

THE SIX BERKSHIRE UNITARY COUNCILS

AND

THE TWO BERKSHIRE PRIMARY CARE TRUSTS

JOINT AGREEMENT FOR BERKSHIRE COMMUNITY EQUIPMENT SERVICES (BCES)

THIS AGREEMENT is made this day of 2011

BETWEEN:

SLOUGH BOROUGH COUNCIL of St Martins Place, 51 Bath Road, Slough SL1 3UF respectively (“the Lead Council”); and **THE ROYAL BOROUGH OF WINDSOR & MAIDENHEAD** of Town Hall, St Ives Road, Maidenhead, SL6 1RF, and **BRACKNELL FOREST BOROUGH COUNCIL** of Time Square, Market Street, Bracknell RG12 1JD, and **READING BOROUGH COUNCIL** of Civic Centre, Reading RG1 7TD, **WEST BERKSHIRE DISTRICT COUNCIL** of Council Offices, Market Street, Newbury RG14 5LD and **WOKINGHAM DISTRICT COUNCIL** of Shute End, Wokingham, Berkshire, RG40 1WN (“the Partnership Councils”)

NHS BERKSHIRE EAST of King Edward VII Hospital, Windsor, Berkshire SL4 3DP, and **NHS BERKSHIRE WEST** of 57- 59 Bath Road, Reading, Berkshire, RG30 2BA and any successor organisations (“the PCTs”)

RECITALS

- A. The Partnership Councils and the NHS organisations desire to setup a Joint Agreement for the operation of a Joint Community Equipment Service under s. 75 of the NHS Act 2006.**
- B. Slough Borough Council has agreed to act as the Principal in the provisions of the Services on the understanding that this responsibility can be assigned to another partner organisation by agreement at a date to be agreed by the Partnership Councils and the PCTs.**

1. Terms of Agreement

This Agreement will commence on, 2011 and will continue from year to year thereafter, unless terminated in accordance with Clause 20 Termination. This Agreement replaces all previous like agreements”

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

- (a) “Best Value” shall mean the duty to secure continuous improvement in service through review and procurement regime defined the Local Government Act 1999 and the Regulations and guidance made thereunder.

- (b) "Community Equipment" means equipment from a standard core equipment list a copy of which is annexed hereto marked 'A; which is procured by the Lead Council under this Agreement.
- (c) "the Councils" shall mean the Lead Council and the Partnership Councils
- (d) "Data Protection Act" shall mean the Data Protection Act 1998.
- (e) "Financial Year" shall mean the 1st April in any calendar year until the following calendar year, inclusive.
- (f) "Individuals / Service Users" People assessed by social services and healthcare services and are deemed as requiring the provision of equipment to assist them in their daily living.
- (g) "Partnership Arrangements" shall mean the arrangements between the Partner Organisations covered by this Agreement.
- (h) "the Partner Organisations" shall mean the Councils and the PCTs.
- (i) "the Partnership Commissioning Group" shall mean the representatives of the Partnership Organisations, the Terms of Reference of which are set out in the service Specification.
- (j) "the Lead Council" shall mean Slough Borough Council or such other body as shall be appointed by the parties to carry out the Services specified in this Agreement from time to time.
- (k) "the Services" shall mean the services set out in this Agreement more particularly in the service specification Appendix A.
- (l) "Pooled Budget" shall have the meaning set out in this Agreement more particularly in clauses 2, 6 and 7.
- (m) "Contract Fund Manager" shall mean a suitably qualified manager appointed by the Lead Council responsible for the delivery of the Agreement, management of Pooled Budget and performance targets to be agreed with new provider.

2. Aims and Purpose of the Agreement

- 2.1 The overall aim of this Partnership Arrangement is to improve standards and quality of Services through more effective coordination of resources within the partnership. The purpose of this Agreement is to enable the Partner Organisations to deliver the joint vision for provision of equipment, in line with local strategies. This will be enabled by the delegation of lead commissioning and integrated service provision to the Lead Council, and supported by the flexible use of funds in a Pooled Budget. This will be extended to commission comprehensive and integrated equipment services, with the aim of improving outcomes, for individuals. This will be achieved through the Pooled Budget arrangement between the Partner Organisations basing expenditure on need of service users, and the level of contribution from each of the Partner Organisations.

- 2.2 This Agreement provides a robust framework under which the Partners pool budgets for the provision of an integrated community equipment service in Berkshire to the benefit of residents living in Berkshire, and defines the legal, practical and strategic context for pooling budgets. The Partnership Councils and PCTs delegate responsibility to the Lead Council for the Pooled Budget. The Partnership Councils and PCTs delegate responsibility to the Lead Council for the Commissioning of an integrated community equipment service.
- 2.3 This Agreement shall be governed and construed in English Law. Section 75 of the National Health Service Act 2006 describes the scope of the functions that are allowed within the Pooled Budget arrangement.
- 2.4 This Agreement relates to funds contributed by the Partner Organisations to joint budgets for each Financial Year during the term of this Agreement. If additional funding or services are to come within the remit of the Pooled Budget agreement, then a review of the budget will be required and the Agreement will be adjusted or amended accordingly.
- 2.5 The service which is primarily subject to this Agreement is the procurement by the Lead Authority of an integrated community equipment service, the defining characteristics of which are set out in the appendices to this Agreement.
- 2.6 Targets for the development and performance of the Services are determined by the Partnership Commissioning Group. The Partnership Commissioning Group is accountable to the Unitary Authority or PCT that members are representing. The Lead Council remains responsible for delivery of the Services to the Partnership Councils and to the PCTs.
- 2.7 The terms of reference for the Partnership Commissioning Group and its Sub Groups are set out in the Service Specification. Attached Appendix A.

3. Partner Organisations

- 3.1 The Lead Council for this Agreement shall act as a host organisation for the purposes of the Pooled Budget. The Lead Council is currently Slough Borough Council as per this Agreement; however this is subject to variation and one of the Councils may take over the role of Lead Council if agreed unanimously by all of the Partner Organisations.
- 3.2 The Lead Council may enter into any such Agreement (“Contract for Services”) with a Service Provider for the Service Provider to act as Contractor to provide the Services on behalf of the Lead Council in accordance with the following obligations in the remainder of this Clause 3.
- 3.3 Obligations of the Lead Council

The Lead Council shall:

- (a) Fulfil on behalf of the Partner Councils and PCTs all their statutory duties in relation to the commissioning of an integrated community equipment service.

- (b) Comply with all obligations under the Public Contracts Regulations 2006 (as amended from time to time) in the commissioning of the Services.
- (c) Provide a suitably qualified person in the role of Contract Fund Manager.
- (d) To consult with the Partner Councils and PCTs about any decision which would affect any responsibility of the Partner Councils and the PCTs.
- (e) To develop the fullest possible integration and co-ordination between the Partner Organisations.
- (f) Exercise all such professional skill care and diligence as may be reasonably expected for a competent host organisation experienced in carrying out work of a similar size, scope and complexity to that which is the subject of this Agreement.

Obligations of the Partner Councils and PCTs

The Partner Councils and PCTs shall:

- (a) Pay their contribution to the Pooled Budget in a timely manner.
- (b) Consult with the Lead Council about any decision which would affect any responsibility of the Lead Council.
- (c) Develop the fullest possible integration and co-ordination between the Partner Organisations.

Related Contracts:

There is one related Contract:

- (a) Between the Lead Council and the Provider for the provision of an integrated community equipment service.

Best Value

The Contract Fund Manager shall be responsible for complying with Government guidance on Best Value in commissioning the Pooled Budget to meet the requirements of the Partner Councils.

The Contract Fund Manager will be responsible for ensuring that there are satisfactory systems and procedures in place to provide accurate and reliable performance management information on the use of the Pooled Budget and that the commissioning of the Service complies with Best Value requirements.

4. Accountability Framework

- 4.1 The Lead Council will be responsible for the management of the Pooled Budget and the management of the contract and is accountable to the Partnership Commissioning Group.
- 4.2 It is acknowledged by all parties that role of Lead Council can by Agreement be assigned to any of the Partner Councils in accordance with Clause 15 such assignment being made pursuant to this Partnership Agreement and the role of Lead Council will apply to the current Lead Council.

- 4.3 The Partnership Commissioning Group has representation and delegated responsibility for the Director of their respective organisations for developing and monitoring the Services and compliance with this Agreement and the related contracts.
- 4.4 Through regular meetings the Partner Organisations shall determine the shape and strategic direction of Services through the Partnership Commissioning Group and activity levels will be agreed annually between the Partner Organisations.
- 4.5 Equipment procured pursuant to this Agreement will remain in the ownership of the Lead Council but will be held on trust for and made available for use by all other Partnership Organisations for the duration of this Agreement. However, due to the tender currently underway, various financial models will be assessed by the financial leads of each organisation to achieve value for money and this arrangement may be varied.

4.6 “Engagement

The Lead Council will ensure that service users are properly consulted and involved in the development and provision of the integrated community equipment service.

4.7 Complaints

The Partner Organisations shall each continue to deal with complaints falling within their statutory functions, duties and powers in accordance with their own complaints procedure.

Each Partner Organisation shall ensure that the other will be kept fully informed on the progress of any complaints related to their functions and to the arrangements under this Agreement.

The Partner Organisations recognise the need and expediency of responding to a complaint as quickly as possible and will therefore deal with any complaints in accordance with the timescales contained in their own procedure.

Prior to the issue of any press release or making any contract with the press on any issue attracting media attention the Partner Organisations shall consult with each other to agree a joint strategy for the release and handling of the issue.

In the event of any potential legal action or complaint to the Local Government or Health Ombudsman relating to the Partnership Agreement and the functions thereunder, the Partner Organisation notified of the potential legal action or complaint shall notify the other partners immediately and if possible agree a joint strategy for dealing with the action.

4.8 Liability and indemnity

- 4.8.1 Without prejudice to the primary liability of each of the Partner Organisations for its respective functions, preserved by Section 75(5)(a) and (b) of the National Health Services Act 2006, the following indemnity provisions will apply:

- 4.8.1.1 References in this clause to damages, claims and liabilities shall include the obligation to pay sums recommended by an Ombudsman or under any other complaint resolution procedure.
- 4.8.1.2 The PCTs will indemnify the Partner Councils and Lead Council from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the Partner Councils and Lead Council arising in the exercise by the Lead Council of the PCT's functions or the breach by the PCTs of any obligation in this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the Partner Councils, Partner Councils' Staff, the Lead Council or a Lead Council's Staff or any other employee of the Partner Councils or the Lead Council) including, without prejudice to the generality of this provision, any act, neglect or default of the PCTs, their employees, agents or contractors.
- 4.8.1.3 The Partner Councils and Lead Council will indemnify the PCTs from and against any damages, claims or liabilities suffered and reasonable legal fees and costs incurred by the PCTs arising in the exercise by the PCTs of the Partner Councils and Lead Council's functions or the breach by the Partner Councils and Lead Council of any obligation in this Agreement (except in so far as such damages claim or liability arises from any negligent act or omission or breach of any obligation in this Agreement by the PCTs or a PCT Staff or any other employee of the PCTs) including, without prejudice to the generality of this provision, any act, neglect or default of the Partner Councils and Lead Council, their employees, agents or contractors.
- 4.8.1.4 Each Partner Organisation will indemnify the others from and against any direct loss and expense suffered and reasonable legal fees and costs incurred as a result of any breach of this Agreement by it, except to the extent that such loss or expense is caused by the breach of contract or the act, neglect or default of the other, its employees, agents or contractors.
- 4.8.1.5 In relation to the diagnosis, care and treatment of a service user or patient of the PCTs under the PCT's functions, the provisions of the NHS Indemnity shall apply in relation to any acts or omissions of the PCTs, its employees or agents in consequence of which the service user suffers harm.
- 4.8.1.6 The Partner Organisations shall use reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any claim or proceedings which maybe subject to an indemnity under this Agreement and any material developments. Partner Organisations shall co-operate in the defence of any such claim or proceedings. No settlement or admission properly made by any Partner Organisations in dealing with a complaint or in connection with any professional or disciplinary proceedings shall vitiate its right to be indemnified by the other under this Agreement.
- 4.8.1.7 Insurance

In respect of all liabilities arising under any indemnity in this Agreement, the PCTs shall maintain membership of the Liabilities to Third Parties Scheme and the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to

time by the National Health Services Litigation Authority, and the Partner Councils and Lead Council shall maintain such insurance as they consider appropriate.

4.8.1.8 The Partner Organisations will make available data in relation to claims received, in respect of those services transferring, for the purpose of any insurance renewal negotiations. The Partners shall co-operate with each other in the bringing of or in the defence of any insurance claim arising under this Agreement. In the event of litigation arising from such an insurance claim the Partner Organisations agree to provide witnesses and evidence to each other without charge.

5. Liability

5.1 As host organisation the Lead Council will provide the required financial systems on behalf of the Partner Organisations and be legally accountable for audit and good practice in the administration of the budget (as provided for in clause 12 below). To this end, all Partner Organisations will ensure that the Lead Council receives any information reasonably required in order to effectively manage the pooled budget.

5.2 Liability for any over-expenditure is expected to be on the following basis:

- Where over-expenditure occurs because of actions or inactions of one or more of the Partner Organisations, the liability will rest with the Partner Organisation responsible for the over-expenditure.
- Where over-expenditure occurs due to unforeseen circumstances that are not due to negligence or the foreseeable actions of any one of the Partner Organisations, liability will be shared in proportion to the Partner Organisations' individual contributions to the Pooled Budget
- Where over-expenditure is incurred because of budget maladministration by the Provider the liability for this will rest with the Provider. In this context budget maladministration means expenditure outside the terms of the Contract between the Lead Council and the Provider and without proper authorisation.

5.3 Each partner's liability will be recorded in their published accounts.

5.4 All of the above provisions are expected to be in accordance with the Procedure Rules and Policies of the Lead Council. Disposal of assets funded under this Agreement arising from any winding up of Services during the course of this Agreement will be subject to separate negotiation and agreement regarding re-allocation of any monies available. Commissioning of assets of any capital expenditure will also be subject to separate negotiation and unanimous agreement.

5.5 The Partnership Councils and the PCTs hereby indemnify the Lead Council (so long as the Lead Council has complied in full with its legal obligations in respect of management of the Pooled Budget, and / or the commissioning / provision of the Services including complying with its obligations under the Public Contracts Regulations 2006 as amended) against all costs claims actions and losses properly and directly arising out of its function as host organisation except as provided for in Clauses 3.3 and 5.2 above.

5.6 Unless otherwise stated in this Agreement, a party that seeks to withdraw from this Agreement shall bear its own costs and expenses in such withdrawal and any additional costs to the Pool Budget arising from such early withdrawal. For the avoidance of doubt this may include staff costs and redundancy costs. The remaining parties to this Agreement shall offer no indemnity nor have any liability in relation to the Services to the withdrawing party after it has withdrawn from this Agreement.

6. Management of the Pooled Budget

6.1 The Lead Council shall be responsible for managing the Pooled Budget and forecasting and reporting to the Partner Organisations on the planned outputs/outcomes, including how far financial targets are being met and potential overspends and under spends. The Lead council will employ a contract fund manager as part of the pooled budget arrangements. Role and responsibilities to be agreed by lead commissioners.

6.2 The Partner Organisations will each account for their contribution to the Pooled Budget in their accounts.

6.3 The Lead Council as the operator of the Services and the host organisation for the Pooled Budget is responsible for the financial administration and accounting arrangements and will arrange for monitoring report to be sent to all Partner Organisations on a quarterly basis and at the year end prepare a memorandum of accounts within its statement of accounts, which shows what has been received, spent and what remains. This memorandum of accounts will be sent to each of the partners at the end for inclusion in their statement of accounts. Records will need to be retained for at least six years plus the current year.

7. Detailed Working Arrangements for the Pooled Budget

7.1 The Partner Organisations consulting with the Lead Council are responsible for agreeing the detail of the Services to be provided at a strategic level (the Lead Council will be responsible for the detail of Services to be provided at an operational level). The primary governance of this process is to be undertaken by the Finance lead from each organisation.

7.2 The financial contribution for year 1 of the contract will remain the same as that in 2011/12.

7.3 The amount to be provided will cover service developments, inflation and cost pressures. Management of efficiency savings will need to be negotiated and agreed between the Partner Organisations each year. The Partner Organisations will also need to discuss and agree the split of any additional funding between them Governance arrangements can be found in the service specification Appendix A.

7.4 The Partner Organisations will also need to agree the element to allow for annual growth in services each year. The financial leads will need to work together to draft an agreement around what elements need to be considered annually eg: inflation, new services and how to deal with overspends.

- 7.5 The VAT regime of the Lead Council will apply as laid out in the CIPFA guidance on Pooled Budgets.
- 7.6 Services will be provided in line with eligibility criteria for services as outlined in the Service Specification a copy of which is attached at Appendix A Service Specification.
- 7.7 Provision needed re Microsoft database to be used and its ownership.

8. Monitoring Arrangements

- 8.1 The Lead Council will ensure that monthly budget monitoring reports and performance reports are made available to the other Partner Organisations.
- 8.2 The Lead Council will provide quarterly financial monitoring reports and year-end accounts showing funds received, funds spent, funds committed and any unspent resources, to the other Partnership Organisations. Where finance or performance is not to target, an appropriate recovery/remedial plan will be produced (or amended) to accompany the report.
- 8.3 Performance targets and service outcomes will be agreed between the Partner Organisations and detailed in the service and financial planning document at the beginning of each financial year. These performance targets and service outcomes must, where relevant, be included in the related contract between the Lead Council and the Provider. The Lead Council is expected to ensure the achievement of these targets within budget.
- 8.4 The Partner Organisations will provide the Lead Council with a list of authorised prescribers where changes occur, the Lead Council will be notified of these changes.
- 8.5 The Partner Organisations will provide the Lead Council with information in respect of any known risks or hazards in respect of the provision of the Services

9. Changes / Suspension to Contributions to the Pooled Budget

- 9.1 Subject to the provisions of clause 5.4 each of the Partner Organisations will under normal circumstances give a minimum of twelve months notice of any intention to unilaterally withdraw from the pooled budget agreement or to make proposals for significant variations in interagency contributions. Significant will be defined for this purpose as 5% of total contribution or greater than £100,000, whichever is the lower figure.
- 9.2 Under exceptional circumstances, in situations of extreme budget crisis the Chief Officers of the Partner Organisations should be authorised to take action, including the suspension of the agreement, with one month's notice, where no further expenditure can be incurred without their written agreement.
- 9.3 Changes to contributions of the Partner Organisations may become necessary, for example as a result of Best Value Reviews or in response to developing service strategies. Agreement will be reached between the Partner Organisations regarding how

any variations to the budget will be managed. Changes in contributions will be recorded as a variation to the Agreement.

10. Overspends / Under spends

- 10.1 If a potential overspend is not contained within the budgetary resources available, the Lead Council will notify lead commissioners of the projected overspend as soon as possible and will agree with the Finance leads how the potential overspend will be managed.
- 10.2 Under spends may be carried over to the following year but these will be discussed and agreed by the Lead Council in consultation as appropriate. As a general principle, it is agreed that underspends will be carried over to the following year within the pooled fund arrangement to enable the services funded to achieve their operational and strategic objectives.
- 10.3 The Partner Organisations cannot make decisions that would override the standing financial instructions or other probity requirements of the individual funding bodies.

11. Processing of Payments between the Partner Organisations

- 11.1 The Lead Council will invoice the Partner Organisations for their contribution to the Pooled Budget quarterly in advance.

12. Audit Arrangements

- 12.1 The Lead Council, as the operator of the Services will arrange for the audit of the Pooled Budget accounts and this will be certified by the Auditor appointed by the Audit Commission in the annual return, under section 28 of the Audit Commission Act 1998. This will relate to the level of contributions made by each of the Partner Organisations and the total expenditure from the pool.
- 12.2 Audit will also be supported by evidence that management reporting to the Partner Organisations identify how far joint store operation is fulfilling the aims, outcomes and targets that were agreed by the Partner Organisations at the outset and set in the start of year service and financial plan.
- 12.3 The timing of audit requirements may vary between the different partner agencies and it is the responsibility of the Lead Council as the host to align audit timetables to the satisfaction of all parties.
- 12.4 Any additional costs arising from audit will be met from the pooled fund.
- 12.5 Reports will be provided to the Boards of the Partner Organisations on the performance of the Services and financial plans as requested.

13. Data Protection Act

- 13.1 The Partner Organisations agree:

- (a) To observe all obligations under the Data Protection Act 1998 together with any subsequent amendment or re-enactment therefore and the Data Protection Act Principles and guidelines issued by the Information Commissioner in storing and processing personal data and any other implementing regulations which arise as a result of this Agreement.
- (b) To ensure that the other Partner Organisations are not in breach as a result of their actions or omissions.
- (c) To use the personal information required for the completion of obligations in relation to service users only for the purpose of fulfilling those obligations in an appropriate manner.
- (d) To ensure the confidential destruction of these personal data once the information is no longer required to provide the Services.
- (e) To ensure that all appropriate technical and operational measures are taken to guard against unauthorised or accidental loss or damage to any personal information and comply with other obligations set down in the seventh principle Data Protection Act 1998 in respect of processing done on behalf of this Agreement.
- (f) To not transfer the personal information outside of the European Economic Area without the consent of the individual data subject and to only transfer it to the extent to which that individual has agreed.
- (g) To allow the other partners access to the information they hold as reasonably required to monitor each other's performance of obligations under the Data Protection Act 1998.
- (h) The Partner Organisations are bound by the same obligations owed to the Agreement whether they are acting as Data Controller or Data Processor on behalf of the Agreement.
- (i) The Partner Organisations agree that, in cases where the personal information is given to a third party for the provision of appropriate services, then that third party is to be bound by the same obligations as the Partner Organisations in relation to the data and that this obligation will be passed on via the related contract or agreement.
- (j) The Partner Organisations agree to provide each other with all of the information reasonably required for each to:
 - a. Account for the funds which they have contributed to the Pooled Budget.
 - b. Report on its statutory obligations.
 - c. Plan overall strategies.
- (k) The Partner Organisations agree that data relating to the social care needs of an individual is owned by the relevant Partner Council or the Lead Council and that data relating to the health care needs of any individual is owned by the relevant PCTs.

13 Freedom of Information Act

- 13.2 The Partner Organisations agree to comply with the obligations under the Freedom of Information Act 2000, any amending enactments and any amending regulations.

- 13.3 The Partner Organisations will
- (a) Support each others current and future Freedom of Information Act 2000 obligations and any codes of practice, government guidance and any appropriate enforcement agencies.
 - (b) Comply with the Freedom of Information Act 2000 insofar as it places obligations upon that partner in the performance of its obligations under this Agreement.
 - (c) Assist each other where possible to ensure compliance with the obligation under these provisions and to comply with any reasonable requests for that purpose.
 - (d) Acknowledge that, if a request for information is received by the other partner (“the Receiving Body”), the Receiving Body will be entitled to disclose information help by it relating to this Agreement or which otherwise relates to the other partner.
 - (e) Agree to take reasonable steps to notify the other partner of any request under the Freedom of Information Act which relates to this Agreement or the other partner, within 10 (ten) days of notification.
 - (f) Agree to give consideration to any comments made by the other partner where those comments are made within 5 (five) days of notification.
 - (g) Acknowledge that if the other partner does not make comments to the Receiving Body within the set period, or if the other partners comments do not alter the view of the Receiving Body that the information should be disclosed, the Receiving Body is entitled to disclose such information.
 - (h) Agree to co-operate with the Receiving Body in connection with any request received by the other partner under the Freedom of Information Act 2000 and such co-operation shall be at no cost to the Receiving Body.
- 13.4 In relation to requests of information, the Receiving Body is only required to provide such information as is held by the Receiving Body at the time of request. They are not obliged to see further information in compliance with that request.
- 13.5 The Partner Organisations shall provide each other with such information as each partner may reasonably request to satisfy themselves that the other partner is complying with their obligations under this Agreement.

15. Transparency

- 15.1 The Partner Organisations acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the text of the related contract between the Lead Council, and any schedules to that agreement, are not Confidential Information. The Lead Council shall ensure that it obtains the provider’s consent for the Partner Organisations to publish the related contract and its schedules in its entirety, including from time to time agreed changes to the contract, to the general public in whatever form the Partner Organisations decide. The Lead Council shall be responsible for determining any redactions to the related contract as are necessary.

16. Accountability

- 16.1 The elected Members of the Council must be kept informed about matters on which they may be required to make decisions or which affect their electoral division.
- 16.2 In the event of an enquiry from a Member of the Council about the circumstances of an individual service user the partner receiving the complaint shall consult with the other

Partner Organisations immediately and agree a joint strategy for the release or handing of the issue.

- 16.3 In the event of an enquiry from a Member of the Council about policy the appropriate Partner Council shall respond in accordance with this agreement and inform the other Partner Organisations on request.

17. Variation

- 17.1 The variation/change control provisions in this clause shall apply as a means of developing and refining of the Partner Organisations' functions and fulfilling the objectives of this Agreement.
- 17.2 If at any time during the term of this Agreement a partner gives notice to vary this Agreement, it shall be considered first by the Partnership Commissioning Group prior to making recommendations to the Partner Organisations for consideration and implementation if approved by the relevant Partner Organisations.
- 17.3 If any requested variation/ change cannot be agreed or the terms of its implementation cannot be unanimously agreed by the Partners, the variation/change cannot take place.
- 17.4 Any variations agreed by the Partner Organisations shall only be effective if they are signed by authorised officers from each of the Partner Organisations.

18. Force Majeure

- 18.1 Partner Organisations shall not be liable to each other for any delay in or failure to perform in part or in whole their respective functions under this Agreement as a result of any cause beyond their reasonable control, including but not limited to fire, natural disaster, flood, shortage or delay of power, fuel or transport, irresistible force or compulsion or any overwhelming power, any national emergency, civil commotion, explosion, war, prohibitive act of Parliament, prohibitive governmental regulations or any other contingency (except strike action) beyond the reasonable control of the Partner Organisations.

19. Disputes

- 19.1 If any party considers that one of the parties has failed to comply with the terms of this Agreement, then the following course of action is required:
- Each of the Partner Organisations shall use their best endeavours to resolve by agreement any dispute between them in connection with this agreement. If this fails to resolve the matter it shall be referred to the Chief Executives of the relevant Partner Organisations who shall within 10 days of a written notice from either party to the other meet in good faith in an effort to resolve the dispute without the recourse of proceedings.
 - If the dispute is still unresolved following such a meeting, then provided the value of the dispute shall be in excess of £10,000 the partners may agree to refer the matter to an individual, agreeable to all parties' for mediation.
 - If the dispute cannot be resolved following mediation, the matter shall be referred for independent arbitration to the Institute of Arbitrators.

19.2 The full costs for any mediation and/or arbitration process shall be shared equally by all parties to the dispute.

20. Termination of Agreement

20.1 In the event of any of the Partner Organisations wishing to terminate this Agreement, the principal consideration will be maintaining continuity of service for users. Therefore a minimum of twelve months notice is required for this Agreement to be terminated or for one of the partners to withdraw, except in exceptional circumstances outlined in Clause 9.2. A Partner Organisation exercising the right of termination under this Clause 20.1 shall indemnify the other Parties for all costs arising as a result of such termination.

20.2 Either party may at anytime, by prior notice in writing to the other party, terminate this agreement in the event of the following:-

- There is a fundamental breach by the other party of any provision hereof; or
- A party commits a material breach of any of its obligations hereunder which is not capable of remedy, or if capable of remedy has not been remedied within 14 days after written notice requiring it to remedy the breach ; or
- A party is unable to fulfil its obligations hereunder, as a result of any change in law or legislation; or
- A party, in fulfilling its obligations hereunder, would be in contravention of any guidance from any Secretary of State.

20.3 In the event that this Agreement is terminated (whether by effluxion of time or by notice of termination), the parties agree to co-operate to ensure the orderly wind down of their joint activities set out in this Agreement. The remaining partners may elect to continue operating a Pooled Budget if it is believed to be financially viable.

20.4 Upon termination of any Partner Organisation's interest under this Agreement for any reason whatsoever the following will apply:

20.5 Termination of this Agreement shall have no effect on the liability of any partner for the payment of any sums arising under this Agreement or any rights or remedies of any partner already accrued, prior to the date upon which termination takes effect.

20.6 If a Partner Organisation withdraws from this Agreement during the duration of the Agreement, the relation between the remaining partners shall not be affected and the Agreement shall continue in force unless terminated by all partners.

20.7 If there are any assets upon termination lead commissioners and finances leads will meet and agree sharing of such assets.

21. Changes to Management Agreements

21.1 All changes to this Agreement must be agreed in writing between the Partner Organisations.

22. Authority

- 22.1 Apart from the Lead Council entering into any arrangement to procure the Services, none of the Partner Organisations shall make any representation or give any warranties on behalf of the other parties nor bind or hold itself out as having authority to bind the other parties.
- 22.2 Nothing in this Agreement shall be taken to create a legal partnership between the parties.

23. Notices

- 23.1 Any notice or other document to be served on any Parties under the provisions of or in conjunction with this Agreement shall be sufficiently served if left or delivered at, or sent by first class or registered post or through the recorded delivery system addressed:

in the case of the Lead Council to:

Slough Borough Council
St Martins Place
51 Bath Road
Slough
SL1 3UF

in the case of ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD to:

Town Hall
St Ives Road
Maidenhead
SL6 1RF

in the case of the BRACKNELL FOREST BOROUGH COUNCIL to:

Time Square
Market Street
Bracknell
RG12 1JD

in the case of the READING BOROUGH COUNCIL to:

Civic Centre
Reading
RG1 7AE

in the case of the WEST BERKSHIRE DISTRICT COUNCIL to:

Council Offices,
Market Street
Newbury
RG14 5LD

in the case of the WOKINGHAM DISTRICT COUNCIL to:

Shute End
Wokingham
RG40 1WN

In the case of BERKSHIRE EAST PRIMARY CARE TRUST to:

King Edward VII Hospital
Windsor
Berkshire
SL4 3DP

In the case of BERKSHIRE WEST PRIMARY CARE TRUST to:

57-59 Bath Road
Reading
Berkshire
RG30 2BA

or to such other address as the relevant party shall notify to the other in writing from time to time.

- 23.2 Any notice or document of the kind referred to in Clause 23.1, if sent by registered post or through the recorded delivery system addresses in accordance with Clause 23.1 shall be deemed to have been sufficiently served 48 hours after the time of posting (unless returned by the Post Office undelivered).

25. Contracts (Rights of Third Parties) Act 1999

- 25.1 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person who is not a party to this Agreement may enforce any terms of it unless the Agreement expressly provides that he may do so.

26. Severance

- 26.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in force and full effect.

27. Equal Opportunities

- 27.1 All parties shall operate an equal opportunities policy which shall comply in all respects with the statutory obligations set down in the Equality Act 2010 and they shall not treat one group of people less favourably than others because of their race, nationality, ethnic origin, gender, sexual orientation or disability.

28. Governing Law and Jurisdiction

- 28.1 This Agreement shall be governed and construed in accordance with English Law.

AS WITNESS the hands of the parties the day and year first before written, the parties hereby enter into this Agreement as a Deed

The Common Seal of **SLOUGH BOROUGH
COUNCIL** was hereunto
Affixed in the presence of:

The Common Seal of the **ROYAL BOROUGH
OF WINDSOR AND MAIDENHEAD** was hereunto
Affixed in the presence of:

The Common Seal of The **BRACKNELL
FOREST BOROUGH COUNCIL** was hereunto
Affixed in the presence of:

The Common Seal of The **MAYOR AND
BURGESS OF READING BOROUGH
COUNCIL** was hereunto
Affixed in the presence of:

The Common Seal of The **WEST BERKSHIRE
DISTRICT COUNCIL** was hereunto

Affixed in the presence of:

The Common Seal of The **MAYOR AND BURGESS OF WOKINGHAM BOROUGH COUNCIL** was hereunto
Affixed in the presence of:

EXECUTED as a **DEED** by **NHS BERKSHIRE EAST**
whose Corporate Common Seal was hereunto
Affixed in the presence of:

EXECUTED as a **DEED** by **NHS BERKSHIRE WEST**
whose Corporate Common Seal was hereunto
Affixes in the presence of: