

**Appendix to Joint Working Framework  
(Appendix 5)**

**BATH AND NORTH EAST SOMERSET COUNCIL**

**AND**

**BATH AND NORTH EAST SOMERSET CLINICAL COMMISSIONING GROUP**

**JOINT WORKING ARRANGEMENT:  
SECTION 113 AGREEMENT**

**1st APRIL 2013**

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## **SECTION 1 - DATE OF AGREEMENT, PARTIES AND BACKGROUND**

**THIS AGREEMENT** is made on **1st** day of **April** 2013,  
which is the Commencement Date

### **PARTIES**

- (1) **BATH AND NORTH EAST SOMERSET CLINICAL COMMISSIONING GROUP** of Trust  
Headquarters, St Martin's Hospital, Clara Cross Lane, Bath, BA2 5RP (the "**CCG**")
- (2) **BATH AND NORTH EAST SOMERSET COUNCIL** of Guildhall, High Street, Bath, BA1  
5AW (the "**Council**")

### **1 BACKGROUND**

- 1.1 This Agreement forms a part of a joint working framework which expresses the commitment to the arrangements under which the Council and CCG will work together for the benefit of local people.
- 1.2 The arrangements set out in the Agreement facilitate the operation of a Joint Management Team which supports integrated commissioning of local services.

## **SECTION 2 - INTERPRETATION, DURATION & THE ARRANGEMENTS**

### **2 DEFINITIONS AND INTERPRETATION**

This Agreement shall be interpreted in accordance with Appendix 1.

### **3 DURATION OF THE AGREEMENT**

This Agreement shall commence on the Commencement Date and shall continue in force until it is terminated in accordance with clause 13.

### **4 THE ARRANGEMENTS**

- 4.1 With effect from the Commencement Date it is agreed that in exercise of the powers contained in Section 113 of the 1972 Act
  - 4.1.1 the Council will make those individuals identified in Appendix 2 (and any other individual made available in accordance with and for whom the Council is the Employing Partner) available to the CCG;

4.1.2 the CCG will make those individuals identified in Appendix 3 (and any other individual made available in accordance with and for whom the CCG is the Employing Partner) available to the Council:

for the purposes of enabling each Post Holder to commission services **for health, people and communities** through the combined performance of their Employee Duties and, in accordance with their Individual Agreement, their S113 Duties.

4.2 Each Partner agrees to take no action to change the terms and conditions of any Post Holder's Employment Contract without prior consultation and agreement with the other Partner, such agreement may not be unreasonably withheld or delayed.

The Parties shall be entitled to make further individual(s) available to the other Partner for the purposes set out in this Agreement at any time provided that:

- the New Post Holder has been consulted and has agreed to being made available in accordance with Section 113 of the 1972 Act;
- an Individual Agreement (including an appropriate job description) is signed by both Parties and the New Post Holder and arrangements are put in place which define the accountability of the New Post Holder; and
- an updated version of **Appendix 2 and 3** (as applicable) is completed and appended to a letter signed by both Parties.

The Arrangements shall not affect the liabilities of the Parties to any third parties for the exercise of their respective functions and obligations.

4.3 The aims, benefits and intended outcomes of the Parties in entering into the Arrangements are as set out in the **Joint Working Framework**.

4.4 It is agreed that the availability of Post Holders pursuant to **Clauses 4** of this Agreement shall be subject to the provisions contained in **Appendix 4 (HR protocols)**

4.5 In entering into this Agreement, neither Party is exercising powers contained in Section 75 of the 2006 Act. As such, nothing in this Agreement has (or is intended to have) the effect of:

- 4.5.1 transferring statutory functions from one to the other; and/or
  - 4.5.2 establishing a Pooled Fund.
- 4.6 The performance by a Post Holder of their S113 Duties is done in their capacity as an officer of the Non-Employing Partner. That Post Holder is not exercising functions delegated by the Non-Employing Partner to the Employing Party

### **SECTION 3 – ACCOUNTABILITY, MONITORING AND REVIEW**

#### **5 ACCOUNTABILITY**

- 5.1 For the purposes of these Arrangements, the Post Holders will be accountable to the Non-Employing party for the performance of their S113 Duties and the Employing Party for the performance of their Employee duties in accordance with Appendix 5.

#### **6 COMMITTEE FOR THE OVERSIGHT OF JOINT WORKING (Joint Committee)**

- 6.1 Overall responsibility for the monitoring and implementation of the arrangements will lie with a Joint Committee established for that purpose. The Joint Committee will review the operation of the Agreement on an annual basis.
- 6.2 Any recommendations of the Joint Committee will be reported to the Clinical Commissioning Group and the Council's Cabinet.

### **SECTION 4 - FINANCIAL & HR ARRANGEMENTS**

#### **7 FINANCIAL ARRANGEMENTS FOR POST HOLDERS**

- 7.1 In respect of each Post Holder, the Employing party shall be responsible for the payment of all sums due and payable to that Post Holder in accordance with their Employment Contract
- 7.2 The Non-Employing party will contribute to the costs of employment in accordance with funding arrangements scheduled in the Joint Working Framework

#### **8 HUMAN RESOURCES (HR) POLICIES AND PROCEDURES**

- 8.1 The Parties agree to operate under the jointly agreed HR protocol included at Appendix 4. These are designed to support the Arrangements but are not intended to be (and, unless the Parties expressly agree otherwise in writing, will not have the effect of being) a substitute for existing HR policies and procedures.

8.2 Appendix 4 may be varied by agreement between the Parties from time to time.

## **SECTION 5 - LIABILITIES AND INSURANCE**

### **9 INDEMNITIES, LIABILITIES AND INSURANCE (legal guidance needed on the following)**

9.1 The Parties agree that they will meet liabilities to third parties and each other arising out of the activities of the Post Holder as follows:

9.1.1 the Non-Employing Partner will meet liabilities arising out of the acts or omissions of any Post Holder when performing their S113 Duties or otherwise acting in their capacity as an officer of the Non-Employing Partner, and will indemnify the Employing Partner against any costs, claims or damages incurred in respect of any such liability;

9.1.2 the Employing Partner will meet liabilities arising out of the acts or omissions of any Post Holder when performing their Employee Duties or otherwise acting in their capacity as an officer of the Employing Partner and will indemnify the Non-Employing Partner against any costs, claims or damages incurred in respect of any such liability.

9.2 Subject to **Clause 9.6** any costs and expenses incurred in relation to a Post Holder's employment following termination of employment of a Post Holder or termination of this Agreement including any award by a court or tribunal shall be the responsibility of the Employing Partner. The Non-Employing Partner shall have no liability in respect of such costs expenses or awards and the Employing Partner agrees to indemnify the Non-Employing Partner against any costs, claims or damages incurred in respect of any such liability.

### **TUPE**

9.3 The Partners hold the view that TUPE will not apply on the commencement of this Agreement, during the Agreement Term or on the expiry of this Agreement (in whole or in part). However if TUPE operates so as to transfer the contract of employment of any Post Holder due to a Relevant Transfer from one Partner ("the Transferor Partner") to the other Partner ("the Transferee Partner"), the Partners shall comply with their legal obligations under TUPE and, if applicable, shall comply with the Statement of Practice and the Code of Practice.

- 9.4 Subject to Clause 9.6, the Transferor Partner shall be liable for and shall indemnify the Transferee Partner against any Employee Liabilities incurred by the Transferee Partner which arise before on or after the Relevant Transfer and out of an act or omission of the Transferor Partner in connection with:
- 9.4.1 the Post Holder's employment with the Transferor Partner;
  - 9.4.2 any failure to comply with the obligations under Regulations 13 and 14 of TUPE (including any claim brought by an employee representative for breach of Regulations 13 and / or 14 of TUPE) except where such failure arises from the Transferee Partner's failure to comply with its obligations under Regulations 13 and / or 14 of TUPE; or
  - 9.4.3 any failure to comply with the Statement of Practice or the Code of Practice.
- 9.5 Subject to clause 9.6, the Transferee Partner shall be liable for and shall indemnify the Transferor Partner against any Employee Liabilities incurred by the Transferor Partner which arise before on or after the Relevant Transfer and out of an act or omission of the Transferee Partner in connection with:
- 9.5.1 the Post Holder's employment with the Transferee Partner;
  - 9.5.2 any failure to comply with the obligations under Regulations 13 and 14 of TUPE (including any claim brought by an employee representative for breach of Regulations 13 and / or 14 of TUPE) except where such failure arises from the Transferor Partner's failure to comply with its obligations under Regulations 13 and / or 14 of TUPE; or
  - 9.5.3 any failure to comply with the Statement of Practice or the Code of Practice.
- 9.6 Where any Employee Liabilities arise partly as a result of any act or omission of the Transferee Partner and partly as a result of any act or omission of the Transferor Partner whether before on or after the date of the Relevant Transfer, the Partners shall indemnify each other against only such part of the Employee Liabilities sustained by the other Partner as is reasonably attributable to the act or omission of that Partner.

## **MITIGATION**

- 9.7 In relation to the indemnities in this **Clause 9**, the Parties agree to co-operate with each other and take all reasonable steps to mitigate any costs and expenses and any adverse effect on industrial or employee relations.

## 10 INSURANCE

- 10.1 Each Partner shall ensure that they maintain policies of insurance (which, in the case of the CCG, may include equivalent arrangements through the schemes operated by the National Health Service Litigation Authority) in respect of all potential liabilities arising from these Arrangements.
- 10.2 Each Partner agrees to ensure that:
- where they are the Non-Employing Partner, the insurance policies maintained pursuant to Clause 10.1 cover liabilities that may be incurred through the performance, by a Post Holder, of their S113 Duties;
  - where they are the Employing Partner, the insurance policies maintained pursuant to Clause 10.1 cover liabilities that may be incurred through the performance, by a Post Holder, of their Employee Duties.

## SECTION 6 - DEFAULT, DISPUTES AND TERMINATION

### 11 DEFAULT

- 11.1 In the event of a Partner (the “**Defaulting Partner**”) being, in the reasonable opinion of the other Partner (the “**Other Partner**”), in breach of its obligations under this Agreement and such breach being capable of remedy, the following procedure will apply:
- 11.1.1 the Other Partner may request a meeting with the Defaulting Partner by giving five (5) Working Day’s written notice to that effect. The meeting will include the CCG Representative and the Council Representative;
- 11.1.2 following such a meeting, where it is accepted that there has been a default, the Parties will discuss and agree an action plan under which the Defaulting Partner will be given a reasonable period of time to remedy the default to the satisfaction of the Other Partner (the “**Remedial Action Plan**”);
- 11.1.3 where the Other Partner is not reasonably satisfied that the Defaulting Partner has complied with the Remedial Action Plan, the Other Partner will have the right, at its discretion, either to initiate the Dispute Resolution Procedure or to exercise its right to terminate this Agreement in accordance with **Clause 13**.



## **12 DISPUTES**

- 12.1 In the event of a dispute between the Parties in connection with this Agreement the Parties shall refer the matter to the CCG Representative (or a nominated deputy) and the Council Representative (or a nominated deputy) who shall endeavour to settle the dispute between themselves.
- 12.2 In the event that the Council and CCG representatives cannot resolve the dispute between themselves within a reasonable period of time having regard to the nature of the dispute, the matter will be referred to the Joint Commissioning Committee for oversight of Joint Working.
- 12.3 Neither Party may commence any court proceedings/arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Partner has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

## **13 TERMINATION**

- 13.1 This Agreement may be terminated (in whole or in part) at any time by written agreement between the Parties or by one party giving the other party 12 Months written notice to the other Partner.
- 13.2 This Agreement, in respect of any individual Post Holder, will terminate forthwith in respect of that particular Post Holder upon the dismissal or resignation of the Post Holder from their Employing Partner or upon the Post Holder withdrawing their consent to being made available pursuant to these Arrangements.
- 13.3 This Agreement will terminate in respect of any individual Post Holder upon any re-organisation or reconstruction affecting either Partner whereby the Post Holder no longer holds office with their Employing Partner.
- 13.4 Either Partner may at any time by notice in writing to the other Partner terminate this Agreement upon service of 20 Working Days written notice if:

13.4.1 the other Partner commits a material breach of any of its obligations hereunder which is not capable of remedy; or

13.4.2 the other Partner commits a material breach of any of its obligations hereunder which is capable of remedy but has not been remedied in accordance with **Clause 11**.

13.5 Either Partner may by written notice to the other Partner in accordance with **Clause 13** terminate this Agreement if:

13.5.1 as a result of any change in law or legislation it is unable to fulfil its obligations under this Agreement;

13.5.2 its fulfilment of its obligations hereunder would be in contravention of any guidance from any Secretary of State issued after the Commencement Date;

13.5.3 its fulfilment of its obligations would be ultra vires,

and the Parties shall be unable to agree a modification or variation to this Agreement (which may include termination in part only) so as to enable the Partner to fulfil its obligations in accordance with law and guidance.

13.6 In the case of notice pursuant to **Clause 13.5.1 or 13.5.2**, the Agreement shall terminate after such reasonable period as shall be specified in the notice having regard to the nature of the change referred to in **Clause 13.5.1** or the guidance referred to in **Clause 13.5.2** as the case may be. In the case of notice pursuant to **Clause 13.5.3**, the Agreement shall terminate with immediate effect.

13.7 Notices served pursuant to **Clause 13.4 or 13.5** will result in termination of the whole of the Agreement unless the Parties agree otherwise in writing

## **14 CONSEQUENCES OF TERMINATION**

14.1 Termination of this Agreement in whole or in part (whether by effluxion of time or otherwise) shall be without prejudice to the Parties' rights in respect of any antecedent breach and the provisions of this Clause and **Clauses 2, 9, 10-12 inclusive and 15-21 inclusive** shall continue in full force and effect.

- 14.2 In the event of termination of this Agreement, the Parties will use all reasonable endeavours to agree arrangements which will minimise disruption to staff working within the Arrangements.
- 14.3 In the event that this Agreement is terminated in part only, the Parties will agree appropriate variations to the Agreement. Such variations will be documented in writing and signed by both Parties.
- 14.4 Where the Agreement is terminated in part, then except for that part of the Agreement that has been terminated, this Agreement shall continue in full force and effect.

## SECTION 7 - GENERAL PROVISIONS

### 15 NOTICES

- 15.1 Any notice of communication shall be in writing.
- 15.2 Any notice or communication to the relevant Partner shall be deemed effectively served if sent by registered post or delivered by hand at an address set out in **Clause 16.4** and marked for either the CCG Representative or Council Representative (as applicable) or to such other addressee and address notified from time to time to the other Partner.
- 15.3 Any notice served by hand delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.
- 15.4 For the purposes of this **Clause 15**, the addresses at which notice must be served are, unless either Partner is notified otherwise in writing, as follows:
- 15.4.1 Bath & North East Somerset CCG  
Trust Headquarters  
St Martin's Hospital  
Clara Cross Lane  
Bath  
BA2 5RP

15.4.2 Bath & North East Somerset Council  
Guildhall  
High Street  
Bath  
BA1 5AW

## **WAIVERS**

- 15.5 The failure of either Partner to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of any such provision and shall not in any way affect the right of that Partner thereafter to enforce such provision.
- 15.6 No waiver in any one or more instances of a breach of any provision hereof shall be deemed to be a further or continuing waiver of such provision in other instances.

## **16 SEVERANCE**

If any provision of this Agreement becomes or is declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such unenforceability shall in no way impair or affect any other provision of this Agreement all of which will remain in full force and effect.

## **17 TRANSFERS**

The Parties may not assign, mortgage, transfer, sub-contract or dispose of this Agreement or any benefits and obligations hereunder without the prior written consent of the other except to any statutory successor in title to the appropriate statutory functions.

## **18 NO PARTNERSHIP**

- 18.1 Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the Parties or render either Party directly liable to any third for the debts, liabilities or obligations of the other.
- 18.2 Save as specifically authorised under the terms of this Agreement neither Party shall hold itself out as the agent of the other.

## **19 ENTIRE AGREEMENT**

- 19.1 The terms contained in this Agreement together with the contents of the Schedules and Appendices constitute the complete agreement between the Parties with respect to the Arrangements and supersede all previous communications, representations, understandings and agreement (including previous S113 Agreements) and any representation, promise or condition not incorporated herein shall not be binding on either Partner.
- 19.2 No agreement or understanding varying or extending any of the terms or provisions hereof shall be binding upon either Partner unless in writing and signed by a duly authorised officer or representative of the Parties.
- 19.3 For the avoidance of doubt, nothing in this Agreement shall affect the continuation of the existing Section 75 Arrangements.

## **20 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **21 GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English Law and, without prejudice to **Clause 2**, shall be subject to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement has been executed by the Parties on the date of this Agreement

**EXECUTED by**  
**BATH AND NORTH EAST SOMERSET CLINICAL COMMISSIONING GROUP**

by:

Signed (Authorised Officer): .....

Name/Position: .....

Signed (Authorised Officer): .....

Name Position: .....

**EXECUTED BY**  
**BATH AND NORTH EAST SOMERSET COUNCIL**

by:

Signed (Authorised Officer): .....

Name/Position: .....

Signed (Authorised Officer): .....

Name/Position: .....

**LIST OF APPENDED DOCUMENTS**

- Appendix 1 Definitions and interpretations
- Appendix 2 Council Section 113 Post Holders
- Appendix 3 CCG Section 113 Post Holders
- Appendix 4 HR Protocols
- Appendix 5 Operational Arrangements

## APPENDIX 1

### DEFINITIONS AND INTERPRETATION

In this Agreement the following expressions shall have the following meanings:

**"1972 Act"**

the Local Government Act 1972;

**"2006 Act"**

the National Health Service Act 2006;

**"Agreed HR Protocol"**

the protocol appended to this Agreement and (appendix 3).

**"Agreement"**

this S113 agreement in support of Joint Working arrangements;

**"Agreement Term"**

the duration of this Agreement as determined in accordance with **Clause 3**;

**"Arrangements"**

the arrangements made by the Parties for the use of S113 powers pursuant to this Agreement, as summarised in **Clause 4**;

**"CCG Representative"**

the individual appointed by the CCG from time to time (and notified to the Council) as its representative for the purposes of the Arrangements;

**"CEDR"**

Centre for Effective Dispute Resolution;

**"Child Services"**

the child services described in **Schedule 7**;



**“Code of Practice”**

*the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D OR such of this document as may be from time to time in force in respect of such matters;*

**"Commencement Date"**

1 April 2013

**“Council Representative”**

the individual appointed by the Council from time to time (and notified to the CCG) as its representative for the purposes of the Arrangements;

**“Delegated (CCG) Functions”**

any function delegated to the Council by the CCG pursuant to an Existing Section 75 Arrangement or any New Section 75 Arrangement;

**“Delegated (Council) Functions”**

any function delegated to the CCG by the Council pursuant to an Existing Section 75 Arrangement or any New Section 75 Arrangement;

**“Dispute Resolution Procedure”**

the procedure set out in **Clause 25**;

**"Employee Duties"**

the duties which a Post Holder performs on behalf of the Employing Partner as determined in accordance with their Employment Contract;

**"Employing Partner"**

in respect of each individual Post Holder, the Partner that employs that Post Holder. For the Original Post Holders this shall be the Partner identified as such in **Schedule 3 or 4** (as applicable) and for all New Post Holders this will be the Partner agreed between the Parties in accordance with **Paragraph 8 of Schedule 5**;

**"Employment Contract"**

the contract of employment between the Post Holder and the Employing Partner;

**“Existing Section 75 Arrangements”**

the arrangements described in **Schedule 11**;

**"Financial Year"**

a year commencing 1st April in one calendar year and ending on 31st March in the subsequent calendar year;

**“FOIA”**

the Freedom of Information Act 2000;

**“HR”**

human resources;

**“Individual Agreement”**

the agreement made between each Post Holder, the Employing Partner and the Non-Employing Partner describing the terms on which the Post Holder will be made available by the Employing Partner to the Non-Employing Partner and the scope of their Section 113 Duties;

**“Information Sharing Protocol”**

the protocol agreed between the Parties to govern the sharing of information for purposes connected with the Arrangements (as amended or replaced from time to time);

**“Inspection Authority”**

the Care Quality Commission, Ofsted or similar or successor bodies;

**Joint Committee**

The Committee responsible for the oversight of joint working arrangements

**Joint Leadership Team**

The senior leadership team responsible for the oversight of all joint commissioning activity.

**“Month”**

a calendar month;

**"New S75 Arrangement"**

Any arrangement made between the Parties on or after the Commencement Date in exercise of the powers contained in Section 75 of the 2006 Act;

**"New Post Holders"**

the individuals made available in accordance with APPENDIX 4

**"Non-Employing Partner"**

in respect of each individual Post Holder, the Partner that is not the Employing Partner;

**"Original Post Holder"**

the individuals identified in APPENDIX 2 & 3(as applicable) and being the individuals who, as at the Commencement Date, are made available in accordance with Clauses 6, 7 and APPENDIX 4.

**"Partnership Regulations"**

the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617);

**"Pooled Fund"**

a fund within the meaning of Section 75(2)(a) of the 2006 Act or Section 10 of the Children Act 2004;

**"Post Holders"**

individuals made available by the Parties in accordance with APPENDIX 4;

**"Relevant Transfer"**

*a relevant transfer for purposes of TUPE;*

**"S113 Duties"**

those duties which a Post Holder will perform for and on behalf of the Non-Employing Partner being the duties identified in the job description appended to that Post Holder's Individual Agreement (subject to such variations as may be agreed between the Parties (and, where appropriate, the Post Holder) from time to time);

**"Service Users"**

individuals who are eligible for the Adult Health, Social Care & Housing, Children and Public Health Services;

**"Staff Member"**

*an individual engaged by either Partner for the purposes of commissioning and/or delivering the Services in accordance with these Arrangements (including any Post Holder);*

**"Statement of Practice"**

*the Staff Transfers in the Public Sector Statement of Practice as currently contained in the Cabinet Office statement dated January 2000;*

**"TUPE"**

*the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246) as amended;*

**"Transferee"**

*the Partner who immediately before the Relevant Transfer was the employer of a Staff Member whose contract of employment, subject to Regulations 4 (7) and 4 (9) of TUPE, is subject to a Relevant Transfer or of a Staff Member who contends that, subject to Regulations 4 (7) and 4 (9) of TUPE, his or her contract of employment is subject to a Relevant Transfer;*

**"Transferor"**

*the Partner to whom, subject to Regulations 4 (7) and 4 (9) of TUPE, a Staff Member's employment contract transfers, or a Staff Member contends that his or her employment contract transfers, due to a Relevant Transfer*

**"Working Day"**

8.30am to 5.00pm on any day except Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday (in England) under the Banking & Financial Dealings Act 1971.

**APPENDIX 2 (to the S113 Agreement)**

**S113 POST HOLDERS**

***Council Post Holders***

- 1 In accordance with Clause 4 of this Agreement, the following individuals are made available by the Council to the CCG for the purposes of commissioning the Adult Health, Social Care & Housing, Children's and Public Health Services:
  - 1.1 Strategic Director of People & Communities
  - 1.2 Deputy Director (Adult Care, Health & Housing Strategy & Commissioning)
  - 1.3 Director of Public Health
  - 1.4 Deputy Director for CYP, Strategy & Commissioning
  - 1.5 Senior Commissioning Manager – Specialist Services for CYP
  - 1.6 Senior Commissioning Manager – Social Care - Associate Director, Non-Acute & Social Care
  - 1.7 Head of Safeguarding – Adults
  - 1.8 Joint Finance Post

**APPENDIX 3 (to S113 Agreement)**

**S113 POST HOLDERS**

***CCG Post Holders***

2 In accordance with Clause 4 of this Agreement, the following individuals are made available by the CCG to the Council for the purposes of commissioning the Adult Health, Social Care & Housing, Children's and Public Health Services:

2.1 Chief Operating Officer

2.2 Director of Nursing and Quality

2.3 Senior Commissioning Manager (Long Term Conditions, Unplanned Care)

2.4 Senior Commissioning Manager (Learning Disabilities)

2.6 Senior Commissioning Manager (Mental Health)

## APPENDIX 4 (to Section 113 Agreement)

# HR PROTOCOL

## PURPOSE OF THE FRAMEWORK

The purpose of the framework is to set out how employment issues will be dealt with in the context of staff from the Council and the CCG working together in an integrated team and in particular, where the staff are managed by an employee of the other organisation.

Staff employed in the integrated team will continue to be contracted to their *current* employer on the terms and conditions provided under their respective individual contract of employment. The employing organisation remains responsible for exercising the rights and duties of the employer and for maintaining the terms and conditions of employment and HR policies and procedures of the employing organisation except where changes are negotiated in accordance with relevant policies and procedures.

Under this arrangement, a member of staff in a joint team may be line managed by a manager from the other organisation, in which case the member of staff shall be informed in writing. In this situation, there should be a named link from the employing organisation who will advise the line manager/member of staff on policies and procedures relating to payroll and personnel matters.

## 1. INTRODUCTION

1.1 This framework compliments but does not replace the Human Resource Policies and Procedures of Bath and North East Somerset Council or Clinical Commissioning Group i.e., the Party organisations.

1.2 This framework in no way affects the statutory obligations of either Party organisation.

1.3 This framework in no way affects the contracts of employment or terms and conditions of the staff of the Party organisations.

1.4 This framework is designed to support all staff working in joint teams.

## 2. MANAGEMENT ARRANGEMENTS AND SUPPORTING ROLES

The framework clarifies the roles and responsibilities of operational managers and named employer links as follows:

### Line Manager / Staff

The member of staff reports directly to the line manager of the team/service/department. This includes agreeing annual work objectives within the integrated team which would be monitored via regular supervision/update meetings with an associated performance management review process, and agreeing an annual personal / professional development plan.

The line manager is responsible to the member of staff for listening to and acting appropriately on any concerns or incidents reported by them, for providing safe and suitable facilities and equipment to enable staff to fulfil their role, for ensuring team cohesion and local operational protocols, including standards and quality, and to facilitate the smooth running of the team.

On a day to day basis the parties agree the Manager of an integrated service:

- Shall have the right to give any reasonable instructions to staff of both parties but shall not be entitled to instruct a member of staff in any way which contravenes their terms and conditions of employment;
- Will collect and provide to the Council, the CCG, the Care Quality Commission or the Department of Health or any Government body or agency such information as shall be required to review and monitor the performance of the integrated service and support the parties duty to secure Best Value, Clinical Governance and Improving Working Lives and other initiatives in accordance with DPA
- Will manage staff in accordance with the expectations of the Party organisations employment policies, all legal requirements and good employment practice.
- Will recognise and understand the professional support and accountability arrangements for staff and their own and staff's responsibility to regulatory bodies.

### **Named Employer Link / Line Manager / Staff**

Where a member of staff is employed by a different organisation to the line manager, the manager will continue to be the first point of contact for resolving any queries, but will work closely with a nominated contact within the HR function of the employing Party to obtain advice on terms and conditions of employment and HR policies and procedures as necessary. The nominated contact will also advise the manager on procedures for job evaluation or competency based pay progression, and upholding the arrangements applicable to the employing Party.

The named employer link has a key advisory role in terms of employment law and therefore helps manage organisational risk on behalf of the employing agency.

The member of staff can seek clarification and advice on terms and conditions and HR policy and procedure issues by contacting the named employer link directly, although in the first instance they should contact their line manager.

## **3. RECRUITMENT**

Where, during the Agreement Term, a Post Holder leaves the employment of the Employing Party and a new appointment is required, the recruitment process will be undertaken by the CCG and/or the Council in accordance with Guidelines for Determining the Employer set out in paragraph 22 below or such alternative arrangements as may be agreed in writing between the Parties from time to time.

The Employing Party of any Designated Joint Appointment in accordance with Paragraph 22 below shall be as agreed by the Parties and that Employing Party agrees to make the New Post Holder available to the Non-Employing Party in accordance with the terms of this Agreement.

In all cases, whether for new posts, reorganisations or replacements both parties agree that the terms of the employing organisation will prevail and the integrity of the terms and conditions will be upheld. No individual shall be subject to a hybrid set of terms and conditions.

Regardless of the source of funding for posts within the service, all staff will be treated fairly and equitably and in accordance with the policies of the Party organisations.

When handling reorganisations; the need to replace staff or to recruit to a new post, the relevant line Manager will work in conjunction with HR and follow the guidance notes on 'Determining the Employer' set out at paragraph 22 below, to develop proposals for consideration and agreement by the other Party about:



- Which organisation is to become the employer.
- How the vacancy is to be managed and the nature of the replacement post
- The process of advertising; and
- How the recruitment costs will be met.

The recruitment process will be in accordance with the employing organisations policies and procedures and will conform to the principles for safer recruitment.

All staff within the integrated service in the position of leading on the Recruitment and Selection will be appropriately skilled and familiar with the Policies and Procedures of the Party organisations.

There are separate job evaluation schemes in place in the two organisations. The relevant employers' scheme will apply.

#### **4. INDUCTION**

All staff within the integrated service will be provided with an induction programme in accordance with the procedure of their contractual organisation. As far as is practicable induction programmes will be developed and carried out jointly.

Line Managers will determine what induction element of the Party organisations it would be appropriate to provide. It is expected that Health staff who manage Council staff attend the Council Corporate Induction event and vice versa.

All new managers who are managers of staff across the Party organisations must familiarise themselves with the key policies and procedures of both organisations.

#### **5. APPRAISAL**

The two organisations have separate but similar Personal Development Review/Appraisal processes to meet staff needs. Everyone will have an annual appraisal which will be reviewed on an on-going basis through supervision.

Staff may receive salary progression (in accordance with their terms and conditions) subject to satisfactory performance as evidenced in their appraisal/review.

Key objectives will be set which support the aims of the team, the service and the Health and Wellbeing Partnership and individual training and development needs will be identified through the process. The Parties will provide appropriate training to supervisors to enable them to effectively undertake the relevant appraisal processes for their staff.

Supervisors and supervisees will have access to relevant training to enable them to effectively engage in the processes.

All managers must ensure the timetabled Annual Review/appraisal takes place.

#### **6. CAPABILITY**

The capability procedure for the relevant employing organisation will be used to manage any capability / performance problems that arise. Where these procedures identify an immediate line manager, this will mean the member of staff's line manager, regardless of their employing organisation. Normally, the first step to resolving a problem shall be informal.

Managers contemplating taking formal capability action will take advice from the employing organisation to ensure adherence to contractual capability procedures.

Any decision to dismiss can only be taken by the appropriate designated senior manager of the employing organisation following due process in accordance with the policy, procedures and contractual terms of the employing organisation.

For Medical staff specific advice should be sought from the employing organisation as matters of professional conduct and capability are governed by separate policies and procedures

## **7. DISCIPLINARY**

Any formal action taken against a member of staff will be taken under their employing organisations Disciplinary Policies and Procedures. Where these procedures identify an immediate line manager, this will mean the member of staff's line manager, regardless of their employing organisation

The manager must clarify his/ her responsibilities with regards to the various levels of authority to for example, approve suspension from duty.

Appropriate HR advice from the employing organisation must be sought in all cases of potential gross misconduct; when there is police, fraud or safeguarding involvement; where a trade union representative is involved; where there is an allegation of bullying or harassment made by a member of staff of one organisation against a member of staff of another organisation. If fraud or any financial irregularities are suspected the manager must also inform Audit and/or NHS Counter Fraud immediately, as appropriate.

Any decision to dismiss can only be taken by the appropriate designated senior manager of the employing organisation following due process in accordance with the policy, procedures and contractual terms of the employing organisation.

## **8. GRIEVANCE**

Any grievance issues will be dealt with under the appropriate employing organisations grievance procedure. Where these procedures identify an immediate line manager, this will mean the member of staff's line manager, regardless of their employing organisation.

It is essential managers of integrated teams make themselves aware of the timescales under the procedure.

Guidance on the grievance process is available via the web pages in both the Council and the CCG. These should be read to ensure adherence to contractual grievance procedures. In cases that are particularly complex, advice should be sought from the employing organisation of the individual.

Where a health member of staff submits a grievance about a Council member of staff (or vice versa) relevant HR staff should be consulted to agree how the investigation and hearing process best be managed. Adherence to the contractual procedure of the aggrieved is essential.

Wherever possible, and depending on the seriousness, a joint investigation is preferable.

## **9. GROUP GRIEVANCE OR SHARED DISPUTES**

Collective grievances or disputes can only be raised by trade unions / staff representative bodies.

Pay and Terms and Conditions remain the province of the relevant Party; therefore there can be no shared dispute on these grounds.

## **10. SICKNESS / ATTENDANCE MANAGEMENT**

Any issues arising from the sickness and/or absence of a member of staff within the integrated service will be managed in accordance with the employing organisation's policies and procedures and contract of employment.

Managers of integrated teams will need to be mindful of trigger points for consideration under the sickness / attendance policies and procedures.

On issues of long-term sickness line managers will have access to advice from the employing organisation.

## **11. LEAVE**

The immediate line manager, regardless of employing organisation, can authorise flexi/ annual/special/compassionate and other forms of paid and unpaid leave for staff employed by the Party organisation in accordance with the relevant Policy. It is the immediate line managers' responsibility to ensure that this is done in a planned manner where possible according to the requirements of the service. It is the line manager's responsibility to keep a record of staff leave and to ensure that this information is forwarded as required to the relevant payroll function.

For matters of Maternity, Adoption and Paternity Leave, sabbaticals or employment breaks the manager must seek advice as soon as possible according to the employing organisation of the member of staff concerned.

## **12. RESPONDING TO STAFF CONCERNS/WHISTLEBLOWING**

The Policy from the member of staff's "Home" organisation will apply. However, it is accepted that if the member of staff reveals concerns that are related to the other organisation these will be shared on a confidential 'need to know' / need to act basis and managed in accordance with best practice.

## **13. SHARED CONDITIONS**

In adopting the principle of best practice in an integrated service, it is determined that some policies, procedures and protocols may be adopted jointly by all members of the service, regardless of their employing organisation. Individual policies and procedures will make it clear if this applies. Opportunities to integrate and harmonise policies and procedures will be maximised, as will Party organisations commitment to respond jointly to new legislation and initiatives.

## **14. SMOKING AND THE CONSUMPTION OF ALCOHOL OR DRUGS**

The rules of the employing organisation must be followed with regard to the consumption of alcohol during working hours, including breaks if returning to duty following the break.

Smoking whilst on duty is allowed only in accordance with the employing organisations policies and procedures and also in accordance with the policies and procedures of the organisation on whose premises staff are working.

Any issues relating to the consumption of alcohol or drugs will be managed within the organisational procedures of the member of staff.

## **15. CODE OF CONDUCT**

The code of conduct of the employing organisation will apply to staff and where appropriate professional codes of conduct will be referred to as necessary.

## **16. EQUAL OPPORTUNITIES POLICY**

The equal opportunity policies of both Parties as they apply to members of the public, service users and members of staff, will apply to the services.

## **17. BULLYING AND HARASSMENT**

The Bullying and Harassment Policies of both organisations will be used and applied to staff dependant on their employing organisation.

## **18. STAFF CONSULTATION**

Staff consultation processes within each organisation will continue and matters applying across the Partnership may need to be raised through both routes

## **19. SHARING OF INFORMATION**

Within the integrated structure some members of staff from the CCG and Council may need to access personal files and computer records of staff employed by the Party organisation. Therefore, in line with the principles of Data Protection Act 1998 staff consent will be sought to the processing of information concerning them.

## **20. WORK LIFE BALANCE**

A healthy work life balance is encouraged and policies are in place in both organisations to support staff in achieving this aim.

## **21. HEALTH AND SAFETY FRAMEWORK**

This agreement supplements, but does not replace the Health and Safety policies and procedures of the Party organisations.

This agreement in no way dilutes or undermines the statutory duties of each of the Party organisations.

The aim of the local agreement is to ensure that whilst the statutory duties of Health and Safety are met by the Party organisations, they work together in an integrated manner wherever possible and appropriate to assess and manage the risks to the Health and Safety of their staff and others who may be affected by work activities.

The general principles that will be adopted are:

- Any Health and Safety matters relating to premises are dealt with under the policies of the main tenant of those premises.
- Any matters relating to staff are dealt with according to their employer's policies.
- Managers will be responsible for risk assessment and management in line with these principles, for integrated teams.

## 22. GUIDELINES FOR DETERMINING THE EMPLOYER

The aim of these guidelines is to ensure that the terms of the Section 113 agreement are met by the Parties and that both organisations work together to jointly assess future appointments and arrive at decisions which promote the effective delivery of integrated services whilst safeguarding their individual interests and governance requirements.

The guidelines cover the decision making process for determining whether the Council or the CCG shall be the employer in circumstances when new posts are created, reorganisations occur or there is a need to replace staff within the Joint Management Team.

The guidelines supplement, but do not replace the Policies and Procedures of the Parties and in no way affect their statutory obligations or the terms and conditions of staff of the CCG and the Council.

### GUIDING PRINCIPLES

In so far as is possible the Parties will aim to take decisions that:

- Minimise any adverse impact on staff arising from reorganisations.
- Minimise the complexity associated with managing staff from 2 employing organisations.
- Enable productive, harmonious and effective working relationships to develop within integrated teams.
- Involve discussion with the Trade Unions / Staff representative bodies as appropriate.

In all cases, whether for new posts, reorganisations or replacements both parties agree that the terms of the employing organisation will prevail and the integrity of the terms and conditions of employment will be upheld. No individual shall be subject to a hybrid set of terms and conditions.

Where internal reorganisations take place that are caused due to the joint arrangements, posts will be ring fenced to those within the departments/teams affected.

### NEW POSTS

For new posts with a joint working role, plans should be documented as a proposal and submitted to the other Party for approval.

The proposal should contain information on the rationale behind the creation of the post; the job description and person spec for the role; the suggested terms and conditions of the post; the proposed division of funding and a reasoned proposal as to which organisation should 'host' and recruit to the post. The proposal will need to be agreed by both Parties.

The following considerations should be taken into account in determining the employing Party:

- Where the job has a requirement for an occupational qualification or has a statutory obligation to provide certain roles specific to either the CCG or Council, then that should determine the employing Party.
- Where the job has no such requirement, an assessment should be made to determine if a majority of the post holder's time will be spent on either CCG or Council duties. The employing Party should be the one where the majority of the duties fall.

Where the job has no requirement for a specific occupational qualification and the apportionment of time on CCG and Council duties is evenly spread, then either Party could be the employer. In such cases the following should be considered in deciding who the employing Party should be:

- The composition of the existing team- whether there are other similar positions that it would be sensible to align the new post with.
- Whether the post is generic and electing one or the other Party to act as employer for the generic roles in question would support the development of harmonious and effective working relationships within integrated teams.
- Whether the choice of employer is likely to have an effect on the ability to attract the right volume or calibre of staff.
- Whether there are any economic considerations to take into account.
- The balance of risk between the Parties – whether there is a need to redress an imbalance regarding the number of employees or particular skills sets between the employing Parties.

The decision regarding who should be the employing Party should be made in advance of any recruitment activity and the recruitment should be handled by the employing Party in accordance with their recruitment policies and practices. In all cases advice on the factors that need to be taken into account to determine the legal employer should be sought from HR, bearing in mind that the organisation funding the appointment may not necessarily be that legal employer. The post should be evaluated in line with their own job evaluation process and the position advertised on their terms and conditions. Recruiting managers and candidates should be clear that once a considered decision has been made regarding who should be the employing organisation, there is not a choice of employer. Job Descriptions and advertisements should therefore clearly specify the employing organisation.

## **REPLACEMENTS**

When an individual engaged in joint work leaves one of the Party organisations, this provides an opportunity to review how the post should be filled and how monies are used to deliver an efficient and effective service to best effect.

The relevant manager should submit a proposal regarding their replacement which should include a reasoned recommendation as to which organisation should 'host' and recruit to the post. Any relevant changes to the establishment for either Party must be agreed in accordance with their own procedures.

The same considerations as above for new employees should be taken into account in determining the employing Party – with the default being that the employing Party should remain unchanged unless the other considerations outweigh that.

## **REORGANISATIONS**

For reorganisations, any potential change which affects joint working arrangements must be documented as a proposal and submitted to the other Party for approval.

The proposal should contain information on the rationale behind the change; job descriptions and person specs for new or changed roles; the proposed division of funding; an assessment of how the reorganisation would impact on the existing structure and post holders and a recommendation regarding the employing Party. If a proposed reorganisation places staff 'at risk' in either organisation the proposal should identify this, outline any ring fenced group and confirm whether they will be given priority consideration in the other organisation. The proposal should also describe the consultative process to be followed paying due regard to the requirement to consult both Trade Unions/ staff representative bodies and staff regarding organisational change. The proposal will need to be agreed by both Parties and be ratified by the relevant HR advisors.

For reorganisations the same considerations set out above for new posts should be taken into account in determining the employing Party.

Where either Party could be the employer then the Parties will reach specific agreement on which will act as employer.

To support the possibility of appointing to either Party, in some circumstances positions may be evaluated by both Party organisations in readiness for appointment to either organisation.

To protect staff that may leave one employing Party to join the other as a result of a formal reorganisation and to ensure the Parties are in a position to offer suitable alternative employment and avoid redundancies, the Parties agree to a reciprocal arrangement regarding protecting of service and the adoption of a 'special provisions' regarding the retention of former pension arrangements.

## **RECRUITING FOR DESIGNATED JOINT APPOINTMENTS**

Within the joint working agreement between the Council and CCG there is provision for formal legal arrangements through which Section 113 of the Local Government Act 1972 will be used to enable each Party to make identified employees available to the other Party for the purposes of performing that other Party's functions. Under this arrangement a limited number of very senior posts will be designated and post holders will have dual officer status. For example, where a person employed by the CCG is exercising Council functions they are doing so as an officer of the Council (and vice versa).

When compiling the business case for a designated joint post, funding arrangements and the level of funding required for the establishment of the post, including advertising or agency costs, should be clear at the outset and agreed jointly.

For joint appointments, applicants will be short listed, interviewed and selected jointly. The employing organisation will have the final decision if consensus is not reached, especially where professional qualifications and experience are crucial to the post.

For joint appointments, the contract of employment should detail the delegated management accountabilities and reflect the integrated nature of the appointment.

The contract will reflect the terms and conditions of the host employer and be underpinned by an individual agreement in accordance with the terms of the Section 113 agreement.

Appointment to a joint post will need to be recorded in an updated version of the schedules appertaining to the formal Section 113 agreement and appended to a letter signed by both Parties.

## **FUNDING ARRANGEMENTS**

The formal agreement to establish a jointly funded post will include the basis for apportioning the costs of the post including expenses incurred by the post holder.

After each appointment, the respective Finance Managers will arrange for the appropriate payments and reimbursements to be made.

The costs of any training which a post holder is required or requested by the Non-Employing Party to attend for purposes connected with the performance of a Post Holder's S113 duties will be funded by the Non-Employing Party.



## **APPENDIX 5 (TO THE S113 AGREEMENT)**

### **OPERATIONAL ARRANGEMENTS**

#### ***Governing Principles***

This Schedule assumes that the HR policies and procedures of the Employing Party will prevail. Where S113 joint working arrangements dictate the need for particular HR arrangements, guidance is included in the agreed joint HR protocol.

#### **Obligations of the Employing Party**

In respect of each of the Post Holders for which they are the Employing Party, each Party agrees to ensure that:

- the Post Holder has been consulted and has agreed to being made available in accordance with Section 113 of the 1972 Act;
- Post Holders perform their S113 Duties for and on behalf of the Non-Employing Party in accordance with the terms of the S113 Agreement, their Individual Agreement and their employee duties in accordance with their agreed joint objectives.
- when performing their S113 Duties, Post Holders (without prejudice to Paragraph 11.1) comply with and are bound by any codes of conduct for the time being applicable to officers of the Non-Employing Party including (without limitation) compliance with:
  - the published policies and procedures of the Non-Employing Party to the extent that they are relevant to the Post Holder's performance of their S113 Duties.
  - such joint policies and procedures as may be agreed between the Parties in writing from time to time
  - the Non-Employing Party's disciplinary and grievance policies and procedures
  - any statutory requirements;

- all relevant national and local guidance on conduct and probity and good corporate governance; and
  - the Non-Employing Party's Standing Orders, Standing Financial Instructions and Schemes of Delegation.
- Post Holders will not disclose to a third party any information however obtained which is confidential by law to the Non-Employing Party or is information the Non-Employing Party is entitled not to disclose except where such disclosure is authorised by the Non-Employing Party or other proper authority;
- Post Holders will notify the relevant Accountable Officer as soon as they become aware that:
  - a Conflict of Interest has arisen;
  - that a potential Conflict of Interest may arise; or
  - they reasonably believe a Conflict of Interest has arisen or that a potential Conflict of Interest may arise

## **Duties**

To enable S113 postholders to perform their duties, it is agreed that each Party will provide

- access to the Premises;
- office accommodation, equipment and, subject to the Non-Employing Party's existing policies and
- administrative, IT and facilities support
- on-going training and professional development relevant to their duties

## Suspension

The Non-Employing Party of a Post Holder shall not suspend such Post Holder from performance of their S113 Duties without prior consultation with the Employing Party save where it is not possible to consult due to urgency. In such cases, the Non-Employing Party will inform the Employing Party as soon as possible after the action taken

The Employing Party of a Post Holder shall not dismiss or suspend such Post Holder without prior consultation with the Non-Employing Party save where, in the case of suspension, it is not possible to consult due to urgency. In such cases, the Employing Party will inform the Non-Employing Party as soon as possible after the action taken. For the avoidance of doubt, although the Employing Party agrees to consult with the Non-Employing Party, the final decision to dismiss or suspend a Post Holder will be made at the discretion of the Employing Party.

Following consultation or in the event of consultation not being practicable, the Non-Employing Party may require the Post Holder to be excluded from its premises and be suspended from undertaking their S113 Duties. Written notice of such requirement will be given by the Non-Employing Party as soon as possible to the Employing Party.

Following consultation, or in the event of consultation not being practicable, the Post Holder's Employing Party may suspend the Post Holder from his employment with the Employing Party and shall take such action as it considers necessary in relation to disciplinary procedures applying to the Post Holder.

Suspension will occur if

- a breach of discipline has occurred which constitutes gross misconduct under either Party's disciplinary procedure;
- the Post Holder is incapable of undertaking his S113 Duties and/or Employee Duties in a satisfactory matter;
- there has been a material failure by the Post Holder to declare a Conflict of Interest.
- in the case of the Post Holder's Employing Party it would have a right to suspend the Post Holder under the terms of his Employment Contract.

In the event of a suspension, the financial obligations of the Parties shall remain unchanged.

### **Grievances & Performance**

Performance will be monitored through the appropriate performance and development procedures and regular review meetings.

Any grievance by any employee or officer of the Non-Employing Party in relation to the exercise by the Post Holder of their S113 Duties shall be dealt with according to the grievance procedures of the Non-Employing Party and the determination of the grievance process shall be reported to the Employing Party who shall take such action in consultation with the Non-Employing Party as they deem appropriate.

### **Conflicts Of Interest**

it is agreed that reference to a Conflict of Interest is intended to refer to a situation where:

- the proper performance by a Post Holder of their Employee Duties will (or has the potential to) restrict, frustrate or improperly influence the performance by that Post Holder of their S113 Duties;
- the proper performance by a Post Holder of their S113 Duties will (or has the potential to) restrict, frustrate or improperly influence the performance by that Post Holder of their Employee Duties

and is not intended to refer to day to day situations where:

- the proper and diligent performance by a Post Holder of their Employee Duties will have a direct or indirect outcome or effect that is not considered to be in the best interests of the Non-Employing Party but which does not fall within Paragraph 22.1; or
- the proper and diligent performance by a Post Holder of their S113 Duties will have a direct or indirect outcome or effect that is not considered to be in the best interests of the Employing Party but which does not fall within Paragraph 22.2; and/or

- *[the conflict can be appropriately and adequately addressed through a declaration by the Post Holder of that interest at the outset of a meeting and an appropriate course of action being agreed prior to commencement of that meeting].*

For the purposes of Paragraphs 10.6 and 24 where the Post Holder identifying the Conflict of Interest (or to whom such conflict relates) is the Accountable Officer of the CCG, references to the CCG Accountable officer shall be deemed to be a reference to the Chair of the CCG or, where it is considered more appropriate, the Chair of the Audit and Assurance Committee of the CCG.

The Parties will use all reasonable endeavours to avoid situations where a Post Holder has a Conflict of Interest arising from their respective responsibilities and, subject to Paragraph 23, shall apply the following principles:-

- following receipt of notification by a Post Holder in accordance with the terms of these arrangements the Party receiving notice will notify the other Party in writing that a Conflict of Interest has arisen or a potential Conflict of Interest may arise. In doing so the notifying Party shall provide to the other Party with full details of such Conflict of Interest or potential Conflict of Interest;
- where notice is given as provided above the Post Holder may not act on behalf of either Party in relation to the subject matter of that Conflict of Interest or potential Conflict of Interest unless appropriate arrangements have been agreed pursuant to Paragraph 24.3. In the interim, the Chief Executive/Chief Accountable Officer of each Party shall each nominate separate persons to represent the respective interests of the Parties;
- where notice of a Conflict of Interest (or potential Conflict of Interest) has been served the Chief Executive of the Council and the Chief Accountable Officer of the CCG shall agree what action shall be taken and the extent of authority to be delegated to the Post Holder to act in relation to the subject matter of that Conflict of Interest or potential Conflict of Interest; and
- in a case where no notice has been given under Paragraph 24.1 but where the Chief Accountable Officer of the CCG and the Chief Executive of the Council jointly agree that a matter may give rise to a Conflict of Interest they shall decide upon the extent

of authority which shall be delegated to the Post Holder to act in relation to any such matter.

## Appendix 6 to 113 Agreement – Copy of Individual 113 Agreement

### SECONDMENT AGREEMENT

#### DATE OF AGREEMENT, PARTIES AND BACKGROUND

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**THIS AGREEMENT** is made on the 1<sup>st</sup> April 2013

#### **BETWEEN:**

- (1) **NHS Bath & North East Somerset (CCG)** of Trust HQ, St Martin's Hospital, Clara Cross Lane, Bath, BA2 5RP ("the Host Organisation")
- (2) **Bath & North East Somerset Council** of Guildhall, High Street, Bath, BA1 5AW ("the Employer")
- (3) **Staff name (" the Employee")**

#### **WHEREAS:**

- a. The Employee commenced employment with, the Employer, on xxxxx.
- b. The Host Organisation wishes to have the benefit of the services of the Employee.
- c. The Employer has agreed that the Host Organisation may have the services of the Employee upon the terms hereinafter mentioned and the Employee has joined in this Agreement to acknowledge his/her consent to the Agreement.

The Employee should read this document in conjunction with their statement of particulars.

#### **Background – Purpose of Secondment**

1. This Agreements forms part of the Joint Working Agreement between Bath & North East Somerset Council and NHS Bath & North East Somerset (CCG).
2. The agreement will apply to all post holders designated within the Joint Working Agreement as having accountability for both Council and CCG functions. Those staff occupying designated posts will be required to perform duties for and on behalf of the non-employing partner ("their S113 Duties") in addition to their employee duties ("their Employee Duties").
3. In order for designated post holders to discharge their responsibilities effectively they will be seconded under Section 113 of the Local Government Act 1972 to work for the Host Organisation part of the time and continue to work for the Employer for the remainder of the time.

#### **Requirements and Expectations**

4. The Employee is expected to perform their S113 Duties and, where applicable their Employee Duties in accordance with the aims, benefits and intended outcomes of the Partners joint objectives which are:
  - To commission, manage and deliver high quality Services which understand and respond to the needs of individual service users and their carers;
  - To deliver the joint strategic needs assessment for Bath & North East Somerset;
  - To plan and prioritise together;
  - To improve the health and wellbeing of Service Users and reduce inequalities;

- To deliver the objectives of the CCG, Council and Local Strategic Partnership including outcomes and targets set out in the LAA, LDP and JOP.
  - To make access to services and support as easy as possible for Service Users;
  - To ensure that care provided streamlined and seamless and responsive to the needs of Service Users;
  - To facilitate the development of a skilled and motivated health and social care workforce with access to high quality joint training and support and development opportunities;
  - To make the best use of management and professional skills and knowledge;
  - To work within and make best use of available resources to deliver efficient, economical and effective services.
5. The Employee will familiarise themselves with, and comply with the local government and statutory reporting requirements and codes of conduct of both the Employer and the Host Organisation.
  6. The Employee is authorised to manage the Host Organisation's staff. In conducting this duty they are required to work within the policies and procedures of the Host Organisation and to ensure that the employment contracts of the Host Organisation's staff are compiled with in full (including, for the avoidance of doubt, the disciplinary and grievance policies and procedures).

### **Employing Organisations**

7. The Employee shall continue to be employed by the Employer and other than as set out in this Agreement their terms and conditions will remain the same.
8. The resolution of any issues relating to the management of the Employee including pay, pensions, sick leave, discipline and other terms and conditions remain the responsibility of the Employer.

### **Line Management/Accountability**

9. When performing their S113 duties, the Employee shall be subject to the control and direction of the Host Organisation and will be acting as officers of that organisation only.
10. When performing their Employee Duties, the Employee shall be subject to the control and direction of the Employer and will be acting as an officer of that organisation only.
11. The Employee shall report to a Line Manager who will be responsible for the allocation of work, management supervision and annual performance review. The Line Manager may be employed the Employer or the Host Organisation and will uphold the policies applicable to the Employer of the employee in accordance with the agreed framework for managing staff in integrated teams.
12. Where the Employee's Line Manager is from a different professional background, arrangements will be put in place to provide access to appropriate professional supervision, development and training.

### **Named Manager**

13. If the Employee is employed by a different organisation from that of their line manager they will have a named contact with their Employer who is the person to whom they should direct any questions about their contractual terms or employment arrangements and who is responsible for ensuring they are kept informed of changes to such matters affecting their employment and terms and conditions.



**Work Base**

14. The Employee's work base may vary and the employee may be required to work at locations of either or both the Employer and the Host Organisation.

**Period of Secondment**

15. The Secondment will continue until such time either the Employer or the Host Organisation seeks to terminate the arrangement in accordance with the terms of the Joint Working agreement.

**Termination of Agreement**

16. The Employee's Secondment agreement will automatically terminate if their contact of employment is terminated for any reason.

**Travel and Subsistence**

17. The Employee will reclaim expenses by completing the Employer's Travel and Subsistence Forms, getting each form endorsed by their line manager, and submitting each form in accordance with the Employer's policy and procedure.

**Accommodation and Support**

18. The Employee will be provided with access to office accommodation at other facilities to enable them to work effectively from both the Employer's and the Host Organisation's premises.

**Meetings to be attended**

19. The Employee will be expected to attend meetings as required by both the Employer and the Host Organisation for the proper performance of their Employee Duties and S113 Duties.

**Annual Leave**

20. The Employee must request leave in advance from their Line Manager and advise both the Employer and the Host Organisation of approved leave.

**Sickness or Absence**

21. The Employee should advise both the Employer and the Host Organisation of any occasions of sickness or other absence.

**Discipline**

22. The Employer's disciplinary policy and procedure will continue to apply to the Employee.
23. Any issues relating to conduct or performance of the Employee which arise in the performance of their S113 duties must be notified by the Chief Executive of the Host Organisation to the Employer and managed in accordance with their policies and procedures as detailed in the agreed framework for managing staff in integrated teams.
24. The Employee shall not be suspended from the performance of their S113 duties without prior consultation with the Employer save where it is not possible to consult due to urgency.

In such cases, the Host Organisation will inform the Employer as soon as possible after the action taken.

25. The Employer reserves the right to take disciplinary action up to and including dismissal in relation to the Employee's conduct or performance of their S113 Duties carried out on behalf of the Host Organisation.

### **Inappropriate Behaviour at Work**

26. If the Employee has any concerns regarding bullying and harassment or any other inappropriate behaviour they should refer this to their Line Manager or another appropriate manager who will deal with their concerns in accordance with their Employer's policy and procedures.

### **Grievance**

27. The Employer's grievance policy and procedure will continue to apply to the Employee.
28. If a grievance issue involves staff from both organisations, Human Resources will advise on the most appropriate approach which could involve a joint investigation and a single joint grievance hearing.

### **Health and Safety**

29. The Employee must ensure they are familiar with both the Employer's and the Host Organisations' Health and Safety policies and procedures and ensure that Health and Safety legislation, policies and procedures are applied correctly.

### **Confidentiality**

30. The Employee must observe both the Employer's and the Host Organisations' policies on confidentiality including personal information about patients, service users and staff, and to conform to the Data Protection Act 1998.
31. The Employee must not disclose to a third party any information however obtained which is confidential by law to the Host Organisation or is information the Host Organisation is entitled not to disclose except where such disclosure is authorised by the Host Organisation or other proper authority.
32. In addition to the provisions regarding confidentiality in the contracts of employment of the Employee, the Employee must not disclose during or after the Secondment any confidential information to which they become privy during the course of the Secondment.

### **Politically Restricted Post**

33. As the Employee will discharge duties for Bath & North East Somerset Council (B&NES) and their post carries a salary equivalent to Scale Point **xx** or above on the B&NES pay scale their post is designated as politically restricted under the provisions of the Local Government and Housing Act 1989 and the Local Government Officers (Political Restrictions) Regulations 1990. An Employee may apply for an exemption from such restriction. Further details of the restriction and the procedure for applying for an exemption are available from Human Resources.

### **Codes of Conduct for NHS Managers**

34. As the Employee will discharge duties for NHS Bath & North East Somerset CCG they are required to work within the formal code of conduct for NHS Managers.

### **Conflicts of Interest**

35. A conflict of interest is intended to refer to a situation where:
- The proper performance of the Employee of their Employee Duties (will, or has the potential to) restrict, frustrate or improperly influence the performance by that post holder of their S113 duties.
  - The proper performance of the Employee of their S113 Duties (will, or has the potential to) restrict, frustrate or improperly influence the performance by that post holder of their Employee Duties.
36. The Employer and the Host Organisation will use all reasonable endeavours to avoid situations where an Employee has a conflict of interest arising from their respective responsibilities.
37. The Employee will notify the Chief Executive of each Partner in writing as soon as they become aware that in relation to themselves:
- A conflict of interest has arisen;
  - That a potential conflict may arise; or
  - They reasonably believe a conflict of interests has arisen or that a potential conflict may arise
  - And will provide details of such conflict or potential conflict

### **Other Policies and Procedures**

38. The Employee is expected to become familiar with and adhere to the local operating policies and procedures of the Integrated Service.

### **Data Protection**

39. The Employer and the Host Organisation will need to share and process data relating to the Employee, and by signing this agreement the Employee agrees to the sharing and processing of personal data, and specifically consents to the processing, of such data, including as necessary sensitive data, under the Data Protection Act 1998, by the Host Organisation, both during the period for which they are seconded and following the expiry of the secondment period, as if the Host Organisation were the Employer.
40. The Employer and the Host Organisation agree to process any personal data held on or relating to the Employee in accordance with the Data Protection Act 1998.

### **Signed on behalf of Bath & North East Somerset Council**

**Jo Farrar**  
Chief Executive

### **Signed on behalf of NHS Bath & North East CCG**

**Simon Douglass**  
Clinical Accountable Officer

I confirm that I agreed to the sharing and processing of my personal data, including as necessary any sensitive personal data, as set out in clause 39 above.

I confirm that I understand that my S113 Duties are performed on behalf of the Host Organisation but that I wish to remain employed by the Employer.

I hereby accept the variations to my contract of employment and the terms and conditions of my secondment to the Host Organisation as contained in this agreement and accompanying letter.

Signed.....

Date.....