



DATED _____ 2016

WEST SUSSEX COUNTY COUNCIL

and

SUSSEX PARTNERSHIP NHS FOUNDATION TRUST

SECONDMENT AGREEMENT

**RELATING TO
CHILD AND ADOLESCENT
MENTAL HEALTH SERVICES
("CAMHS")**

Legal Services
West Sussex County Council
County Hall
Chichester
West Sussex
PO19 1RQ

CONTENTS

CLAUSE

1.	INTERPRETATION	1
2.	SECONDMENT	1
3.	SERVICES	2
4.	SECONDEES EMPLOYMENT	3
5.	TUPE	5
6.	MANAGEMENT AND SUPERVISION DURING THE SECONDMENT PERIOD	5
7.	LEAVE AND ABSENCES	8
8.	REVIEW AND MONITORING	8
9.	PAYMENTS	9
10.	ARRANGEMENTS FOR THE REPLACEMENT OF SECONDEES	10
11.	INDIVIDUAL SECONDMENT AGREEMENT	12
12.	SAFEGUARDING	12
13.	DATA PROTECTION	13
14.	CONFIDENTIALITY	14
15.	EQUAL OPPORTUNITIES, HUMAN RIGHTS AND ANTI CORRUPTION	15
16.	INTELLECTUAL PROPERTY RIGHTS	15
17.	INDUCEMENTS	16
18.	SUMMARY TERMINATION	16
19.	TERMINATION ON NOTICE	17
20.	EFFECT OF TERMINATION OF SECONDMENT	17
21.	OBLIGATIONS FOLLOWING TERMINATION	17
22.	LIABILITY	17
23.	DISPUTE RESOLUTION	19
24.	NOTICES	19
25.	ENTIRE AGREEMENT	20
26.	RELATIONSHIP OF PARTIES	20
27.	ASSIGNMENT	20
28.	VARIATION AND WAIVER	20
29.	COUNTERPARTS	20
30.	THIRD PARTY RIGHTS	21
31.	GOVERNING LAW AND JURISDICTION	21

SCHEDULE A – DEFINITIONS

SCHEDULE B – LIST OF SECONDEES

SCHEDULE C – SPECIFICATION

SCHEDULE D – COUNCIL AND TRUST CONTACT DETAILS

SCHEDULE E – PRICE SCHEDULE

SCHEDULE F – TEMPLATE INDIVIDUAL SECONDMENT AGREEMENT

PARTIES

- (1) **SUSSEX PARTNERSHIP NHS FOUNDATION TRUST** whose principal address is Swandean Hospital, Arundel Road, Worthing, West Sussex, BN13 3EP ("**the Trust**"); and
- (2) **WEST SUSSEX COUNTY COUNCIL** of County Hall, Chichester, West Sussex, PO19 1RQ ("**the Council**"),

each being referred to as a "**party**" and together "**the parties**".

BACKGROUND

- (A) The Trust employs the employees detailed in Schedule B (List of Secondees) (as such list of employees may be updated as agreed between the parties during the Secondment Period). These employees are together referred to as "**the Secondees**". The Secondees include both full and part-time employees.
- (B) The Trust intends to second the Secondees to the Council, during the Secondment Period, in order to deliver the CAMHS mental health services to looked after, adopted and special guardianship order (SGO) children the service formally known as the Looked After and Adopted Children (LAAC), as more specifically described in Schedule C (Specification).

AGREED TERMS

1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise requires, the terms set out in Schedule A (Definitions) shall have the meanings ascribed to them therein.
- 1.2 Any references in this Agreement to a clause, schedule, section, part or appendix is a reference to a clause, schedule, section, part or appendix within this Agreement unless expressly stated otherwise.
- 1.3 The schedules and appendices form part of this Agreement and, as such, references to this Agreement shall include the schedules and appendices.
- 1.4 A reference to a particular law 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.
- 1.5 Words importing one gender shall include the other, words in the singular shall include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa.

2. SECONDMENT

- 2.1 The Trust shall second the Secondees to the Council, on an exclusive basis, for the Secondment Period, to provide the Services in accordance with the terms of this Agreement.
- 2.2 The Secondment Period shall commence on 01 July 2016 ("**the Commencement Date**") and shall continue until 30th June 2017 ("**the Initial Secondment Period**"), unless this Agreement is extended pursuant to clause 2.3 or this Agreement is terminated earlier in accordance with its terms.

- 2.3 No later than three (3) months before the end of the Initial Secondment Period, the Council and the Trust may agree to extend the Secondment Period by a further period or periods of up to one (1) year (an "**Extension**"). For the avoidance of doubt, the "**Secondment Period**" shall be the Initial Secondment Period plus any Extension agreed by the Parties, subject to earlier termination, provided that the total Secondment Period shall not exceed two (2) years.
- 2.4 Any such Extension shall be on the same terms and conditions as this Agreement and the Council and Trust shall, as soon as practicable after agreeing to extend this Agreement, meet to discuss and use all reasonable endeavours to agree any changes to this Agreement as necessitated by reason only of such Extension.

3. SERVICES

- 3.1 The Trust shall procure that the Secondees shall provide the Services at [INSERT DETAILS OF LOCATION], as notified to each individual Secondee prior to the Commencement Date and as set out in the Individual Secondment Agreements, or the date of Secondment for any new starters, or such other place within West Sussex County as the Council may reasonably require for the proper performance and exercise of the Services.
- 3.2 The Secondees may be required to travel on the Council's business to such places (within the United Kingdom) by such means and on such occasions as the Council may from time to time require.
- 3.3 The Secondees' contractual working hours shall remain as set out in their respective Employment Contracts during the Secondment Period. However, the Services will be delivered during the hours of 9:00 am to 17:00 pm on Working Days and such additional or different hours as are reasonable and necessary for the proper performance of the Services. Any hours to be delivered in addition to the Secondees contractual working hours will require the prior written agreement of the Council and time off in lieu ("**TOIL**") will be agreed between the parties. The Council shall not be liable for payment to the Trust for any overtime carried out by a Secondee unless this has been agreed in writing with the Council in advance.
- 3.4 The Trust shall procure that the Secondees shall during the Secondment:
- (a) unless prevented by incapacity or unless otherwise agreed in this Agreement, devote the whole of their working time as set out in Schedule B, attention and abilities to the Services;
 - (b) faithfully and diligently serve the Council and use their best endeavours to promote, protect, develop and extend the Council's business;
 - (c) not enter into any arrangement on behalf of the Council which is outside the normal course of business or their normal duties or which contains unusual or onerous terms; and
 - (d) promptly make such reports to the Council's Authorised Officer on any matters concerning the affairs of the Council and at such times as are reasonably required.
- 3.5 The Trust shall procure that the Secondees shall provide the Services with all reasonable skill, care, prudence and foresight and in accordance with:
- (a) all applicable Laws;
 - (b) Good Industry Practice;
 - (c) the Specification attached at Schedule C; and
 - (d) all reasonable instructions of the Council acting in good faith and in accordance with this Agreement.

4. SECONDEES EMPLOYMENT

- 4.1 The Secondees shall remain employed by the Trust and the Employment Contracts shall remain in force during and for the duration of the Secondment Period.
- 4.2 The parties acknowledge that some adjustments may be required to the Secondees' Employment Contracts to amend:
- (a) lines of accountability;
 - (b) relevant operational management issues;
 - (c) location; and
 - (d) other day to day management procedures.

Similar changes may also be required to aspects of the Secondees' job descriptions, job plan and job purpose.

- 4.3 The Trust shall remain responsible for:
- (a) consulting with the Secondees regarding any of the changes referred to in clause 4.2; and
 - (b) making all of the necessary changes to the terms of the Employment Contract so that it can second the Secondees to the Council to provide the Services in accordance with the terms of this Agreement.
- 4.4 The Trust warrants to the Council that it can second the Secondees to the Council to provide the Services in accordance with the terms of this Agreement.
- 4.5 The Trust shall provide to the Council true, complete and accurate copies of each of the Secondees' Employment Contracts prior to the Commencement Date or the date of Secondment for any new starters. The Trust shall obtain permission from the Secondees to share their Employment Contracts (and any associated documents) with the Council.
- 4.6 The Trust shall comply with the terms of the Employment Contracts during the Secondment Period.
- 4.7 Other than as provided for in this Agreement, in the Employment Contracts and/or in the Individual Secondment Agreements, the Trust shall not make any further changes to the Employment Contracts during the Secondment Period, without the prior written consent of the Council.
- 4.8 The Council shall not, and shall not require a Secondee to, do anything which would put the relevant Secondee in breach of its Employment Contract and shall have no authority to vary the terms of the Employment Contracts or make any representations to the Secondees in relation to the terms of their Employment Contracts during the Secondment Period.
- 4.9 The Council shall provide the Trust with such reasonable information and assistance as the Trust may reasonably require to carry out its obligations as the Secondees' employer.
- 4.10 The Secondees shall not be required, unless detailed in this Agreement or otherwise agreed between the Trust and the Council, to undertake any work for the Trust during the Secondment Period.

- 4.11 All documents, manuals, hardware and software provided for the Secondees' use by the Council, and any data or documents (including copies) produced, maintained or stored on the Council's computer systems or other electronic equipment (including mobile phones or laptops), shall remain the property of the Council.
- 4.12 The Trust shall procure that the Secondees shall:
- (a) comply with any reasonable directions of the Council regarding security arrangements, vehicular access arrangements, parking instructions and/or procedures at the Council's premises;
 - (b) only access and use the Council premises for the purpose of providing the Services in accordance with this Agreement or as otherwise agreed with the Council;
 - (c) use any equipment provided by the Council only for the delivery of the Services and in accordance with all instructions for use provided by the Council;
 - (d) take all reasonable measures to prevent damage, loss and theft of any IT and communication equipment provided by the Council to the Secondees, in accordance with the guardianship form signed when users take ownership of such equipment;
 - (e) comply with the Council's Acceptable Use Policy (AUP) and the Council's Frameworki Security Policy (attached at Appendices 1 and 2 of the Specification) as part of the terms and conditions of their employment in the delivery the Services outlined in this Agreement;
 - (f) undertake the necessary training for access to Frameworki (as set out in the Specification) and all Secondees shall sign and return the individual declaration of use (set out at Appendix 1 of the Specification) to the Council prior to the Commencement Date;
 - (g) where a Secondee is provided with keys or security cards/pass to access Council premises ("Keys") the relevant Secondee shall immediately report the loss of or misplacement of any Keys to the Council and shall ensure all Keys are returned to the Council at the end of the Secondment Period or as reasonably requested by the Council; and
 - (h) return all equipment (including but not limited to phones, computers and all electronic devices) provided by the Council at the end of the Secondment Period, in proper working order and good condition.

Secondee(s) access to Frameworki

- 4.13 The Secondees shall, during the Secondment Period, be given access to the Council's Frameworki system only to the extent set out in the Specification, or as otherwise notified to the Secondee by the Council, and only for the purposes of delivering the Services under this Agreement.
- 4.14 The Secondees' access to Frameworki granted pursuant to clause 4.13 shall immediately terminate upon expiry of this Agreement or upon termination of the Secondment of the individual Secondee, whichever is the earlier.
- 4.15 The Trust shall ensure that all Secondees comply with the requirements of this Agreement (including, but not limited to, the requirements set out in the Specification) and all reasonable instructions of the Council and its Representatives when accessing and using Frameworki.

- 4.16 The Secondees will be required to ensure that all relevant work undertaken as part of the Services is recorded onto Frameworki in accordance with the requirements of the Specification.
- 4.17 Subject to the Secondees meeting the requirements detailed in the Specification, each Secondee will be allocated unique user credentials (i.e. user name/ID and password, access token or other similar access mechanism) to allow the individual Secondee to access Frameworki.
- 4.18 The Trust shall ensure that each Secondee is required to keep his/her user name and password confidential at all times and shall not permit it to be used by any other person (including any other Secondees).
- 4.19 The Trust shall ensure that the Secondees do not access, store, distribute or transmit any Viruses, or any material during the course of their use of Frameworki that:
- 4.19.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 4.19.2 facilitates illegal activity;
 - 4.19.3 depicts sexually explicit images;
 - 4.19.4 promotes unlawful violence;
 - 4.19.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 4.19.6 is in a manner that is otherwise illegal or causes damage or injury to any person or property.

5. TUPE

- 5.1 The Trust and the Council acknowledge and agree that their intention at the date of this Agreement is that the Secondees shall not transfer to the Council pursuant to TUPE.
- 5.2 The Trust has consulted with the Secondees and each of the Secondees has confirmed to the Trust in writing their wish to remain as an employee of the Trust for the duration of the Secondment Period.
- 5.3 Notwithstanding clauses 5.1 and 5.2, the parties recognise that any Secondee may subsequently claim that TUPE applies in respect of this Agreement and, in relation to their own employment, in particular, that their Employment Contract has transferred to the Council. For the avoidance of doubt, the indemnity in clause 22.6 shall apply in respect of any claims or demands made by any Secondee pursuant to this clause 5.3.
- 5.4 Where any claim is made in accordance with clause 5.3, the parties shall meet to discuss their response to such a claim and to agree the steps which should be taken, including any variations required to this Agreement.
- 5.5 If any Secondee is held to be employed by the Council at any time during the Secondment Period then the Council may dismiss the relevant Secondee and the Trust shall offer the relevant Secondee employment on the terms that applied immediately before that dismissal.

6. MANAGEMENT AND SUPERVISION DURING THE SECONDMENT PERIOD

- 6.1 The Secondees shall work and discharge their responsibilities as employees within the Council working as members of the Council's teams and/or units. However, the Secondees will not be fully integrated into the Council's teams and/or units and the Council shall make it clear, at all times, on all relevant paperwork, that the Secondees are on secondment to the Council and are not employees of the Council.

- 6.2 The Trust shall procure that the Secondees shall comply with the Council's day to day operational policies as notified to the Secondees from time to time where necessary for the performance of the Services.
- 6.3 The Council shall, on or around the Commencement Date, or the date of Secondment for new starters, ensure that all Secondees are provided with an induction to the Council, which shall include identifying which of the Council's day to day operational policies that will be applicable to the Secondees, and providing copies of the relevant policies and procedures that the Secondees will be expected to follow during the Secondment Period.

DAY TO DAY CONTROL

- 6.4 Subject to clauses 6.5 and 6.14 and the remaining provisions of this Agreement, the Council shall have day to day control of the Secondees' activities which relate to the provision of the Services by the Secondees.
- 6.5 Such day to day control shall, subject to the remaining provisions of this Agreement, include (but shall not be limited to) directing the Secondees' daily work tasks and ensuring appropriate supervision for such tasks, management of the Secondees' workloads, work allocation, management of multi-disciplinary team case planning and co-ordination in respect of individual children/adolescents receiving the Services, review of the outcomes being achieved for individual children/adolescents and day to day tasks relating to the operation of the Council. Subject to clause 6.6, day to day control may include 1-2-1's relating to the day to day work carried out by the Secondees in relation to the performance of the Services excluding any Clinical Treatment elements of the Services. The Council shall issue such authorisations, instructions and directions to the Secondees as shall be necessary for the Secondees to carry out the Services. In the event of a disagreement between the parties (including between a Secondee and the Council's day to day service managers) in respect of the Services to be delivered to a particular child/adolescent the Dispute Resolution procedure at clause 23 shall be followed.

MANAGEMENT ISSUES

- 6.6 The Trust shall continue to deal with any Management Issues concerning the Secondees during the Secondment Period, where relevant and appropriate, following consultation with the Council. The Trust's Disciplinary and Appeals Procedures and/or the Grievance Procedure shall apply to such Management Issues as applicable.
- 6.7 The Council shall use its reasonable endeavours to provide any information, documentation, access to its premises and employees and assistance (including but not limited to giving witness evidence) to the Trust to deal with any Management Issues concerning a Secondee whether under the Trust's internal procedures or before any court of tribunal. The Trust will reimburse the reasonable costs and expenses incurred by the Council in providing such information, documentation, access and assistance, subject to the prior approval of the Trust.
- 6.8 The Council shall, as soon as reasonably practicable, refer any Management Issues concerning a Secondee that come to its attention to the Trust.
- 6.9 Both parties shall inform the other as soon as reasonably practicable of any other significant matter that may arise during the Secondment Period relating to the Secondees or their employment.

CONFLICTS OF INTERESTS

- 6.10 The Secondees shall declare and seek agreement from both their day to day reporting contact at the Council (as detailed in the Individual Secondment Agreement) and the head of service within the Trust, with regard to any interests, financial or otherwise, which may give rise to conflicts of interests during the course of their Secondment. Such interests include other employment, business interests and positions of authority in a charity or voluntary body in the field of health and social care and any connection with a voluntary or other body contracting for services connected with the parties.
- 6.11 The Trust shall procure that the Secondees shall notify the Council's Authorised Officer if any Secondee identifies any actual or potential conflict of interest between the Council and the Trust during the Secondment Period.

MANAGEMENT OF CHANGE

- 6.12 In the event that the Secondees are affected by organisational change within the Trust during the Secondment Period the Secondees shall be dealt with by the Trust in accordance with the Trust's policy and guidelines for dealing with organisational change.
- 6.13 The Secondees will have the right to return to a substantive post within the Trust if this Agreement, as a whole, or the Secondment of an individual Secondee, comes to an end at any time during, or at the end of the Secondment Period. If any of the substantive posts are to terminate or are placed at risk during the Secondment Period, the Trust's policy and guidelines for dealing with organisation change will be complied with i.e. consultation will take place with the recognised Trade Union and the relevant employee and his/her representative and suitable alternative employment will be considered.

SUPERVISION AND PERFORMANCE MANAGEMENT PROCESS

- 6.14 The Trust shall maintain full control of the Clinical Treatment elements provided by the Secondees as part of the Services during the Secondment Period. The Secondees will be fully supervised by the Trust in relation to these Clinical Treatments and will comply with the Trust's policies and procedures in relation to the provision of these Clinical Treatments. The Secondees will continue to receive all clinical supervision and performance management in relation to the Clinical Treatment elements of the Services from the Trust in line with the Trust's relevant policies, procedures and guidance.
- 6.15 On or before the Commencement Date, or the date of Secondment for new starters, the Trust shall provide the Council with copies of the Secondees' current performance records or other performance details which shall be no more than twelve (12) months old. The Trust shall ensure that they have the Secondees' consent to disclose this information to the Council.
- 6.16 The Trust shall, during the Secondment Period, continue to provide professional and/or clinical support and supervision to the Secondees. The Council shall permit the Secondees to attend any necessary meetings, supervision and/or training with the Trust which take place during working hours, subject to the Council being given fourteen (14) Working Days prior notification. Any time required for formal clinical supervision (1-1) and professional guidance from the Trust should not exceed two (2) hours per calendar month per Secondee unless otherwise agreed in advance with the Council.

- 6.17 During the Secondment Period, the Trust shall continue to carry out appraisals (which shall include Performance Development Reviews (PDRs)) for the Secondees, in consultation with the Council where relevant and appropriate. The parties agree that PDRs shall be carried out jointly by the Trust and the Council as a 360 degree PDR using the Trust's policies and procedures. The Trust shall report the outcome of such appraisals and PDRs to the Council as soon as reasonably practicable following their completion.
- 6.18 Following the completion of the appraisals and PDRs carried out by the Trust pursuant to clause 6.17, the Council and the Trust shall hold a meeting to discuss the review meetings for monitoring and reviewing the training and development needs of the Secondees. Where agreed identified training and development needs are related to tasks common to all of the staff working on the Services and are required for the provision of the Services, such training requirements (including the costs of such training) will be met by the Council. All other professional development needs and training for the Secondees will continue to be met by the Trust.
- 6.19 The Trust shall procure that the Secondees shall continue to maintain any relevant professional registration at their own cost, and shall attend any required professional training and/or supervision required to maintain such professional registration. Where such professional training is to take place during working hours this shall be subject to the Council's prior approval.

7. LEAVE AND ABSENCES

- 7.1 The Secondees shall continue to be eligible for sick pay, holiday pay and any absence entitlements in accordance with their Employment Contracts and shall remain subject to the Trust's approval and notification procedures.
- 7.2 Prior to the Commencement Date, or the date of Secondment for new starters, the Trust shall notify the Council of any leave dates for the Secondees which have been requested and approved prior to the Commencement Date, or prior to the date of Secondment for any new starters.
- 7.3 During the Secondment Period the Secondees shall continue to submit all leave requests to the Trust for approval and shall at the same time notify the Council of making such leave request. The Trust shall consult with and obtain agreement of the Council before approving any leave request made by a Secondee and, once approved, the Trust will notify (and shall procure that the relevant Secondee shall also notify) the Council of any approved leave dates.
- 7.4 The Secondees will be required to continue to report any unplanned leave or absence to the Trust as per the Trust's notification procedures but shall also be required to notify the Council at the same time. The Trust shall inform the Council of any absence notified to it by a Secondee as soon as reasonably practicable.

8. REVIEW AND MONITORING

- 8.1 The parties shall hold regular meetings (being at least Quarterly unless agreed otherwise) to review this Agreement and to monitor and review the Secondment and the provision of the Services by the Secondees under this Agreement and to allow the parties to discuss any issues or concerns regarding this Agreement. Such meetings shall be held within three (3) weeks of a request from either party for such a meeting to be convened.

- 8.2 As soon as practicable following any meetings referred to in clause 8.1 the Councils' Authorised Officer will prepare minutes of the same and submit these to the Trust's Manager for his/her approval. Such approval should be given or withheld (as the case may be) by the Trust within ten (10) Working Days of receipt of such minutes. Where no response is received within such period, the Trust will be deemed to have agreed the content of the relevant minutes.
- 8.3 From the Commencement Date the parties will pilot an integrated service delivery model using an innovative multi-disciplinary team as detailed in the Specification and will jointly evaluate the impact of the Services on outcomes for children, young people and their families and carers.
- 8.4 Notwithstanding clause 8.3, the parties acknowledge and agree that it is their intention to trial a number of alternative models of service delivery during the Secondment Period and to evaluate the impact of such alternative service delivery models on the outcomes for children, young people and their families and carers. The parties will therefore work jointly and collaboratively throughout the Secondment Period to discuss, review and, if appropriate, re-design the services and/or the model of service delivery, and to implement any revised services and/or service delivery model.
- 8.5 If, as a result of any reviews and re-designs carried out pursuant to clause 8.4, it is jointly agreed by the parties that:
- 8.5.1 changes are required to the job roles and/or the job descriptions of any of the Secondees in order to meet the requirements of the re-designed services, the Trust shall use its best endeavours to ensure that appropriate changes are made to the job roles and/or the job descriptions and/or, where appropriate, the Employment Contracts of the relevant Secondees to reflect the required changes. The Trust shall ensure that it complies with all of its legal obligations in making such changes, and shall make such changes as soon as reasonably practicable; and/or
- 8.5.2 not all of the Secondees are required for the provision of the re-designed services, then notwithstanding any other clause in this Agreement, either party may terminate the Secondment of an individual Secondee or a number of individual Secondees upon giving the other party not less than three (3) months' written notice, and, for the avoidance of doubt, the provisions of clauses 6.13, 20 and 22.6 shall apply to any such terminations.

9. PAYMENTS

- 9.1 During the Secondment Period, the Trust shall continue to:
- (a) pay the Secondees' salaries and any allowances;
 - (b) provide any benefits due to the Secondees or their dependants;
 - (c) make any payments to third parties in relation to the Secondees;
 - (d) make any deductions that it is required to make from the Secondees' salaries and other payments including, but not limited to, tax and pension contributions. In terms of pension, the Secondees will remain in the NHS Pension Scheme if already a member, if not already a member, and will remain eligible to join the NHS Pension Scheme if the Secondees are eligible in accordance with the rules applicable to the NHS Pension Scheme;
 - (e) approve and pay all claims for the expenses of the Secondees (including travel and subsistence costs) incurred by the Secondees during the Secondment Period in accordance with the Employment Contracts.

- 9.2 The Council shall pay the Trust the Annual Payment, pursuant to the provisions of Schedule E (Price Schedule), during the Secondment Period for the Secondment of the Secondees under this Agreement. Where the Trust is registered for VAT purposes this sum will be subject to VAT at the current rate.
- 9.3 At the end of each month of the Secondment Period the Trust shall send the Council an invoice, addressed to the Council's Authorised Officer, specifying the payment due under this Agreement in relation to the preceding month and if applicable the amount of VAT due on the payment. Such invoices shall take account of any variations to the Annual Payment agreed pursuant to clause 10 (Arrangements for the Replacement of Secondees).
- 9.4 Subject to clause 9.5, all invoices submitted by the Trust under this Agreement shall be payable by the Council within thirty (30) days of receipt of the invoice.
- 9.5 Within thirty (30) days of the receipt of the invoice, the Council shall advise the Trust in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Trust in accordance with this Agreement, which shall take into account any adjustments made and the Council shall pay to the Trust such amount as properly due.
- 9.6 The Council shall make all payments to the Trust via the Bankers' Automated Clearing Service (BACS).
- 9.7 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be referred to clause 23 (Dispute Resolution). Any dispute will not affect any payments which the Trust is required to make to the Secondee under their Employment Contracts.
- 9.8 Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:
- (a) resolution of the dispute between the parties; or
 - (b) receipt of the decision in accordance with clause 23 (Dispute Resolution).
- 9.9 Either party shall pay interest on any overdue undisputed sum properly invoiced under this Agreement at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10. ARRANGEMENTS FOR THE REPLACEMENT OF SECONDEES

- 10.1 From the Commencement Date the provision of administrative services to support the recruitment and selection process of employees to posts of Secondees under this Agreement to will be undertaken by the Trust. The recruitment policies and procedures for the Secondees shall be those of the Trust.
- 10.2 The Trust shall consult the Council on the wording of any recruitment adverts and on the applications received and shall take into account all reasonable representations received from the Council in respect of the same.
- 10.3 Appointment panels for Senior Posts will include appropriately qualified/experienced representatives from both parties. To be appointed, applicants must be assessed as competent to meet the minimum professional standards as defined in the relevant job specification and as judged by the members of the relevant appointment panel.

10.4 Where:

- (a) any of the secondee posts (as set out in Schedule B) due to be filled by the Trust are vacant for a period of one (1) month or more for any reason;
- (b) a Secondee has been absent from work for any reason for a period of twenty one (21) calendar days or more (thereby qualifying as Long Term Leave);
- (c) it is known that a Secondee is due to be going on Long Term Leave for any reason;
- (d) a Secondee gives notice of ending his/her Employment Contract;
- (e) a Secondee is removed from the provision of the Services pursuant to clause 12.6; or
- (f) the Secondment of any individual Secondee is terminated for any reason pursuant to clauses 18 (Summary Termination) or 19 (Termination on Notice),

the parties will meet as soon as reasonably practicable (and in any event within five (5) Working Days of a request from either party for such a meeting to be convened) and will in good faith discuss, with the intention of agreeing, any necessary actions and steps to ensure that the delivery of the Services is maintained.

10.5 Such steps referred to in clause 10.4 may involve:

- (a) the Trust providing temporary/permanent cover for the role of the relevant post/Secondee from within its own staff resources at no additional cost to the Council; or
- (b) the Trust recruiting a replacement secondee to cover the relevant post/Secondee at no additional cost to the Council; or
- (c) the Council providing temporary/permanent cover for the role of the relevant post/Secondee from within its own team, in which case the parties will agree an appropriate reduction to the Annual Payment to take account of the fact that the relevant Secondee is no longer being provided by the Trust; or
- (d) the Council arranging cover for the role of the relevant post/Secondee, in which case the parties will agree an appropriate reduction to the Annual Payment to take account of the fact that the relevant Secondee is no longer being provided by the Trust.; or
- (e) the parties agreeing that a vacant post shall remain empty and is not to be filled for the remainder of the Secondment Period providing an appropriate corresponding reduction to the Annual Payment is made to take account of the fact that a Secondee is no longer being provided by the Trust to the Council; or
- (f) if the relevant Secondee is on Long Term Leave, whether planned or unexpected, the parties agreeing that the relevant post is to remain vacant until the relevant Secondee returns or the Secondment Agreement expires or terminates (whichever is the earlier) and a corresponding reduction to the Annual Payment shall be made in line with any reduced salary/pay payable by the Trust to the relevant Secondee during the Long Term Leave (i.e statutory sick pay or statutory maternity pay).

10.6 Where the parties acting reasonably and in good faith cannot reach agreement pursuant to clauses 10.4 and 10.5, the parties shall refer the matter to the Dispute Resolution Procedure set out in clause 23 (Dispute Resolution).

10.7 Where it is agreed that a recruitment process should be undertaken to fill any vacant posts or to cover any planned or unplanned absences in accordance with clause 10.5(b) the Trust shall, in consultation with the Council, be responsible for co-ordinating the hiring of any replacement secondees and shall use all reasonable endeavours to fill such posts/positions as soon as reasonably practicable.

11. INDIVIDUAL SECONDMENT AGREEMENT

11.1 The Trust shall ensure that prior to the Commencement Date, or the date of Secondment for any new starters, an individual secondment agreement is entered into between each Secondee and the Trust which, as a minimum, shall contain the provisions set out in Schedule F (Template Secondment Agreement) and which shall, at all times, reflect the arrangements detailed in this Agreement ("**the Individual Secondment Agreement**").

11.2 The Trust shall provide the Council with a copy of the final Individual Secondment Agreement for approval prior to signature by any of the Secondees.

12. SAFEGUARDING

12.1 The Trust shall not second to the Council any person who:

(a) is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out any Regulated Activity or who may otherwise present a risk to children or any other person, in the provision of any part of the Services involving a Regulated Activity or access to or unsupervised contact with children without the Council's prior and express written consent; or

(b) discloses that he or she has a Relevant Conviction, or who is found by the Trust to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service (or any successor body) procedures or otherwise), in the provision of any part of the Services involving access to or processing of financial data, or access to or processing of sensitive personal data without the Council's prior and express written consent; or

(c) is or has been barred or suspended from practice by their professional regulatory body or is not registered with their professional regulatory body or who's registration has lapsed or been revoked where registration is a mandatory requirement of the role and the Services to be delivered under this Agreement.

12.2 The Trust shall prior to the Commencement Date, or the date of Secondment for new starters, ensure that all individuals that will, during the Secondment Period, be engaged in the provision of Regulated Activities are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (or any successor body) including a check against the adults' barred list or the children's barred list, as appropriate. Such checks shall be repeated on a three (3) yearly basis for each Secondee. The Trust shall be required to discuss any relevant disclosure issues with the Council within fourteen (14) days and to provide copies of the updated DBS disclosures for each Secondee to the Council upon request. The checks required under this clause 12 shall be carried out at the Trust's expense.

12.3 The Trust warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be seconded to the Council:

(a) has a Relevant Conviction; or

(b) is barred from carrying out Regulated Activity, in accordance with the provisions of the SVGA and any regulations made thereunder, as amended from time to time; or

- (c) is or has been barred or suspended from practice by their professional regulatory body; or
 - (d) is not registered with their professional regulatory body or who's registration has lapsed or been revoked where registration is a mandatory requirement of the role and the Services to be delivered under this Agreement.
- 12.4 The Trust shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 12 have been met.
- 12.5 Where required by Law, the Council shall refer information about any Seconded carrying out the Services to the Disclosure and Barring Service (or any successor body) where it removes permission for such Seconded to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children or Vulnerable Adults.
- 12.6 Subject to clause 12.7, the Council may require the Trust, by notice in writing, which shall include the reasons for the same, to reprimand or remove temporarily or otherwise from the provision of the Services any Seconded(s) specified by such notice. Where required the Trust shall forthwith remove such Seconded from the provision of the Services and the Council shall be entitled to terminate the Secondment in respect of that individual pursuant to clause 18.3(a) and the provisions of clause 10 (Arrangements for the Replacement of Secondeds) shall apply to the replacement of such Seconded.
- 12.7 The Council shall not require removal of a Seconded under clause 12.6 unless it has given due consideration as to whether the Council would (if the individual concerned were an employee of the Council) take the same action against such employee in the same or similar circumstances.
- 12.8 The Council shall not be liable either to the Trust or to any Seconded in respect of any liability loss or damage occasioned by the operation of clause 12.6.

13. DATA PROTECTION

- 13.1 Workforce information regarding the Secondeds will continue to be collected and retained by the Trust. To the extent that the Council requires any data concerning the Secondeds in order to support the planning and delivery of the Services the Trust shall, in accordance with such format and deadlines as are agreed between the parties, provide this information to the Council.
- 13.2 The Trust confirms that the Secondeds have consented (by providing written consent to the Trust) to the Council processing data relating to the Secondeds for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Secondeds including, as appropriate:
- (a) information about the Secondeds' physical or mental health or condition in order to monitor sick leave and take decisions as to the Seconded's fitness for work;
 - (b) the Seconded's racial or ethnic origin or religious or similar beliefs in order to monitor compliance with the equal opportunities legislation;
 - (c) the Seconded's membership of any trade union in order to inform the relevant unions in the event the employer of the Seconded's is due to change;

- (d) information relating to any criminal proceedings in which a Seconded has, or is alleged to have, been involved for insurance purposes and to comply with legal requirements and obligations to third parties; and
- 13.3 The Trust confirms that the Seconded have consented to the Council making such information available to those who provide products or services to the Council (such as advisers and insurers), regulatory authorities, governmental or quasi-governmental organisations.
- 13.4 The parties shall, at all times, comply with their respective obligations in accordance with the Data Protection Act 1998 which arise in connection with this Agreement.

14. CONFIDENTIALITY

- 14.1 The Trust shall procure that the Seconded shall not:
- (a) except in the proper course of the Services, as required by law or as authorised by the Council during the Secondment Period or after its termination (howsoever arising) use or communicate to any person, company or other organisation whatsoever and shall use his/her best endeavours to prevent the use or communication of any Confidential Information relating to the Council that she/he creates, develops, receives or obtains during the Secondment Period. This restriction does not apply to any information that is or comes in the public domain other than through the Seconded's unauthorised disclosure; or
 - (b) make (other than for the benefit of the Council) any record (whether on paper, computer memory, disc or otherwise) containing Confidential Information relating to the Council or use such records (or allow them to be used) other than for the benefit of the Council. All such records (and any copies of them) shall be the property of the Council and shall be handed over to the Council's Authorised Officer by the Seconded on the termination of this Agreement or at the request of the Council at any time during the Secondment Period.
- 14.2 Clause 13.1 shall continue to bind the Seconded after the end of the Secondment Period.
- 14.3 All Seconded shall have access to a confidential reporting procedure (whistle blowing policy) maintained by the Council, as well as to that of the Trust.
- 14.4 Nothing in this Agreement shall prevent the Seconded from disclosing information that they are entitled to disclose under the Public Interest Disclosure Act 1998, provided that the disclosure is made in accordance with the provisions of that Act and the Seconded has complied with the Council's policy from time to time in force regarding such disclosures.
- 14.5 The Trust shall:
- (a) keep any Confidential Information relating to the Council that it obtains as a result of the Secondment secret;
 - (b) not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the Council;
 - (c) use its best endeavours ensure that no person gets access to the Confidential Information from it, its officers, employees or agents unless authorised to do so; and
 - (d) inform the Council immediately on becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

- 14.6 The Council shall:
- (a) keep any Confidential Information relating to the Trust that it obtains as a result of the Secondment confidential ;
 - (b) not use or directly or indirectly disclose any such Confidential Information (or allow it to be used or disclosed), in whole or in part, to any person without the prior written consent of the Trust;
 - (c) use its best endeavours to ensure that no person gets access to such Confidential Information from it, its officers, employees or agents unless authorised to do so; and
 - (d) inform the Trust immediately on becoming aware, or suspecting, that an unauthorised person has become aware of such Confidential Information.

15. EQUAL OPPORTUNITIES, HUMAN RIGHTS AND ANTI CORRUPTION

15.1 In the performance of the Services and in their dealings with customers, the Council's Representatives and members of the general public, the Trust shall ensure that the Secondees shall comply with:

- (a) the Human Rights Act 1998;
- (b) all Laws relating to equal opportunities; and
- (c) the Council's equal opportunities policies and procedures as may be adopted and amended from time to time and as notified to the Secondees, which are available and accessible from the Council's website or may otherwise be obtained during normal working hours (by prior arrangement) from the Council's offices.

15.2 The Trust and the Secondees must comply with:

- (a) the Council's Anti-fraud and Corruption Strategies (as may be in force from time to time), which are available and accessible from the Council's website or may otherwise be obtained during normal working hours (by prior arrangement) from the Council's offices; and
- (b) the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 The Council retains ownership of all Intellectual Property Rights in all documents provided by the Council to the Trust or Secondees in connection with or arising out of this Agreement.

16.2 The Trust shall procure that the Secondees agree that the Intellectual Property Rights in any and all documents, drawings, designs, data or other material in any format created by the Secondees in the course of and for the purpose of providing the Services under the Secondment are assigned to the Council and shall execute or cause to be executed (by its Representatives as necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Council.

16.3 The Intellectual Property Rights in all drawings, reports, calculations and other documents provided by the Trust or the Secondees in connection with the Services shall be vested in the Council in accordance with clause 16.2 and the Trust and the Secondees shall have a licence to use such drawings and other documents for any purpose related to the Services.

- 16.4 Save as aforesaid, the Secondees shall not make copies of such drawings or other documents nor shall he use the same in connection with the making or improvement of any works other than those to which the Services relate without the prior approval of the Council and upon such terms as may be agreed between the Council and the Trust.
- 16.5 The Trust shall ensure that the Secondees shall not in connection with the performance of the Services use, manufacture, supply or deliver any process, article, matter or thing, the use manufacture supply or delivery of which would be an infringement of any Intellectual Property Rights of the Council or any third party.
- 16.6 The Trust shall procure that the provision of the Services by the Secondees shall not infringe any Intellectual Property Rights of any third party.
- 16.7 The Trust shall indemnify the Council and keep the Council indemnified against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that such liabilities have been caused or contributed by the Council's acts or omission.

17. INDUCEMENTS

The Trust and the Secondees shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract.

18. SUMMARY TERMINATION

- 18.1 The Secondment of an individual Secondee under this Agreement will terminate with immediate effect, on the termination of the Secondee's Employment Contract for any reason, including, without limitation, as a result of the Secondee's gross misconduct, resignation or retirement.
- 18.2 The Trust may terminate this Agreement in whole, with immediate effect and without notice, if the Council is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy the Trust may only terminate this Agreement under this clause 18.2 if the Council has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Trust.
- 18.3 The Council may, with immediate effect and without notice, terminate:
- (a) the Secondment in respect of an individual Secondee, if the Secondee is removed from the provision of the Services in accordance with clause 12.6;
 - (b) the Secondment in respect of an individual Secondee, if the Trust persistently fails to pursue any Management Issues against the Secondee;
 - (c) this Agreement in whole, if the Trust is in breach of any material obligation under this Agreement provided that if the breach is capable of remedy the Council may only terminate this Agreement under this clause 18.3(c) if the Trust has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Council (each a "**Remediation Notice**");

- (d) this Agreement in whole, if the Trust commits a Persistent Breach; or
- (e) this Agreement in whole, if the Trust becomes bankrupt or makes any arrangement or composition with or for the benefit of its creditors.

18.4 Any delay by the Council in exercising the right to terminate under clause 18.3 shall not constitute a waiver of such rights.

19. TERMINATION ON NOTICE

Notwithstanding any other clause in this Agreement, either party may at any time terminate this Agreement in whole upon giving the other party not less than six (6) months' written notice.

20. EFFECT OF TERMINATION OF SECONDMENT

Where there is a termination of this Agreement as a whole, or where there is a termination of the Secondment in respect of an individual Secondee for any reason other than the termination of his/her Employment Contract (for the avoidance of doubt including any termination carried out pursuant to clause 8.5.2), the relevant Employment Contract shall not be affected and the Secondee shall have the right to return to a substantive post within the Trust. The responsibility for the continuing employment of the Secondees remains with the Trust, and there will be no impact on the continuity of employment of the Secondees.

21. OBLIGATIONS FOLLOWING TERMINATION

21.1 On termination of the Secondment howsoever arising the Trust shall procure that the Secondees shall if the Council so requests:

- (a) deliver to the Council all documents (including, but not limited to, correspondence, lists of clients or customers, plans, drawings, accounts and other documents of whatsoever nature and all copies thereof, whether on paper, computer disc or otherwise) made, compiled or acquired by them during the Secondment and relating to the business or affairs of the Council or its or their clients, customers or suppliers and any other property of the Council which is in their possession, custody, care or control;
- (b) irretrievably delete any information relating to the business of the Council stored on any magnetic or optical disc or memory and all matter derived from such sources which is in their possession, custody, care or control outside the premises of the Council; and
- (c) return all equipment pursuant to clause 4.12(f);
- (d) confirm in writing and produce such evidence as is reasonable to prove compliance with their obligations under this clause 21.

22. LIABILITY

22.1 Subject to clause 22.2, the Council shall take out and maintain in full force with a reputable insurance company for duration of the Secondment Period adequate insurance cover for any loss, injury and damage caused by or to the Secondee in the course of providing the Services during the Secondment Period.

- 22.2 The Trust shall, at its own cost, take out and maintain in full force, with a reputable insurance company, for the duration of the Secondment Period, clinical negligence insurance with a limit of cover of not less than five million pounds (£5,000,000.00) in relation to any one claim or series of claims. The Trust shall ensure that the clinical negligence insurance maintained pursuant to this clause 22.2 shall cover the Secondees in respect of all Clinical Elements carried out by any of the Secondees as part of the Services during the Secondment Period, notwithstanding that the Secondees are Seconded to the Council during this time and shall cover any loss, injury and/or damage caused by or to the Secondees in the course of providing the Clinical Elements of the Services during the Secondment Period. As and when reasonably required in writing by the Council and within 10 Working Days of such request, the Trust shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 22.2 are being met.
- 22.3 During the Secondment Period, the Council shall fulfil all duties relating to the Secondees' general health, safety and welfare as if it was the Secondees' employer and shall comply with the Trust's reasonable requests in connection with the Trust's duties in relation to the Secondee.
- 22.4 The Council shall indemnify the Trust fully and keep the Trust indemnified fully at all times against any loss, injury, damage and/or costs suffered, sustained or incurred by a Secondee in relation to any loss, damage or costs arising out of any act or omission by the Council of its employees or agents (excluding the Secondees and/or the Trust) during the Secondment Period.
- 22.5 The Trust shall indemnify the Council fully and keep the Council indemnified fully at all times against any loss, injury, damage and/or costs suffered, sustained or incurred by the Council or any third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Secondee in the course of carrying out the Services (for the avoidance of doubt, including (but not limited to) any and all Clinical Elements of the Services) during the Secondment Period.
- 22.6 The Trust shall indemnify the Council fully and keep the Council indemnified fully at all times against any and all costs, losses and liabilities incurred by the Council directly or indirectly in connection with any claim or demand by the Secondees arising out of their employment by the Trust or its termination, the Secondment or its termination, or their deemed employment by the Council or its termination during or at the end of the Secondment Period, except for any claim relating to any act or omission of the Council or its employees or agents (excluding the Secondees) in breach of this Agreement. Without prejudice to the generality of the foregoing, the Trust hereby acknowledges and accepts that it shall be solely liable for all Employment Liabilities and/or any Redundancy Costs in relation to any of the Secondees arising as a result of this Agreement or the termination of this Agreement or of the Secondment (in whole or in part), (including (but not limited to) a termination carried out pursuant to clauses 8.5.2, 18.3(a) or 18.3(b)), or arising from any claims or demands by the Secondees pursuant to clause 5.3. The parties agree that on a termination of a Secondment (howsoever arising) neither the Trust nor the Secondees shall make any claim against the Council for redundancy or any other claim relating to the ending of the Secondment or their Employment Contract as the case may be.

23. DISPUTE RESOLUTION

- 23.1 If a dispute arises between the Council and the Trust in connection with this Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 23.2 In the event there are different professional perspectives/opinions in respect of care planning and co-ordination or the Services to be delivered to a particular child/adolescent and these professional differences cannot be resolved between the Seconded(s) and their day to day Council managers the matter will be referred, within five (5) days of the disagreement arising, to the clinical lead for the Trust and the Council's Authorised Officer for resolution.
- 23.3 If a dispute is not resolved within fourteen (14) days of referral under clause 23.1 or 23.2, then either party may refer the dispute to the relevant Executive Director of the Trust and the Chief Executive of the Council, or to an appropriate nominated officer of each party, for resolution, who shall meet for discussion within fourteen (14) days or such longer period as the parties may agree.
- 23.4 Provided that both parties consent, a dispute not resolved in accordance with clauses 23.1 or 23.2 and 23.3, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within fourteen (14) days of one party requesting mediation, with the costs of any such mediation being determined by the mediator.
- 23.5 Nothing in this clause 23 shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

24. NOTICES

- 24.1 Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be treated as validly served if:
- (a) served personally on the addressee; or
 - (b) sent by pre-paid recorded delivery or registered post,
- at or to the address of the party referred to in this Agreement or to another address which has been notified expressly in writing by that party to the other under the provisions of this clause 24; or
- (c) sent by e-mail to the e-mail address notified in writing for the purpose of service of notices under this Agreement.
- 24.2 Any notice that complies with clause 24.1 shall be deemed to have been received by the addressee when delivered:
- (a) personally, on the date of delivery, provided that the notice was delivered in normal working hours and otherwise on the next Working Day;
 - (b) in the case of delivery by post on the third (3rd) Working Day after the date of posting; and
 - (c) by e-mail, on receipt of successful transmission.

24.3 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was sent by e-mail to the e-mail address of the relevant party.

GENERAL

25. ENTIRE AGREEMENT

25.1 Each party acknowledges and agrees with the other party that:

- (a) this Agreement together with any documents referred to in it constitutes the entire agreement and understanding between the Trust and the Council and supersedes any and all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral relating to the Secondment;
- (b) in entering into this Agreement it has not relied on any Pre-Contractual Statement; and
- (c) the only remedy available to it for breach of this Agreement shall be for breach of contract under the terms of this Agreement and it shall have no right of action against any other party in respect of any Pre-Contractual Statement nor for innocent or negligent misrepresentation based on any statement in this Agreement.

25.2 Nothing in this Agreement shall, however, operate to limit or exclude any liability for fraud.

26. RELATIONSHIP OF PARTIES

26.1 The Trust shall not be or be deemed to be, an agent of the Council and the Trust shall not hold itself out as having authority or power to bind the Council in any way, other than expressly conferred by this Agreement.

26.2 Nothing in this Agreement shall be construed as creating a partnership within the meaning of the Partnership Act 1890 between the Trust and the Council, or as a contract of employment between the Secondees and the Council.

27. ASSIGNMENT

The Trust shall not assign or otherwise dispose of any of its rights or benefits under this Agreement without the prior written consent of the Council.

28. VARIATION AND WAIVER

No modification, variation or amendment of or to this Agreement shall be effective unless such modification, variation or amendment is in writing and has been signed by or on behalf of both parties.

29. COUNTERPARTS

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

30. THIRD PARTY RIGHTS

30.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person other than the Trust and the Council shall have any rights under it and it shall not be enforceable by any person other than the Trust and the Council.

30.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

31. GOVERNING LAW AND JURISDICTION

31.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

IN WITNESS of which this Agreement has been duly executed by the parties on the day and years first before written.

Signed for and on behalf of **WEST SUSSEX COUNTY COUNCIL** by:

Signed: _____ (Authorised Signatory)

Printed Name: Avril Wilson

Position: Executive Director Care Wellbeing & Education

Signed for and on behalf of **SUSSEX PARTNERSHIP NHS FOUNDATION TRUST** by:

Signed: _____ (Authorised Signatory)

Printed Name:

Position:.....

Signed: _____ (Authorised Signatory)

Printed Name:.....

Position:.....

SCHEDULE A – DEFINITIONS

Agreement: means this agreement between the Trust and the Council and any schedules hereto.

Annual Payment: means the charges payable by the Council in accordance with this Agreement as set out in Schedule E (Price Schedule).

CAMHS: means Child and Adolescent Mental Health Services.

Clinical Treatment(s): means the clinical treatment elements of the Services only to be carried out by the Secondees, as described in paragraph [] of the Specification at Schedule C which include, but are not limited to, any element of the Services that involve any medical mental health diagnosis, prescribing of any medication, psychological testing and/or any clinical psychiatric, psychological or therapeutic treatments or therapy services (i.e. cognitive behavioural therapy) to be delivered to children or adolescents as part of the Services under this Agreement.

Commencement Date: has the meaning given in clause 2.2.

Confidential Information: means information relating to the business, products, affairs and finances of the relevant party for the time being confidential to the relevant party and trade secrets including, without limitation, technical data and know-how relating to the business of the relevant party or any of its suppliers, clients, customers, agents, distributors, shareholders or management.

Council's Authorised Officer: means the person named as such in Schedule D (Council and Trust Contact Details), or such other person as the Council may appoint and notify to the Trust in writing from time to time, appointed to act as the Council's representative under this Agreement.

Employment Contract(s): means the terms of employment between the Trust and the Secondee(s) at the date of this Agreement (provided to the Council on or before the Commencement Date), subject to any changes in the Secondee(s) salary or other benefits in accordance with the Trust's usual procedures in place from time to time (up to date copies of which will be made available to the Council by the Trust within seven (7) Working Days of a request).

Employment Liabilities: means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Extension: has the meaning given in clause 2.3.

Framework: means the electronic social care database system used by West Sussex County Council which stores information about service users/customers (including adults and children) and provides an integrated care planning, care purchasing and finance system.

Good Industry Practice: means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking as that of the Trust under the same or similar circumstances at the relevant time for such exercise.

Individual Secondment Agreement: has the meaning given in clause 11.1 (Individual Secondment Agreement).

Initial Secondment Period: has the meaning given in clause 2.2.

Intellectual Property Rights: means any and all patents, trademarks, service marks, copyright, moral rights, rights in design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether now or in the future subsisting in the United Kingdom or any other part of the world together with all or any goodwill and accrued rights of action.

Laws: means any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance, code of practice, direction, judgment or determination with which the Council and/or the Trust is bound to comply including the Council's rules, procedures, guidelines, policies, codes of practice, standing orders, financial regulations and standards from time to time.

Long Term Leave: means any absence or leave for twenty one (21) calendar days or more.

Management Issues: all those matters under the Employment Contract requiring action, investigation and/or decisions by the Trust including in particular (by way of illustration only and without limitation) appraisals and performance issues; pay reviews and the award of other payments and benefits under the Employment Contract; entitlement to annual, sick or other leave; periods of annual, sick or other leave; absence of the Secondee for any other reason, any complaint about a Secondees (whether or not that would be dealt with under the Trust's Disciplinary and Appeals Procedures) and any complaint or grievance raised by a Secondee (whether or not that would be dealt with under the Trust's Grievance Policy and Procedure) (including, but not limited to, all grievances brought by a Secondee related to their terms and conditions of employment).

Persistent Breach: means the Council serving two (2) Remediation Notices in a rolling three (3) month period or the Trust repeatedly breaching any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.

Pre-Contractual Statement: means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the Secondment under this Agreement (whether made innocently or negligently) other than as expressly set out in this Agreement or any documents referred to in it.

Quarter(s): means 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March and the term "Quarter" shall be construed accordingly.

Redundancy Costs: means statutory redundancy payments, contractual redundancy payments and contractual notice pay payable to the Secondees.

Regulated Activity: means in relation to children as defined in Part 1 of schedule 4, and in relation to Vulnerable Adults as defined in paragraph 7(1) of schedule 4, of the SVGA.

Relevant Conviction: means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders that is relevant to the nature of the Services to be provided (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 3 of the SVGA.

Remediation Notice: has the meaning given in clause 18.3(c).

Representatives: means any employee, volunteer, officer, worker, agent or service provider engaged by a party or by a consultant, agent or sub-contractor of any party.

Secondees: has the meaning given in Recital (A).

Secondment: means the secondment of the Secondees by the Trust to the Council on the terms of this Agreement.

Secondment Period: has the meaning given in clause 2.3.

Senior Posts: means those posts identified in Schedule B as being employed at the Trust's salary band of 8A or above;

Services: means the Services to be provided by the Secondees under this Agreement as more particularly described in the Specification at Schedule C and any variation thereto made in accordance with this Agreement;

SVGA: means the Safeguarding Vulnerable Groups Act 2006 (as amended).

Trust's Manager: means the person named as such in Schedule D (Council and Trust Contact Details), or such other person as the Trust may appoint and notify to the Council in writing from time to time, appointed to act as the Trust's representative under this Agreement.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

Virus or Viruses: means any thing or device (including any software, code, file or programme) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses, malware and other similar things or devices.

Vulnerable Adults: means any adult to whom an activity which is a Regulated Activity relating to vulnerable adults by virtue of any paragraph of paragraph 7(1) of Schedule 4 of SVGA is provided.

Working Days: means Monday to Friday inclusive of each week excluding Christmas Day, Good Friday and other Bank Holidays in England.

SCHEDULE C – SPECIFICATION

PART 1 - THE SERVICES

[INSERT FINAL SPECIFICATION]

[INSERT DETAILS OF THE CLINICAL TREATMENT ELEMENTS OF THE SERVICES]

PART 2 – STRUCTURE CHART AND JOB/ROLE DESCRIPTIONS

[INSERT DETAILS OF JOB/ROLES THAT WILL BE UNDERTAKEN BY SECONDEES DURING THE SECONDMENT]

PART 3 – ACCESS TO FRAMEWORKI

Recording and access to Frameworki ("FWi")

All work undertaken by the Secondees is to be recorded onto Frameworki (FWi), the Council's social care database. Information should be recorded upon FWi at the earliest opportunity, but no later than [one (1) week] after the relevant information is generated or becomes available.

Secondees will access FWi to read information and add to case notes- the expectation is that they will be able to easily access information and upload risk assessment and care plans to FWi and any other requirements set out by the Council.

As per the Council's mandatory FWi training, all users of Frameworki are required to undertake a modular Frameworki course and e-learning course on security in relation to its use as detailed at <https://www.westsussexcpd.co.uk/cpd/Default.asp> and the Council's practice instructions available on the West Sussex Connect to Support Professional Zone, which can be found at <https://www.connecttosupport.org/s4s/WhereILive/Council?pageId=753>.

The Trust will ensure that all Secondees shall:

- comply with and follow the Information Sharing Protocol;
- comply with the level two FWi agreement (<https://www.connecttosupport.org/s4s/WhereILive/Council?pageId=759>);
- complete the Council's Protecting Information training before accessing Frameworki (details of this training can be found at http://www.westsussexcpd.co.uk/courses/bookings/c_detail_elearning.asp?cid=23&iscancelled=0&curpage=&keyword=protecting);
- review the Council's Frameworki Security Policy and sign the Council's Personal Declaration For Use (both attached as Appendix 1 to this Specification) before accessing Frameworki and comply with the same at all times;

- understand and agree to comply with the Council's Acceptable Use Policy (attached as Appendix 2 to this Specification);
- understand and agreed to comply with the other Council policies detailed in paragraph 4 of the Council's Frameworki Security Policy (attached as Appendix 1 to this Specification), which are available from the Council's website or will be provided by the Council upon request;
- access Frameworki only as instructed by Council or its Representatives;
- only access the data and information on Frameworki that relates to their work with the Council;
- acknowledge that use of the Frameworki may be monitored by the Council and its Representatives for lawful purposes;
- acknowledge and agree that they are responsible for any use by them of Frameworki using their unique user credentials (user ID and password, access token or other mechanism as provided) and e-mail address;
- protect their user credentials at least to the same level of secrecy as the information they may be used to access (in particular, they must not write down or share their user credentials other than for the purposes of placing a secured copy in a secure location at the Service Provider's premises);
- protect any sensitive or not protectively marked material sent, received, stored or processed by them via Frameworki to the same level as they would paper copies of similar material;
- disclose information received via Frameworki only on a 'need to know' basis;
- seek to prevent inadvertent disclosure of sensitive or protectively marked information by avoiding being overlooked when working, by taking care when printing information received via Frameworki (e.g. by using printers in secure locations or collecting printouts immediately they are printed, checking that there is no interleaving of printouts, etc.) and by carefully checking the distribution list for any material to be transmitted;
- securely store or destroy any printed material (by shredding or other secure disposal);
- never attempt to disable any measures to protect unauthorised viewing of information displayed on IT systems (such as an inactivity timeout that causes the screen to be blanked or to display a screensaver or similar, requiring a user logon for reactivation);
- inform their manager/Council contact immediately if they detect, suspect or witness an incident that may be a breach of security;
- take precautions to protect all computer media and portable computers when carrying them outside the Council premises (e.g. leaving a laptop unattended or on display in a car such that it would encourage an opportunist thief);
- comply with the Data Protection Act 1998 and any other legal, statutory or contractual obligations that the Trust and/or the Council informs them are relevant; and
- ensure all information that they are working with is accurate and up to date, for example dating out relationships, addresses, or warnings are regularly reviewed etc.

The Trust will ensure that all Secondees do **not**:

- use a colleague's credentials to access Frameworki and equally ensure that their credentials are not shared and are protected against misuse;
- attempt to access Frameworki from other IT systems and locations or by other means other than those approved by the Council, unless they have been explicitly authorised by the Council for this purpose;
- make false claims or denials relating to their use of the Frameworki (e.g. falsely denying that an e-mail had been sent or received);
- send protectively marked information over public networks such as the Internet;
- forward or disclose any sensitive or protectively marked material received via Frameworki unless the recipient(s) can be trusted to handle the material securely according to its sensitivity and forwarding is via a suitably secure communication channel;
- leave their computer unattended in such a state as to risk unauthorised disclosure of information sent or received via Frameworki (this might be by closing the e-mail programme, logging-off from the computer, activate a password-protected screensaver, etc., so as to require a user logon for activation);
- attempt to bypass or subvert system security controls or to use them for any purpose other than that intended;
- remove equipment or information from the Council's premises without appropriate approval;
- introduce Viruses into the system; or
- disable any anti-virus protection provided on their computer;

APPENDIX 1 – FRAMEWORKI SECURITY POLICY AND DECLARATION



Frameworki Security
Policy and Declaration.

APPENDIX 2 – ACCEPTABLE USE POLICY



Frameworki
Acceptable Use Policy.

DRAFT

SCHEDULE D - COUNCIL AND TRUST CONTACT DETAILS

1. Council's Authorised Officer:

Name:
Title:
Address:
E-mail:
Telephone:

Council's Group Manager:

Name:
Title:
Address:
E-mail:
Telephone:

2. Trust's Manager:

Name:
Title:
Address:
E-mail:
Telephone:

DRAFT

SCHEDULE E – PRICE SCHEDULE

1. The Council shall pay the Trust the Annual Payment for the Secondment of the Secondees to provide the Services.

Initial Secondment Period	Annual Payment
1 July 2016 – 30 June 2017	£[]

2. Such Annual Payment shall be paid in equal monthly instalments.
3. In order to receive the Annual Payment, the Trust shall invoice the Council for the relevant instalment of the Annual Payment at the end of each month of the Secondment Period in accordance with clause 9 (Payments).
4. All prices in this Schedule E are exclusive of VAT.

[INSERT PRICING BREAKDOWN – SPREADSHEET]

DRAFT

SCHEDULE F – INDIVIDUAL SECONDMENT AGREEMENT

PROVISIONS TO BE INCLUDED IN EACH INDIVIDUAL SECONDMENT AGREEMENT BETWEEN THE TRUST AND THEIR EMPLOYEE:

To [NAME OF EMPLOYEE TO BE SECONDED],

I am writing to confirm the arrangements that have been agreed between us in connection with your secondment from Sussex Partnership NHS Foundation Trust ("the Trust") to West Sussex County Council ("the Council"):

1. During the secondment you act as [POSITION] and carry out [DETAILS OF DUTIES].
2. During the secondment you will be based within the Council's Looked After, Adoption and Intervention Service department and you will be based at [INSERT LOCATION].
3. You are contracted to work for [INSERT] hours per week. [INSERT DETAILS IF THEY ARE TO SPEND LESS THAN 100% OF THEIR WORKING TIME ON THE SERVICES UNDER THE SECONDMENT AGREEMENT WITH THE COUNCIL].
4. You shall remain employed by the Trust during the secondment and your current terms of employment shall remain unchanged, except as set out in this letter. In particular, your period of continuous employment will remain unbroken.
5. At the end of the secondment, the Trust currently intends that you will return to your current position on the terms applying before the secondment, or a suitable alternative if that role no longer exists. However, this may change according to the needs of the Trust's business at that time.
6. Your secondment will begin on **1st July 2016** and shall be for an initial period of one (1) year with the option to be extended, at the discretion of the Trust and the Council, for one (1) further year (up to two (2) years) or until the termination of your employment in accordance with the terms of your contract.
7. During the secondment:
 - a) you shall continue to abide by the terms of your contract with the Trust;
 - b) you shall comply with the Council's [DETAILS OF RELEVANT POLICES AND PROCEDURES], copies of which are attached;
 - c) you shall continue to receive all clinical management and supervision from [INSERT NAME] at the Trust. Any time required during working hours for formal clinical supervision and/or professional guidance from the Trust should not exceed two (2) hours per calendar month unless you have agreed additional hours for clinical supervision/guidance in advance with your day to day manager at the Council;
 - d) your operational day to day manager will be [[INSERT NAME], the Group Manager] of the Therapeutic Intervention Group at the Council;
 - e) you must obtain the prior approval of the Trust in the usual way before taking any holiday and shall also be required to notify the Council's Group Manager at the same time as submitting your request for annual leave to the Trust. All annual leave will be recorded as per the Trust's usual procedures. You will be required to further notify the Council's Group Manager of any approved annual leave dates;

- f) if you are absent from work at any time, you must notify both the Trust and [INSERT NAME] at the Council as soon as possible on the first day of absence. The Trust's processes, policies and procedures in relation to any absence shall continue to apply;
- g) you shall not be required to work any hours in addition to your contractual working hours set out in your contract of employment with the Trust. In the event that any additional working hours are agreed in advance with the Council's Group Manager, time off in lieu ("TOIL") will be agreed.
- h) you shall continue to stay in contact with [INSERT NAME OF CONTACT AT THE TRUST] on a regular basis and, in particular, keep them informed of any issues that arise, any issues or concerns about the secondment or the work that you are doing and any absences from work.
8. The Trust will conduct any performance management, appraisals and pay reviews in the usual way and will deal with any grievances or any concerns about your conduct or performance in accordance with its usual processes. The Trust and the Council intend that any formal performance development reviews (PDRs) shall be carried out jointly as a 360 degree PDR.
9. You will retain your normal entitlement to annual leave and any public and bank holidays and shall remain subject to the Trust's occupational sick pay scheme.
10. The Trust shall continue to pay your salary in the normal way and you will receive any subsequent pay increases to which you are entitled in accordance with the terms of your contract.
11. You will remain in the NHS Pension Scheme if already a member and, if not already a member, you will remain eligible to join the NHS Pension Scheme if you are eligible in accordance with the rules applying to the NHS Pension Scheme.
12. The Trust will be responsible for the payment of travel and subsistence in accordance with the relevant terms conditions in place and your contract. Any expenses claims for travel and subsistence arising during your secondment must be submitted to [NAME OF EMPLOYEE AT THE TRUST] in accordance with the Trust's normal procedures.
13. You consent to the Trust providing relevant information about you to the Council in connection with your secondment and, in particular, to the Trust providing a copy of your contract or employment and salary details, [INSERT ANY OTHER DETAILS] to the Council to enable it to [INSERT DETAILS].
14. Your contract currently requires you to keep the Trust's confidential information and trade and business secrets confidential. This is particularly important while you are on secondment to the Council. You should also respect the confidentiality of any similar information relating to the Council to which you have access during the secondment.
15. Should the secondment agreement between the Council and the Trust expire or be terminated for any reason, for the avoidance of doubt, you will not acquire any rights to any redundancy payment or any other benefits arising from the ending of the secondment from the Council. Your employment will continue with the Trust and there will be no effect on your continuity of employment.

16. During the secondment you will be given access to the Council’s IT systems to record work undertaken and will be allocated unique user credentials (i.e user name/ID and password, access token or other access mechanism). You will be required to keep your user name and password confidential at all times and will not permit it to be used by any other person. Prior to the secondment you will be required to undertake e-learning training in the use and protection of the Council’s IT systems and to sign a declaration confirming agreement to the Council’s security and acceptable use policies.

17. [INSERT DETAILS OF ANY EQUIPMENT TO BE PROVIDED TO THE SECONDEE AND RETURN OF EQUIPMENT AT THE END OF THE SECONDMENT OF THE INDIVIDUAL]

18. You should declare and seek agreement from your operational day to day line manager at the Council and the head of service of the Trust, in respect of any interests, financial or otherwise, which may give rise to conflict of interest during the course of your secondment.

Signed for and on behalf of the **Trust**.....

Print Name:..... Position:..... Date:.....

I hereby agree to the above changes to the terms of my employment.

Signed by the **Employee (“Secondee”)**:

Print Name:..... Date.....

