

DATED

1 APRIL 2013

SERVICE LEVEL AGREEMENT

Between

**Partnership Commissioning Unit hosted by
SCARBOROUGH AND RYEDALE CLINICAL COMMISSIONING GROUP**

and

**HARROGATE AND RURAL DISTRICT
HAMBLETON RICHMONDSHIRE AND WHITBY
VALE OF YORK
CLINICAL COMMISSIONING GROUPS**

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THIS AGREEMENT is dated 1 April 2013

PARTIES

The parties to this service level agreement (Agreement) are:

- (1) Scarborough and Ryedale Clinical Commissioning Group (“the host CCG”)
Scarborough Town Hall York House St Nicholas Street Scarborough YO11 2HG
- (2) Harrogate and Rural District Clinical Commissioning Group
1 Gimbald Crag Court
St James Business Park
Knaresborough
HG5 8QB
- (3) Hambleton Richmondshire and Whitby Clinical Commissioning Group
Civic Centre
Stone Cross
Northallerton

North Yorkshire
DL6 2UU
- (4) Vale of York Clinical Commissioning Group
West Offices
Station Rise
York
Y01 6GA

together “the Parties” and each a “Party”

RECITALS

WHEREAS

- (A) The Parties to this Agreement wish to collaborate in the provision of certain services as set out herein that are their responsibility under the National Health Service Act 2006 (as amended)
- (B) For that purpose, the Parties have created an unincorporated body to be known as the Partnership Commissioning Unit (“the PCU”) to be hosted by the host CCG
- (C) The PCU shall be headed by the Director of Partnerships who shall be jointly appointed by the Parties but who shall be employed by the host CCG
- (D) The Director of Partnerships shall hold an honorary contract of employment with each of the parties who are not the host CCG in order to enable them to discharge functions on their behalf.
- (E) Each Party agrees to delegate to the Director of Partnerships the necessary authorities to enable them to carry out, and only to carry out, duties for the

purposes of this Agreement. Such delegations contain an express power to further delegate to staff of the PCU in accordance with a Scheme of Delegation maintained by the Director of Partnerships.

(F) Whilst expressly recognising that the PCU lacks the capacity to enter into Agreements, for the purpose of this Agreement, the PCU shall be regarded as a party to the extent the context requires.

1. BACKGROUND

- 1.1 A CCG is responsible, and shall remain responsible, for commissioning NHS funded services to meet the needs of its population
- 1.2 Each CCG has agreed with the PCU to enter into an arrangement for the delivery of Services by the PCU set out at Annex A (**Services**)
- 1.3 The Parties wish to record the basis on which they will work together. This Agreement sets out:
 - (a) the principles underpinning this Agreement; and
 - (b) the respective roles and responsibilities the Parties.
- 1.4 Each Party shall at all times act in good faith towards the other Parties in interpretation and the delivery of this agreement.
- 1.5 Where information contained in the Annexes to this SLA is to be added at a date later than the date of agreement or signature, this will be to enable development and refinement of particular areas. This information will be added within agreed timescales and with agreed lead responsibility, as set out in an action plan agreed by all parties. The principles in section 2 will apply during this time.

2. PRINCIPLES

The Parties agree to adopt the following principles when carrying out this agreement (**Principles**):

- (a) collaborate and co-operate in the delivery of the Services to ensure that the commissioning ambitions and intentions of the CCG are met;
- (b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- (c) be open. Communicate openly about major concerns, issues or opportunities relating to the agreement;
- (d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- (e) adopt a positive outlook. Behave in a positive, proactive manner;
- (f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU and domestic

procurement law, data protection and freedom of information legislation;

- (g) act in a timely manner. Recognise the time-critical nature of the project and respond accordingly to requests for support;
- (h) manage stakeholders effectively;
- (i) act in good faith to support achievement of the key objectives and compliance with these principles; and
- (j) provide coherent, timely and efficient decision-making.
- (k) Operational decision making should only be made at CCG level where it is legally necessary to do so or where it adds value to do so.

3. ROLES AND RESPONSIBILITIES

3.1 Host CCG

The host CCG is responsible for the following:

- a) Provide an annual report to non-host CCGs to provide assurance on HR and policies and procedures.
- b) Oversight of financial management and audit function of PCU and ensure the publication of an annual report covering PCU functions.
- c) Ensure PCU have been provided with appropriate authorisation to deliver services on behalf of the CCG.
- d) Work collaboratively with non-host CCGs and PCU management board to ensure delivery of core PCU objectives.
- e) Provide financial resource and any other resource as agreed through PCU management board
- f) Provide reports to CCG governing body as required to provide assurance on PCU functions.

3.2 Non Host CCGs

- a) Ensure PCU have been provided with appropriate authorisation to deliver services on behalf of the CCG.
- b) Work collaboratively with host CCG and PCU management board to ensure delivery of core PCU objectives.
- c) Provide financial resource and any other resource as agreed through PCU management board
- d) Provide reports to CCG governing body as required to provide assurance on PCU functions.

3.3 Accountable Officers

- a) Attend PCU management board as decision making representative of CCG
- b) Ensure through PCU management board that PCU services are effective, efficient and of high quality.

3.4 Director of Partnerships

- a) Ensure PCU has an effective workforce through implementation of appropriate HR and workforce policies and procedures.
- b) Ensure PCU have appropriate specialist support and provision to deliver objectives in a safe working environment. Eg IT, HR provision
- c) Ensure staff have access to robust policies and procedures in line with national guidance.
- d) Deliver PCU business plan and be accountable for delivery of service schedules.
- e) Ensure the PCU performs its obligations under this agreement in a reasonable and timely manner.
- f) Ensure the PCU provides the CCGs with such information and advice in connection with the services and the provision thereof as a party may, from time to time, reasonably require both before and during the provision of the services.
- g) Provide CCGs with single point of contact and is responsible for the overall management of the relationship with the CCGs including regular, timely and relevant contact with CCGs.
- h) Responsible for continuously monitoring and reviewing services for the duration of this agreement.

4. TERM OF AGREEMENT

- 4.1 This Agreement will come into force on the Commencement Date of 1st April 2013 and will run until such time the PCU is dissolved or parties terminate its involvement within the terms set out in clause 4.2
- 4.2 Any party may terminate their involvement in this agreement by giving at least 12 months notice in writing to all other parties. Any costs associated with termination will be met by the terminating party.
- 4.3 The PCU is a collaborative and any costs of termination will be shared equally between the four Clinical Commissioning Groups in the event of the termination being agreed by all CCGs.

5. PRICES AND PAYMENTS

- 5.1 The non-host CCGs shall pay the host CCG for the Services that the PCU delivers in accordance with the terms of this Agreement. (Annex B)
- 5.2 The PCU shall set out in writing, for all the CCGs, a statement of the monthly sums due to host CCG taking into account any deductions or credit arising as a result of this Agreement.

- 5.3 The PCU in the name of the host CCG shall submit an invoice to the other CCGs in respect of the Services provided on a monthly basis based on the statement issued by the PCU. Invoices will be based on equal 12th of the risk share agreement and all other costs detailed in Annex B with quarterly reconciliations and adjusted values as necessary. Risk share agreements have been agreed and signed by all four CCGs involved in this agreement. Details of the percentage rates can be found in Appendix B.
- 5.4 The CCG shall pay all or any undisputed sums within 10 business days of the receipt of the invoice from the PCU.
- 5.5 Where there are disputed sums the Parties shall refer the matter through the Disputes Procedure as set out in clause 11.
- 5.6 Prices are current at 2013/14 and any variation figures in subsequent years will be requested no later than two months before the beginning of the financial year and must be a common agreement across all CCGs.

6. INFORMATION

- 6.1 The information to be reported by the Parties shall be set out at Annex C.
- 6.2 A CCG shall act reasonably in requesting additional or ad hoc information.
- 6.3 The PCU shall provide requested additional or ad hoc information as soon as practicable

7. INFORMATION GOVERNANCE

- 7.1 The PCU will complete and publish an annual information governance assessment using the NHS information governance toolkit. The PCU must achieve a minimum level 2 performance against all requirements in the relevant information governance toolkit.
- 7.2 Where the PCU is acting as a data processor on behalf of the CCG, both parties must comply with the data controller/ data processor regulations and all appropriate Information Governance Policies of the host organisation. The PCU must only process such personal data as is necessary to perform its obligations under this agreement, and only in accordance with any instruction given by the CCG under this agreement;
- 7.3 All parties will report all incidents of data loss and breach of confidence in accordance with Department of Health and Information Commissioner guidelines.
- 7.4 The PCU will retain and archive information in line with the host organisations policy

8 Conflicts of Interest

- 8.1 The partnership Commissioning Unit shall take appropriate steps to ensure that neither their personnel, a service provider nor any service provider's personnel is placed in a position where, in the reasonable opinion of any of the Clinical Commissioning Groups party to this agreement:

8.1.1 There is or may be an actual conflict or potential conflict between the pecuniary or personal interests of the service provider and the duties of the Partnership Commissioning Unit or Clinical Commissioning Group.

8.1.2 the behaviour of a member of the Partnership Commissioning Unit's personnel, a service provider or service provider's personnel is not in the best interests of one or all of the Clinical Commissioning Groups party to this agreement, or might materially adversely affect the CCs reputation.

8.2 The PCU will maintain a register of declarations of interests for their personnel under the host CCG's Conflict of Interest and Business Standards policy(ies).

8.3 The PCU will, as soon as reasonably practicable, disclose to the relevant CCG full particulars of any behaviour which may give rise to the acts described in sub-clauses 8.1.1-8.1.2.

8.4 The Clinical Commissioning Groups party to this agreement reserve the right to take such other steps as it deems necessary where, in the reasonable opinion of the client there is or may be an actual or potential conflict, between the financial or personal interests of the Partnership Commissioning Unit personnel, a service provider or a service provider's personnel and the duties of the Clinical Commissioning Group under the provisions of this agreement.

9. PERFORMANCE MANAGEMENT

9.1 Each Party shall nominate a named contract manager, which may be changed from time to time and notified in writing to the other Party, to act as contact point for the management of this Agreement.

9.2 The Parties shall meet monthly to review the performance of this agreement. This will be taken forward through the PCU Management Board or supporting Chief Financial Officers meeting.

9.3 Any Party can submit matters for discussion at the review meeting.

9.4 A written record of the review meeting shall be agreed and circulated.

9.5 Where performance of the Services and/or any other obligations under this Agreement falls below the service requirements or key indicators set out in this Agreement or could be reasonably expected from a Party to this Agreement, then a corrective action plan will be agreed by the Parties setting out the improvement in performance that should be achieved by the PCU prior to the next performance review meeting.

9.6 Where the corrective action plan, or part of the corrective plan is not complied with and the agreed improvement in performance is not achieved by the next performance review meeting, the CCG may exercise the consequence identified against each corrective action. The corrective action plan shall specify the consequence(s) of each or any failure to achieve the full performance of the service requirements or key indicators.

9.7 Where there is persistent failure to meet the performance standards or key indicators or a corrective action plan is not complied with then the CCG shall issue a Notice of Breach to the Director of Partnerships. The Director of Partnerships shall forthwith prepare an action plan to remedy the breach within a timescale to be specified in the Notice.

- 9.8 A record of any corrective action plan and any consequence exercised and actions completed shall be recorded in the written record of the review meeting
- 9.9 Where appropriate assurance is not provided by the PCU, the collective CCG membership or an individual CCG shall retain the right to request independent review, this independent review would in the first instance be expected to be Internal audit. The cost of such a review to be borne by the party(ies) requesting the review.

10. KEY INDICATORS

Key indicators relating to specific service delivery matters and this agreement are set out in PCU's performance dashboard. The key indicators shall be reviewed at performance review meetings and reported to the CCGs on a monthly basis.

11. DISPUTES

- 11.1 Where a dispute arises between the Parties out of or in connection with this Agreement (a Dispute) the Parties shall first attempt to settle it by negotiation between the contract managers.
- 11.2 Where the contract managers fail to resolve the Dispute within 5 working days of the Dispute arising, the contract managers shall escalate the Dispute to a senior person within their respective organisations.
- 11.3 Within 5 working days of receipt the senior person of each organisations shall meet the other party's identified senior person to seek to resolve the Dispute
- 11.4 Where the senior person in each Party is unable to resolve the Dispute the Accountable Officer of the CCG and the Director of Partnerships of the PCU shall meet within 5 days to resolve the Dispute
- 11.5 Where the Parties fail to resolve the Dispute the matter shall be referred to an agreed independent mediator appointed by the Parties. If the parties fail to agree on an independent mediator the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR).
- 11.6 The mediator would meet with the parties and work to gain resolution to the Dispute. Where there is agreement, the mediator would set out the agreement and each Party shall sign the mediation agreement.
- Where a mediation agreement cannot be reached, the Parties would submit themselves to the binding decision of an independent arbitrator to be agreed or otherwise appointed by CEDR.
- 11.7 The independent arbitrator shall set out the binding arbitration process for the parties to sign.
- 11.8 The independent arbitrator shall determine the procedure to be followed for the conduct of the arbitration. The decision will be recorded in writing by the arbitrator and shall be binding on both or all Parties.
- 11.9 All costs for the mediation and arbitration shall be borne equally by each Party
- 11.10 The arbitrator shall not be the same person as acted as mediator.

12. INTELLECTUAL PROPERTY

12.1 To be undertake in line with appropriate CCG's intellectual property rights.

13. CHARGES AND LIABILITIES

13.1 Except as otherwise agreed in writing, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement.

13.2 All Parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other Party shall be liable for any loss it suffers as a result of this Agreement.

14. CONTRACT VARIATION PROCEDURE

14.1 This Agreement may not be amended or varied other than in accordance with this Clause 14.

14.2 Where such amendment or variation is agreed in accordance with this Clause 14, it will be taken as a Contract Variation

14.3 The provisions of the Agreement, the Services described in Annex A, Financial Arrangements Annex B and the information schedule Annex C may be varied at any time by agreement in writing between the Partnership Commissioning Unit and the Clinical Commissioning Groups party to this agreement.

14.4 Where a 'contract variation' is proposed that would have the effect of increasing the cost of the Partnership Commissioning Unit, then the Partnership Commissioning Unit will inform the relevant CCG(s) of any increase in accordance with the service schedules.

14.5 The party requesting a contract variation pursuant to this Clause 14 will issue a Contract Variation Notice. The Contract Variation Notice shall:

- (a) Provide sufficient information to enable the party in receipt of the Contract Variation notice to assess the extent of the Contract variation and consider whether any changes to the service prices is required in order to implement the Contract Variation
- (b) Specify a time limit within which the services provided by the party in receipt of the Contract Variation Notice shall be modified so that they accurately reflect the agreed Contract Variation.

If the Contract Variation is agreed, then the Parties shall confirm the same in writing and the terms of this Agreement shall be modified so that they accurately reflect the agreed Contract Variation. An agreed Contract Variation will be recorded in the Record of Agreed Contract Variations in the form set out in Annex D.

14.7 Where the Parties fail to agree a Contract Variation, having followed the procedure outlined in sub-Clause 14.6

14.7.1 the Contract Variation Notice may be withdrawn by the Party first issuing it; or

14.7.2 the Dispute Resolution Procedure set out at Clause 11 will be applied.

14.6 If any Change in Law directly alters the costs incurred or to be incurred by the Partnership Commissioning Unit in meeting its obligations under the Agreement or otherwise requires any deletion, amendment or alteration of the extent of any obligation to be met by the Partnership Commissioning Unit under the Agreement or an addition to the obligations of the Service provider under the Agreement, the Partnership Commissioning Unit shall notify the CCGs accordingly and the Parties shall negotiate in good faith to agree a Contract Variation to the Agreement and, where relevant, to amend the Service Prices to account for the introduction of the Change in Law.

14.7 For the purposes of this Clause 14 the expression “law” shall include any primary or secondary legislation and any binding requirement of the Department of Health or NHS England.

15. OBLIGATIONS ON EXPIRY OR TERMINATION OF THIS AGREEMENT

15.1 This clause details the arrangements that shall be made by the Partnership Commissioning Unit to ensure an effective and efficient transition of responsibility for the provision of the Service(s) from it to the relevant Clinical Commissioning Group in the event of the Termination or Expiry of this Agreement or the Termination of a Service.

15.2 The Partnership Commissioning Unit shall provide such assistance as the CCG may reasonably require to affect a full and orderly transfer of the service(s). The PCU shall furnish the CCG with all reasonable information or documents reasonably required to perform the Service(s) (including staffing details). All such assistance shall be provided within a reasonable time having regard to the circumstances of the transfer.

15.3 The PCU shall produce an Exit Management Plan. This Exit Management Plan will comprehensively cover all activities and the associated liaison and assistance which should be provided by the PCU for the successful transfer of the Service(s) to a CCG.

15.4 The Exit Management Plan(s) shall be delivered to and agreed by the CCG (if appropriate) no later than 6 months prior to the end of the Term of this Agreement or the date of Termination of this Agreement or any part thereof.

15.5 The Exit Management Plan shall include the following information to the extent that such information is required to enable the CCG to provide the

Service(s). Such information to be provided by the PCU within the Exit Management Plan¹:

- (a) a detailed description of the tasks to be performed in order to achieve an orderly transfer of the Service(s);
- (b) detailed estimates of the PCU resources required to perform the tasks and an indication of any CCG resources that may be required;
- (c) detailed estimates of the timescales necessary for the orderly execution of the Exit Management Plan;
- (d) a comprehensive chart showing which tasks are dependent on the completion of any other task or tasks;
- (e) a process for disclosure of agreed documentation used by the PCU, PCU Personnel and any Sub-Contractors in support of provision of the Service(s) (including designs, specifications, operations manuals, user-related documentation);
- (f) a process for disclosure of details of all processes and procedures used in respect of the Service(s), including all underlying processes necessary to effect the Service(s) or an equivalent service;
- (g) a process for disclosure of details of any training materials used in connection with the performance and delivery of the Service(s)s;
- (h) a process for disclosure of full details of the information relating to PCU Staff;
- (i) a process for disclosure of full details of any third party contracts entered into by the PCU which relate to the PCU's provision of the Service(s) (indicating which of these are third party contracts relating exclusively to the Service(s));
- (j) a process for disclosure of full details of any relevant Intellectual Property used by the PCU in the provision of the Service(s), detailing ownership of the relevant rights and any restrictions or conditions applying to their use;
- (k) proposals for knowledge transfer to the CCG and/or the third party nominated by the CCG in connection with the continuation of the provision of the Service(s) following the Expiry or Termination of this Agreement or Termination of any Service(s);
- (l) a process for disclosure of an inventory of any CCG data and PCU owned data that is under the control of the PCU and details of the data structures in which the CCG data is stored;

- (m) proposals for the transfer of any CCG data and PCU owned data in the PCU's possession from the PCU to either the CCG or a third party nominated by the CCG, including
 - (i) proposed data transfer methods, both physical and electronic (wherever possible); and
 - (ii) proposed methods for ensuring the integrity of CCG data on transfer.
 - (n) proposals for the assignment or novation, where applicable, of any third party contracts which the Parties agree are to be so transferred from the PCU to the CCG and/or a third party nominated by the CCG;
 - (o) proposals for the supply of any other information or assistance reasonably required by the CCG or a third party nominated by the CCG in order to effect an orderly hand over of the provision of the Services. This shall include resources to support any due diligence activities required as part of any future procurement undertaken by the CCG.
- 15.6 The CCG shall be responsible for reasonable costs incurred by the PCU in discharging its obligations under this Clause 15, except where the Agreement has been terminated by reason of
- (a) a material breach of this Agreement by the PCU;
 - (b) a Force Majeure Event as set out in clause 17; in which case the PCU shall be responsible for such costs.
- 15.7 The costs incurred by the PCU in discharging its obligations and which will be reimbursed by the CCG under this Clause 15 shall be agreed both Parties acting reasonably.
- 15.8 Upon the Expiry or Termination (for any reason) of this Agreement:
- (a) any sum owing by any Party to any other Party under any of the provisions of this Agreement shall become immediately due and payable;
 - (b) any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its Expiry or Termination shall remain in full force and effect. Expiry or Termination shall not affect or prejudice any right to damages or other remedy which any Party may have in respect of any breach of this Agreement which existed at or before the date of Expiry or Termination;

- (c) subject as provided in this Clause 15, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;
- (d) Upon Expiry or Termination of this Agreement, each Party shall, to the extent permissible by law, promptly:
 - (i) return to the other Party all equipment, materials and property belonging to the other Party in connection with the provision of the Services under this Agreement;
 - (ii) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information;
 - (iii) erase all Confidential Information from their respective computer systems (to the fullest extent possible); and
 - (iv) on request, certify in writing to the other Party that it has complied with the requirements of this Clause 15.

15.9 If the CCG terminates a Service(s), and that Service(s) Termination has a material adverse effect on the PCU, the Contract Manager will notify the PCU's Representative of the actions being taken to manage this adverse effect. The Contract manager will inform the PCU's Representative of progress in completing these actions at their monthly meetings until such time that such adverse effect is eliminated.

15.10 On receipt of a Termination Notice, the Parties will determine and agree the Service(s) Price of the terminated Service(s) to be extracted by the CCG from the Service Price(s) and the reasonable costs of implementing that Service(s) Suspension or Termination. Where the Parties fail to agree:

- a) the Service Price(s) to be extracted; and/or
- b) the reasonable costs to be incurred in effecting the Service(s) Suspension or Termination (such costs to include additional or unforeseen costs resulting directly from the Service(s) Suspension or Termination)

then the Dispute Resolution Procedure set out at Clause 11 will be applied.

16. INDEMNITY, LIABILITY AND LIMITS ON LIABILITY

16.1 The host-CCG shall indemnify and hold harmless the non-host CCGs, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance or failure to perform its obligations under this

Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the PCU or any persons for which the host CCG is otherwise legally liable.

- 16.2 The Non-host CCG shall indemnify and hold harmless the host CCG, its subcontractors, agents and employees from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature and whether in contract or in tort, including injury to or death of any person or persons or loss of or damage to any property arising out of or in respect of the performance by the non-host CCG of its obligations under this Agreement if and to the extent that such losses, costs, damages and expenses are caused or contributed to by the negligent acts or omissions of the non-host CCG or any persons for which the non-host CCG is otherwise legally liable.
- 16.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against any other Party pursuant to this Agreement. The host CCG retains legal responsibility for the PCU. Any financial implications, losses or associated costs arising under this clause will be shared across a" CCGs in accordance with Annex B
- 16.4 Notwithstanding any other provision of this Agreement neither Party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.
- 16.5 Subject always to Clauses 16.3, 16.4 and 16.7 the host-CCG's total liability to the non-host CCG in respect of any losses, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not, under any circumstances exceed, in the aggregate, a sum equal to the Service(s) Prices payable in any one year by the non-host CCG to the host-CCG under this Agreement.
- 16.6 All Parties agree to take out and maintain in force adequate insurance throughout the Term, whether under the NHSLA Schemes or otherwise, in respect of their obligations under this Agreement.
- 16.7 Except as expressly provided in this Agreement, no Party shall be liable or responsible to any other Party in contract, tort or otherwise (including any liability for negligence) for:
- (a) any loss of revenue, business, contracts, anticipated savings or profits, or any loss of use of facilities; or

(b) any special indirect or consequential loss howsoever arising.

16.8 For the purposes of sub-Clause 16.7.a “anticipated savings” means any expense which either Party expects to avoid incurring or to incur in a lesser amount than would otherwise have been the case by reason of the use of the Services provided by the PCU under this Agreement.

17. FORCE MAJEURE

17.1 No Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party (a “Force Majeure Event”) provided that this Party:

- (a) promptly notifies the other Parties in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- (b) uses all reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.

17.2 For the purposes of this Agreement causes of Force Majeure Events are limited to:

- (a) flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots, sabotage;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) fire, explosion or accidental damage;
- (f) loss at sea;
- (g) extreme adverse weather conditions;
- (h) enduring or repercussive interruption or failure of utility services, including but not limited to electric power, gas or water.
- (i) Industrial action/strikes

18. STATUS OF THIS AGREEMENT

18.1 This agreement is an ‘NHS contract’ made between NHS Bodies pursuant to section 9 of the National Health Service Act 2006.

18.2 This Agreement is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this Agreement. The Parties enter into the Agreement intending to honour all their obligations.

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties or that the PCU be deemed to be the agent of the CCG

19. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English law

Signed for and on behalf of [CCG]	
Signature:	.....
Name:	...Simon cox.....
Position:	.....Accountable Officer.....
Date:	.....
Signed for and on behalf of [PCU]	
Signature:	.....
Name:	.... ...Janet Probert
Position:	Director of Partnerships ..
Date:	.....
CONTRACT MANAGERS	
CCG Hambleton Richmondshire and Whitby	
Name:	.....
Office address:	.....
Tel No:	.....
E-mail Address:	.....
CCG Harrogate and rural district	
Name:	
Office address:	
Tel No:	
E-mail Address:	
CCG Vale of York	

Name:		
Office address:		
Tel No:		
E-mail Address:		
CCG scarborough and Ryedale		
Name:		
Office address:		
Tel No:		
E-mail Address:		
PCU		
Name:		.....
Office Address:		.....
Tel No:		.....
E-mail Address:		.....

Annex A. The Services

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
Continuing Health Care	<ul style="list-style-type: none"> • Whole process, pathway, • Strategy development within the national framework • Decision-making panel, • Managing payments, • Contracting legal advice (internal) and external advice, representation • National and Local performance reporting • Management of sub-contractors • Identification and reporting of any quality or safety concerns in visits to the relevant CCG and Safeguarding Forum 	<ul style="list-style-type: none"> • Assessment - PCU • Strategy/ Policy national framework- • Budget management (risk share) • Developing care packages, and commissioning packages • Appeals and litigation • Negotiating the annual prices 	<ul style="list-style-type: none"> • CCG role in the CHC appeal process 	<ul style="list-style-type: none"> • CCG role in the CHC appeal process • Amend scheme of financial delegation to include CHC, with Director of PCU with authorisation to agree contracts and authorisation for payment within SRCCGs scheme of delegation 	<p>PCU need to work direct with CSU to procure legal advice, Business Intelligence, Procurement and Information Governance</p>
Vulnerable Adults includes, but no exclusively - Mental Health - Dementia	<ul style="list-style-type: none"> • Commissioning • Contract Management • Strategy • National and local 	<ul style="list-style-type: none"> • PCU Management Board – approve strategies subject to prior robust consultations with 	<ul style="list-style-type: none"> • Specifications approved by each CCG in line with scheme of delegation 	<ul style="list-style-type: none"> • Amend scheme of financial delegation to include out of area placements and specialist packages 	<p>Performance and quality reporting</p> <p>Project Management support</p>

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
<ul style="list-style-type: none"> - Learning Disability - ASD & Autism - Domestic Abuse 	<ul style="list-style-type: none"> Performance Monitoring • Service Improvement • Winterbourne action plan • Out of Area Placements and review of those for safety and quality • Quality of care • Individual case management • Financial Monitoring and budget management 	<p>each CCG</p> <ul style="list-style-type: none"> • Reporting for each CCG, each contract and against a NY benchmark • Agee out of area placements • PCU Management Board to approve specifications in line with the relevant CCGs scheme of delegation 	<ul style="list-style-type: none"> • Monitor performance through relevant committee • Lead Commissioner to approve and lead relevant procurements 	<p>with Director of PCU with authorisation to agree contracts and authorisation for payment within SRCCGs scheme of delegation</p> <ul style="list-style-type: none"> • Specifications approved each CCG in line with scheme of delegation • Monitor performance through relevant committee • Lead Commissioner to approve and lead relevant procurements 	
<p>Adult Safeguarding (moving to statutory basis –Care Bill)</p>	<ul style="list-style-type: none"> • Strategy Development • Contractual compliance for Safeguarding • Commissioning of and assurance on safeguarding training • Advice provision • Represent the CCGs on local Safeguarding 	<ul style="list-style-type: none"> • Director of PCU to recommend and ensure appropriate action is taken in response to safeguarding concerns. This will primarily be done in conjunction with Chief Nurse unless an emergency requires a decision and the Chief Nurse 	<ul style="list-style-type: none"> • CCG lead post for Safeguarding • Attendance on Safeguarding Boards as required • Prompt action in response to Safeguarding Concerns • Promotion of Safeguarding awareness within the CCG 	<ul style="list-style-type: none"> • CCG lead post for Safeguarding • Attendance on Safeguarding Boards as required • Prompt action in response to Safeguarding Concerns • Promotion of Safeguarding awareness within the CCG 	<p>Serious Incidents Training</p>

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
	<ul style="list-style-type: none"> Boards Support partnership working Domestic homicide Alert CCGs to safeguarding concerns Conduct safeguarding reviews Monitor providers for safeguarding compliance 	<p>is not available.</p> <ul style="list-style-type: none"> Annual Safeguarding Report Approve Safeguarding Strategies at PCU Board following robust consultation with CCGs 			
<p>Children and Maternity Including, but not limited to:</p> <ul style="list-style-type: none"> - CAMHS - Looked After Children commissioning - Maternity - Commissioning for children and young people with special educational needs and disabilities (SEND) 	<ul style="list-style-type: none"> Commissioning Strategy development Service Improvement Development and Implementation of plans for changes in legislation Performance monitoring of providers Represent CCGs on relevant children's and maternity partnership boards Financial management and budget monitoring 	<ul style="list-style-type: none"> Commissioning Intentions - PCU management Board Service specifications to PCU Management Board in line with scheme of delegation, following prior consultation with CCGs Service specific strategies to PCU Management Board following robust consultation with CCGs Feed back to CCGs on performance 	<ul style="list-style-type: none"> CCGs to include commissioning intentions in contracting where lead commissioner Relevant Lead Commissioner to approve and lead on procurements CCG to approve partnership strategies in line with scheme of delegation Consideration of any non-risk share children's services to be delegated to Director of PCU in line with the 	<ul style="list-style-type: none"> CCGs to include commissioning intentions in contracting where lead commissioner Relevant Lead Commissioner to approve and lead on procurements CCG to approve partnership strategies in line with scheme of delegation Consideration of any non-risk share children's services to be delegated to Director of PCU in line with the scheme of delegation 	<p>Performance monitoring</p> <p>Maternity Dashboard</p> <p>Project management</p>

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
		monitoring and statutory changes.	scheme of delegation <ul style="list-style-type: none"> Service specifications approved by each CCG in line with scheme of delegation 	<ul style="list-style-type: none"> Service specifications approved by each CCG in line with scheme of delegation 	
Personal Health Budgets	<ul style="list-style-type: none"> Develop a system for managing personal health budgets for CCGs Manage personal health budgets for CHC and Children's Services in line with national guidance and timescales Develop a model for financial allocations for care packages 	<ul style="list-style-type: none"> Approve Personal Health Budget proposals following robust consultation with CCGs 	<ul style="list-style-type: none"> Relevant Lead Commissioner to review contract processes in line with personal health budget recommendations 	<ul style="list-style-type: none"> Relevant Lead Commissioner to review contract processes in line with personal health budget recommendations 	Project Manager
Pan-PCU Services					
FOI	Respond to all relevant FOI requests within the timescale	PCU staff to comply with SRCCG FOI policy	Approve FOI	Approve FOI	Managed within current CCG FOI arrangements
MP Correspondence	Respond to all relevant MP letters within the	PCU staff to comply with SRCCG MP Letters	Approve Response	Approve Response	Managed within current CCG

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
	timescale	policy			arrangements
IFR	PCU bring to panels on behalf of the CCG – handled in the same way	IFR panel to make decision	Role in appeal process	Role in appeal process	Managed within the current CCG arrangements
HR	All staff to follow SR CCG HR policies	Report to PCU Management Board on any major staffing changes	Host to lead all HR issues; report to CCGs via annual governance report.	n/a	HR is provided within the PCU management costs
IT	IT support and infrastructure	Specific IT developments or new purchases to be reported to PCU Management Board within scheme of delegation limits	Decisions on IT investment over the scheme of delegation limits for PCU Board	Decisions on IT investment over the scheme of delegation limits for PCU Board	IT is provided through the PCU management costs
Policies/ Governance	All PCU staff follow policies from Scarborough, Ryedale CCG, with the exception of clinical policies and equalities, stat & mandatory training etc.		Share policies with all non-host CCGs Provide an assurance report, including risk, HR and policies to non-host CCGs	Share any differences to the clinical policies of SR CCG	Managed within current CCG arrangements
Risk	Each service to have their own risk registers. Corporate risk register for PCU Manage identified risks	Report on significant risks to PCU Management Board.	Each CCG to incorporate PCU risk register	Each CCG to incorporate PCU risk into corporate risk registers Alert the PCU of any CCG risks that may affect PCU	Managed within current CCG arrangements
Procurement	PCU may require procurement advice and support		Recommendations to on procurement approach and decisions to be taken by the lead	Recommendations to on procurement approach and decisions to be taken by the lead commissioners	Advice on procurement managed within current CCG

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
			commissioners Governing Body, following consultation with other CCGs	Governing Body, following consultation with other CCGs	arrangements
Patient Relations	Investigate and respond to complaints	Investigation of complaints and case work, in line with SRCCG complaints policy Share complaints response with the relevant CCG Report the number of complaints and outcomes across PCU and to individual CCGs	Authorise Director of PCU to act on behalf of AO on complaints	Authorise Director of PCU to act on behalf of AO on complaints	To be managed within current CCG arrangements
Clinical Quality and Assurance	Serious Incident Reporting				To be managed within current CCG arrangements
IG	All staff to follow SR CCGs Information Governance Policies	Report Breaches to PCU Management Board Provide report relevant on breaches and investigations to each CCGs Audit Committee. Named Caldicott Guardian on PCU Board	SR CCG is data controller for all PCU information, regardless of location of case. Breaches and reporting, investigations led by IG team Include IG within assurance report to non-host CCGs	Non-host CCGs should report any breaches affecting patients within their area to their relevant Audit Committee for information Non-host CCGs may be involved in investigations of IG issues that relate to their geographic area.	
Communications and Engagement	Communication and engagement activity relating to services to	Internal Communications	Communication and Engagement support to be done through current	Communication and Engagement support to be done through current CCG	External – to be managed within current CCG

PCU Functions	Expected activity	Decision Making Points PCU	Host CCG actions required	Non-host CCG actions required	CSU Services Impact
	<p>be taken through the relevant CCG(s) communications service/ process</p> <p>Internal Communications support</p>		CCG processes	processes	arrangements
Legal	Access to legal advice, legal services and counsel	Agree legal representation for cases and tribunals			
Strategic Projects	Support to do major redesign	PCU Management Board to agree a share of days out of existing CCG contracts -cost per case basis			
BI	Data reporting and monitoring Trends and analysis Reporting from IT systems				

ANNEX B: FINANCE SCHEDULE

Scarborough & Ryedale Clinical Commissioning Group

Partnership Commissioning Unit

PCU Running Costs

The CCG's have agreed that the running costs will be recharged in 2013/14 using the capitation basis used in the baseline exercise.

		£	WTE
PAY	Management	£376,925	6.50
	Mental Health & Vulnerable People	£288,837	6.00
	Adult Safeguarding	£223,157	5.00
	Children, Young People & Maternity	£285,445	6.00
		£1,260,50	32.0
	Continuing Care - Clinical Services	4	0
	Continuing Care - Admin	£169,383	4.69
			14.4
	Continuing Care -Contracts	£311,520	0
Agency			
		£2,915,77	74.5
		1	9
NON PAY	CSU costs	£89,800	
	Travel	£90,000	
	Occupancy (Sovereign House)	£133,400	
	Other	£30,000	
	System One implementation		

	HRW Fasttrack BI support to integrate System One with QA /QA replacement development Dedicated team to clear backlog - non rec cost of staffing for 1 year Recharge from S&R CCG (non-recurrent 2013/14)	£129,100	
		£472,300	
INCOME	Recharge to Local Authority (JP)	-£30,000	
TOTAL PCU COSTS		£3,358,07	74.5
		1	9

CCG SPLIT for 2013/14

18.97%	NHS Hambleton, Richmondshire and Whitby CCG	£637,148
20.39%	NHS Harrogate and Rural District CCG	£684,676
		£1,526,09
45.45%	NHS Vale of York CCG	5
15.19%	NHS Scarborough and Ryedale CCG	£510,153
		£3,358,07
		1

*Notes (related to schedule with actual figures as at
Month 7)*


- 1 Includes provision for redundancy
payments of £50k*
- 2 Costs do not include IT engineering or
equipment*
- 3 Costs not yet quantified*
- 4 Initial estimate, further work required*

Part year effect of £100k in 2013/14
5 (3/12ths) and 2014/15 (9/12ths)

Harrogate and Rural District

Signature

:



Position:

Chief Officer

Date:

02/12/2013

Hambleton, Richmondshire & Whitby

Signature

:



Position: Clinical Chief Officer

Date: 2/12/13


Scarborough & Ryedale

Signature

:



Position:	
	Chief Clinical Officer
Date:	02/12/2013

<u>Vale of York</u>	
Signature	
:	
Position:	
	Chief Clinical Officer
Date:	02/12/2013

The PCU management costs will be reviewed and agreed annually through the PCU management board and the section above will be amended accordingly.

PCU Commissioning Costs

PCU commissioning costs will be agreed annually through the PCU Management Board and financed by the CCGs on the current risk share basis.

Risk share basis is currently:

Mental Health

Hambleton, Richmondshire and Whitby

17.78%

Harrogate and Rural District	20.99%
Scarborough & Ryedale	19.82%
Vale of York	41.42%

Continuing Care

Hambleton, Richmondshire and Whitby	20.26%
Harrogate and Rural District	24.50%
Scarborough & Ryedale	20.69%
Vale of York	34.55%

Running Costs

Hambleton, Richmondshire and Whitby	18.97%
Harrogate and Rural District	20.39%
Scarborough & Ryedale	45.45%
Vale of York	15.19%

ANNEX C: INFORMATION

PCU will report to the host CCG and all non-host CCGs a monthly basis a set of Key Performance Indicators. These will consist of Finance and Contracting, Clinical Pathways, Safeguarding, Commissioning, Workforce and Experience as agreed at PCU Management Board and as set out in the PCU's performance dashboard

ANNEX D: RECORD OF CONTRACT VARIATIONS

Title	Summary of Changes	Financial Implication	Approved Date

