yes	Yes	Yes	Y
Data Analyst	Children, Families and Lifelong Learning – Commissioning	Surrey County Council	PS9	No	No	No	Y

## **SCHEDULE 3 – STAFF MANAGEMENT PROTOCOL**

### **1 INTRODUCTION**

- 1.1** This protocol outlines the arrangements between the Council and Surrey Heartlands ICB for the management of Staff working in joint and integrated teams and across the Council and Surrey Heartlands ICB. For the avoidance of any doubt, staff employed by Frimley ICB are not part of the joint teams and are not subject to this Schedule.
- 1.2** All Staff are contractually employed by the Council or Surrey Heartlands ICB however some posts may have shared funding arrangements between the Council, Surrey Heartlands ICB and Frimley ICB. This will not impact the terms and conditions of employment for post holders.

### **2 GUIDING PRINCIPLES**

- 2.1** This protocol aims to ensure that all Staff are treated fairly and that the principles for joint working and equality and diversity are upheld. Where there are any problems or difficulties relating to the employment or management of Staff working within the partnership, the aim will be to resolve these at a local management level whenever possible.
- 2.2** The Council or Surrey Heartlands ICB will work together to ensure joint understanding and familiarity with each Partner's working standards / practices. The Council or Surrey Heartlands ICB will develop joint practices and procedures where needed, for example, establishing Joint Posts or shared funding arrangements. Where practicable, the Council or Surrey Heartlands ICB will use common practices / procedures.

### **3 WORKFORCE LEADS OR NOMINATED MANAGERS**

- 3.1** The Council or Surrey Heartlands ICB agree that each Partner, with Staff in joint and integrated teams, will have workforce leads or nominated managers who will work in partnership with senior HR representatives in the Council's or Surrey Heartlands ICB's HR function. The workforce leads or nominated managers will:
- 3.1.1 lead the development and implementation of strategic workforce activities to support the integration and development of the workforce within the joint function.
- 3.1.2 review and develop joint working arrangements, and
- 3.1.3 signpost and support managers to access information and resources to proactively address employee relations issues within their workforce,
- 3.1.4 ensure access to the Council's or Surrey Heartlands ICB's learning, development and induction arrangements are in place and meet the needs of the joint workforce,

### **4 EMPLOYMENT POSITION OF STAFF**

- 4.1** Staff will be employed by the Council or Surrey Heartlands ICB and will be subject to the terms and conditions set out in their contract of employment. The contractual employer will continue to pay salaries and accept all the normal duties and legal responsibilities of any employer including those related to tax, national insurance and pension contributions.
- 4.2** The policies and processes of the contractual employer will apply regardless of where Staff are based and whether they are in a post with joint responsibilities across the Council or Surrey Heartlands ICB.
- 4.3** The full terms and conditions of the contractual employer will apply, successful candidates will not have the option to cherry pick from the Council or Surrey Heartlands ICB e.g., a candidate cannot be employed by the local authority and retain their NHS pension.

## **5 JOINT POSTS**

- 5.1** Some Staff will be employed in Joint Posts and these will be roles that are required to operate both in and across the Council or Surrey Heartlands ICB. Staff in Joint Posts will have one or more joint responsibilities across the Council or Surrey Heartlands ICB.
- 5.1.1 Joint strategic / professional responsibilities e.g., Executive Directors of Adult Social Care and Joint Commissioning.
- 5.1.2 Joint line management responsibilities e.g., Staff employed by the Council managing Surrey Heartlands ICB Staff
- 5.1.3 Joint financial management responsibilities e.g., Staff employed by Surrey Heartlands ICB managing spend of the Council's budget.
- 5.2** Staff employed in Joint Posts may need specific access and IT equipment to undertake joint responsibilities, e.g. access to the Council's or Surrey Heartlands ICB's HR / workforce systems.
- 5.3** Line managers / hiring managers must follow the joint process to request a new Joint Post or to request a change an existing post to a Joint Post, to ensure that Staff have the right delegated authority to undertake the responsibilities of that post, and to guide line managers / hiring managers to undertake related actions.
- 5.4** When recruiting to Joint Posts line managers / hiring managers will be responsible for ensuring that the new postholder has the correct access and IT equipment to undertake joint responsibilities.

## **6 SHARED FUNDING OF POSTS**

- 6.1** Some posts have shared funding arrangements, therefore Partners have an agreement in place for contributions to a Pooled budget.
- 6.2** Line managers / hiring managers must follow the joint process to request new shared funding arrangements or to request changes to existing funding arrangements, to ensure that the right authorisation and agreement is obtained from the Partners.

## **7 SECONDMENTS**

- 7.1** Secondments do not need to be created to enable joint responsibilities to be undertaken across the Council or Surrey Heartlands ICB. Secondments should be used when Staff need to temporarily transfer into another post, partially or fully, and away from their primary job.
- 7.2** Line managers / hiring managers must follow the formal process for any internal and external secondments to ensure that the appropriate approval is obtained, written confirmation is provided to the employee, Staff have the right delegated authority to undertake the responsibilities of that post and that any costs are appropriately charged. Line managers are responsible for confirming in writing any practical arrangements associated with joint roles or line management arrangements.
- 7.3** Staff may be seconded, as appropriate to the circumstances, within their own employing organisation or to the Partner organisation but will remain employees of the original contractual employer.
- 7.4** Staff will continue in already established secondments unless formal changes are made.

## **8 MEMBERSHIP OF LEADERSHIP TEAMS**

- 8.1** Membership of Leadership Teams will be determined by the Executive Director, or equivalent, for the contractual employer.

## **9 MANAGEMENT OF STAFF**

- 9.1** Managers can have line management responsibilities across the Council or Surrey Heartlands ICB; managers will be set up with a record and provided access to the Partner's HR / workforce system to undertake line management activities and access personnel information.
- 9.2** Staff can be line managed by someone from either the Council or Surrey Heartlands ICB.
- 9.3** Staff may be Matrix Managed and have more than one reporting line (solid line and dotted line):
- 9.3.1 a solid line to a primary line manager for formal line management activity, supervision etc, for example approval of leave, expenses,
  - 9.3.2 a dotted line to one or more other managers or work leads.
- 9.4** Managers may have a key contact / mentor / buddy in one of the other Partners to support with line management, help understand the organisation(s) and facilitate how to get things done by the Partners, and for day-to-day supervision of particular pieces of work. Managers will identify suitable contacts and organise such arrangements themselves.
- 9.5** Managers who line manage Staff employed by a different Partner to their own can:
- 9.5.1 access Staff personal and work information.
  - 9.5.2 supervise and undertake performance reviews for those Staff in accordance with the policies and processes of the employing organisation, seeking advice from HR as appropriate.
  - 9.5.3 approve pay progression / make decisions in relation to pay for those Staff in accordance with the policies and processes of the employing organisation, seeking advice from HR as appropriate.

## **10 ACCESS TO AND INFORMATION OF STAFF WITHIN THE PARTNERSHIP**

- 10.1** Managers within Joint Posts with delegated line management responsibilities will:
- 10.1.1 process personal information for Staff administration, training, management information, health and safety, research, recruitment and selection, equal opportunities monitoring and compliance purposes and disclose to the employing organisation and their representatives /agents and third parties whose participation is necessary to fulfil these services.
  - 10.1.2 maintain and make available on request to the employing organisation appropriate management information, including details of absence due to annual, sick or special leave, any unauthorised absence and performance information, in accordance with this Agreement including data protection and confidentiality legislation.
- 10.2** Staff will be notified of changes to reporting lines. Staff will be notified when the line manager does not have the same contractual employer as the Staff they are managing and will have access to personal data and information.

## **11 STAFF ISSUES AND INVESTIGATIONS**

- 11.1** The employing organisation [contractual employer] will be responsible for issues relating to Staff employed by them.
- 11.2** Investigations may be undertaken by either the Council or Surrey Heartlands ICB under the policies and processes of the employing organisation with the agreement of the employer.

- 11.3 The employing organisation will identify a lead for any investigation, and this will be agreed by the Council or Surrey Heartlands ICB and confirmed in writing to all parties. Typically, this will be an appropriate manager within the same employing organisation. Alternatively, it could be an independent investigator, or a manager employed by either the Council or Surrey Heartlands ICB.
- 11.4 Partners will identify and agree the most appropriate person to undertake an investigation, based on the nature of the allegation and on a case by case basis.
- 11.5 The Partner, who is the contractual employer, will manage the outcome and decision. In cases where dismissal may apply, a senior manager from the contractual employer should chair the hearing and would be responsible for communicating the outcome to the employee.
- 11.6 Where agreed by the Partners, formal employee relation (ER) issues should be jointly managed by the Partners. This should be done with due consideration of governance around dismissal. Partners should agree terms of reference at the outset of the process and seek advice from HR as appropriate.

## **12 POSTS IN STRUCTURES**

- 12.1 While joint teams exist and will be formed, each Partner needs to manage and maintain their respective organisational structures and staffing budgets. Each post sits within the structure of either the Council or Surrey Heartlands ICB. The hosting organisation is usually the contractual employer, however there are some exceptions. Posts can be either designated to a specific Partner, for example a nursing role would always sit with the NHS or can be assigned to any Partner.

## **13 JOB EVALUATION**

- 13.1 In the case that a post can only be designated to a specific Partner, the hosting organisation is determined at the outset and the line manager/hiring manager will arrange for the post to be evaluated and graded/banded in accordance with the hosting organisation's job evaluation process.
- 13.2 In the case of a post that is not predominantly assigned to one organisation, the hosting organisation is not necessarily determined at the outset and the successful candidate may determine the contractual employer at the point of hiring.
- 13.3 When a successful candidate requests to be employed by the other Partner, the line manager / hiring manager will arrange for hosting organisation to change and the post grade/band to be matched in value. Line managers/hiring managers must follow the joint process to request approval to change the hosting organisation.

## **14 RECRUITMENT AND SELECTION PROCESSES**

- 14.1 The recruiting manager has overall responsibility for recruitment. They are responsible for ensuring:
  - 14.1.1 the recruitment process and procedures of the organisation that hosts the post are followed;
  - 14.1.2 the relevant HR policies are adhered to;
  - 14.1.3 the appropriate approval to recruit to a post is secured including agreed funding / budget.
  - 14.1.4 that adverts for Joint Posts are put on both NHS and the Council's platforms; and
  - 14.1.5 that one person from each Partner is involved in the recruitment process for Joint Posts including shortlisting and interview questions, unless pre-agreed with the other partners HR team.
- 14.2 Where a post is not predominantly assigned to one organisation, the contractual employer will be determined based on the preference of the successful candidate. In the case that the successful candidate would prefer to be employed by the other Partner rather than the organisation hosting the



post the hiring manager must follow the joint process to request approval to change the hosting organisation.

- 14.3 In the case that the successful candidate has no preference for the employing organisation the organisation hosting the post will be unchanged and the hiring manager will continue the recruitment process.
- 14.4 With any new vacancy or creation of a new post the line manager / hiring manager should find out whether the post should have shared funding arrangements.
- 14.5 Any posts to be recruited will be considered as to whether they will be joint funded.

## **15 ADVERTISING**

- 15.1 All vacancies, secondments and temporary posts will be advertised jointly and across all Partners simultaneously.
- 15.2 Line managers / hiring managers must follow the joint process to request approval for additional expenditure for a Joint Post, for example one off recruitment costs with external party to ensure there is agreement for the additional expenditure.

## **16 SENIOR APPOINTMENTS**

- 16.1 In the case of joint appointments at a senior level hiring managers must go through the governance process for both health and the Council appointments.
  - 16.1.1 In Surrey Heartlands ICB, the standard selection process for very senior managers will be applied in line with national guidance.
  - 16.1.2 In the Council, any leadership role (pay scale PS15 and above), the recruitment and selection process must be led by Council Members.

## **17 JOINT INDUCTIONS**

HR and organisational development staff from each Partner will work together to develop and organise a framework for joint inductions. Line Managers are responsible for organising and delivering induction arrangements and local inductions to cover role and base specific information.

## **18 LEARNING AND DEVELOPMENT**

- 18.1 Staff will be entitled to continued access to training and development opportunities available within their employing organisations. The identification of training needs will be the responsibility of formal line managers. Statutory and mandatory training will be determined and managed by the contractual employer.
- 18.2 Staff development and training will be managed flexibly across the Partners based on best fit.
- 18.3 In the case of Council Staff in an NHS band 8a or above health post, e.g. as an interim, secondment or in a Joint Post, those Staff must sign a conflict of interest declaration.
- 18.4 The Partners will work together to develop joint arrangements for development and training, to ensure that opportunities for are equally available to Staff within the Partners.

## **19 STAFF INVOLVEMENT AND CONSULTATION**

- 19.1 For the purposes of individual negotiation, consultation and representation, the relevant trade union(s) Recognition/Facilities Agreement will be applied. In matters of joint interest in relation to the

partnership, items will still need to be referred back to organisation's own consultative committee for consultation and discussion.

- 19.2** In matters that relate to one Partner's Staff, consultation and representation will take place in accordance with the employing organisation's arrangements. Agreement for facilities time will be in accordance with the Trade Union facilities agreements in place with each Partner.

## **20 REDUNDANCY AND REDPLOYMENT**

- 20.1** Respective contractual employers will be responsible for managing redundancy and redeployment processes for their Staff including consultation and engaging with relevant trade unions.
- 20.2** Redundancy liabilities (cost and redeployment) for shared posts are held by the contractual employers.
- 20.3** Redeployees within jointly funded teams can be ringfenced for other jointly funded posts, regardless of who the employer is (as the contractual employer can be changed).

## **21 HEALTH AND WELLBEING**

- 21.1** Line managers will remain responsible for the safety and welfare of Staff and will be expected to brief an individual Staff member in all aspects of health and safety with regard to any working arrangements in their own buildings, including familiarisation with facilities arrangements and evacuation points and protocols.
- 21.2** The general welfare of Staff will be the shared responsibility of Partners who will work in partnership to safeguard the health and wellbeing of individual Staff.

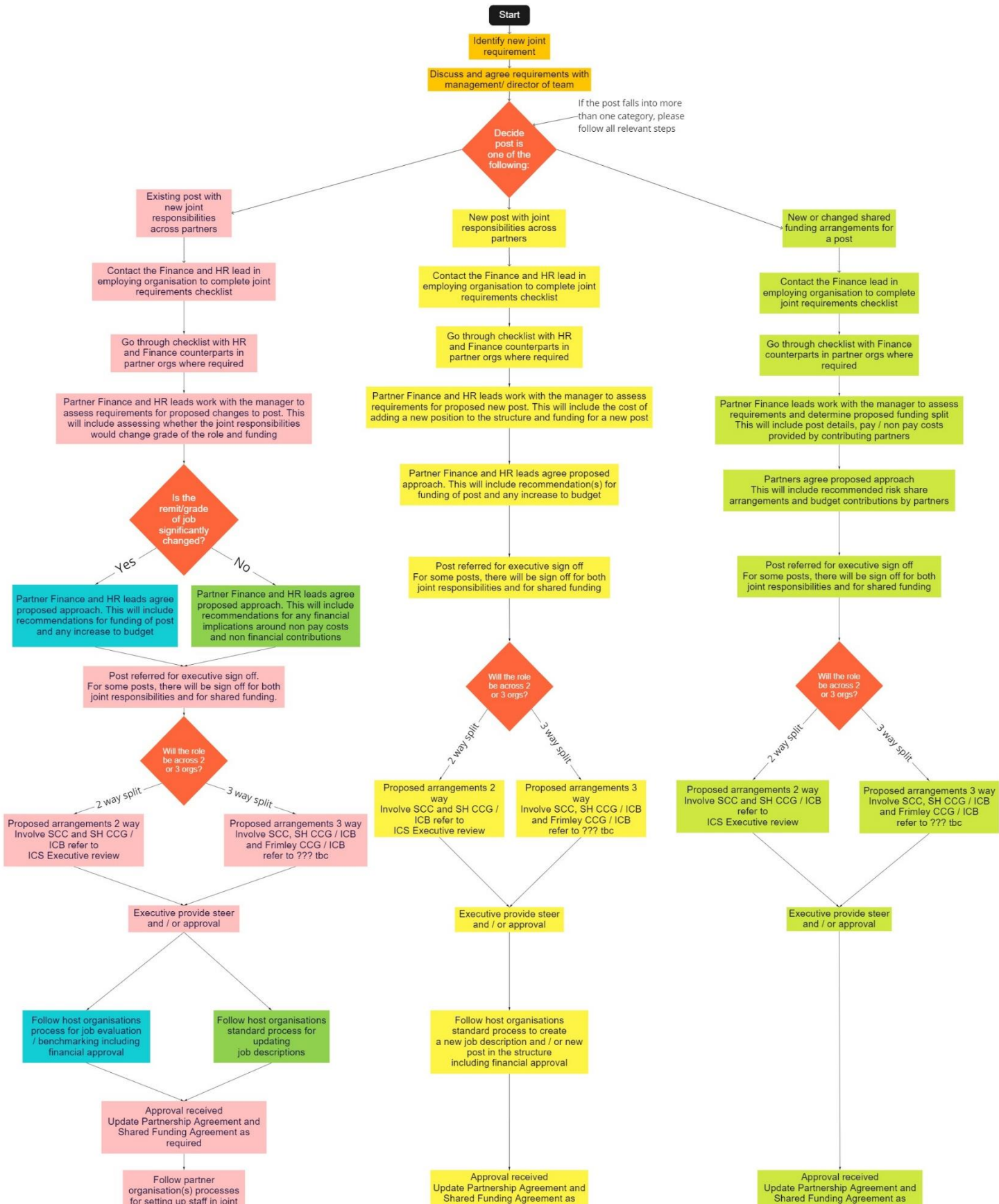
## **22 IMPLEMENTATION OF THIS PROTOCOL**

- 22.1** Each Partner, as an employing organisation, accepts their responsibilities to ensure this Protocol is appropriately shared with all managers and Staff in the partnership. Senior Manager in each service area will be responsible for ensuring the Protocol is implemented and updated as required.
- 22.2** This Protocol will be kept under regular review.

## SCHEDULE 4 – JOINT POST AND SHARED FUNDING PROCESS

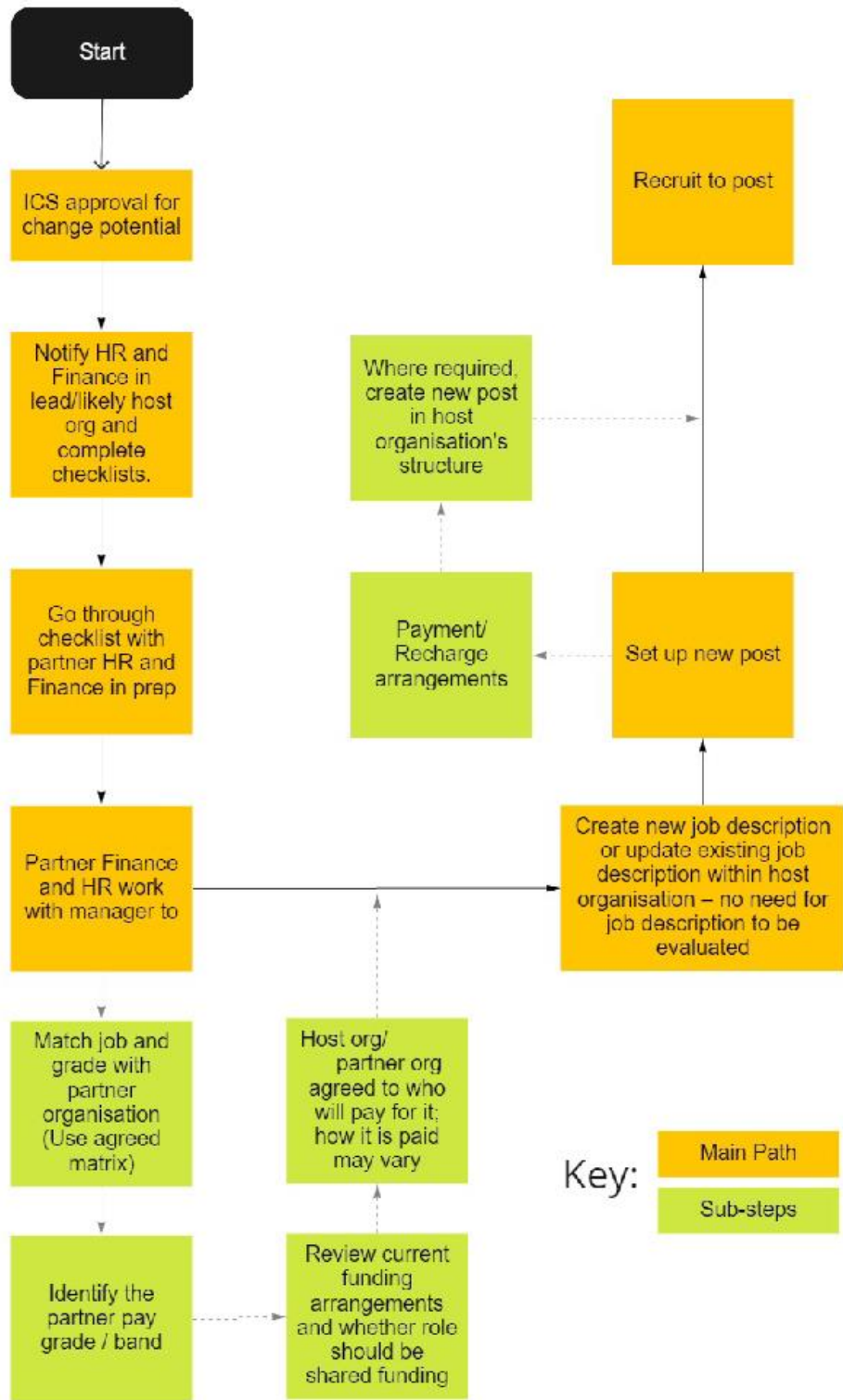
**Diagram 1. HR and Finance Process for Joint Posts**

Please contact [Jude.Middleton@surreycc.gov.uk](mailto:Jude.Middleton@surreycc.gov.uk) for support in enacting this process.



**Diagram 2. Process to change hosting organisation**

Please contact [Jude.Middleton@surreycc.gov.uk](mailto:Jude.Middleton@surreycc.gov.uk) for support in enacting this process.



## SCHEDULE 5 – IT PRINCIPLES

### 1 INTRODUCTION

- 1.1 This Schedule outlines the IT principles and the arrangements between the Council and Surrey Heartlands ICB ('the Partners') for the provision of IT equipment, applications and access.

### 2 ACCESS TO PARTNER APPLICATIONS AND SYSTEMS

- 2.1 Staff working in joint teams, across the partnership and / or undertaking joint responsibilities may need access to Partner applications and systems.
- 2.2 Partners will arrange access to relevant applications and systems for Staff in Joint Posts to enable them to undertake their joint responsibilities for the Partner.
- 2.3 Partners will enable access to certain applications and systems for Staff working in joint teams and across the partnership to support collaborative working and integrated activity.
- 2.4 In the County of Surrey there is an ambition and wider programme of work to align digital infrastructure and join up potential systems to support efficient and effective working across organisational boundaries. The Partners acknowledge that until that ambition is realised there will need to be other arrangements in place to provide the access that enables Staff to work together.
- 2.5 The employing organisation is responsible for providing equipment and appropriate access to their Staff. Staff working across the partnership and / or undertaking joint responsibilities may need to be provided with additional IT equipment by the Partners to access required applications and systems.

### 3 ACCEPTABLE USE POLICY

- 3.1 The Partners will ensure that Staff are made aware of their responsibilities for the proper use of IT equipment, systems and applications, as well as data. All Staff must comply with their employer's policies, procedures, and published guidance.
- 3.2 The Partners agree that each Partner's Acceptable Use Policy, in principle, mutually covers the use of each Partner's IT equipment, systems and applications, and related services. Any key differences will be recorded and notified to Staff in writing as appropriate.

### 4 COLLABORATION PLATFORM

- 4.1 The Partners agree that there will be a shared online collaboration platform (the "Collaboration Platform") put in place to support joint working activity across Partners by enabling Staff in the Partners to store and share data and documentation with each other.
- 4.2 The Partners agree that representatives of the Staff will jointly develop an approach to managing, maintaining, and using a shared platform. Prior to the development of a joint approach and new way of working the following initial principles will apply:
- 4.2.1 Staff will use a nominated and approved Collaboration Platform as a virtual workspace where resources, files and tools will be centralised for joint working and integrated approaches;
- 4.2.2 If one Partner hosts the Collaboration Platform, that Partner will have full administrative control over the space. As host, they will provide advanced support for the Collaboration Platform, when required.
- 4.2.3 the Partners will operate the collaborative platform in accordance with the Surrey Heartlands Health and Social Care Information Sharing Agreement (ISA) and adhere to the associated Processing and Sharing Specifications;

- 4.2.4 the Partners will have joint data sharing control, with Surrey Heartlands ICB as lead controller;
- 4.2.5 Staff in the Partners will only copy Children's and Adult's personal data that is relevant to joint working and integrated commissioning activity to the Collaboration Platform. Staff will not copy any personal data and information over that predates the execution of this Agreement by the Partners.
- 4.2.6 each Partner will have nominated owners for the Collaboration Platform. At least 1 owner will be nominated for each group to provide leadership for the development of the shared area and make decisions about its use. For example, the Adult Social Care Team may have 1 owner for continuing health care area and 1 owner for mental health area.
- 4.2.7 each Partner will have nominated administrators for the Collaboration Platform. A minimum of 2 administrators will be nominated from the Partners for each group of users to provide basic administration, such as creating folders, and to be responsible for managing user access. For example, the Children's Commissioning Team may have 1 administrator from one Partner and 1 administrators from the other Partner. Administrators may also provide basic operational support in the use of the Collaboration Platform.

## **5 PROVISION OF EQUIPMENT**

- 5.1 In the County Surrey there is an ambition and wider programme of work to align digital infrastructure and join up potential systems to support efficient and effective working across organisational boundaries. The Partners acknowledge that until that ambition is realised there will need to be other arrangements in place to provide the IT equipment and access that enables Staff to work together.
- 5.2 The employing organisation is responsible for providing equipment and appropriate access to their Staff. Staff working across the partnership and / or undertaking joint responsibilities may need to be provided with additional IT equipment by the Partners to access required applications and systems.
- 5.3 Each Partner agrees to provide equipment to Staff in Joint Posts, who are not employed by their own organisation, where needed. Additionally, there may be Staff in roles that undertake activities, such as support roles, where access to the Partners' applications and systems are needed.

## **6 USER ACCOUNTS**

- 6.1 Partners will aim to join ("Federate") systems and services between the Partners, where possible, to allow use of their hosting organisation logins /email addresses and the associated passwords. Partners will agree the use of particular services and each Partner will configure associated authentication / authorisation. For example, one Partner will give access rights to a user of the other Partner, using their existing identity to access the finance system.

## **7 IT SUPPORT**

- 7.1 In cases where Staff have a technical issue or request relating to Partners applications, systems or IT equipment, in the first instance they should direct their enquiry to their own organisation's IT support function. Any request for support should follow the usual process and procedures.
- 7.2 The IT support function will assess and triage the problem and will either help resolve the issue directly or, if required, refer Staff to the Partner's support function to resolve.
- 7.3 When Staff have an issue or request relating to the Collaboration Platform in the first instance they should contact a nominated administrator for the site. If it is a technical issue, Staff will be sign-posted to their own IT support function.

## **8 EMAIL ADDRESSES**

- 8.1 In cases where Staff have an email address in both Partners organisations, Staff will be advised to nominate one as their primary email addresses, typically their employing organisation.

**8.2** Staff will be able to access their email account through an email client such as MS Outlook or through a browser.

**8.3** When creating and updating email contact lists, each Partner should aim to use a Staff member's primary email address, rather than copying emails and calendar invites to both addresses.

## **9 CALENDARS**

**9.1** Calendars systems will be joined between the Partners. Staff will be able to view the availability of colleagues in the partnership through the scheduling assistant in MS Outlook.

## **10 STARTERS / LEAVERS**

**10.1** Staff that are changing their role within a Partner and leaving and joining another team, should have their access updated as appropriate.

**10.2** Staff that are starting at, or leaving, a Partner should have their accounts created or disabled as part of standard user lifecycle management.

**10.3** When Staff start in a role or team where they will need additional access to applications and systems of the other Partner, the line manager is responsible for ensuring that access is requested and arranged. The line manager is also responsible for requesting additional equipment, where required to access the applications and systems of the other Partner.

**10.4** More importantly, line managers must notify when Staff are leaving or have left the organisation or a role that requires that additional equipment, access to those applications and systems.

**10.5** It is important that the Partner that has provided equipment or access:

10.5.1 has that equipment returned to them.

10.5.2 is notified so that they can remove and/or disable access and/or accounts and comply with any audit conditions of the hosting organisation.

## **11 IT TRAINING**

**11.1** Partners agree the principle of aligning training where possible and acknowledge the importance of consistent IT approach across joint and integrated teams, irrespective of who Staff are employed by.

## **12 IMPLEMENTATION OF THESE PRINCIPLES**

**12.1** Each Partner, as an employing organisation, accepts their responsibilities to ensure these principles are appropriately shared with all managers and Staff in the partnership. Service area managers are responsible for ensuring the Protocol is implemented and updated as required, with support from other colleagues where necessary.

**12.2** These Principles will be kept under regular review.

## **SCHEDULE 6 – SECTION 75 SCHEDULE**

### **1. BACKGROUND**

- A. Increased joint working between Partners to integrate strategic planning, commissioning and service provision has led to increased joint staffing arrangements. Staff are undertaking activities and responsibilities across the Partner organisations and acting on behalf of one another.
- B. In addition, a number of posts have been created that are accountable to more than one Partner, employed by one organisation, that have joint responsibilities that span across the Council and Surrey Integrated Care Boards. Certain posts already have shared funding arrangements between two or more Partners.

### **2. PURPOSE OF THIS SECTION 75 SCHEDULE**

- A. The purpose of this Section 75 Schedule is to set out the terms on which the Partners have agreed to collaborate and to establish a framework through which the Partners can secure the future position of health and social care services through lead or joint commissioning arrangements. It is also a means through which the Partners will pool funds and align budgets as agreed between the Partners.
- B. The purpose of this Section 75 Schedule is to set out the terms and principles on which the Partners have agreed to Pool Budget for staffing costs for Joint Posts which two Partners have agreed shared funding arrangements for.
- C. This Section 75 Schedule is not a means through which the Partners will pool or align budgets for anything other than the posts which Partners have agreed shared funding arrangements for. Any such shared funding for other areas of expenditure will be governed by separate arrangements or agreements.

### **3. AIMS OF THIS SECTION 75 SCHEDULE**

- A. The aims of the Partners are to:
  - a. share costs of Joint Posts for which two or more Partners have agreed shared funding arrangements for.
  - b. make decisions in an efficient manner.
  - c. ensure there is clear governance in place to evidence each Partner's funding share of posts for which two or more Partners have agreed shared funding arrangements for.
  - d. ensure the costs of all posts with shared funding arrangements are accounted for correctly in line with each Partner's agreed funding share.

### **4. EXPECTED BENEFITS**

- A. The expected benefits of the Partners in entering into this Agreement are to:
  - a. Increase transparency of costs within the partnership leading to more effective use of resources
  - b. Ensure that each Partner contributes its agreed funding share towards the cost of each post with shared funding arrangements.
- 4.1 Partners agree to share the costs for the posts identified in Schedule 4 – Joint Posts and Shared Funding Process of the Partnership Agreement effective from 1<sup>st</sup> April 2021 or whenever members of staff commence working in joint posts agreed to be part of the agreement. At the end of each year the Host Partner will reconcile the actual expenditure and contributions and determine any monies owed.



- 4.2 Only expenditure associated with Staff in post performing joint roles will be rechargeable to each Partner.

## **5. SCOPE OF THIS SECTION 75 SCHEDULE/ STAFFING BUDGET TO BE COVERED**

- 5.1. This Schedule shall include the staffing costs for Joint Posts, as agreed from time to time by the Partners and set out in Schedule 4 – Joint Post and Shared Funding Process.
- 5.2. This Agreement shall include the staffing costs for agreed posts that:
- 5.2.1. are accountable to more than one Partner.
- 5.2.2. supports the delivery of Partner integrated health and social care strategies.
- 5.3. Each Partner acknowledges that it is the responsibility of each Partner to ensure that they gain the appropriate internal approval to agree their Financial Contribution to the Pooled budget.

## **6. ESTABLISHMENT OF A POOLED BUDGET**

- 6.1. This Agreement is for establishing and managing a Pooled budget for staffing costs for Joint Posts which two or more Partners have agreed shared funding arrangements for as set out in Schedule 4 – Joint Posts and Shared Funding Process.
- 6.2. This Pooled budget shall be managed and maintained in accordance with the terms of this Agreement.
- 6.3. Partners agreed that the budget held in the Pooled budget will only include the following costs (“Permitted Costs”):
- 6.3.1. Pay Costs, which include all the on-costs related to pay for each respective Partner organisation.
- 6.3.2. Non-Pay Costs will include but are not limited to:
- a) Provision of mobile phones and network charges, where use is required by the post holder, and is in line with relevant corporate policy;
  - b) Travel expenses in line with relevant corporate policy;
  - c) Other relevant costs specific to a Joint Post for reasonable adjustments to perform their role;
  - d) Issuing laptops; and
  - e) Recruitment costs.
- 6.4. The Partners may only depart from the definition of Permitted Costs to include or exclude other costs with the express written agreement of each Partner, respective of the Governance arrangements outlined in Clause 9 and Schedule 2 of the Integrated Commissioning Memorandum of Understanding.

## **7. POOLED BUDGET MANAGEMENT**

- 7.1. Pursuant to this Agreement, the Partners agree that the Council shall be the Host Partner for the Pooled budget set out in this Section 75 Schedule.
- 7.2. The Host Partner shall be the Partner responsible for:

- 7.2.1. establishing the financial and administrative systems and support necessary to enable the effective and efficient management of the Pooled budget, meeting all required accounting and auditing obligations.
  - 7.2.2. holding the Pooled budget, on behalf of itself and the other Partners, that Partners have agreed to contribute to.
  - 7.2.3. appointing the Pooled Budget Manager; and
  - 7.2.4. ensuring that the Pooled Budget Manager complies with its obligations under this Agreement.
- 7.3. The Pooled Budget Manager for this Pooled budget shall have the following duties and responsibilities:
- 7.3.1. calculating each Partner's estimated annual contribution to the Pooled budget based on the costs of each Joint Post provided by the employing Partner and each Partner's agreed funding share for each post.
  - 7.3.2. the day-to-day operation and management of the Pooled budget;
  - 7.3.3. ensuring that all budget in the Pooled budget is spent in accordance with the provisions set out in Section 3 of this Agreement.
  - 7.3.4. maintaining a record and details about all agreed posts, the funding shares agreed between Partners and associated risk sharing arrangements.
  - 7.3.5. ensuring that full and proper records for accounting purposes are kept in respect of the Pooled budget.
  - 7.3.6. undertaking quarterly reconciliations and producing quarterly updates for Finance leads in each Partner organisations.
  - 7.3.7. undertaking annual reconciliations and calculating any net contribution owed by or net reimbursement due to each Partner.
  - 7.3.8. producing and submitting exception reports for overspends to escalate to senior finance managers within Partner organisations and to the agreed representatives set out in Schedule 4 – Joint Post and Shared Funding Process.
  - 7.3.9. producing and issuing invoices to Partner organisations at the end of the Financial Year, if contributions are owed.
  - 7.3.10. facilitating an annual review with Finance Leads in Partner organisations on the management of the Pooled budget and producing an annual report to share with Partner organisations.
- 7.4. The Partners agree to confirm their actual monthly expenditure for Pay Costs and Non-Pay Costs for each agreed post, to enable the Pooled Budget Manager to administer the Pooled budget.
- 7.5. The Partners agree to provide all necessary information to the Pooled Budget Manager in time for the reporting requirements to be met to comply with any reporting requirements as set out in this Agreement.
- 7.6. The Partners agree that should they receive an invoice in error from a Partner for a Joint Post that is part of the Pooled budget they will return this invoice to the Partner unpaid as all costs for Joint Posts with shared funding arrangements should be managed through the Pooled budget.

- 7.7. The Partners agree that, unless by agreed exception, Surrey Heartlands ICS will collect the contributions for this S75 pooled budget from Frimley Health and Care ICS and invoicing will take place between Surrey County Council and Surrey Heartlands ICS.

## **8. FINANCIAL CONTRIBUTIONS AND RISK SHARING ARRANGEMENTS**

- 8.1. Any Financial Contributions agreed to be held within this Pooled budget will be notionally held in a fund established solely for the purposes agreed by the Partners. For the avoidance of doubt, this Pooled Budget does not constitute a pooled fund for the purposes of Regulation 7 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000.
- 8.2. The Financial Contributions and associated risk sharing arrangements of the Partner organisations to the Pooled budget for the First Financial Year are set out in Schedule 4 - Joint Post and Shared Funding Process.
- 8.3. The Financial Contributions and associated risk sharing arrangements of the Partner organisations to the Pooled Budget for each subsequent Financial Year of operation shall be subject to annual review by the Partners.
- 8.4. The Partners have documented and agreed a process, provided in Schedule 4 - Joint Post and Shared Funding Process of this Agreement. The process will ensure that any changes or additions to shared funding arrangements and this Pooled budget go through the required approval channels set out in Schedule 4 - Joint Post and Shared Funding Process.
- 8.5. Financial Contributions and risk sharing arrangements will be committed as set out in Schedule 4 - Joint Post and Shared Funding Process.

## **9. VARIATIONS TO BUDGETED CONTRIBUTIONS TO THE POOLED BUDGET**

- 9.1. Partners will submit actual monthly expenditure for Pay and Non-Pay costs for each shared funding post to the Host Partner. The Pooled Budget Manager will undertake quarterly reconciliations and will monitor the Pooled budget for overspends and underspends against the budgeted costs of each shared funding post.
- 9.2. If a Partner identifies a likely cost pressure in relation to a shared funding post where they are the employer, then they will notify the other Partners who fund the post as soon as reasonably practical so the Partners can agree how to manage these cost pressures. The funding of these cost pressures will be agreed and documented through the governance arrangements as set out in Section 9 and Schedule 4 of the Partnership Agreement for all joint posts.
- 9.3. Partners agree that unless by written exception the contributions required from each Partner to the Pooled budget will be managed in total across all posts in line with each Partner's agreed funding share of each shared funding post. As such, all variations for shared funding posts (whether higher or lower than the budgeted contribution) will be considered collectively to determine whether a Partner is required to contribute more or less to the Pooled budget than their total budgeted contribution across all the posts for which they have agreed to fund a share of the costs.
- 9.4. For the avoidance of doubt, this total Pooled budget position will be calculated by apportioning the actual costs incurred for each post (rather than the budgeted cost) across Partners based on each Partner's agreed funding share of each shared funding post.
- 9.5. One or more Partners may by written exception request that a variation (overspend or underspend) to the budgeted contribution for a shared funding post is treated separately to variations for other posts in the Pooled budget. This might occur for instance if there was a very significant overspend or underspend for a post. In such instances, Partners will agree in writing an alternative arrangement to the funding of the variation to the budgeted contributions for this post so that this can be applied in the final year-end Pooled budget reconciliation. Partners commit to acting in good faith in requesting such arrangements so as to avoid wherever possible creating financial pressures for one or more Partners as a result of an exceptional funding arrangement for a specific post.

9.6. All arrangements will be managed in line with the Partners respective Constitutions and/or Scheme of Delegation, and each Partners governance.

**10. VAT**

10.1. The Partners shall agree the treatment of this Pooled budget for VAT purposes in accordance with any relevant guidance from HM Customs and Excise.

**11. BILLING AND PAYMENT PROCESSES**

11.1. The Pooled Budget Manager will produce and issue invoices to Partner organisations for any net contributions owed or a reimbursement for any monies owed to Partner organisations at the end of the Financial Year.

11.2. Partners agree to pay any invoices in line with normal and standard payment terms and timescales.

11.3. If invoices are not paid within the standard payment terms and timescales, the issue will be escalated and escalated as necessary to senior stakeholders as required in each organisation.

**12. OMBUDSMAN**

The Partners will co-operate with any investigation undertaken by the Parliamentary and Health Service Ombudsman or the Local Government and Social Care Ombudsman (or both of them) in connection with this Agreement.

**13. FINANCIAL CONTRIBUTIONS TO THE POOLED BUDGET**

13.1 Table 1 below shows the estimated contributions required from the three Partners in 2022/23 to Joint Posts noted within Schedule 4 of this Agreement. It is accurate as of 17<sup>th</sup> November 2022 and will continue to be updated as changes to jointly funded posts are agreed by partners.

	Surrey County Council £000	NHS Frimley CCG £000	NHS Surrey Heartlands CCG £000	Total £000
2022/23 estimated contribution from each partner organisation	935	45	984	1,963

Table 1: 2022/23 estimated contributions

13.2 Table 2 below shows the actual contributions due from the three Partners in 2021/22 to the Joint Posts, which were live in 2021/22, noted within schedule 4 of this agreement. It is accurate as of 17<sup>th</sup> November 2022.

	Surrey County Council £000	NHS Frimley CCG £000	NHS Surrey Heartlands CCG £000	Total £000
2021/22 actual contribution due by each partner organisation	701	33	703	1,437

Table 2: 2021/22 actual contributions due