

## Appendix 2: JAD Section 75 Agreement

- (1) The Mayor and Burgesses of the London Borough of Barking and Dagenham
- (2) The Mayor and Burgesses of the London Borough of Havering
- (3) The North East London NHS Foundation Trust
- (4) Barking, Havering and Redbridge University Hospitals Trust
- (5) Barking and Dagenham NHS Clinical Commissioning Group
- (6) Havering NHS Clinical Commissioning Group
- (7) Redbridge NHS Clinical Commissioning Group

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### DEED TO ESTABLISH A PARTNERING AGREEMENT PURSUANT TO SECTION 75 OF THE NATIONAL HEALTH SERVICE ACT 2006 TO DELIVER A JOINT ASSESSMENT AND DISCHARGE INTEGRATED SERVICE

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This Agreement is made by **DEED** this

day of

2015

## Appendix 2: JAD Section 75 Agreement

### BETWEEN

- (1) **The Mayor and Burgesses of the London Borough of Barking and Dagenham** of the Civic Centre, Dagenham, RM10 7BN (LBBD & the Host Borough)
- (2) **The Mayor and Burgesses of the London Borough of Havering** of Town Hall, Main Road, Romford, Essex, RM1 3BD (LBH & a Partner Organisation)
- (3) **The North East London NHS Foundation Trust** of Trust Head Office, Goodmayes Hospital, Barley Lane, Ilford, Essex. IG3 8XT
- (4) **Barking, Havering and Redbridge University Hospitals Trust** of Queens Hospital, Rom Valley Way, Romford. Essex. RM7 0AG
- (5) **Barking and Dagenham NHS Clinical Commissioning Group** of Barking Community Hospital, Upney Lane, Barking, Essex. IG11 9LX
- (6) **Havering NHS Clinical Commissioning Group** of 3<sup>rd</sup> Floor, Imperial Offices, 2-4 Eastern Road, Romford, Essex. RM1 3PJ
- (7) **Redbridge NHS Clinical Commissioning Group** of 5<sup>th</sup> Floor, Becketts House, 2-14 Ilford Hill, Ilford Essex. IG1 2QX

Each a Party and together the Parties

### WHEREAS

- A.** By Section 75 of the National Health Service Act 2006 and the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 617) (as amended) certain Local Authorities and NHS Bodies are able to enter into partnering arrangements offering combined NHS and Local Authority community, social, and health related services.
- B.** Having consulted with all persons who would appear to be affected, the Parties have agreed, pursuant to the legislation detailed above to establish and deliver a Joint Assessment and Discharge Service (JAD) for the benefit of all eligible residents within their area.
- C.** The Parties consider that such a partnership will improve and enhance the way such services are delivered.
- D.** The purpose of establishing this section 75 Agreement is to allow all of the Parties to work collaboratively in delivering the JAD Service as envisaged by the relevant legislation and in accordance with their respective constitutions and at all times subject to relevant legislative and constitutional governance provisions.

### IT IS NOW AGREED

#### 1. Definitions and Interpretations

1.1 Where the context so permits, the following words and expressions, where used, shall have the following meanings throughout this Agreement and any Schedules or Annexure hereto.

**Adult:** a person who has attained the age of 18 years

**Agreement:** this Deed of Agreement comprising these terms and conditions together with any Schedule or Appendices or any other attachment.

**Aligned Budget:** means a Budget which is NOT a Pooled Budget and is comprised of two or more distinct budgets (the budgets of each Partner Organisation) managed and utilised by each Partner in accordance with their own internal budgetary arrangements but for the purposes of the JAD Service as provided for by this Agreement.

**Authorised Officer:** the individual person(s) named by each Party as their nominated contact for the day to day management of this Agreement and the Service(s) to be provided hereunder.

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**Board:** “the Board” as defined in the 2000 Regulations (as amended) means the National Health Service Commissioning Board

**Change in Law:** the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Agreement.

**CCG:** Clinical Commissioning Group as established and defined by the Health and Social Care Act 2012

**CHC:** Continuing Health Care as understood and contained in the National Framework for Continuing Health Care reissued November 2012 available from the Department of Health.

**Commencement Date:** the date from which the provision of the JAD Services commences, specifically 1<sup>st</sup> June 2014

**Commissioning Partner:** any of the three Clinical Commissioning Groups named herein responsible for commissioning the JAD or any part thereof on behalf of Service Users within their respective areas.

**Confidential Information:** means any information which has been designated as confidential by any Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of any Party, all personal data and sensitive personal data (within the meaning of the DPA)

**Data:** is a generic term to include all information and data of any description and howsoever held, recorded, or stored and where used throughout this Agreement the expressions Data and Information are synonymous.

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

**DTOC:** Delayed Transfer of Care

**Eligibility Criteria:** the criteria used to establish the eligibility of persons who will benefit from the provision of the JAD as set out in Schedule 8.

**EIR:** the Environmental Information Regulations 2004 together with any amending regulations

**ESG:** the Executive Steering group; a body comprising representative members from each Party to oversee the implementation and operation of the JAD and the Services

**Force Majeure:** any cause materially affecting the performance by any Party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting any or all other Parties, including without limitation: acts of God, war, industrial action not related to Partners, protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.

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**FOIA:** the Freedom of Information Act 2000 together with any amending legislation and related regulations

**HWB:** Health and Well Being Board as established and defined by The Health and Social Care Act 2012

**Host Borough:** the Host Borough will be responsible for the management and monitoring of the delivery of the JAD service including the accounting and audit arrangements of the Aligned Budget, HR arrangements, disputes, and performance. As at the Commencement Date the Host Borough shall be the London Borough of Barking and Dagenham subject to review as set out herein.

**Information Sharing Protocol:** the agreed system and method for sharing information that is of common interest and necessary for the continued operation of the JAD and incorporates the North East London Sharing Protocol as defined elsewhere.

**IPR:** Means all intellectual and industrial property rights in including (but not limited to) patents, know-how, trademarks, registered designs, utility models, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights to prevent passing off for unfair competition, rights in any invention, discovery or process, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country in each case in the United Kingdom and all countries in the world and together with all renewals and extensions.

**ISP:** Information Sharing Protocol as set out in Schedule 2.

**JAD:** the Joint Assessment and Discharge Integrated Service

**Joint Executive Management Committees:** The Joint Executive Management Committees are Committees of the Clinical Commissioning Groups and Local Authorities. They will function as a Joint Committee of both legal entities. The Joint Committee will report directly to the CCG Governing Body and the Health and Wellbeing Board and or Cabinet where required of the Local Authorities.

**Legislation:** any Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, instruments, rules, orders, regulations, notices, bye-law, regulatory policy, permissions and plans for the time being deriving validity from them, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body, or any European Directives and Regulations enforceable in England and Wales. Specifically;

1970 Act:	The Local Authorities Social Services Act 1970.
1985 Act:	Hospital Complaints Procedures Act 1985.
1990 Act:	The National Health Service and Community Care Act 1990
1999 Act:	The Health Act 1999.
1999 Act Circular:	Circular HSC2000/010; LAC (2000) 9 made Pursuant to the 1999 Act.
1999 Act Circular Guidance:	Guidance issued relating to the above Circular.
2000 Regulations:	The NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (S1 2000/617) as amended.

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2003 Act:	The Community Care (Delayed Discharges etc) Act 2003 and associated guidance.
2006 Act:	The National Health Service Act 2006.
2007 Act:	The Local Government and Public Involvement in Health Act 2007.
2009 Regulations:	Social Services and National Health Service Complaints (England) Regulations 2009.
2012 Act:	The Health and Social Care Act 2012.
2012 Regulations:	The NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012

**Minor:** a person yet to attain the age of 18 years

**NE London Information Sharing Protocol:** an over-arching protocol providing a framework Information Sharing Protocol for the secure and confidential sharing of personal information within a consortium of North East London Local Authorities and National Health Service bodies.

**Partner:** Refers to all Partner Organisations including the “Host Borough” who are signatories to this Agreement each of whom is a “Party” and collectively the “Parties” and all such terms are synonymous.

**Performance Metrics:** Indicators used to measure performance of delivery of the Services and as set out in Schedule 10

**Services:** the Services to be delivered pursuant to this Agreement as part of the Joint Assessment and Discharge Integrated Service

**Service Manager:** the person so identified and notified to each Partner as the person responsible for overseeing the day to day operation of the Services

**Service Users:** an individual meeting the relevant Eligibility Criteria who is about to be or recently discharged from hospital where circumstances require the provision of the JAD

**Term:** the duration of this Agreement as set out in clause 3 below.

**Working Day:** It is anticipated that the JAD will be delivered 7 days a week (Monday – Sunday) including bank and public holidays

### 1.2 Interpretations:

1.2.1 All references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any clauses attaching thereto;

1.2.2 References to:-

- masculine include the feminine
- singular include the plural
- persons include companies and corporations and vice versa;

1.2.3 The headings of the Clauses of this Agreement are for reference only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant clauses to which they relate;

1.2.4 References made to clauses sub-clauses schedules and annexes are to clauses sub-clauses schedules and annexes of this Agreement;

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1.2.5 This Agreement is intended to be binding on any successor body to any of the Parties which is created during the Term by or under primary or secondary legislation;

1.2.6 Where reference is made to a body which is abolished by statute it is the intention of the Partners that the Agreement shall be interpreted as if it referred to whichever body takes over the function performed by the body which has been abolished and all references in this Agreement to a body which has been abolished shall be construed as if the reference was to the successor body concerned.

1.2.7 Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.

1.2.8 Where a term of these terms and conditions provides for a list of items following the word "including" "include", "included" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

1.2.9 Subject to the contrary being stated expressly in these terms and conditions, all communication between the Parties shall be in writing.

1.2.10 All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

1.2.11 All Schedules, Appendices, and Annexure are intended and shall be deemed to be read and construed as part of this Agreement and shall be given full force as if they appeared in the main body of this Agreement.

### 2. Purpose, Scope, and Objectives

2.1 This section 75 partnering agreement is established for the purpose of attaining the following objectives;

2.1.1 To facilitate an integrated health and social care support service where required upon discharge from King George Hospital and Queens Hospital for patients with social and/or complex medical needs which may be either short or longer term care;

2.1.2 To identify end of life patients who wish to be looked after at home and ensure that they receive expedited discharge with the right health and social care support

2.1.3 To minimise delays arising from problems with inter-agency liaison;

2.1.4 To focus decision making with the service user at the centre of processes;

2.1.5 To harmonise the assessment and discharge from both hospitals and to improve the quality and efficiency of the service for the relevant Service Users

2.2 This Agreement is a partnering agreement allowing each of the Parties to collectively fulfil their aims and statutory obligations in respect of social, health, and

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community care for the combined area. It does not and is not intended to create a partnership as defined by the Partnership Act 1890 (as amended).

2.3 This Agreement does not affect the liability of any of the Partners for the exercise of their respective statutory functions and all Partners shall continue to be responsible for observing all applicable laws and regulations in the discharge of their statutory functions.

2.4 Whilst this Agreement is made between the signatories appearing herein the Parties acknowledge the requirements of section 82 of the 2006 Act for NHS Bodies and Public Bodies to co-operate with one another to secure and advance the health and welfare of people within their areas and the need for any partnering agreement to be flexible.

2.5 In the circumstances, the Parties acknowledge that the composition of the Partners who are to deliver the JAD, as well as the location for the delivery of the services, and the services themselves may be varied or amended from time to time as recognised by clause 2.4 above and in accordance with the Variation provisions of clause 5 herein.

2.6 Notwithstanding the arrangements set out in this Agreement it is hereby agreed and declared by the Partners that nothing contained or implied in this Agreement shall prejudice or affect the rights powers duties and obligations of any Partner in the exercise of their functions as a local authority and / or an NHS body as the case may be and their rights powers duties and obligations under all public and private statutes, bye-laws and regulations may be as fully and effectually exercised as if they were not Partners to this Agreement.

2.7 Insofar as any legislation deals specifically with hospital discharge procedures and particularly delayed discharges the Parties agree they will be bound by any such legislation and subsequent amendments.

2.8 The Commissioning Partners named herein, having hitherto commissioned assessment and discharge services on behalf of Service Users from NELFT and BHRUT shall henceforth co-operate and work with all Partner Organisations to commission the JAD Services for all eligible Service Users within their respective areas.

### 3. Commencement and Term

3.1 This Agreement shall be effective at the date of signing by all Parties. Provision of the JAD Service commences on the Commencement Date of 1<sup>st</sup> June 2014 and shall continue for an initial period of three (3) years until 31 May 2017 subject to a review by the ESG at 18 months from the Commencement Date.

### 4. Governance

4.1 Each Partner represents and warrants to the other Partners that at the Commencement Date and continuing thereafter it has full and proper power and authority (including all necessary delegated authority in accordance with their respective Schemes of Delegation) to enter into and perform its obligations under this Agreement and that such authority is available for inspection and audit purposes upon reasonable request.

4.2 The Parties have established an Executive Steering Group (ESG) comprising representative members from each Party to this s.75 Agreement as envisaged by regulation 10(2) of the 2000 Regulations.

4.3 The ESG has overall responsibility for the proper functioning of the partnership and delivery of the JAD. The hierarchy / governance of the ESG is set out in Schedule 1 hereto.

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4.4 The ESG authority to take decisions regarding the JAD is derived from the combined delegated authority given by each of the Parties to this s.75 Agreement in accordance with their respective schemes of delegation. For the Clinical Commissioning Groups the ESG will report formally to the Joint Executive Management Committees (Barking and Dagenham (1) and Havering (2)). For the avoidance of doubt the Joint Executive Management Committees are formal committees of the CCG Governing Body.

4.5 The function of "Host" and leadership of the ESG shall be reviewed at eighteen months from the Commencement Date and if necessary, variations may be made to this Agreement.

4.6 For the avoidance of doubt, the reference to proper authority in clause 4.1 above includes obtaining any necessary consents from any relevant Health Authority.

4.7 Without prejudice to any other governance or reporting procedures contained herein the Parties shall report both quarterly and annually on the exercise of any health related functions that form part of this Agreement.

### 5. Variations

5.1 If any Partner proposes a variation to any of the terms of this Agreement that Partner shall initially report its proposal (in writing) to a meeting of the ESG.

5.2 Variations will only be effective if agreed by all Partners through the ESG and if agreed will be evidenced by a document confirming the details of the variation signed on behalf of each Partner by the senior of its representatives on the ESG.

5.3 In the event that a variation is required by virtue of any emergency or unforeseen circumstances such that it is not possible to present a prior written report the ESG shall have the power to make any such variation that might be deemed necessary, provided always that any such variation shall be recorded in writing and notified to all interested parties as soon as practicable thereafter.

### 6. Insurances

6.1 Each Partner shall at the commencement and throughout the term of this Agreement warrant and affirm that they have adequate insurance policies as may be necessary for their participation in the provision of the JAD and shall provide documentary evidence of the same on request by any of the Parties.

6.2 The insurance policies referred to above shall include as a minimum but may not be limited to Employers Liability, Public Liability, Occupiers Liability, and Professional Indemnity cover Each Partner shall further warrant and affirm they have notified their relevant insurance departments about this Partnership arrangement.

6.3 In respect of liabilities arising under any indemnity in this Agreement, the CCG Commissioning Partners shall effect through the National Health Services Litigation Authority, alternative arrangements in respect of NHS schemes, in lieu of commercial insurance, including maintaining membership of the Liabilities to Third Parties Scheme or equivalent, the Clinical Negligence Scheme for Trusts or such other scheme as may be operated from time to time by the National Health Service Litigation Authority.

6.4 Each Partner shall be responsible for insuring the premises and assets it contributes to the Partnership Arrangement.

6.5 Each Partner acknowledges and affirms that all liabilities howsoever arising that predate the commencement date of this Agreement will be managed by the individual Partner(s) as being distinct and separate and of no effect to this Agreement.

### 7. Indemnities

7.1 Each Partner (the indemnifying Partner) shall indemnify and keep indemnified the other Partner(s) (the indemnified Partner(s)) against all claims, costs and



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liabilities arising directly or indirectly from any events, acts or omissions in relation to their respective functions occurring prior to the Commencement Date.

7.2 Each of the Partners confirms that it has informed all other Partners of any material or potential liabilities of which it is aware as at the Commencement Date, arising directly or indirectly from any events, acts or omissions of the indemnifying Partner in relation to those of its respective functions which are relevant to the arrangements set out in this Agreement.

7.3 This Clause 7 shall apply where one of the Partners (“the indemnified Partner”) incurs direct expense or loss, or is subject to claims from third parties as a result of the negligent actions or omissions of one or more of the other Partners or their employees or agents (“the negligent Partner(s)”) and the indemnified Partner reasonably settles any such claim or is found liable at law in respect of such a claim having reasonably opted to defend such a claim

7.4 In the circumstances outlined in Clause 7.3 the negligent Partner(s) shall indemnify the indemnified Partner against any such expenses or claims to the extent which such expenses and claims result directly from the negligence of the negligent Partner(s) with the amount indemnified being apportioned according to each Partner’s share of responsibility where two or more Partners admit or are found to be negligent Partners

7.5 The indemnified Partner shall not be entitled under this Clause 7 to recover from an indemnifying Partner any loss of income or any indirect or consequential loss suffered by the indemnified Partner.

7.6 Each Partner agrees:

7.6.1 to notify all other Partners in a timely manner of the details of any Claim

7.6.2 if it considers that this Clause 7 may apply to any Claim to consult with and have reasonable regard to any views expressed by the indemnifying Partner(s) as to the conduct and handling of that Claim and in particular shall not settle dispose or compromise that Claim without the prior written consent of the indemnifying Partner(s) provided that if such consent is unreasonably withheld or delayed the indemnified Partner(s) may proceed to settle dispose or compromise that Claim if in the reasonable opinion of the indemnified Partner(s) it is necessary to so do.

7.7 Each Partner agrees to co-operate and provide all such advice, assistance and information to the other Partners as may be reasonably required in respect of any claim or the conduct of any such claim in a timely manner.

7.8 Where:

7.8.1 any claim by or against a Partner or

7.8.2 any claim or losses in respect of which a Partner is or it appears may become entitled to indemnification under this Clause 7 relates solely to the exercise of the statutory functions of one Partner, then that Partner shall be entitled at any time to commence or resist the Claim and shall have the conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations and the other Partners will give that Partner all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim (including promptly taking all steps necessary to transfer the conduct of such Claim to that Partner) and that Partner shall consult with and keep the other Partners informed of the progress of the Claim.

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### 8. Dispute Resolution

8.1 Save where any dispute resolution procedure is governed by specific legislation, regulation or guidance, (and, for the avoidance of doubt this includes disputes relating to CHC eligibility decisions which will be resolved in accordance with procedures governed by the CHC National Framework), any other dispute between the Parties relating to this Agreement, shall in the first instance be referred to the Executive Steering Group who shall endeavour to resolve such dispute within 28 days of such notification. If it has not been possible to satisfactorily resolve the dispute within 28 days the dispute shall be referred to the Chief Executives of the Partners affected who shall endeavour to resolve the dispute within a further 14 days.

8.2 In the event that a dispute between two or more Partners (the Disputing Partners) has not been resolved pursuant to Clause 8.1 the Partners agree that without restricting the ability of any Partner to terminate this Agreement in accordance with Clause 9 below, the Disputing Partners may by agreement refer the dispute to mediation, the mediator if not agreed by the Disputing Partners to be appointed by the Chief Executive of NHS England or their replacement as determined by the Department of Health from time to time. The mediation procedure shall be in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure or such other model mediation procedure as the Disputing Partners may agree.

### 9. Termination and Consequences of Termination

9.1 This agreement shall continue for the duration of the initial period and any subsequent extension period as identified in clause 3 above unless terminated early in accordance with these provisions.

9.2 This Agreement shall terminate where:

9.2.1 Any Partner gives at six (6) months written notice to the ESG that they wish to terminate this Agreement for whatever reason, provided that no such notice may be given before 31 March 2015. .

9.2.2 A Partner ceases or threatens to cease to carry on all or any part of its undertakings as constituted at the date of this Agreement where this would in the reasonable opinion of the ESG have a material effect on the ability of the Partners to comply with this Agreement

9.2.3 Any Partner considers that reasonable circumstances at any time arising as a result of new and unforeseen legislation or policy requirements of central Government results in the terms of this Agreement no longer being tenable and gives the other Partners at least six months' written notice

9.2.4 Where there has been service failure as a consequence of which the continuation of the Agreement would be detrimental to client services or a Partner and at least three months' written notice is given

9.2.5 The Partners are unable to agree the resourcing of this Agreement either in respect of financial contributions or the available staff to provide the services or the accommodation services to be made available, with the result that the joint arrangements are no longer functional. Where such a situation arises the Partners will first have fully discussed the implications through the ESG and agreed on a joint exit strategy for the dissolution for the Agreement. Thereafter a minimum of three months written notice will be required to determine the Agreement under this Clause.

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9.3 Where this Agreement is terminated the Partners agree to cooperate fully in ensuring that Partnership is dissolved without harm to clients or Services and there is an orderly transition to the arrangements that are to supersede this Agreement in accordance with the Exit Strategy contained in Schedule 7 herein.

9.4 Any costs resulting from the termination of the Agreement shall be paid for:

9.4.1 Where the termination is a no fault termination and agreed by all of the Partners, on a pro rata (based upon each of the Partners' financial contribution to the JAD) or similar basis to be agreed by the Partners. For the avoidance of doubt this clause 9.4.1 shall not apply to any of the Commissioning Partners.

9.4.2 Where one or more Partners decides, without the agreement of the remaining Partners, to cease providing part or all of the Services, by that Partner or Partners;

9.4.3 Where termination is caused by one or more Partners having acted unreasonably (which in the case of dispute shall be determined by the ESG or following the dispute resolution procedure at clause 8 above) by that Partner or Partners.

9.5 Ongoing costs which arise as a consequence of the termination of the Agreement and its replacement with new arrangements shall be borne separately by the Partners.

### 10. Intellectual Property Rights

10.1 Ownership of all IPR shall remain with the respective owner but each Party hereby grants all other Parties a perpetual, irrevocable, royalty free licence to use such of its IPR as is necessary to enable it to fulfil its functions under this Agreement only.

10.2 Future IPR shall belong absolutely to the Party that creates it from the moment it is created, but that Party hereby grants to all other Parties a perpetual, irrevocable, sub-licensable licence to use the future IPR for the purposes of this Agreement only.

### 11. Force Majeure.

11.1 No Party to this Agreement shall be liable for failure to perform its obligations hereunder if such failure results from Force Majeure.

11.2 If the delivery location for the performance of the Services is affected by circumstance of Force Majeure, the ESG shall meet to consider whether the Service or any part thereof should be totally or partially suspended until the circumstances of the Force Majeure have ceased. In all cases, the decision of the ESG shall be final and in such circumstances no Partner shall have any claim for damages or loss against any other Partner nor be entitled to terminate the Agreement or any part of the Service thereunder except in accordance with this clause 11.

11.3 In circumstances where the event of Force Majeure is ongoing the ESG shall meet as often as they deem necessary and should the situation continue for more than two (2) consecutive months the ESG may in their absolute discretion give written notice to all the Partners to terminate the JAD and this Agreement forthwith or on a set termination date.

11.4 If the Agreement is terminated in accordance with clause 11.3 above no Partner will have any liability to the other Partners except that any rights and liabilities which accrued prior to termination and will continue to exist.

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11.5 For the avoidance of doubt, industrial action, illness, or unavailability for work by any Partners' own staff, employees, or agents shall not be regarded as an event of Force Majeure.

### 12. Change in Law

12.1 On the occurrence of a Change in Law which may have a material effect upon the operation of the Services the ESG shall meet at the earliest opportunity to consider any such change.

12.2 Where the ESG decide unanimously that the delivery of the JAD is capable of continuing with or without modifications or amendments in compliance with any Change in Law the ESG shall decide what, if any, modifications or amendments are required and this Agreement shall be varied accordingly.

12.3 Subject to any other rights of any of the Parties if, (in the opinion of the ESG), the effect of any Change in Law is such that the continuation of this Agreement and the delivery of the JAD is no longer feasible the ESG shall meet and agree an orderly dissolution process in accordance with the Termination and Exit Strategy provisions of this Agreement.

### 13. Severance

13.1 In the event of any provision or part of this Agreement being held to be illegal, invalid, or un-enforceable the remainder of this Agreement shall not thereby be affected.

13.2 In the event that any provision in this Agreement is held to be illegal, invalid, or unenforceable the Partners shall negotiate in good faith to amend or replace the provision concerned with an alternative which is legal valid and enforceable and which achieves to the greatest extent possible the Partner's original intention on entering into this Agreement or as subsequently varied in accordance with Clause 5 above, as the case may be.

### 14. Waiver

14.1 The rights and remedies of any Partner in respect to this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by such party to the other nor by failure or delay by the said party in ascertaining or exercising of any such rights or remedies.

14.2 Any waiver by any Partner of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

14.3 No waiver shall be effective unless it is communicated in writing to the other Partners

### 15. Entire Agreement

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15.1 Save to any extent expressly provided for in this Agreement, this Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

15.2 Each Party confirms that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statements, warranties, representations, or understandings (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. However nothing in this Agreement purports to exclude liability on the part of either party for fraudulent misrepresentation.

### 16. Information and Data Sharing

16.1 By entering into this Agreement each Partner warrants and affirms that their respective organisation has in place a robust and DPA compliant system for the gathering, retention, processing, use, and sharing of all Data and information.

16.2 Each Partner further warrants and affirms that all individuals who have or are likely to have responsibility for the gathering, retention, processing, use, and sharing of all Data insofar as it relates to their roles within the provision of the JAD are fully aware of their obligations in relation to Data protection under all Data Protection Legislation.

16.3 Each Partner and all individuals involved in the delivery of the JAD shall have regard to and be bound by the Information Sharing Protocol appearing herein as Schedule 2 .

### 17. Prevention of Corruption

17.1 Every Partner shall have adequate policies and procedures in place (that shall be shared with any of the other Partners upon request) to ensure that relevant controls, assurance, probity and professional standards are met throughout the Term of this Agreement and the delivery of the JAD.

17.2 Every Partner shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and each and every Partner warrants they will not, by their employees, servants, agents or consultants engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010.

17.3 Every partner shall promptly report to the other Partners any request or demand for any undue financial or other advantage of any kind received in connection with the performance of this Agreement.

### 18. Safeguarding Policy

18.1 Pan London safeguarding policies for Adults and Minors (Children) are in place and continually reviewed and updated. Every Partner is deemed to be aware of all such policies as may be applicable to their function and delivery of the JAD and all such safeguarding policies shall be followed accordingly.

### 19. Law and Jurisdiction

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

### 20. Counterparts

## **Appendix 2: JAD Section 75 Agreement**

20.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

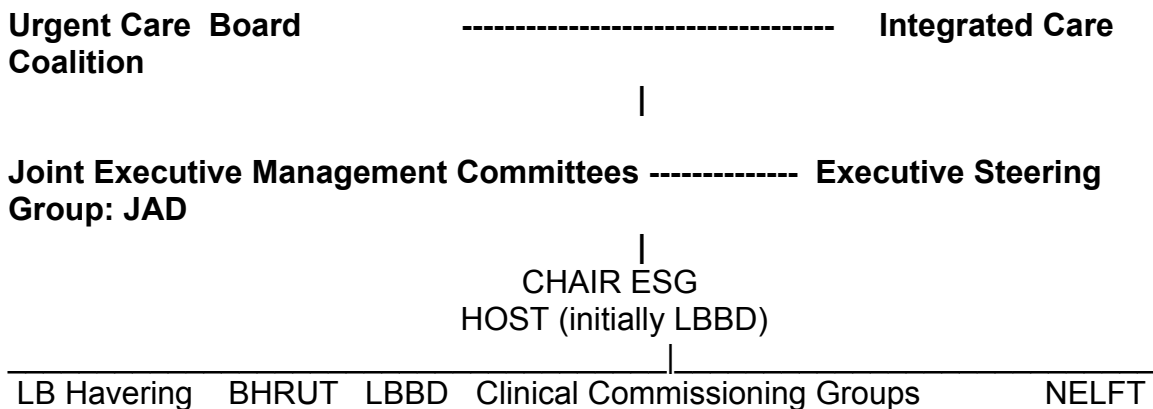
20.2 Transmission of an executed counterpart of this agreement together with the signature page(s) executed by all Parties to this Agreement by e-mail (in PDF or other agreed format) shall take effect as delivery of an executed counterpart of this agreement.



## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 1

#### EXECUTIVE STEERING GROUP AND GOVERNANCE



1. The Executive Steering Group (ESG) shall comprise senior members of the Partners as set out above. The CCG will report directly to the two CCG Executive Committees (Barking and Dagenham (1) and Havering (2)) formally. The Joint Executive Management Committees are formal committees of the CCG Governing body.
2. The Chair of the ESG shall be determined from time to time by the ESG and shall be one of the senior representatives of each party in rotation. The Chair shall not have a casting vote in relation to any item of business transacted by the ESG. The term of office of each Chair shall be 12 months.
3. The Partners agree that the purpose of the ESG's is, inter alia:-
  - 3.1 To provide high level management in respect of the services and to be responsible for agreeing the approach to all relevant issues arising from the provision and procurement of the services, including commissioning reports on the provision of the services and making recommendations on their procurement and management.
  - 3.2 To identify, where appropriate, senior managers employed by the partners to manage the services.
  - 3.3 To consider reports from the Service Manager (including performance reports and risk management) ensuring that the reports take account of the respective reporting cycles of both partners; having regard to the contents and recommendations of such reports, to take all actions which the ESG considers appropriate.
5. A decision of the ESG must be unanimous in order to bind the Partners.
5. The quorum required for the ESG shall be one representative of each of the Partners represented on it. Where the designated ESG member of any



## Appendix 2: JAD Section 75 Agreement

Partner is unable to attend any meeting for whatever reason a substitute attendee of sufficient seniority to take decisions on behalf of that Partner organisation may be nominated and such substitution shall be sufficient to contribute towards the quorum.

6. The ESG will ordinarily meet at least quarterly, save that for the first three months from the Commencement Date it shall meet at least twice each month. In exceptional circumstances or as the need arises the current chair of the ESG shall have the power to convene further meetings by giving reasonable notice to all ESG members as required. Any member of the ESG can request an exceptional meeting of the ESG via the chair.
7. Practical arrangements to support the ESG will be reviewed from time to time, with initial agreement as follows:-
  - Secretarial support will be provided by LBBD or the current Host Partner
  - Papers and Agendas will be distributed not less than 7 days before each meeting;
  - Reports to the ESG should be written reports, unless of an urgent nature. In such cases any urgent reports presented verbally will be minuted.

## **Appendix 2: JAD Section 75 Agreement**

### SCHEDULE 2 INFORMATION SHARING PROTOCOL

#### 1. Introduction

1.1 This Information Sharing Protocol (ISP) is made pursuant to regulation 8 of the NHS Bodies and Local Authority Partnership Regulations 2000 as amended by regulation 12 of the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health, and Local Healthwatch) Regulations 2012 which requires all s.75 Agreements to contain provisions for the sharing of information.

1.2 The aim of this ISP is to facilitate the sharing of all personal, sensitive, and non personal data between all of the Partners responsible for delivering the JAD so that service users and members of the public receive the services they need and peace of mind they deserve.

1.3 Public bodies involved in providing services to the public have a legal responsibility to ensure that their use of personal data is lawful, properly controlled, and safe and that individual rights are respected.

1.4 Each Partner to this s.75 Agreement shall ensure that all persons engaged in the delivery of the JAD are aware of their individual and collective responsibilities in relation to the collection, processing, use, and sharing of all data.

1.5 This ISP will be reviewed periodically or as often as the ESG deem necessary. Any revision or amendment to this ISP must be approved by the ESG but the responsibility for disseminating any such change throughout the Partner Organisations shall remain with each Partner Organisation.

#### 2. SCOPE

2.1 This ISP sets out the rules that all persons working for or with the Parties to this Agreement must follow when collecting, processing, using, and sharing information.

2.2. This protocol applies to all information shared by the Partners and not solely information classified as Personal Data by the Data Protection Act 1998. This includes all information processed by the organisations, howsoever obtained and stored in whatever format including electronic, or manual records and any anonymised, including aggregated data.

2.4 This ISP is subject to the overarching and governing protocol which is the North East London Information Sharing Protocol (the NELISP) as amended from time to time. Each Partner to this Agreement are either signatories to and bound by the principles set out in the NELISP or, shall be deemed to be aware of its contents and by entering into this Agreement also deemed to agree to abide and be bound by the principles contained therein.

2.5 The specific purpose for use and sharing information will be defined in the Information Agreements that will be specific to the Partners sharing information, for example Subject Specific Information Sharing Agreements.

#### 3. The Legal Framework

3.1 In addition to the Data Protection Legislation as defined herein each Partner Organisation and every individual involved in the delivery of the JAD and responsible for information and data sharing will be familiar with the principal legislation

## Appendix 2: JAD Section 75 Agreement

concerning the protection and use of personal information. This may include but shall not be limited to:

- Article 8 of The Human Rights Act 1998
- The “Caldicott Principles”
- The 8 principles of The Data Protection Act 1998
- The Common Law Duty of Confidence
- Computer Misuse Act
- Civil Contingencies Act 2004

3.2 Other legislation may be relevant when sharing specific information.

### 4. Information covered by this ISP

4.1 All Information, including personal data and sensitive personal data as defined in the Data Protection Act 1998 (DPA). In order to reduce the risks of DPA compliance and security breaches it is recommended that, where possible, anonymised data should be used.

### 5. Individual and Collective Responsibility

5.1 Each Partner Organisation is responsible for ensuring that their internal organisation and security measures protect the lawful use of information shared under this ISP.

5.2 Every individual working for the organisations listed in this Partnership Agreement is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.

5.3 The Service Manager for the JAD (directly employed by LBBD) will line manage managers and staff, some of whom will be directly employed by LBBD and some who retain their existing employment with their originating employer. The Service Manager, in consultation with other Partner Organisations will determine a unified approach to the sharing of information that will require adherence to this ISP and the NELISP.

5.4 The Partner Organisations will work together to establish any further procedures, forms or additional agreements that may be necessary from an operational perspective for compliance with this ISP. This may include the development of forms, agreements, subject specific information sharing agreements, and any other policies, examples of which can be found at Annexure 1 to this Schedule.

## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 2 INFORMATION SHARING PROTOCOL ANNEXURE 1

Who	Type of information	Reasons
Service Manager and other managers (ward managers and any deputies)	HR data relating to individual staff who may not share the same employer as their manager	To manage staff, supervision, performance, sickness and leave etc...
Practitioners working within the JAD (including SWs, Nurses etc..)	Individual patient records	To undertake assessment of need (as required by NHS & CC Act)
Practitioners working within the JAD (including SWs, Nurses etc..)	Assessment information undertaken by other agencies	To undertake assessment of need (as required by NHS & CC Act) and determine eligibility.
Practitioners working within the JAD (including SWs, Nurses etc..)	Access to databases which will include: <ul style="list-style-type: none"> <li>• Rio</li> <li>• Carefirst</li> <li>• Health analytics</li> </ul>	To undertake assessment of need (as required by NHS & CC Act) and determine eligibility.
	Information from other agencies which will include information from: <ul style="list-style-type: none"> <li>• UK Border Agency</li> <li>• Housing Departments</li> </ul>	To undertake assessment of need (as required by NHS & CC Act) and determine eligibility.
Staff and managers	Information and data relating to organisational performance, some of which will relate to action planning to improve current performance which may be sensitive were this to be more broadly available.	To understand the services role in delivering whole system performance and in meeting service specific measures.
Managers	G.P registration services ( <i>tbc- final iteration</i> )	
Managers	Datex database – recording of incidents & risks ( <i>tbc- final iteration</i> )	
Administrative staff	<ul style="list-style-type: none"> <li>• HR data</li> <li>• Individually identifiable data for patients and service users.</li> <li>• Performance reporting and database access</li> </ul>	<p>To support management function and core business of the service.</p> <p>To receive referrals and track onward management of volumes and those people who may be pending discharge</p>

### DETAILS OF STAFF PERMITTED TO ACCESS SENSITIVE PERSONAL INFORMATION RELEVANT TO SSISA.



## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 3 FINANCIAL GOVERNANCE AND FUNDING

1. The Parties have agreed that the financial contributions from each Partner will form the Aligned Budget.
2. Each Partner organisation that contributes to the Aligned Budget will retain the monies in their respective internal budgets. The amounts that have been agreed will be “ring fenced” for the specific purpose of funding the JAD.
3. Under no circumstances may any of the Partner Organisations use any part of their respective internal budget for use with the JAD except for that part which has been “ring fenced” for that specific purpose.
4. All Partner Organisations that contribute funding to the JAD shall keep documented records for audit purposes and such records shall be made available for inspection by any of the Partner Organisations or any other interested party upon reasonable notice.
5. Financial tracker / monitor tracker attached.

JAD Financial Tracker 2014/2015  
ALL FIGURES IN £'000

2014/2015	LBBB	LBH	BHRUT	NELFT	JOINTLY FUNDED POSTS	TOTAL
Aligned Annual Budget						
Actual spend to date as per respective general ledgers						
Outstanding items that need to be settled to date between Partner organisations						
Estimated to spend from current date to year end						
Total estimated year end outturn						
Estimated year end favourable / unfavourable variance	0	0	0	0	0	0

Notes: Each Partner organisation to submit the above data to the JAD Service Manager by 21<sup>st</sup> of each month. The JAD Service Manager will then liaise with the host finance team.

**SCHEDULE 4**  
**HR, STAFFING, SECONDMENT**

**SECONDMENT AGREEMENT**

**THIS SECONDMENT AGREEMENT** is made on 14 June 2014 between: -

- (1) London Borough of Barking and Dagenham ("the Host")**
- (2) London Borough of Havering ("Partner organisation")**
- (3) Barking, Havering and Redbridge University Hospitals Trust ("Partner organisation")**
- (4) North East London NHS Foundation Trust ("Partner organisation")**

**1. INTRODUCTION**

- 1.1 This Secondment Agreement is entered as a consequence of an Agreement between the Host, and the Partner organisations under section 75 of the National Health Service Act 2006 ("the s75 Agreement") for the provision of a joint Assessment and Discharge Service.
- 1.2 Partner organisations have agreed to second their Employees to the Host on the terms of this Agreement.

**2. SECONDMENT**

- 2.1 With effect from 14 June 2014 Partner Organisations shall second Employees to the Host on the terms of this Agreement. Subject to earlier termination as provided for in this Agreement, the secondment is reviewable annually during the period of the s75 Agreement provided that the Employee remains employed by the Partner organisation
- 2.2 During the Secondment, the Employee shall be co-located within the Joint Assessment and Discharge service, located at Queens' Hospital, Romford or King George Hospital, Goodmayes, where he/she shall act and perform the duties as set out in the Employee's contract of employment with the Employer. However it is recognised that in order to meet changes in service provision this location and role may change over time. The Employee will be consulted in relation to any further proposed changes to either location or role.

**3. CONDITIONS OF SECONDMENT**

- 3.1 The Employee's Terms and Conditions of Employment with the Partner organisation shall remain in force during the Secondment period.
- 3.2 Employees shall be issued with a revised, generic, job description which will be subject to consultation with the Employee and Trade Unions.
- 3.3 Employees shall remain an employee of the Partner organisation at all times and shall not be deemed to be an employee of the Host by virtue

## Appendix 2: JAD Section 75 Agreement

of the Secondment and shall not be entitled to any salary, pension, bonus or other fringe benefits of the Host.

- 3.4 The Employee's continuity of service with the Partner organisation will be preserved for both statutory and contractual purposes during the period of secondment.

### 4 LIABILITY AND INDEMNITIES

- 4.1 The Partner organisation shall indemnify and keep indemnified, the Host in relation to any claims, charges or liabilities for (including but not limited to) any income tax, Employee National Insurance or similar contributions (including costs interests and penalties), or other statutory charges or remuneration or other compensation arising from or in relation to the services by the Employee under this Agreement or the Employee being found to be an Employee of the Host or otherwise. The Host agrees to notify the Partner organisation of any such claims charges or liabilities received by the Host.
- 4.2 The Host shall not be liable for any act or omission on the part of the Employee during the Secondment and shall incur no liability for loss, damage or injury of whatever nature sustained by the Employee during the Secondment.
- 4.3 The Partner organisation hereby indemnifies the Host against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages and demands arising out of or resulting from breach of this Agreement or any act or omission or default of the Employee including without limitation:
- 4.3.1 Any loss of or any damage to any property;
  - 4.3.2 All financial loss;
  - 4.3.3 Those resulting from any breach by the Employee of any intellectual property rights owned by the Partner organisation or a third party;
  - 4.3.4 Injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Employee, whether resulting in material or financial loss or damages or death or injury to persons or any other loss or damage whatsoever;
  - 4.3.5 Any and all liability arising from any breach of the provisions of the Data protection Act 1998 by the Employee.
- 4.4 The Partner organisation hereby indemnifies the Host against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Partner organisation which are attributable to any act or omission by the Partner organisation any other person for whom the Partner organisation are liable arising out of:-
- 4.4.1 The employment or termination of employment of the Employee during the Secondment; or
  - 4.4.2 The engagement or termination of engagement of the Employee under the terms of this Agreement during the Secondment; or
  - 4.4.3 Any breach by the Partner organisation of any collective



## Appendix 2: JAD Section 75 Agreement

agreement with a trade union, staff association or employee representatives in respect of the Employee including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy, statutory redundancy, equal pay, and discrimination of any kind or under any legislation applicable in the United Kingdom.

- 4.5 The Host shall indemnify the Partner organisation against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the Partner organisation which are attributable to any act or omission by the Host or any other person for whom the Host are liable arising out of:-
  - 4.5.1 Any breach by the Host of any collective agreement with a trade union, staff association or employee representatives in respect of the Employee
  - 4.5.2 Any breach by the Host of any disciplinary, grievance or other employee related rules and procedures during the Secondment including for the avoidance of doubt without limitation liability for personal injury, accident or illness suffered or incurred in whole or in part during the Secondment, breach of contract or in tort, unfair dismissal, redundancy redeployment costs, statutory redundancy, equal pay, discrimination of any kind or under any legislation applicable in the United Kingdom.

## 5 CONDUCT OF CLAIMS

- 5.1 If the Host becomes aware of any matter that may give rise to a claim against the Employee and/or the Partner organisation, notice of that fact shall be given as soon as possible to the Partner organisation.
- 5.2 Without prejudice to the validity of the claim or alleged claim in question, the Host shall allow the Partner organisation and its professional advisors to investigate the matter or circumstance alleged to give rise to such claim and whether and to what extent any amount is payable in respect of such claim, and for such purpose, the Host shall give subject to being paid all reasonable costs and expenses, all such information and assistance, including access to premises and personnel, and the right to examine and copy or photograph any assets, accounts, documents and records, as the Partner organisation or its professional advisors may reasonably request provided that nothing in this clause shall be construed as requiring the Host to disclose any document or thing the subject of any privilege. The Partner organisation agrees to keep all such information confidential and only to use it for such purpose.
- 5.3 No admission of liability shall be made by or on behalf of the Host and any such claim shall not be compromised, disposed of or settled without the consent of the Partner organisation.

## Appendix 2: JAD Section 75 Agreement

- 5.4 The Partner organisation shall be entitled in its absolute discretion to take such action as it shall deem necessary to avoid, dispute, deny, defend, resist, appeal, compromise or contest any such claim or liability (including, without limitation, making counterclaims or other claims against third parties) in the name of and on behalf of the Host and to have the conduct of any related proceedings, negotiations or appeals.

### 6 LEAVE

- 6.1 The Host will inform the Partner organisation of any absence, including but not limited to sickness absence, industrial injury or other disability as soon as is reasonably practicable. It is the Employee's responsibility to follow the Partner organisation's sickness absence reporting procedures at all times. The Host will abide by the partner organisations leave policy including sickness absence management, leave and other absence related policies.
- 6.2 The Employee shall be entitled to holiday during the period of secondment in accordance with the Employee's terms and conditions of employment with the Partner organisation.

### 7 HEALTH AND SAFETY

- 7.1 The Host shall ensure that the Employee observes its health and safety policies and procedures and maintains a safe method of working.
- 7.2 The Employee is required under Section 7 of the Health and Safety at Work Act 1974, to take reasonable care for his/her own Health and Safety and that of others who may be affected by his/her acts or omissions at work.

### 8 CONFLICTS OF INTEREST

- 8.1 The Employee must declare and seek agreement from the Partner organisation and his/her line manager regarding any interests, financial or otherwise, which may give rise to a conflict of interest during the course of the secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and in connection with a voluntary or other body contracting for NHS services.

### 9 RESPONSIBILITY FOR RESOURCES

- 9.1 **Where applicable:** Where the Employee is responsible for the management of the Host budgets and/or the procurement of equipment and services the Employee should follow the Host's Standing Financial Instructions and associated procedures.
- 9.2 In undertaking such duties the Employee should be mindful to ensure efficient and transparent financial management. This will include financial probity, the management of financial risk and achievement of value for money.

### 10. PAYMENT OF SALARIES AND EXPENSES

- 10.1 The Employee will continue to be paid by the Partner organisation in accordance with the Employee's terms and conditions of employment for the duration of the secondment.
- 10.2 It is agreed that the Partner organisation shall be solely responsible for all income tax liability and National Insurance contributions or other statutory charges in respect of any payment to the Employee for the

## Appendix 2: JAD Section 75 Agreement

provision of services by the Employee to the Host under this Agreement.

- 10.3 Any salary increments applicable to the Employee's substantive post with the Partner organisation will continue to apply subject to the Partner organisation's Pay Review.

### 11. HUMAN RESOURCES SERVICES

#### 11.1 Replacement of seconded staff

After 13 June 2014 the administrative services to support the recruitment and selection of seconded staff will be led by the Host, supported by the Partner organisation as appropriate.

#### 11.2 Employee Relations

- 11.2.1 After 13 June 2014 the Partner organisation will continue to provide advice to the Employee on the Partner organisation's policies including but not limited to disciplinary, grievance, ill health, maternity leave and general terms and conditions of service. The Partner organisation's Human Resources Policies are available internally on the Partner organisations' Intranet.

- 11.2.2 The Partner organisation will be responsible for ensuring the Employee is kept updated with all changes in the Partner organisation's policies and procedures, although this may be communicated to the Employee through the Host staff.

#### 11.3 Policies and Procedure

11.3.1 During the Secondment Period, the Host, in consultation with the Partner organisation's Human Resources Department shall implement the Partner organisation's policies and procedures in respect of the Employees, so far as they comply with current employment legislation.

- 11.3.2 The Partner organisation authorises the Host to take action in respect of the

Employees pursuant to the Partner organisation's Disciplinary Policy save for any action, which could result in the dismissal of an Employee. In such circumstances the Partner organisation shall take appropriate steps in accordance with its Disciplinary Policy and Procedure.

- 11.3.3 The Host may, should it consider necessary to do so, suspend Employees from

duty in accordance with the Partner organisation's Disciplinary Policy and in consultation with the Partner organisation's Human Resources Department and responsible officer provided that such a suspension shall be notified to the partner no later than the following working day.

- 11.3.4 The Partner organisation authorise the Host to deal with any grievances raised by

the Employee against the Host in accordance with the Partner organisation's grievance policy. The Host will notify the Partner organisation of any grievances received by the Host including those against the Partner organisation within 3 working days or as soon as reasonably possible

- 11.3.5 For the avoidance of doubt, nothing in clause 11 shall be construed or have

## **Appendix 2: JAD Section 75 Agreement**

effect as construing any relationship of Partner organisation or Employee between the Host and the Employee.

### **11.4 Workforce Information**

Workforce information regarding seconded staff will continue to be collected and retained by the Partner organisation. However, it is recognised that the Host will require data concerning seconded staff in order to support the planning and delivery of services. The Partner organisation in accordance with the format and deadlines identified by the Host will provide this information as required. The Host organisation will also be required to provide workforce information to the partner organisation in order to maintain accurate records

## **12 MANAGEMENT DURING THE SECONDMENT**

12.1 The Employee shall be supervised by and directly accountable to a designated line manager in the Host's organisational structure during the secondment and the Partner organisation will provide access to professional supervision for qualified social workers.

## **13 PROFESSIONAL DEVELOPMENT**

13.1 The Partner organisation will work with the Host to ensure the Employee's professional and developmental needs are identified and met. Performance Development Review's, Performance Management processes, and training of the Employee will be undertaken by the Host In line with the partner organisations policy.

## **14 MANAGEMENT OF CHANGE**

14.1 It is recognised that the Host and the Partner organisation in delivering and developing services will face organisational restructuring and changes in employment levels. In the event that the Employee is affected by organisational change, the Host and the Partner organisation will ensure that changes happen following full consultation with his/her union representative and that changes comply with the Partner organisation's employment policies.

## **15 DATA PROTECTION**

15.1 The Employee and the Partner organisation consent to the Host holding, disclosing, using or otherwise processing any information about them which they provide to the Host on which the Host may acquire as a result of the Secondment.

15.2 The Partner organisation and the Host agree to protect any personal data held in relation to the Employee in accordance with the Data Protection Act 1998.

## **16 CONFIDENTIALITY**

16.1 In addition to the provisions regarding confidentiality in the Employee's Contract of Employment, the Employee will not disclose during or after the secondment any confidential information to which the Employee became privy during the course of the secondment, including but not

## **Appendix 2: JAD Section 75 Agreement**

limited to all trade secrets, lists or details of customers, suppliers or patients, information relating to the working of any process or invention carried on or used by any subsidiary or associate, research projects, prices, discounts, mark-ups, future business strategy, marketing, tenders, any price sensitive information, and any proprietary Host information.

### **17 TERMINATION**

- 17.1 In the event of termination of the s75 Agreement howsoever arising, this Secondment Agreement will automatically terminate. In such circumstances, the appropriate redeployment and / or redundancy of the Partner organisation will apply. There will be no presumption for Host organisation to redeploy staff other than those staff employed on the Hosts' terms and conditions.
- 17.2 The Employee may terminate the Secondment by giving not less than (one) month's notice in writing (or the Employee's contractual notice period if this is greater) simultaneously to the Host and the Partner organisation. Any notice of termination will, after the appropriate notice period, terminate employment with the Partner organisation.
- 17.3 Should, at any time, an employee secure alternative employment with the employing Partner organisation through that organisations recruitment and selection processes, the secondment will terminate. Subject to the policies and procedures of the employing Partner, continuous service will be maintained.

### **18 REVIEW AND VARIATION**

- 18.1 Subject to clause 2 above, this secondment agreement will remain the subject of periodic review and amendment as necessary in light of changing service needs and legislative developments.
- 18.2 The parties agree that any amendments or variations to this Agreement must be in writing and signed by authorised representatives of the parties

### **19 GENERAL**

- 19.1 If any provision or term of this Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever, including without limitation, by reason of provisions of any legislation or by reason of any decision of any court or other body having jurisdiction over the parties, such terms or provisions shall be divisible from this Agreement and shall be deemed to be deleted in the jurisdiction in question provided always that if any such deletion substantially affects or alters the commercial basis of this Agreement, the parties shall negotiate in good faith to amend and modify the provisions or terms of this Agreement as may be necessary or desirable in the circumstances.
- 19.2 This Agreement does not create any partnership or agency relationship between the Partner organisation and the Host.

## **Appendix 2: JAD Section 75 Agreement**

- 19.3 This Agreement shall supersede any previous letters of appointment, agreements or arrangements, whether written, oral or implied, relating to the Secondment of the Employee.
- 19.4 This Agreement shall be governed by and construed in accordance with English law. The Partner organisation and the Host agree that any dispute arising under this Agreement or in connection with it shall be decided in the English Courts, which shall have the sole jurisdiction in any such matter.

## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 5 CONTINUING HEALTH CARE

#### **1. Introduction:**

1.1 The JAD is the Joint Assessment and Discharge Integrated Service. From 1 June 2014 the Partner Organisations and LBBB are providing the JAD to the Commissioning Partners. The decision maker as to the eligibility of Continuing Healthcare remains with the appropriate Commissioning Partner if and until the relevant Commissioning Partner (being the relevant Clinical Commissioning Group) who have accountability for decisions regarding Continuing Health Care, are satisfied that the systems and processes are in place to ensure robust decision making, and for quality assurance of these decisions.

1.2 If and until the Commissioning Partners are so satisfied the Partner Organisations and LBBB will simply recommend Continuing Healthcare eligibility to the Commissioning Partners in accordance with the prevailing and accepted process:

1.3 The Partners have agreed that existing dispute resolution procedures, which shall include but may not be limited to the CHC National Framework, will apply to the provision of the JAD.

1.4 This scheme of delegation shall apply to the Service Manager and the Discharge Managers within the JAD. It determines the level of financial decision-making and quality assurance permissible in the allocation of health resources to facilitate discharges from acute care.

1.5 The key principle is seek to move decision making closer to the front line and for all staff to be clear about the level of authority held and to deliver consistency and equity.

#### **2. Implementation:**

2.1 The Parties have agreed below a scheme of delegation which will apply to this Agreement if and when the relevant Clinical Commissioning Groups, who have accountability for decisions regarding Continuing Health Care, are satisfied that the systems and processes are in place to ensure robust decision making, and for quality assurance of these decisions. The Commissioning Partners may decide in their absolute discretion whether they are so satisfied.

#### **3. The Scheme of delegation:**

3.1 Verification of the Multidisciplinary Team Continuing Health Care Recommendation is transferred from the CCG Commissioning Partners to trained and competent Continuing Health Care assessors within the Joint Assessment and Discharge service Management Team.

a) Ratification of the Multidisciplinary Team's recommendation and financial approval for Continuing Health Care will be provided by the JAD Service Manager and a JAD Discharge Managers

b) Joint Assessment & Discharge Managers will make decisions for Continuing Health Care Nursing Home placements and packages of care for up to and including £700 per week. Where the cost is more than £700 per week, the case will be referred to the Clinical Commissioning Group for financial approval.

c) The Joint Assessment and Discharge service will also be responsible for assuring high quality Continuing Health Care applications are made. Quality Assurance of Continuing Health Care paperwork will be undertaken by a Discharge Manager and the Service Manager, before the final eligibility decision is made. To ensure objectivity, Quality Assurance will be undertaken

## Appendix 2: JAD Section 75 Agreement

by a Discharge Manager from a different Ward Group to the one where the assessment is undertaken. The Service Manager will also carry out regular audits to make sure that high standards are maintained.

3.2 The Joint Assessment and Discharge Service Manager shall review all commitments entered into by the Service and shall ensure the provision of regular budgetary information and reporting to support the CCG to monitor its spend and commitment.

### **4. Review:**

4.1 This Scheme of delegation shall be regularly reviewed by the ESG to ensure it continues to provide a framework for the operation of efficient and effective discharge arrangements for patients who require continuing health care.

## SCHEDULE 6 EXIT STRATEGY

1. In the event of termination of this Agreement (or any part of it) the Partners agree to work together in good faith to ensure an orderly wind down of the Partnership Arrangements and minimum disruption to the commissioning and/or provision of the Services.

2. The Partners shall provide all reasonable co-operation and assistance and provide to the other Partners all information and documentation as might reasonably be requested.

3. The Partners shall agree a lead out plan within such reasonable timescale as agreed by the Partners on anticipation of the coming to the end of the Partnership Arrangements which will include project management of any consultation process and the transfer of the Services or any part of them as appropriate to achieve a controlled and timely transfer of Services with as little disruption to Service Users as possible.



### SCHEDULE 7

#### COMPLAINTS PROCEDURES

**NB** This Schedule deals with complaints received from Service Users and third parties in relation to the delivery of the Service(s). Internal staffing disputes or complaints from within the Partnership relating to governance or performance are dealt with elsewhere in this agreement. At all times, all prevailing legislation and regulations shall take precedence and be adhered to wherever there is any inconsistency with these guiding key principles.

#### 1. Complaints (key principles):

1.1 The JAD and each Partner will maintain or adopt, as the case may be, complaints procedures internal to their organisations which enable service users or patients to be heard in respect of any complaint concerning any element of the Services which are provided by or on behalf of a particular Partner organisation. Policies must adhere to local authority Social Services and National Health Service complaints (England) regulations 2009, the parliamentary health service ombudsman and the NHS constitution.

1.2 The JAD (or in the case of a receiving Partner Organisation) shall consider and determine the most appropriate complaints procedure to be followed in discussion with partners contributing to the JAD and shall be with the agreement of the complainant

1.3 For Social Care the local authority Social Services and National Health Service Complaints (England) Regulations came into force in April 2009. The regulations require that arrangements for dealing with complaints must ensure that:

1.3.1 complainants and their families or carers are listened to

1.3.2 complaints are dealt with efficiently

1.3.3 complaints are properly investigated and a range of interventions are able to assist resolution

1.3.4 complainants are treated with respect and courtesy and involved in the process.

1.3.5 complainants receive, so far as is reasonably practicable, assistance to enable them to understand the procedure in relation to complaints or advice on where they may obtain such assistance

1.3.6 complainants receive a timely and appropriate response

1.3.7 complainants are told the outcome of the investigation or their complaint and

1.3.8 action is taken if necessary in the light of the outcome of the complaint

1.4 Complaints by third parties in respect of the provision of Services to service users or patients will also be dealt with initially by the JAD or the relevant Partner within its own complaints procedures

1.5 The JAD and contributing partners shall have regard to such legislation or guidance as may from time to time be issued in respect of complaints, including the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 and guidance issued in connection with those regulations

## Appendix 2: JAD Section 75 Agreement

1.6 In the event that the JAD (or a partner organisation) receives an enquiry from an elected representative or a complaint relating to the Services which the JAD or the Partner considers falls within the remit of another Partner or pertains to the budget or resources committed to the Partnership by another Partner, it shall without delay notify that other Partner and the Partners concerned shall agree which of the Partners shall deal with the complaint or enquiry concerned.

### 2. Joint Complaints which involve one or more Partner Organisations

2.1 Complaints will be acknowledged by the JAD or the receiving organisation within three working days.

2.2 In the event of several organisations receiving the complaint at the same time, contact will be made with the other organisations and an agreement made as to which will be the 'lead organisation' via an initial risk assessment being undertaken to identify the seriousness of the concerns being raised. The lead organisation will acknowledge within three working days on behalf of all organisations involved and will clarify the complaint and explain the role of the other organisations.

2.3 In the event that the complaint is sent to only one organisation (who will be known as the receiving organisation) but involves other organisations, that receiving organisation will seek consent from the complainant and copy the complaint to the other organisations involved. Consent must be obtained so that records can be accessed by the teams involved.

2.4 On receipt of consent, a copy of the complaint letter will immediately be sent to the other organisations involved in the complaint and a discussion undertaken to agree which organisation should be the lead.

2.5 Where a complaint is shared across organisations, the lead organisation will confirm to the complainant a named person, address and telephone number to identify where each part of the complaint is being investigated

2.6 Each Partner Organisation will investigate in accordance with its own procedure, keeping the lead organisation informed of progress. Ideally, all responses should be completed simultaneously and reports delivered to the complainant together. There may be occasions when this time frame cannot be achieved and on these occasions the timeframe discussion will be noted by all parties with a decision taken and duly agreed with the complainant.

2.6 The lead organisation will obtain responses from all the organisations involved and coordinate them into a final response to the complainant, unless the complainant indicates otherwise. The coordinated response must identify which issues relate to which organisation and the advice/step up details of the next stage for each process should be included if the complainant/s want to pursue.

2.7 It is the responsibility of each Partner Organisation to identify any conflict in input with the other organisations involved and to ensure this is discussed and resolved between the Organisations concerned, or with the relevant Directors if necessary.

## Appendix 2: JAD Section 75 Agreement

2.8 The lead organisation will not have editorial licence to alter the content of the responses from those responding without their explicit and 'confirmed' agreement. The final response from the lead organisation to the complainant **MUST** be approved, within an agreed timescale, by respondent organisations before being dispatched.

2.9 If a comprehensive response is not possible, due to delayed information from one or more organisations, the lead organisation will complete a response with the available information, indicating that the outstanding response(s) will follow separately and directly from those organisations. Those subsequent responses will be copied to all other organisations involved. The complainant will be made aware of this and given the opportunity to decide on either accepting the response in two parts or waiting for the joint response.

## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 8 ELIGIBILITY CRITERIA

Eligibility for individuals to benefit from the delivery of the JAD will include the following criteria:

1.1 To benefit from services commissioned by the Local Authority, the Service User will:

- 1.1.1 be aged 18 years or over
- 1.1.2 be a resident of the London Borough of Barking and Dagenham or Havering
- 1.1.3 be a resident outside the London Borough of Barking and Dagenham as a result of a placement made by the Clinical Commissioning Group and/or the Council to meet their statutory obligations
- 1.1.4 be registered with a Barking & Dagenham or Havering GP
- 1.1.5 be the subject of the authority's statutory support and care responsibilities as defined by the London Borough of Barking and Dagenham's Fair Access to Care (FACS) Eligibility Criteria (taking into account the pending eligibility criteria in the Care Bill when it is enacted)
- 1.1.6 be a Carer of somebody eligible under the above conditions

1.2 To benefit from services commissioned by health, the service user will:

- 1.2.1 be over 18 years or over
- 1.2.2 be resident in the UK
- 1.2.3 eligible for Continuing Health Care as assessed by the CCG or their representatives  
(Unless it is determined that the individual is ineligible for receiving on-going healthcare)

2. Exclusions

2.1 The JAD will not undertake the following:-

- 2.1.1 Rehabilitation assessments/care planning. Any community intermediate care assessments for patients who require admission to a community bed provided by NELFT. These assessments will be completed by NELFT
- 2.1.2 Any Specialist neuro Rehabilitation assessments/care planning as these shall be undertaken by the receiving provider.
- 2.1.3 Fast Track Continuing Health Care Assessments/care planning

Within the resources at its disposal, the JAD Service team should ensure that Service Users and their Carers are not disadvantaged on the grounds of age, disability, gender, language (including sign language), race, ethnic origin, sexual orientation, social class, political beliefs or religion.

## **Appendix 2: JAD Section 75 Agreement**

### ASSESSMENT ARRANGEMENTS

JAD Workers will work collaboratively with Ward Multi-disciplinary staff to complete assessments and discharge plans for the following pathways:

- Continuing Health Care – Full and Funded Nursing Care (not Fast Track)
- Packages of Care
- Residential Care

JAD will also broker a pathway for those who are medically fit but not able to be discharged.

JAD will undertake Safeguarding Investigations

The JAD Operational Procedures set out the detailed processes and timescales for each pathway. JAD, ward staff and therapies staff will use Care Applications (CAPS) to log and track the patient's progress along a pathway.

## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 9 ACCOMMODATION and SERVICES

1. Pursuant to Section 75 (2)(d) of the 2006 Act and Regulation 10(1) of the Regulations the Partners will from the Commencement Date provide in connection with the JAD such accommodation, goods, and services as are agreed and required for the proper and efficient delivery of the JAD.

2. The Partners will cooperate over the Term of the Agreement to utilise the accommodation, goods, and services in an integrated manner and periodically to review the needs of the JAD additional or substituted accommodation, goods or services available by agreement in the light of such periodic review.

3. The Partners shall make available for the purposes of the Partnership and for the purposes of the Services at any time after the Commencement Date the following support services which will include inter alia but not exclusively the following functions

- Finance
- Human resources
- Contracts and procurement
- Performance and management functions
- Business support (including Public Relations and Communications)
- IT
- Legal services

provided that the functions may change from time to time, and service level agreements will be drawn up between the Partners and amended as appropriate in accordance with Schedule 8 and further provided that the cost to each Partner of the provision of such support services shall not count as any part of that Partner's contributions.

## Appendix 2: JAD Section 75 Agreement

### SCHEDULE 10 PERFORMANCE MONITORING

**1. The Partners will, through the Executive Steering Group and with close regard to the Performance Metrics and the local priorities for Health and Social Care, develop a performance management framework for the partnership arrangements with relevant indicators for measuring effectiveness. In so doing, the Partners will have regard to the 1999 Act Circular.**

**2. The performance measures will demonstrate:**

- How far the aims of the Partnership Agreement are being achieved;
- The extent to which outputs including timescales and milestones are being met, as defined in clauses.
- The extent to which agreed outcomes are being fulfilled and targets met, as defined in clauses Budget monitoring for all staffing and Partnership budgets.
- **The targets used to measure quality will primarily relate to those contained in the key NHS and L.A. performance indicators.**

**In relation to any targets set, the Partners agree that it shall be the responsibility of the JAD Service Manager to manage the delivery of such targets, in particular:**

- the JAD Service Manager will take the lead in ensuring action plans are prepared in response to Delivery and Improvement Plans, NHS and L.A. Indicators and targets
- to put in place and monitor a clearly identifiable performance monitoring process

**The JAD Service Manager shall provide all partners with information / data and reports on a monthly basis to enable compliance with its statutory management requirements**

**All Partners will ensure that any changes to the data required in light of new guidance / legislation by Central Government are communicated and changes made in accordance with the new requirements.**

**3. The JAD Service Manager shall initiate and maintain all JAD policies and procedures necessary for the safe and efficient delivery of the JAD. These will include but may not be limited to Risk Management (e.g. service user issues such as safeguarding and inappropriate discharges) and Incident Reporting procedures (e.g. staff injury). All such reports to be recorded centrally as part of the JAD system in addition to being reported to the relevant Partner Organisation.**