

DATED \_\_\_\_\_ 2018

**(1) EAST SUSSEX COUNTY COUNCIL**

**and**

**(2) THE SUSSEX PARTNERSHIP NHS FOUNDATION TRUST**

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**PARTNERSHIP AGREEMENT**  
**under Section 75 National Health Service Act 2006**  
**relating to**  
**delivery of the Local Authority statutory social care**  
**(Care Act, Mental Health Act, Mental Capacity Act and other relevant legislation)**  
**functions within the Forensic Healthcare Service**

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**East Sussex County Council**  
**County Hall**  
**St. Anne's Crescent**  
**Lewes**  
**East Sussex BN7 1UE**  
**ref. AS505.209/BF**



- (e) The Partnership Arrangement has been agreed pursuant to Section 75 of the Act and the Regulations and the Parties seek to deliver the aims and expectations of the Local Authority social work service within the Forensic Healthcare Service led by the needs of people Ordinarily Resident within East Sussex who may require the service.
- (f) Approval for the Partnership Arrangements were previously agreed on behalf of the County Council at a meeting of the Lead Member for Adult Social Care on 20 December 2010 and the Mental Health Trust at a meeting of the Executive Management Board. The Parties have each obtained approval to enter into this Agreement in accordance with their respective governance processes.
- (g) Consultation on the proposals for the Partnership Arrangement has been carried out with interested parties in compliance with the Regulations.
- (h) The Parties will facilitate or secure the accession to this Agreement of any successor to their Functions and thereby to the responsibilities and commitments which may pass from them in respect of commissioning and providing the Services. This will occur by agreement of the successors insofar as it does not happen by operation of law.

**IT IS HEREBY AGREED AS FOLLOWS:**

**DEFINITIONS OF TERMS USED IN THIS AGREEMENT**

For the purpose only of understanding the content of this Agreement (including the recitals) the following terms will have the following meanings.

<b>The Act</b>	The NHS Act 2006.
<b>After Care</b>	as defined in section 117 of the Mental Health Act.
<b>Agreement</b>	This Agreement between the Mental Health Trust and the Local Authority comprising these terms and conditions together with all Appendices attached to it.
<b>AHMP Function</b>	Adult Mental Health Professional as defined in the Mental Health Act.
<b>Best Value</b>	As defined in section 3 of the local government act 1999 and as referred to in the Care and support statutory guidance issued by the Department for Health and Social Care.
<b>Care Act</b>	The Care Act 2014.
<b>The Commencement Date</b>	1 <sup>st</sup> April 2018.
<b>The Client Group</b>	The collection of Service Users either receiving or eligible to receive the service.

<b>The County Council</b>	East Sussex County Council and its statutory successors.
<b>County Council Functions</b>	means: <ul style="list-style-type: none"><li>- the Local Authority's statutory functions under the Care Act, and</li><li>- the role of the Local Authority under the Mental Health Act and the Mental Capacity Act.</li></ul>
<b>Data Protection Legislation</b>	as defined in clause 40.
<b>The Financial Year</b>	12 months commencing on 1st April of each year.
<b>The Functions</b>	The County Council's Functions and the Mental Health Trust's Functions under the Care Act, Mental Health Act and Mental Capacity Act and other relevant legislation in relation to the provision of the service to meet the needs of the eligible Service Users.
<b>Local Authority</b>	means East Sussex County Council.
<b>Mental Capacity Act</b>	The Mental Capacity Act 2005
<b>Mental Health Act</b>	The Mental Health Act 1983 (as amended - 2007);
<b>Non-Pooled Fund</b>	means a non-pooled fund comprising the County Council's financial contribution.
<b>Nominated Officers</b>	As defined in Recital B.
<b>The Mental Health Trust</b>	The Sussex Partnership Foundation NHS Trust, and its statutory successors.
<b>The Nominated Officers</b>	The group of officers appointed by the Parties which will act jointly to oversee the Partnership Arrangement with powers being delegated by the Parties to whom the Officers will be accountable.
<b>Ordinarily Resident</b>	means 'ordinarily resident' for the purposes of the Care Act.
<b>The Parties</b>	The County Council, and the Mental Health Trust and any statutory or legal successor to their respective functions.
<b>The Partnership Arrangements</b>	The arrangements provided for in this Agreement for the management and provision of the Service by the Parties.
<b>The Regulations</b>	The NHS Bodies and Local Authorities Partnership Arrangements Regulations S.I.2000 (617).
<b>The Service</b>	Provision of the County Council Functions including the provision of supervision for the purposes of After Care and delivery of the AMHP Function;
<b>The Service Managers</b>	The managers employed by the Mental Health Trust responsible for managing the Community Forensic Service and Care Act, Mental Health Act and Mental Capacity Act Service.

<b>The Services Team</b>	The staff employed by the Parties to provide the Service.
<b>Standards</b>	means the County Council's standards of service as set out in Appendix 4.
<b>The Steering Group</b>	The board that has responsibility for oversight of joint working arrangements between the Mental Health Trust and County Council with particular reference to this Agreement.
<b>Service User</b>	Means a person to whom the Council has a statutory duty to provide social care services.

## **ARRANGEMENTS FOR DELIVERING THE SERVICES**

1. With effect from the Commencement Date the Mental Health Trust shall be responsible for the delivery of the Local Authority's statutory duties in respect of the Care Act, Mental Health Act and Mental Capacity Act and other relevant legislation within the Forensic Healthcare Service ("County Council Functions").
2. The County Council shall delegate the County Council Functions in respect of the Service to the Mental Health Trust and shall, for the duration of this Agreement, second to the Mental Health Trust those staff in the Services Team employed by the County Council at the Commencement Date to provide the Service.
3. The Service will be configured so that any care or services which are the primary responsibility of the National Health Service shall be provided without charge to the Service User, but that charges may apply where appropriate to the Service User, at the point such a service becomes the responsibility of the County Council, such configuration being more fully defined in Appendix 1.
4. All services to meet Health and Social Care needs will have the Core Values of the Care Act, Mental Health Act and Mental Capacity Act as their guiding principles: Least Restrictive Intervention, Prevention, Maximising Independence, Personalisation, Choice and Control.
5. The Mental Health Trust shall comply with the Standards in the provision of the Services pursuant to this Agreement.

## **FUNDING AND FINANCIAL ARRANGEMENTS**

### **Funding the Partnership Arrangements**

6. The Parties agree that the funding required for the delivery of the Services shall be met through a Non-Pooled Fund. The Parties have agreed their financial contributions

required for delivering the Service for the Financial Year commencing on the 1st April 2018 as set out in Appendix 3, and shall determine their respective financial contributions for future Financial Years no later than 30 calendar days prior to the 1st April of each year of the operation of the Partnership Arrangements.

7. For 2018/19 all funding decisions must be agreed by the County Council's Care Act Assurance meeting, and for s.117 decisions through the s.117 meeting. For future Financial Years, such decisions shall be made in accordance with the County Council's scheme of delegations as in force at the time of such decisions.

### **Contributions to meet the costs of the Service**

8. The Mental Health Trust will provide or make available any central support services required to facilitate the Partnership Arrangements.
9. The County Council and the Mental Health Trust will make available to the Partnership Arrangements, so as to establish the Services Team, the posts referred to in Appendix 3.
10. The Parties respective financial contributions to the Partnership Arrangements are as set out in Appendix 3.

### **Responsibility for spending over or under budget**

11. Each Party shall be responsible for any over spending in relation to their agreed financial contributions.
12. Each Party shall be responsible for any such spend by or on behalf of that Party which is attributable to:
  - a. Maladministration or any commissioning or services practice which is contrary to that agreed between the Parties.
  - b. Negligence in the management or monitoring of agreed procedures.

### **The Exercise of Functions and Quality Assurance**

13. The Mental Health Trust will make arrangements for the Functions to be carried out through the Services Team but nothing in this Agreement will entitle the Services Team to make commitments or take decisions about any services or functions which are specifically excluded by the Regulations.

14. The Services Manager shall report to the Nominated Officers quarterly and annually as required by paragraph 7(4) of the Regulations in relation to the management of effective quality in the Service, in line with such performance management framework and by reference to such criteria for clinical governance as the Nominated Officers require.
15. The Parties will ensure that they each have in place appropriate procedures and protocols to ensure that the Service Managers are enabled to comply with the requirements of any regulations, standards of care and other obligations from time to time in force covering risk assessments, incident investigations and complaints and any regulations or guidance which must be complied with for the purpose of any statutory regulation of the Service.
16. The Mental Health Trust will provide such reports and information as are deemed necessary by the Steering Board to enable effective performance management of the Service.
17. The Mental Health Trust shall be entitled to enter into agreements and contracts necessary for the delivery of the Service in accordance with the scheme of delegation, standing orders and standing orders on contracts of the Mental Health Trust as may be in force at the relevant time PROVIDED THAT such agreement or contract has been approved by the County Council in accordance with its Constitution.

### **Outstanding Commitments**

18. In relation to those commitments, contracts or agreements in place at the Commencement Date and binding upon any of the Parties in respect of the Service all such commitments and agreements shall continue in place in accordance with their respective provisions, and the Parties will ensure that their respective obligations are met in the interests of securing the objectives of the Partnership Arrangements.

### **Employment of Staff**

19. On and from the Commencement Date, all members of the Services Team shall continue to be employed by the Party that employed them immediately prior to the Commencement Date. Any staff employed by the Council in connection with the Services shall, with effect from the Commencement Date, be seconded to the Mental Health Trust for the duration of the Partnership Arrangements.

20. In the event that any of the posts listed in Part B of Appendix 3 become vacant, the successors to any such posts shall be employed by the Mental Health Trust.
21. The human resources procedures applicable to the Services Team shall be those of their respective employer.
22. Where a member of the Services Team employed by one Party (the "**Manager**") is the manager of a member of staff employed by the other Party (the "**Managed Person**"), the Manager is authorised by virtue of the Partnership Arrangements to give instructions to the Managed Person and all appropriate management action in respect of the Managed Person subject to the terms of the relevant personnel procedure and the agreed joint HR protocol for the management of staff set out in Appendix 2 of this Agreement.

### **Complaints**

23. Any complaint relating to the Functions or the delivery of the Service shall be dealt with in accordance with one of the complaints procedures adopted by the Parties. The preferred procedure shall be that used by the Party identified as the subject of the complaint or whose staff, policies, action or decision are the subject of the complaint. The person with responsibility for handling the complaint and reporting to the Service Managers shall be identified in accordance with the relevant procedure. In the case of any doubt or where more than one Party is the subject of a complaint, the Service Managers and the County Council shall agree which procedure to use to process the complaint. If agreement cannot be reached, this will be referred to the Nominated Officers for resolution.

### **Term, Termination and Dispute Resolution**

24. This Agreement commences on the Commencement Date and, subject to earlier termination in accordance with the terms of this Agreement, shall continue for a period of three (3) years ("**Initial Period**"). The Parties shall meet not later than three (3) months prior to expiry of the Initial Period to review the working of this Agreement.
25. The Parties may, by written agreement following the review process set out in clause 24, extend this Agreement beyond the Initial Period, provided that each such extension shall be for a maximum of three (3) years ("**Extension**"). Save where expressly agreed otherwise by the Parties, any Extension shall be on the terms set out in this Agreement. If the Parties do not agree an Extension pursuant to this clause 25, this Agreement shall automatically expire at the end of the Initial Period.

26. Any of the Parties may at any time terminate this Agreement with less than 12 months' notice but in no case less than six months by giving written notice if any other Party:
- 26.1 does not comply with one or more of its obligations under this Agreement and continues not to comply after receiving written notice from the other Party giving details and an opportunity for the Party receiving the Notice to explain their actions and to invoke the procedure set out in clause 22; or
  - 26.2 cannot fulfil its obligations under this Agreement without acting ultra vires or being in contravention of any law or any guidance from any Secretary of State and where the parties are unable to agree a modification or variation to this Agreement which would enable the Party to comply with its obligations in accordance with law and guidance; and
  - 26.3 in either case the Parties shall agree the shares of financial responsibility for any commitments relating to the Service, such agreement being concluded and put into effect before the termination shall be allowed to take effect.
27. In the event that this Agreement is to terminated in accordance with clause 26, the Parties agree to co-operate to ensure an orderly wind down of their joint activities. Both Parties shall be responsible after termination for winding-up outstanding affairs relating to the Partnership Arrangements.
28. In the event of any dispute between the Parties arising out of the construction of this Agreement or any of its provisions such dispute shall be referred in the first instance to the Director of Forensic Services for the Mental Health Trust and the Head of Service for the County Council. If not resolved, such dispute shall be referred to the Director of Adult Social Care and Health of the County Council and to the Chief Executive of the Mental Health Trust.
29. Failing resolution using the procedures under clause 28, the matter may be referred at the option of either of the parties to mediation in accordance with the model mediation procedure for the time being of the Centre for Effective Dispute resolution.

### **Management of this Agreement**

30. The Parties agree that responsibility for managing, planning and monitoring the Partnership Arrangements, the performance of the Service and for overseeing the implementation of this Agreement shall be discharged by Nominated Officers of the County Council and of the Mental Health Trust.

31. The Nominated Officers will agree their own arrangements for meetings and decisions and shall apply the complaints procedures as referred to in clause 23, and receive or deliver reports as provided for in this Agreement. It shall otherwise be accountable to the Parties through the Steering Group for the aims and objectives of the Partnership Arrangements.
32. The Steering Group, under the administration of the County Council, will meet in March each year for the duration of this Agreement.
33. The Nominated Officers comprise:
  - The County Council: Operations Manager – Mental Health
  - The Mental Health Trust: Professional Lead for Forensic Social Work
34. The Steering Group comprises:
  - The County Council:  
Assistant Director, Adult Social Care, Operations  
Head of Service – Mental Health  
Supported by a finance officer and a performance officer
  - The Mental Health Trust:  
Chief Operating Officer  
Deputy Chief Operating Officer  
Supported by a finance officer and a performance officer

## **Review**

35. This Agreement shall be reviewed by the Parties in a form and by such representatives as may be agreed, initially one year after the Commencement Date and then annually until the termination of this Agreement in accordance with its provisions. All reviews shall be held within twelve (12) months of each other.
36. The terms and conditions of this Agreement may only be varied by the written agreement of the Parties.

## **Notices**

37. Any notice to be served by any Party in accordance with the terms of this Agreement shall be served by pre-paid recorded delivery post addressed to the address of the Party shown at the head of this Agreement (or such business address as shall be notified by such Party after the commencement of this Agreement) or by electronic mail and shall be deemed to have been received by the addressee after forty-eight

hours of such posting or twenty-four hours of electronic mail transmission. Notices to the County Council should be marked for the attention of the Director of Adult Social Care and Health. Notices to the Mental Health Trust should be marked for the attention of the Chief Executive.

### **Assignment or Transfer**

38. This Agreement and any rights and conditions contained in it may not be assigned or transferred by either Party without the prior written consent of the other Party except to any statutory successor to the relevant Functions.

### **Law and Data Policy and costs of Agreement**

39. This Agreement shall be governed by the law of England.
40. The Parties agree to provide or make available to each other sufficient information concerning their own operations and actions and concerning client, patient and Service User information (including material affected by the Data Protection Act 1998 and / or the General Data Protection Regulation or such other legislation as relates to the protection of personal data in force at the relevant time ("**Data Protection Legislation**")) as to enable the efficient operation of the Services and actions covered by the Partnership Arrangements. The Parties shall use best endeavours to enter into a formal data sharing agreement in respect of any personal data to be shared pursuant to this Agreement and shall thereafter comply with the terms of such data sharing agreement.
41. Each Party shall have in place a policy and procedure for compliance with the provisions of the Data Protection Legislation and the Freedom of Information Act 2000 and shall co-operate with the other Party and respond in a timely way to any request received from any other Party so as to enable them to comply with their obligations under those Acts.
42. Each Party shall pay its own costs and expenses incurred in connection with the implementation of this Agreement.

### **No Partnership (Save to the Extent of this Agreement)**

43. No Party to this Agreement shall act as agent of or have the power or authority to make any commitment on behalf of any other Party or compromise the credit of the other Party in any way nor shall this Agreement constitute a legal partnership between the Parties save to the extent that is necessary to give effect to the

arrangements for delegation of respective Functions and each Party shall be responsible for its own commitments under this Agreement.

### **Confidentiality**

44. Except as required by law, each Party agrees to keep confidential at all times during the continuance of this Agreement and after its termination all documents, data or papers which it receives or otherwise acquires in connection with the Service and or this Agreement and which are marked "Commercial – in confidence" or such other similar words signifying that they should not be disclosed, save in so far as such designation of any data cannot lawfully be maintained in compliance with any obligation referred to in Clause 41.
45. Prior to the issue of any press release about matters relating to these Partnership Arrangements or making any contact with the press on any issue attracting media attention the Chief Executive of the Mental Health Trust and the Director of Adult Social Care and Health of the County Council (or such persons as they shall each designate) will consult with each other to agree a joint strategy for the release or handling of the issue. The provisions of this clause are subject to any alternative arrangements that the Parties may agree for press relations in particular situations.

### **The Contracts (Rights of Third Parties) Act 1999**

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

### **Entire Agreement**

47. This Agreement, the Appendices and the documents otherwise referred to in it contain the whole agreement between the Parties relating to the Partnership Arrangements and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter including the predecessor to this Agreement dated 1 April 2010.

**EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL OF  
EAST SUSSEX COUNTY COUNCIL  
IN THE PRESENCE OF:**

.....

**Authorised Signatory**

.....

**EXECUTED AS A DEED BY  
AFFIXING THE COMMON SEAL OF  
THE SUSSEX PARTNERSHIP  
NHS FOUNDATION TRUST  
IN THE PRESENCE OF:**

.....

**Authorised Signatory**

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.....

**Authorised Signatory**

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## **Appendix 1            Statutory Social Care Responsibilities**

- Assessments, re-assessments and eligibility as required by Section 9 of the Care Act 2014
- Regular reviews of Care and Support Plans as per Section 27 of the Care Act 2014.
- Assessments of Carer's Needs for Support as per Section 10 of the Care Act 2014.
- Act as an AMHP to help meet the Local Authority's duty to provide AMHP function.
- Section 117 of the Mental Health Act Discharge Planning.
- Act as a BIA (Best Interest Assessor) under the Mental Capacity Act 2005.
- Social Supervision under Part 3 Mental Health Act 1983 and provide Social Supervision Reports to Ministry of Justice.
- Mental Health Tribunal / Facilities Reports.
- Undertake Safeguarding enquiries under section 42 of The Care Act.
- Address Child Protection in partnership with the County Council's Children's Services Department.
- Work in accordance with the Mental Health Act Code of Practice (2015) and the Health and Care Professional Council (or any successor body) Code of Conduct (2012) and successor regulatory frameworks for social work in all settings.

**Appendix 2**

**Secondment Protocol**

**Appendix 3**

**Financial Protocol**

## **Appendix 4                      Standards**

### Section 75 Productivity Calculator

Currently have 105 East Sussex Clients under the Forensic Umbrella; this includes inpatients in Sussex Partnership Beds, Inpatients in Out of Area Beds and Community Clients. This can obviously fluctuate.

1. MHA Assessments:  $18 \times 8 = 144$  hours a month (1728hrs a year)
2. BIA Work:  $3 \times \text{BIA's in team} = 12$  weeks a year (444hrs a year)
3. Safeguarding Activity = 10 hours per Section 42 enquiry, 4 hours for non Section 42 enquiries . Number to be determined
4. Placement Reviews = 36 reviews a year (on average) 8 hours a review = 288 hours a year
5. Care Act/117 Assessments = 77 patients  $\times$  1-2 times a year 8 hours a review = up to 1232 hours a year
6. Social Supervision = 112 reports a year = 37 reports per Social Worker = I think we said 1344 a year including visits, report writing, any extra correspondence with MOJ
7. MHRT = Social Circumstances Report/Facilities Reports = average 62 reports a year  $\times$  10 hours to complete a report = 496 hours
8. Attendance at MHRT's = 62 a year  $\times$  4 hours = 248 hours a year
9. Training/Supervision – monthly supervision  $\times$  1 hour  $\times$  3 social workers = 36 hours a year; training 18 days a year  $\times$  7.5  $\times$  3 social workers = 405 hours a year