

Dated 1st April 2024

Milton Keynes City Council

and

**Bedfordshire, Luton and Milton Keynes
Integrated Care Board**

**For the provision of an Integrated Community Equipment Service (ICES)
and Wheelchair Provision and Repair Service**

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THIS DEED is dated

1st April 2024

PARTIES

- (1) Bedfordshire, Luton and Milton Keynes Integrated Care Board, of 155 Sherwood Drive, Bletchley, Milton Keynes, MK3 6RT (**the “ICB”**).
- (2) **Milton Keynes City Council** of Civic Offices, 1, Saxon Gate East, Central Milton Keynes, MK9 3EJ (the **"Council"**).

BACKGROUND

- (A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in section 275 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.
- (B) The Partners are committed to better integration of the NHS Functions and the Council Health-Related Functions, and therefore wish to enter into the arrangements under this Agreement.
- (C) This Agreement provides the framework within which the Partners will work together to achieve the Aims and Outcomes.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

- 1.1 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: this Agreement between the ICB and the Council comprising these terms and conditions together with all schedules attached to it.

Aims and Outcomes: the objectives of the Partners, setting out how the Partnership Arrangements are likely to lead to an improvement in the way the Functions are exercised, as described in Schedule 1.

BLMK ICES Programme Board: An officer led group, with representatives from the ICB and the Council who meet on a monthly basis to monitor the service, the budget and take corrective action where required. The Board approves operational policy for the services in the scope of this agreement.

CES Team: means the team employed by the ICB to provide a support service to the BLMK Partners and manage the Community Equipment Service on a day to day basis on their behalf.

Change in Law: a change in Law that impacts on the Partnership Arrangements, which comes into force after the Commencement Date.

Commencement Date: 1st April 2024

Community Equipment means equipment and minor adaptations which assist a person to perform their essential activities of daily living in the community and maintain their independence.

Council's Authorised Officer: Mick Hancock, Group Head of Commissioning, Milton Keynes City Council.

Council's Financial Contribution: the Council's financial contribution for the relevant Financial Year. The Council's Financial Contribution for the First Financial Year is set out in Schedule 3.

Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Partner.

Dispute Resolution Procedure: the procedure set out in clause 28.

Financial Contributions: the financial contributions of the Partners as set out in Schedule 3.

Financial Year: 1 April to 31 March.

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation.

Functions: the ICB Functions and the 's Health-Related Functions.

Host Partner: The host partner during the Initial Term of this Agreement is Milton Keynes City Council. The host partner role may be undertaken by either partner following agreement by both partners to any change.

ICB's Financial Contribution: the ICB's financial contribution for the relevant Financial Year. The ICB's Financial Contribution for the First Financial Year is set out in Schedule 3.

ICB Functions: shall have the same meaning as set out in the NHS Constitution for England (updated 17 August 2023).

Information: has the meaning given under section 84 of FOIA.

Information Sharing Protocol: the protocol describing how the Partners will share Information contained in Schedule 9.

Initial Term: the period will be commensurate with the contract term, 5 years and updated on a rolling basis as agreed by both Partners.

Joint Leadership Team: the meeting of senior executives from the Bedfordshire, Luton and Milton Keynes Integrated Care Board and Milton Keynes City Council, which provides governance on the joint commissioning arrangements, and any pooled budgets between the Integrated Care Board and the Milton Keynes City Council. Joint Leadership Team delegates responsibility to BLMK ICES Programme Board for the day to day management of this agreement on its behalf.

Lead Partner: shall mean Milton Keynes City Council for the purposes of this agreement.

Memorandum Account: a full statement of spending prepared at year end and signed by the accountable officer/section 151 officer to provide assurance to all other parties to the pooled budget. This is likely to include:

- Contributions to the pooled budget – cash or kind
- Expenditure from the pooled budget
- The difference
- The treatment of the difference

NHS Act 2006: National Health Service Act 2006.

NHS Body's Authorised Officer: Anne Brierley, Chief Transformation Officer, Bedfordshire, Luton and Milton Keynes ICB

NHS Body's Financial Contribution: The ICB's financial contribution for the relevant Financial Year. The ICB's Financial Contribution for the First Financial Year is set out in Schedule 3.

NHS Regulations 2000: the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (*SI 2000/617*).

Non-pooled Fund: a non-pooled fund comprising either the Council's Financial Contribution or The ICB's Financial Contribution for the Services designated in Schedule 3.

Operational Management Group: a group consisting of operational managers and leads from prescribing teams across BLMK that discuss and recommend operational service developments for agreement by the BLMK ICES Programme Board.

Partner: either the ICB or the Council, and "**Partners**" shall be construed accordingly.

Partnership Arrangements: the arrangements made between the Partners under this Agreement.

Personal Data: shall have the same meaning as set out in the Data Protection Act 2018 and the UK GDPR.

Person using the Service: individuals who are eligible to receive the Services, as more particularly described in Schedule 2.

Pooled Fund: a pooled fund comprising the Council's Financial Contribution and The ICB's Financial Contribution for the Services designated in Schedule 2, out of which payments may be made by the ICB towards expenditure incurred in the exercise of the Functions.

Pooled Fund Budget Manager: is the person nominated by MKCC with responsibility to manage the spend within Budget and forecast expenditure projections.

Pre-Existing Contracts: as set out in Schedule 7.

Previous Section 75 Agreements: previous agreements entered into by the Partners or their predecessor bodies under section 75 NHS Act 2006 or the *Health Act 1999*, as listed in Schedule 8.

Quarter: one of the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

Regulatory Body: those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Council.

Representative: a Partner's employee, agent or subcontractor and any employee of the other Partner who is seconded to the Partner and is acting in accordance with the Partner's instructions.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (*SI 2004/3391*) (**EIR**).

Service Provider: a third-party provider of any of the Services, as commissioned by the ICB or the Council

Services: the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in Schedule 2.

Standing Financial Instructions: the financial policies and procedures of an organisation

Term: the period of the Initial Term as may be varied by:

- any extensions to this Agreement that are agreed under clause 3; or
- the earlier termination of this Agreement in accordance with its terms.

VAT Guidance: the guidance published by the Department of Health entitled "VAT arrangements for Joint NHS and Local Authority Initiatives including Disability Equipment Stores and Welfare- Section 31 Health Act 1999" as amended or replaced from time to time.

Working Day: any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2. COMMENCEMENT AND DURATION

This Agreement shall take effect on the Commencement Date and shall continue for the Term. The period will be commensurate with the contract term, 5 years and updated on a rolling basis as agreed by both Parties.

3. **EXTENDING THE INITIAL TERM**

The Partners may extend this Agreement beyond the Initial Term for a period and on varied terms as they agree, subject to the approval of both Parties.

4. **PARTNERSHIP ARRANGEMENTS**

4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to commission integrated health and social care services to better meet the needs of Milton Keynes residents than if the Partners were operating independently.

4.2 The specific aims and outcomes of the Partnership Arrangements are described in Schedule 1.

4.3 From the Commencement Date, the Previous Section 75 Agreements are superseded and replaced by the provisions of this Agreement.

4.4 The Partnership Arrangements shall comprise:

(a) the establishment of Pooled Funds for the following Services:

(i) **Integrated Community Equipment Services**

(b) the establishment of Non-Pooled Funds for the following Services:

(i) **Equipment to support education**

(ii) **Continuing Health Care**

(iii) **Medical Equipment**

4.5 The specialist wheelchair service will be managed and administered by the ICB.

4.6 The Council shall host and provide the financial administrative systems for the Pooled **and** Non-Pooled Fund.

4.7 The Council shall appoint a Pooled Fund Budget Manager, which will be the Head of Commissioning. They will manage the Pooled Fund and Non-Pooled Fund on behalf of the Partners, supported by the CES Team and MKCC Finance Team.

4.8 The Pooled Fund Budget Manager supported by the MKCC Finance Team will be responsible for submitting quarterly reports and an annual

return to the Partners about the income of and expenditure from, the Pooled Fund and other information, to enable them to monitor the effectiveness of the Partnership Arrangements.

- 4.9 Nothing in this Agreement shall prejudice or affect:
- (a) the rights and powers, duties and obligations of the Partners in the exercise of their functions as public bodies or in any other capacity;
 - (b) the powers of the Council to set, administer and collect charges for any Council Health-Related Function; or
 - (c) the Council's power to determine and apply eligibility criteria for the purposes of assessment under the Community Care Act 1990.

5. DELEGATION OF FUNCTIONS

- 5.1 For the purposes of the implementation of the Partnership Arrangements, the ICB hereby delegates the exercise of the ICB's functions to the Council to exercise alongside the Council's Functions and act as Head of Commissioning supported by the CES team, including provision for educational establishments and equipment for use by children with disabilities.
- 5.2 Additional services may be brought within the scope of this Agreement during the Term by agreement.

6. SERVICES

- 6.1 Milton Keynes City Council is the Host Partner for the Partnership Arrangements, and agrees to act as lead commissioner of the Services listed in clause 5.1.
- 6.2 The Council shall provide the Services or procure that they are provided and shall be accountable to the Partnership for the Functions for the benefit of Service Users:
- (a) to ensure the proper discharge of the Partners' Functions;
 - (b) with reasonable skill and care, and in accordance with best practice guidance;
 - (c) in all respects in accordance with the Aims and Outcomes, the performance management framework, the provisions of this Agreement.

- (d) in accordance with its standing orders or other rules on contracting; and
- (e) in accordance with all applicable Law.

7. PERFORMANCE MANAGEMENT

The Partners shall adhere to the performance management framework set out in Schedule 5.

8. FINANCIAL CONTRIBUTIONS

- 8.1 The Council shall agree its financial contribution with the ICB in respect of the Pooled and Non-pooled Funds in accordance with the process specified in schedule 3 of this agreement and the Annual Development Plan, if applicable.
- 8.2 The ICB shall agree their Financial Contribution to the Pooled Fund **AND** Non-Pooled Fund and shall manage the Pooled Fund and Non-Pooled Fund in accordance with this Agreement and the Annual Development Plan, if applicable.
- 8.3 The ICB's Financial Contribution and the Council's Financial Contribution for the 2024/25 Financial Year are set out in Schedule 3.
- 8.4 The Partners shall pay the Financial Contributions into the Pooled Fund **AND** Non-Pooled Fund monthly in arrears on receipt of an invoice.
- 8.5 Where the Agreement is extended beyond the Initial Term, the Partners shall agree the ICB's Financial Contribution and the Council's Financial Contribution for the following Financial Year by 31 March.
- 8.6 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the relevant Pooled Fund **AND** Non-Pooled Fund.
 - (a) The Partners agree to adopt "Partnership Structure (b)" as set out in the Department of Health/HMRC guidance for joint NHS/local authority initiatives issued in June 2002 whereby the lead body acts as an 'agent' for the other partner. As a result, the Council is required to purchase the goods and services in its own name and re-invoice the relevant share to the ICB. Thus enabling the ICB to recover any VAT which may be incurred under its VAT regime. Invoices shall be issued in the format given in Annex A to the VAT Guidance.
 - (b) The Council will provide sufficient and complete documentation to the ICB to enable the ICB to satisfy the

requirements of HM Revenue and Customs with respect to reclaiming any VAT.

9. OVERSPENDS AND UNDERSPENDS

- 9.1 The Council shall use all reasonable endeavours to arrange for the discharge of the Council Related Functions and the NHS Functions within the Financial Contributions available in each Financial Year.
- 9.2 The Council shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.
- 9.3 The Council shall make the ICB aware of any potential overspend as soon as it becomes aware of this possibility and inform the BLMK ICES Programme Board on a quarterly basis of the projected outturn effect. The Pooled Fund Budget Manager will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.
- 9.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend of either or both Partners' Financial Contribution for:
- (a) Pooled Funds, the Partners shall meet the overspend proportionately to their respective financial contribution to the pooled fund; **AND**
 - (b) Non-Pooled Funds for Council Related Functions (e.g. education), the Council shall fund overspends ; **AND**
 - (c) Non-Pooled funds for NHS related functions (e.g. CHC, Specialist Wheelchairs) the ICB will fund overspends.
- 9.5 The Council shall make the ICB aware of any projected underspend in relation to Financial Contributions, on a quarterly basis throughout the Financial Year. The Council shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.
- 9.6 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an underspend of either or both Partners' Financial Contribution for:
- (a) Pooled Funds, the underspend shall be returned to the partners proportionately to their respective financial contribution to the pooled fund; **AND**

- (b) Non-Pooled Funds for Council Related Functions (e.g. education), the underspends shall be retained by the Council ;
AND
- (c) Non-Pooled funds for NHS related functions (e.g. Specialist Wheelchairs and admin costs) the underspends shall be retained by the ICB.

10. CAPITAL EXPENDITURE

The Financial Contributions in the Pooled Fund shall be directed exclusively to revenue expenditure. Any Capital expenditure made available by the Council is managed through the joint arrangements, but it is part of the Non-Pooled Funds.

11. SET UP COSTS

Each Partner shall bear its own costs of the establishment of the Partnership Arrangements under this Agreement.

12. ASSETS

- 12.1 The Integrated Community Equipment Service operates on a loan arrangement basis, where items of equipment are loaned to people using service for a period of time to meet their needs. Once the person has no need for them, they are returned to the store, decontaminated and cleaned and available for re-use and generate another rental charge.
- 12.2 On occasions, the needs of particular person are not able to be met by the equipment on the ICES catalogue, and equipment has to be specially purchased for their use.
- 12.3 Once an item of equipment has been purchased as a special order, it is then owned by either the Pooled Fund, or by the Non-Pooled Fund if it is an item of equipment to support educational needs, or a specialist wheelchair. The equipment item then becomes an asset.
- 12.4 All special orders can be re-used once the person using the service no longer requires them and they can be re-issued to other people. There is no rental charge levied to the Pooled Fund or Non-Pooled Fund, as this item of equipment belongs either to the Council or to the ICB, depending on its intended use.
- 12.5 All equipment purchased to meet a health or social care need that would ordinarily be met by the Pooled Fund, becomes an asset of the Pooled Fund. Any special equipment purchased to meet an educational need will belong to the Council. Any specialist wheelchair purchased will remain an asset of the ICB.

13. GOVERNANCE

- 13.1 The Council shall nominate the Council's Authorised Officer, who shall be the main point of contact for the ICB and shall be responsible in connection with the Partnership Arrangements.
- 13.2 The ICB shall nominate The ICB's Authorised Officer, who shall be the main point of contact for the Council and shall be responsible for representing the ICB and liaising with the Council's Authorised Officer in connection with the Partnership Arrangements.
- 13.3 The Pooled Fund budget manager will be the Head of Commissioning (supported by the CES Team) , who represent both the ICB and the Council.
- 13.4 The Authorised Officers shall be responsible for taking decisions concerning the Partnership Arrangements, unless they indicate that the decision is one that must be referred to the Joint Leadership Team and their respective boards.
- 13.5 The Partners shall each appoint officers to the BLMK ICES Programme Board in accordance with Schedule 4. The terms of reference of the BLMK ICES Programme Board is set out in Schedule 4.
- 13.6 The Partners shall each appoint officers to the Joint Leadership Team and the Milton Keynes Delivery Board. The Joint Leadership Team will delegate responsibility to BLMK ICES Programme Board and details of its role is set out in Schedule 4.

14. REVIEW AND REPORTING

- 14.1 The Pooled Fund Budget Manager supported by the CES Team will prepare a report quarterly that will be presented at the BLMK ICES Programme Board. This report will outline any improvements made to the service; the current budget position and any actions implemented to address any overspends.
- 14.2 The Pooled Fund Budget Manager shall submit a six monthly report to the Milton Keynes Joint Leadership Team setting out:

- (a) the performance of the Partnership Arrangements against the performance management framework in the current and preceding Quarter; and
- (b) any forecast overspend or underspend of the Financial Contributions.

15. ANNUAL REVIEW

15.1 Where the Agreement is extended beyond the Initial Term, the Partners agree to carry out a review of the Partnership Arrangements within three months of the end of each Financial Year including:

- a) the performance of the Partnership Arrangements against the Aims and Outcomes;
- b) plans to address any underperformance in the Services;
- c) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
- d) review of plans and performance levels for the following year; and
- e) plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

16. VARIATIONS

16.1 This Agreement may be varied by the Partners at any time by agreement in writing and signed by each Partner, in accordance with the Partners' internal decision-making processes.

17. STANDARDS

17.1 The Partners shall collaborate to ensure that the Partnership Arrangements are discharged in accordance with:

- the service standards set out in Schedule 5;
- the prevailing standards of clinical governance;
- the ICB standing orders; and those of the Council.

18. EQUALITY DUTIES

18.1 The Partners acknowledge their respective duties under equality legislation, in particular but without limitation, the Equality Act 2010, to

eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

18.2 The Council agrees to adopt and apply policies in its carrying out of the ICB Health-Related Functions and NHS Functions, to ensure compliance with their equality duties.

18.3 The Partners shall take all reasonable steps to secure the observance of clause 18.1 by all servants, employees or agents of the ICB the Council and all Service Providers employed in delivering the Services described in this Agreement.

19. FREEDOM OF INFORMATION

The Partners acknowledge that each is subject to the requirements of FOIA and the EIR and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.

20. DATA PROTECTION AND INFORMATION SHARING

20.1 Each Partner shall (and shall procure that any of its representatives involved in the provision of the Services shall) comply with any notification requirements under Data Protection Legislation. Both Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

20.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working. This data will be anonymised, as the ICB is not able to view service user identifiable data at present. The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

21. CONFIDENTIALITY

21.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.

21.2 Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.

22. AUDIT

- 22.1 The Council shall arrange for the audit of the accounts of the Pooled Fund **AND** Non-Pooled Fund in accordance with its statutory audit requirements.
- 22.2 The Council shall provide to the ICB any reports required concerning the ICB Functions on reasonable notice.
- 22.3 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

23. INSURANCE

The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

24. INDEMNITIES

Each Partner (**Indemnifying Partner**) shall indemnify and keep indemnified the other Partner (**Indemnified Partner**) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud by the Indemnifying Partner, the Indemnifying Partner's employees, or any of its representatives, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its representatives.

25. LIABILITIES

- 25.1 Subject to clause 25.2, neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.
- 25.2 Liabilities arising from Services provided or commissioned under the Previous Section 75 Agreements shall remain with the Host Partner for the Service under the relevant agreement.

- 25.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

26. COMPLAINTS AND INVESTIGATIONS

- 26.1 The Partners shall deal with all complaints received concerning the Services utilising their own complaints procedure.
- 26.2 The Partners shall each fully comply with any investigation by the Ombudsman, including providing access to Information and making staff available for interview.

27. ENGAGEMENT WITH PEOPLE

The Partners shall promote and facilitate the involvement of people using the service , carers and members of the public in decision-making concerning the Partnership Arrangement through the support of local Healthwatch.

28. DISPUTE RESOLUTION

- 28.1 The members of the Joint Leadership Team shall use their best endeavours to resolve disputes arising out of this Agreement.
- 28.2 If any dispute referred to the Joint Leadership Team is not resolved within 21 days, either Partner, by notice in writing to the other, may refer the dispute to the chief executives (or equivalent) of the Partners, who shall co-operate in good faith to resolve the dispute as amicably as possible within 21 days of service of the notice.
- 28.3 Subject to clause 28.4, if the chief executives (or equivalent) fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Partner may commence legal proceedings.
- 28.4 This clause 28 shall not prevent either Partner from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 29 has been exhausted or not) in the case of any breach or threatened breach by the other Partner of any obligation under this Agreement.

29. TERMINATION

29.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 29.2 or 29.3, either Partner may terminate this Agreement at any time by giving 12 months' written notice to the other Partner.

29.2 Either Partner (for the purposes of this clause 29.2, the **First Partner**) may terminate this Agreement in whole with immediate effect by the service of written notice on the other Partner (for the purposes of this clause 29.2, the **Second Partner**) in the following circumstances:

- if the Second Partner is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Partner may only terminate this Agreement under clause 29.2 if the Second Partner has failed to remedy the breach within 28 days of receipt of notice from the First Partner (**Remediation Notice**) to do so;
- there is a Change in Law that prevents either Partner from complying with its obligations under this Agreement.

29.3 The provisions of clause 30 shall apply on termination of this Agreement.

30. CONSEQUENCES OF TERMINATION

30.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:

- a) the Partners will comply with the exit strategy Schedule 10;
- b) assets purchased from the Pooled Fund shall be disposed of by the ICB and the proceeds of sale allocated according to the Partners' Financial Contributions or, if otherwise agreed and subject to the conditions of such agreement, shall be retained by either party, subject to agreement **AND/OR**
- c) assets purchased from the Non-Pooled Funds shall be returned to the Partner from whose Financial Contribution the purchase was made;
- d) contracts entered into by the ICB concerning the Council shall be novated to the Council by agreement with the Council; and
- e) the ICB shall transfer to the Council all records in its possession relating to the Council's Functions.

30.2 Overspends on termination of the Agreement shall be dealt with in accordance with clause 9.4.

30.3 Under spends on termination of the Agreement shall be dealt with in accordance with clause 9.6.

30.4 The provisions of the following clauses shall survive termination or expiry of Agreement:

Clause 19 (Freedom of Information);

Clause 20 (Data Protection and Information Sharing);

Clause 22 (Audit);

Clause 24 (Indemnities);

Clause 25 (Liabilities); and

Clause 30(Consequences of Termination);

31. PUBLICITY

The Partners shall use reasonable endeavours to consult one another before making any press announcements concerning the Services or the discharge of either Partner's Functions under this Agreement.

32. NO PARTNERSHIP

Nothing in this Agreement shall be construed as constituting a legal partnership between the Partners or as constituting either Partner as the agent of the other for any purpose whatsoever, except as specified by the terms of this Agreement.

33. THIRD PARTY RIGHTS

33.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.

34. NOTICES

34.1 Notices shall be in writing and shall be sent for the attention of Authorised Officer of each party, at the address set out for the Partner in this Agreement.

34.2 Notices may be sent by first class mail or email with confirmation of receipt required by post or e-mail. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting and correctly directed email communications shall be deemed to have been received instantaneously on transmission.

35. ASSIGNMENT AND SUBCONTRACTING

- 35.1 Subject to clause 35.2, This Agreement and any right and conditions contained in it may not be assigned or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.
- 35.2 The Partners recognise the recent changes to the structure of the NHS and agree that where necessary, the ICB must obtain express written agreement from the Council, novate, assign in whole or in part a right or condition under this Agreement to any other NHS organisation or any other entity replacing the ICB or who has become responsible for the exercise of any or all of the NHS functions.

36. SEVERABILITY

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

37. WAIVER

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

38. ENTIRE AGREEMENT

This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

39. GOVERNING LAW AND JURISDICTION

Subject to clause 28, 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.

40. FAIR DEALINGS

The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness. Any variations resulting from this clause shall be dealt with in accordance with clause 16 (Variations).

The Partners have executed and delivered this document as a deed and it takes effect on the date stated at the beginning of it.

Schedule 1

AIMS AND OUTCOMES

- 1.1 The overall aim of the Partnership Arrangements is to improve standards and quality of services through more effective coordination of resources within the partnership.
- 1.2 The purpose of this Agreement is to enable the Partner Organisations to deliver the joint vision for provision of equipment and wheelchair services, in line with local strategies. This will be enabled by the delegation of lead commissioning and integrated service provision to the Lead Partner and supported by the flexible use of funds in a Pooled Fund (the Pooled Fund). This will be extended to commission comprehensive and integrated community equipment services and minor adaptations, with the aim of improving outcomes, for individuals. This will be achieved through the Pooled Fund arrangement between the Partner Organisations basing expenditure on need of service users, and the level of contribution from each of the Partner Organisations.
- 1.3 This Agreement provides a robust framework within which agreed monies can be pooled for the individuals who require equipment or minor adaptations in Milton Keynes to the benefit of individuals and carers, and defines the legal, practical and strategic context for pooling budgets.
- 1.4 This Agreement shall be governed and construed in English Law. Section 75 of the National Health Service Act 2006 describes the scope of the functions that are allowed within the Pooled Fund arrangement.
- 1.5 This Agreement relates to funds contributing to joint budgets for each Financial Year during the term of this Agreement. If additional funding or services are to come within the remit of the Pooled Fund arrangement, then a review of the budget will be undertaken by the Pooled Fund manager and approved by the Joint Leadership Team.
- 1.6 The service which is primarily subject to this Agreement is the procurement by the Lead Partner of an integrated community equipment and minor adaptations service, the defining characteristics of which are set out in the appendices to this Agreement.
- 1.7 The development and performance of the Services are discussed and recommended by the Operational Management Group which reports to the BLMK ICES Programme Board. The Operational Management Group is accountable to the Council or ICB that members are representing.

Schedule 2 SERVICES IN SCOPE

Joint eligibility criteria for community equipment, aids to daily living and adaptations:

Geographical criteria:

- Those resident in Milton Keynes and whose GP practice is a member of Bedfordshire, Luton or Milton Keynes ICB.
- Those who are resident in Milton Keynes, but whose GP is hosted by another Integrated Care Board e.g. Northampton. In this instance the Pooled Fund will fund aids to daily living and adaptations
- Those who do not live within the Borough of Milton Keynes, but who are registered with a GP practice hosted by Bedfordshire, Luton or Milton Keynes ICB. In this instance the Pooled Fund will fund equipment to meet a nursing/medical need

Schedule 3

CONTRIBUTIONS 2024/25

3.1 Pooled Budget 2024/25

Annual Budget 2024/25

ICES Pooled Budget	Total
	£
ICB Equipment Pool Budget	485,826
MKCC Equipment Pool Budget (Adults & Children)	551,226
Sub-Total - ICES Pooled Budget	1,037,052
ICES Provider Management:	
ICB Administration	344,060
MKCC Administration (IBCF)	200,000
Sub-Total - Management	544,060
BCF	549,140
Total Pool & Management	2,130,252
Items not in Pool	
MKCC Education	187,000
Total ICES Budget	2,317,252

- 3.2 The Partners shall operate a Pooled Fund for the purchase of equipment to support medical needs, aids for daily living and adaptations. The budgets to be pooled are specified above **based on the following percentages: Pooled Budget MKCC 53.15% and ICB 46.85% and Provider Management fee MKCC 36.76% and ICB 63.24%.** The Host Partner shall create clear identifiable cost centres and report formats to enable effective monitoring and reporting. This will include the production of monthly budget statements and statutory year end Memorandum Accounts or estimates thereof to coincide with financial timetables. The year-end position shall be reported to the Joint Leadership Team and the Memorandum Accounts shall be sent to both Partners by the Host.
- 3.3 The Partners may extend the Pooled Fund to include additional budgets for equipment by agreement.
- 3.4 The Pooled Fund shall be used for the purchase of equipment and for improving service delivery to the Integrated Community Equipment Service.
- 3.5 The base budgets contributed by the Partners to the Pooled Fund shall be negotiated annually based on the previous Financial Year's budget

from each of the Partners, plus an equal agreed inflationary uplift if deemed necessary by the Partners (and subject to Partners internal budget governance procedures).

- 3.6 In the event of a year-end **overspend** in the Pooled Fund this will be offset by available additional funding set aside in the BCF and IBCF for ICES equipment services (as per the BCF plan which is subject to review and change). Any remaining overspend will be borne by each partner on the terms outlined in 9.4 (a).
- 3.7 In the event of an **under spend** in the Pooled Fund at the end of a Financial Year-, this shall be returned to the partners in proportion to their contributions. Budget variances elsewhere in the Council or the ICB shall not affect the Pooled Fund.
- 3.8 The Standing Financial Instructions for the Host Organisation will govern the deployment of these resources. The Pooled Fund will be governed by the financial rules, statutory requirements and duties of the NHS body. Due delegation will be extended to cover the Partnership Arrangements.
- 3.9 The ICB shall process all supplier invoices due for payment within 30 days in line with the public sector payment policy.
- 3.10 The Partners agree that purchases made under the Pooled Fund will be subject to the VAT rules of "Partnership Structure (b)" as set out in the Department of Health/HMRC guidance for joint NHS/local authority initiatives issued in June 2002 whereby the lead body acts as an 'agent' for the other partner. This shall be subject to the advice of the Department of Health and HM Customs and Excise.
- 3.11 The partners shall consult the Joint Leadership Team in writing before any decision is taken by the partners to make financial investment or disinvestments.
- 3.12 Requirement for additional investment will be identified by the Pooled Fund manager in response to identified service gaps, shortfall in meeting demand, or in response to new targets or guidance from Government and acknowledged through the BLMK ICES Programme Board. These requests will be submitted by the BLMK ICES Programme Board to the Boards of each partner for ratification.
- 3.13 In the event that one Partner identifies an uplift in contribution to the Pooled Fund and the other organisation is not in a position to match this, each Partner shall decide, through their respective decision making processes, whether the Partner who has prioritised the uplift will be required to invest it in the absence of matched funding from the other Partner.
- 3.14 Milton Keynes City Council (MKCC) as the Lead Partner will be responsible for the management of the Pooled Fund in consultation with CES Team. MKCC will delegate the management of the Pooled Fund to the Pooled Fund Budget Manager.

- 3.15 The CES team in conjunction with the Pooled Budget Manager and MKCC Finance Team will provide a quarterly performance report to the BLMK ICES Programme Board on actual activity, finance and service quality against agreed targets.
- 3.16 The BLMK ICES Programme Board is accountable to the Joint Leadership Team and will provide reports every six months on the performance of the pool. The Joint Leadership Team will oversee the strategic direction of the use and application of the Pooled Fund. They will review and propose the budget contributions each year. The partners Governance processes will need to be followed if additional budget is required. The Joint Leadership Team will receive an annual report on the performance of the pool within twelve weeks of the end of the financial year.
- 3.17 It is acknowledged by both parties that the role of Lead Partner can by agreement be assigned to either of the Partners in accordance with Clause 16, such assignment being made pursuant to this partnership agreement and the role of Lead Partner will apply to the current Lead Partner.
- 3.18 The BLMK ICES Programme Board has representation and delegated responsibility for developing and monitoring services.
- 3.19 The Partner Organisations shall determine the shape and strategic direction of services through the Joint Leadership Team, based on recommendations from the BLMK ICES Programme Board. Activity levels will be agreed annually between the Partner Organisations.
- 3.20 Catalogue Stock Equipment procured pursuant to this Agreement will remain in the ownership of the Provider but will be made available for use by the Partnership Organisations. Items ordered under the contract as “specials” will be owned under the pool and shared between each organisation based on their percentage contributions to the pool. The contractor will be responsible for the maintenance and storage of these assets. The lead partner will liaise with the contractor at each year end to undertake a stock take of this equipment which will be fed through for inclusion in the yearend financial position.
- 3.21 In the event of the termination of the Agreement, equipment purchased through the Pooled Fund as “specials” will become the property of the appropriate partner. The equipment will be distributed to whichever partner needs it to carry out its statutory obligations.

Schedule 4 GOVERNANCE

4.0 Joint Leadership Team

The Placed Based Leadership Team will provide the governance for this Section 75 Agreement. The Placed Based Leadership Team role will be to:

- Review the operation of this Agreement and consider its renewal subject to the terms of any existing contractual commitments under the management of CBC in its role as Lead Commissioner on behalf of the Partners.
- Review and consult on commissioning strategies and intentions, and revise this agreement as appropriate.
- Receive six monthly finance reports as set out in this Schedule.
- Agree the financial contributions to the Pooled Budget on an annual basis.
- Agree such variations to this Agreement from time to time as it sees fit.
- Review and agree annually revisions to this agreement as required.
- Receive six monthly performance reports from the Pooled Budget Manager as the lead commissioner.
- Consider progress on key objectives as outlined in this agreement and consult further where necessary.
- Approve the six monthly and annual reports on outcomes as appropriate from the Pooled Budget Manager as the lead joint commissioner.
- Report on progress to stakeholders through the relevant Programme or Partnership Board.
- Delegate day to day management of the service to the BLMK ICES Programme Board on its behalf.

4.1 BLMK ICES Programme Board

The Terms of Reference for this Board is as follows:

Terms of Reference

1	Title
	Bedfordshire, Luton and Milton Keynes Integrated Community Equipment Service (ICES) Programme Board

2 Membership

Membership will comprise of the following:

Associate Director, BLMK ICB

Head of Commissioning, MKCC

Commissioning Lead ASC Older People, MKCC

Senior Commissioning Officer, BBC

Assistant Director – Resources, CBC

Integrated Commissioning Manager, LBC

Senior Commissioner - CES, BLMK ICB

Business Support Officer- CES, BLMK ICB (Minute taker)

3 Quorum, Voting & Chair

To ensure the meeting is quorate, at least one representative from each partnership organisation (BBC, CBC, LBC, MKCC and BLMK ICB) must be present.

If a representative is unable to attend, then they need to arrange a deputy and inform the Chair at least a week in advance of the meeting.

Voting rights are one vote per organisation. Where there is more than one representative then consensus needs to be reached prior to the Board meeting.

CES Team and Project Manager have no voting rights.

The meetings will be chaired by the Associate Director, BLMK ICB or another Board member if Associate Director is unable to attend.

4 Frequency of meetings and reporting arrangements

Board will meet monthly on first the Tuesday of each month. Any additional meetings will be arranged as necessary.

The Board will report to the Adult Leadership Team (or equivalent) at each Council and Commissioning & Contracting Leadership Team at ICB.

5 Reports and Agendas

Agendas and supporting documents/reports to be distributed 5 working days prior to the date of each meeting.

Minutes of each meeting are distributed to members via email within 10 working days from the date of the meeting.

Initials of those members required to act are dated and recorded in the action tracker, for review at the next meeting.

6 Role of the Programme Board

The BLMK ICES Programme Board will ensure the ongoing effective and efficient the delivery of the integrated Community Equipment Service on behalf of all the BLMK Partners.

The Board is supported by the CES Team, who manage the service on a day-to-day basis and the Lead Commissioners who manage the contracts on behalf of the Board.

The Board's role is to:

- Make decisions on a consensus basis on behalf of all BLMK Partner organisations and is supported by operational subgroups to ensure the effective and efficient delivery of the service (see governance structure).
- Ensure that the implementation process for the new contract is proactively managed with monthly updates provided to the Board by Joint Core Group representatives (Framework Manager and Senior Commissioner – CES).
- Ensure that the role of the Joint Core Group is time limited (3-6 months to support the implementation of the new contract) and the activity is absorbed into business as usual as soon as practicable.
- Ensure that the new contract arrangements are managed effectively and any remedial action is taken on behalf of all the BLMK partners.
- Facilitate an integrated performance framework which ensures that all parties within the Partnership have the assurance that the contract achieves the required activity and financial targets.
- Support the CES team in ensuring that:
 - A core group is in place to work proactively with Medequip to ensure the successful implementation of the new contract.
 - Service specifications support the current and future service provision.
 - Policies and procedures support its role in managing the service in the most effective and efficient way.
 - Standardised prescribing practices which support current and future service provision.
 - Training programme actively supports Prescribers.
 - Management and use of specials are supported by adult and children's integrated panel process.
 - Quarterly performance and financial summary reports are provided to the Board, highlighting any issues as necessary, thereby providing information to ensure that any variation is managed proactively.
- Ensure Section 75 arrangements are in place that supports partnership working across BLMK.
- Ensure pooled budgets that reflect the constitution of the new partnership and are placed based (Bedfordshire, Luton and Milton Keynes).

Schedule 5**PERFORMANCE MANAGEMENT FRAMEWORK**

- 5.1 The Lead Partner and CES Team shall be responsible for managing the budget and forecasting and reporting to the partners on the planned outputs/outcomes, including how far financial targets are being met.
- 5.2 The Partner Organisations will each account for their contribution to the Pooled Fund in their accounts.
- 5.3 The Lead Partner as the host organisation for the Pooled Fund, will arrange for monitoring reports to be sent to the ICB on a quarterly basis. At the end of a Financial Year, the Lead Partner will prepare a memorandum of accounts within its statement of accounts, which shows what has been received, spent and what remains. This memorandum of accounts will be sent to the Partner Organisation at the end for inclusion in their statement of accounts. Records will need to be retained for at least six years plus the current year.
- 5.4 The Lead Partner will ensure that monthly budget monitoring reports are made available to the Partner Organisation.
- 5.5 Performance targets and service outcomes will be agreed between the Partner Organisations. The table below sets out the key performance targets and service outcomes that have been agreed as part of the tendering process.

	Key Performance Indicator	Performance Target
1	Items delivered out of time – Same Day	Minimum of 98% of items delivered in time
2	Items delivered out of time – Next Day	Minimum of 98% of items delivered in time
3	Items delivered out of time – 2 Day	A minimum of 95% of items delivered in time
4	Items delivered out of time – 5 Day	A minimum of 90% of items delivered in time
5	Items collected out of time	A minimum of 85% of items collected in time
6	Recycling of standard stock	85% by volume of all standard stock suitable for recycling is returned to the shelf within 5 working days
7	Recycling of non-stock	85% by volume of all non-stock suitable for recycling is returned to the shelf within 15 working days
8	Repairs of standard stock equipment	Complete repairs to standard stock equipment within 5 working days
9	Repairs of non-stock equipment	Repairs to non-stock equipment completed within 10 working days
10	Pre-Planned Maintenance	Complete 95% of all pre-planned maintenance visits completed within required timeframes
11	Procurement of new non-stock items	Purchase Orders raised for new non-stock items within given timeframes
12	Delivery of new non-stock items	New non-stock items delivered to the Person within 5 working days of receipt

		of item into Service Centre
13	Completion of Trusted Assessor orders	95% of Trusted Assessor orders completed within 5 working days
14	Completion of Minor Adaptations	90% of all Minor Adaptation orders completed within 20 working days of authorised order
15	Fulfilment of Peripheral Stores	90% of all requested stock levels to Peripheral Stores fulfilled (as per agreed Operating Procedure)
16	Response to inbound phone calls	90% of all inbound phone calls answered within 5 minutes, including Out of Hours calls
17	Provision of Performance & Finance Information	Agreed Performance and Finance information provided by 5pm on 12 th calendar day of month
18	Number of justified formal complaints in respect of all orders	If the percentage of justified formal complaints exceeds 0.5% of all delivery and repair orders.

- 5.6 All the Milton Keynes provider services that use the Community Equipment Service will provide the CES Team on behalf of the Lead Partner with a list of authorised prescribers. Where changes occur, the CES team will be notified of these changes.
- 5.7 The Milton Keynes provider organisations will provide the CES team and the Lead Partner with information in respect of any known risks or hazards in respect of the provision of the Services.
- 5.8 Any in year overspend will be actively managed. The BLMK ICES Programme Board shall be responsible for the development of a recovery plan for a projected overspend of greater than 10% of the total budget or its component elements. This should be signed off by the BLMK ICES Programme Board and the remedial actions reported to the Joint Leadership Team.

Schedule 6

STAFFING

NOT APPLICABLE FOR THIS AGREEMENT

Schedule 7

Pre-Existing Contracts

The current contract with Millbrook Healthcare Limited ceases on the 31st March 2024. The new contract with Medequip Assistive Technology Limited commences on 1st April 2024 will be honoured for the specified duration and be unaffected by this Agreement.

Schedule 8

Previous Section 75 Agreements

All previous Section 75 and 31 agreements between the Partners relating to the subject are superseded by this Agreement.

Introduction

This information sharing agreement has been written in accordance with the guidelines contained within NHS England's Information Sharing Policy – personal information. The Health and Social Care Information Centre's code of confidentiality (Dec 2014) and the Office of the Information Commissioner guidance on data sharing.

9.1 This Protocol has been developed to enable information to be lawfully shared between the ICB and the Council, in the context of the partnership agreement entered into between the Partners. In developing the Protocol, the Partners have considered the following legal constraints and best practice:-

- Access to Health Records 1990
- Data Protection Act 2018
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- Health and Social Care Act 2013
- UKGDPR

9.2 Definitions

Accessible Record – unstructured personal information usually in manual form relating to health, education, social work and housing.

Agent – acts on behalf of the data subject.

Aggregated – collated information in a tabular format.

Anonymous data – anonymous data is where an Organisation does not have the means to identify an individual from the data they hold. If the Data controller has information, which allows the Data Subject to be identified, regardless of whether or not they intend to identify the individual is immaterial - in the eyes of the IC this is not anonymous data. Data Controller must be able to justify why and how the data is no longer personal.

Consent – The Information Commissioner's legal guidance to the Data Protection Act 2018 is to refer to the Directive, which defines consent as "...any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed" (3.1.5).

Data/Information –

- a) Information being processed by means of equipment operating automatically or
- b) Information recorded with the intention it be processed by such equipment.

c) Recorded as part of a relevant filing system or

Not in a or b or c, but forming part of an accessible record. Recorded information held by a public authority and does not fall within any of paragraphs (a) to (d).

Data Controller – a person or a legal body such as a business or public authority who jointly or alone determines the purposes for which personal data is processed.

Data Processing – any operation performed on data. The main examples are collection, retention, deletion, use and disclose.

Data Processor – operates on behalf of the Data Controller. Not staff.

Data Set – a defined group of information

Data Subject – an individual who is the subject of personal information.

Disclosure – the passing of information from the Data Controller to another organisation / individual

Duty of Confidentiality – everyone has a duty under common law to safeguard personal information.

Fair processing notice – to inform the Data Subject how the data is to be processed before processing occurs

Health Professional (prescriber) – In the Data Protection Act 2018 "health professional" means any of the following who is registered as:

- A medical practitioner, dentist, optician, pharmaceutical chemist, nurse, midwife or health visitor, and osteopaths.

and

- Any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 currently extends to, clinical psychologists, child psychotherapists and speech therapist, music therapist employed by a health service body, and scientist employed by such a body as head of department.

Health Record – any information relating to health, produced by a health professional.

Need to know – to access and supply the minimum amount of information required for the defined purpose.

Personal Data – means data relating to a living individual who can be identified from those data (including opinion and expression of intention).

Processing – any operation performed on data. Main examples are collect, retain, use, disclosure and deletion.

Purpose – the use / reason for which information is stored or processed.

Recipient – anyone who receives personal information for the purpose of specific inquiries

Relevant Filing System – two levels of structure, (i) filing system structured by some criteria (ii) each file structured so that particular information is readily accessible.

Special Category Data – The Data Protection Act defines this data as:

- (a) the racial or ethnic origin of the data subject;
- (b) his political opinions;
- (c) his religious beliefs or other beliefs of a similar nature;
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992);
- (e) genetic data
- (f) biometric data
- (g) sexual orientation
- (h) his physical or mental health or condition;
- (i) his sexual life;
- (j) the commission or alleged commission by him of any offence; or
- (k) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Serious Crime – There is no absolute definition of "serious" crime, but section 116 of the Police and Crime evidence Act.

Subject Access – the individual's right to obtain a copy of information held about themselves.

Third Party – any person who is not the data subject, the data controller, the data processor (includes Health, Housing, Education, Carers, Voluntary Sector etc. as well as members of the public).

9.3 Policy Statement and Purpose of this Data Sharing Agreement.

This data sharing agreement is set up between

- Milton Keynes City Council
- Bedfordshire, Luton and Milton Keynes ICB

Milton Keynes City Council (MKCC) will share with BLMKICB the data set out in this agreement. The records will be shared with and utilised for the purpose developing joint commissioning activities.

This document is a Data Sharing Protocol (for the purpose of this protocol, the terms data and information are synonymous). The aim of this document is to facilitate sharing of information between the public, private and voluntary sectors so that members of the public receive the services they need.

Organisations involved in providing services to the public have a legal responsibility to ensure that their use of personal information is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share information to provide quality service and protection of confidentiality is often a difficult one to achieve

The parties to this agreement may only use the information disclosed to them under this agreement for the specific purpose(s) set out in this document. The information will not be shared with, or passed to, any third parties without prior approval of the originating partner's Data Controller.

9.3.1 This information governance protocol is consistent with those used in other S75 agreements and has been developed in consultation with the following information governance leads:

- Milton Keynes City Council Governance Lead
- Bedfordshire Luton and Milton Keynes ICB Governance Lead

9.4 Information Governance Standards

The Partners must comply with, or be working with an agreed action plan towards, a minimum of level 2 compliance with the NHS Digital Data and Security Protection Toolkit. The obligations of confidentiality contained below shall survive the termination of this Agreement. All enquiries or considerations given to common law duties of confidence or confidentiality must be dealt with as per section 20 of the Section 75 Agreement.

9.5 Freedom of Information

The Partners acknowledge that each is subject to the requirements of Freedom of Information Act 2000 and the Environmental Information Regulations 2004. The Partners shall assist and co-operate with one another to enable each Partner to comply with information disclosure requirements where necessary and in compliance with locally developed policies and protocols which will be developed for this purpose. All enquiries or

considerations given to the Freedom of Information Act legislative requirements must be dealt with as per section 19 of the Section 75 Agreement.

9.6 Non-personal confidential information

The Partners shall keep confidential any information acquired through their conduct of this Agreement and will take all reasonable steps to ensure that their employees and contractors do not divulge such information to a third party without the express consent of the Partners, except in accordance with the requirements of law. This will include, but is not limited to, commercially sensitive information.

9.7 System Access

The Partners shall ensure that staff who access systems will abide by the relevant local policies and procedures. Any contractors who are working for the Partners must sign a Confidentiality Agreement to ensure compliance. The system host Partner will be responsible for the provision of equipment and resolution of any issues or difficulties.

9.8 Data Protection

All Partners shall duly observe all their obligations under the Data Protection Act 2018 (DPA), which arise in connection with this Agreement. Milton Keynes City Council will be the data controller and shall comply with any notification requirements under the DPA. All Partners shall have an understanding of the Caldicott Principles when dealing with confidential information.

9.9 Information Sharing

9.9.1 Primary Use

The Partners shall share information about service users to improve the quality of care and enable integrated working. The information Shared in the provision of this agreement is shared with the fully informed consent of the patient, in compliance with schedule 2 and 3 of the Data Protection Act 2018, and to provide Direct patient Care (defined in Caldicott 2 review) consent is also provided to comply with the common law duty of confidentiality.

However, where secondary uses of data are required the ICB will use anonymised to achieve its commissioning requirement – under CAG 2-03 powers, all Information will be shared within the legislative requirements of:-

- Access to Health Records 1990
- Data Protection Act 2018
- Crime and Disorder Act 1998
- Human Rights Act 1998
- Freedom of Information Act 2000
- The Children Act 2004
- Safeguarding Vulnerable Groups Act 2006

- Education Act 2002
- Mental Capacity Act 2005
- Local Government Act 2000
- Homelessness Act 2002
- Criminal Justice Act 2003
- Civil Contingencies Act 2004
- Health and Social Care Act 2012
- Mental Health Act 1983
- Common Law Duty of Confidentiality
- UKGDPR

9.9.2 Information for Secondary Use shall be pseudonymised before sharing. This includes:

- information used for the audit/assurance of the quality of the healthcare provided
- information used for either preventative medicine, medical or other ethically approved research, financial audit or the management of health [and social] care services
- risk stratification e.g. planning for vulnerable groups such as families at high risk of domestic violence

Where pseudonymisation is not practicable due to system constraints, personal identifiable data may only be used with the explicit situation-specific consent from the relevant Caldicott Guardian.

NHS Bedfordshire, Luton and Milton Keynes ICB is not able, under the current legislation of the Health and Social Care Act 2012, to process or hold Patient Confidential Data, and if PCD data is required must either use a DSCRO or have a statutory gateway as below.

Under the Secretary of State Directions, the NHS Digital is directed to establish and operate systems to collect and analyse Local Commissioning Data and Historical CCG data to deliver Data Services for Commissioners. NHS Digital delivers the service largely through its Regional Offices (DSCROs). DSCRO collect data specified in contracts between the commissioner and the provider, when requested to do so by commissioning organisations who are party to these contracts.

The directions do require the data to be sent in an anonymised format unless a separate legal gateway exists, such as patient Consent, to support Direct Patient Care or s.251

Consent or Section 251 of the NHS Act 2006 allows the health secretary to set aside the common law duty of confidentiality in specific circumstances in which anonymised information is not sufficient and where patient consent is not practicable. This is a short-hand term and refers to section 251 of the National Health Service Act 2006 and its current Regulations, the Health Service (Control of Patient Information) Regulations 2002.

This legal Gateway has been used by the HSCIC as a basis to support the DSCROs onward provision of clear patient data to Commissioning Support Units (CSUs) and Clinical Commissioning Groups (ICBs) for:

Risk Stratification
Invoice Validation

CAG 7-04(1)/2013
CAG 7-07(b)/2013, CAG 7-07(c)/2013

As these provisions do not meet the requirements of this agreement – the ICB will not hold PCD for the purposes of this activity.

9.10 Data Storage Requirements

Both parties to this agreement will:

- Ensure that unauthorised staff and other individuals are prevented from gaining access to personal data
- Ensure visitors are received and supervised at all times in areas where personal data is stored
- Ensure that all computer systems have appropriate technical and organisational measures to protect data and ensure that only those who need to use the data have access. The level of security should depend on the type of data held, but ensure that only those who need to use the data have access.
- Not leave their workstation/PC signed on when they are not using it.
- Not disclose personal data to anyone other than the Data Subject unless the Data Subject's consent has been provided, or it is a registered disclosure, required by law, or permitted by a Data Protection Act 2018 exemption
- Not leave information on public display in any form

9.11 Methods of transfer

Any sharing of patient data or confidential information must be made by secure email (NHS.net or EGRESS) or password protected.

9.12 Retention of the Data

NHS Data held on both parties systems will be held in line with The Department of Health retention guidelines, NHS Records Management Code of Practice 2021.

9.13 Further Use of Data

It is the responsibility of each organisation to ensure individuals' rights are met appropriately and that the data is used only for the specified purposes as set out in specification for the delivery of the Integrated Community Equipment Service.

Further use or sharing of data must be in agreement and with the consent of the data controller

9.14 Breach of Confidentiality

The systems are audited and any abuse or security breach in which data is compromised will be notified at the earliest opportunity to the Caldicott Guardians of MKCC and BLMKICB and the incident reported onto their incident reporting tool for investigation. Access to the system will be immediately withdrawn and disciplinary action may be taken.

9.15 Access to Information

The sixth principle of the Data Protection Act 2018 provides individuals the right to have access to information held about them with limited exemptions. Both parties will ensure that if required individuals will have access to the information that has been shared across the two agencies.

9.16 Review of Data Sharing Agreement

The Data Sharing Agreement will be reviewed one year after signature and at every year thereafter. This review will be the responsibility of both parties to the agreement.

9.17 Closure/Termination of Agreement

The Data Sharing Agreement will be suspended for 45 days if security has been seriously breached. This will be in writing and be evidenced. Any suspension will be subject to a Risk Assessment and Resolution meeting, the panel of which will be made up of the signatories of this agreement, or their nominated representative.

This meeting is to take place within 14 days of any suspension. Termination of this Data Sharing Agreement will be in writing giving at least 30 days notice.

9.18 Requests for Disclosure of Information received under this Data Sharing Agreement

All recorded information held by public sector agencies is subject to the provisions of the Freedom of Information Act 2000 and the Data Protection Act 2018. While there is no requirement to consult with third parties under FOIA, the parties to this Data Sharing Agreement will consider their views to inform the decision making process. All decisions to disclose must be recorded by the disclosing organisation.

9.19 Partner Organisations must be aware that a data subject may withdraw consent to processing (i.e. Section 10 DPA) unless an available exemption applies. Where the Partner Organisations rely on consent as the condition for processing then withdrawal means that the condition for processing will no

longer apply. Any such withdrawal of consent should be communicated to Partner Organisations and processing cease as soon as possible.

Partner Organisations must be committed to having procedures in place to address complaints relating to inappropriate disclosure or failure to disclose personal information. Individuals must be provided with information about these procedures.

Schedule 10 Exit Strategy

- 10.1 In the event of either of the Partner Organisations wishing to terminate this Agreement, the principal consideration will be maintaining continuity of service for people receiving the service. Therefore, a minimum of twelve months' notice is required for this Agreement to be terminated or for one of the partners to withdraw, except in exceptional circumstances outlined in Clause 10.2.
- 10.2 Either party may at any time, by notice in writing to the other party, terminate this Agreement in the event of the following:-
- There is a fundamental breach by the other party of any provision hereof; or
 - A party commits a breach of any of its obligations hereunder which is not capable of remedy, or if capable of remedy has not been remedied within 28 days after written notice requiring it to remedy the breach; or
 - A party is unable to fulfil its obligations hereunder, as a result of any change in law or legislation; or
 - A party, in fulfilling its obligations hereunder, would be in contravention of any guidance from any Secretary of State
- 10.3 In the event that this Agreement is terminated for whatever reason, the provisions of clause 30 will apply and the parties agree to co-operate to ensure the orderly wind down of their joint activities set out in this Agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Partners on the date of this Agreement:

THE CORPORATE SEAL of **THE CITY COUNCIL OF MILTON KEYNES**

was hereunto affixed in the presence of:

Victoria Collins, Director Adult Services
Authorised Signatory

A handwritten signature in black ink, appearing to read 'Victoria Collins', is written over a light yellow rectangular background.

Signed for on behalf of
BEDFORDSHIRE, LUTON AND MILTON KEYNES INTEGRATED CARE BOARD

Chief Executive Officer
Authorised Signatory