

**THIS MEMORANDUM OF AGREEMENT** is made on

**BETWEEN**

- (1) SALFORD CITY COUNCIL of the Civic Centre, Chorley Road, Swinton, Salford M27 5DA (“Lead Partner”)
- (2) THE BOROUGH COUNCIL OF BOLTON (“Bolton Council”) of Town Hall. Bolton BL1 1RU
- (3) TRAFFORD COUNCIL of Trafford Town Hall, Stretford M32 0TH

Collectively “the Parties”

**BACKGROUND**

This Memorandum of Agreement (“Memorandum”) sets out the principles which shall govern the relationship between the Parties including their respective obligations and rights in respect of the Project.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Memorandum, unless the context otherwise requires, a reference to:

“**Confidential Information**” means any information which has been designated as confidential by any Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of any Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

“**Data Protection Legislation**” means the Data Protection Act 1998 (“**DPA**”), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner

“**Memorandum**” means this document, including the Schedule which sets out the Project management and Party contributions hereto;

A **“Party”** means any party to this Memorandum individually and **“Parties”** refers to all of the parties to this Memorandum collectively. A Party shall include all permitted assigns of the Party in question;

**“Project”** means the procurement and management of a contract for Integrated Substance Misuse and Treatment Services on behalf of the Parties which this Memorandum is intended to deliver.

**“Services Contract”** means the contract to be entered into between the Lead Partner, Bolton Council, Trafford Council and the Provider on the terms attached to this Memorandum;

**“Services Provider”** means the provider appointed to deliver the Integrated Substance Misuse and Treatment Services under the Services Contract

**“Services”** means the integrated substance misuse and treatment services available to all people present in a local authority area and commissioned by a local authority pursuant to the Local Authorities (Public Health Functions) Regulations 2012, which Services will be delivered by the Services Provider in accordance with the Services Contract

**Comment [CH1]:** Need to check if this is applicable for this service!

**“Staff”** means employees, servants or agents

**“Term”** means three years from 1<sup>st</sup> October 2017 with the option to extend for two further periods of twelve months by agreement between the parties.

**Comment [CH2]:** Check the period of the contract!

**2. PROJECT OUTLINE AND PRINCIPLES OF THE RELATIONSHIP**

- 2.1 The Parties shall work together in delivering the Project and in particular shall perform their respective obligations under this Memorandum and the Services Contract.
- 2.2 The Lead Partner will:
  - a) Manage the procurement process of the Project in line with the Lead Partner’s Contractual Standing Orders (CSOs), the Public Contracts Regulations 2015 (and any other relevant legislation) and best practice
  - b) Ensure delivery of the Project in accordance with this Memorandum and the Services Contract
  - c) Manage all financial, administrative and reporting aspects of the Project in accordance with this Memorandum and the Services Contract. This will include maintaining detailed project income and expenditure accounts and related documentation.
  - d) Manage the performance of the delivery of the Services by the Services Provider under the Services Contract through quarterly performance meetings and alert Bolton Council and Trafford Council to any problems identified as soon as reasonably possible.
  - e) Exercise all reasonable, care, attention and diligence in carrying out the Project in accordance with this Memorandum and the Services Contract
  - f) Procure the services of its Staff in carrying out the Project and ensure that deliverables relating to the Project are produced as may be agreed in writing by the Parties.
  - g) Ensure that each member of its Staff doing work on its behalf under this Memorandum:
    - is sufficiently qualified, trained, skilled and experienced in the type of work which he is to perform, exercises all due skill, care, attention and diligence in his work; and

- shall, promptly disclose to Bolton Council and Trafford Council all results and new intellectual property rights developed in the Project, and in any event by no later than the termination of this Memorandum (however effected)
- h) Ensure that it has appropriate financial and auditing procedures in place to manage its commitments under this Memorandum and ensure that it has complied with all relevant tax implications and evidence this to Bolton Council and Trafford Council if reasonably required or requested
- i) Keep project records (including but not limited to financial records, award letters, and management reports) for twelve (12) years after the Term ends.
- j) Subject to clause 2.5 below, enforce the provisions of the Services Contract relating to the part of the Services being or to be delivered to the Lead Partner and be responsible for its own associated cost.

2.3 Bolton Council and Trafford Council will:

- a) Provide any relevant data, information, technical specifications or other assistance reasonably required by the Lead Partner or other Party to the Project through its named representative subject always to Data Protection Legislation
- b) Keep project records for twelve (12) years after the Term ends
- c) Subject to the Lead Partner's role in the management of the Services Contract, manage the performance of the delivery of the Services by the Services Provider under the Services Contract through quarterly performance meetings and alert the Lead Partner to any problems identified.
- d) Subject to clause 2.5 below, enforce the provisions of the Services Contract relating to the part of the Services being or to be delivered to Bolton Council and Trafford Council and be responsible for its own associated cost.

2.4 Together the parties will establish a Joint Commissioning Oversight Group (JCOG) to consider, discuss and review any service and service delivery contractual issues which may impact on any Party or Parties. The JCOG will meet on at least a quarterly basis or more frequently as agreed by the Parties. Any issues which cannot be resolved will be dealt with in accordance with clause 12.

2.5 The JCOG will consider and agree the admission of any additional Party to this agreement and any Service Contract.

2.6 In the event that one or any of the Parties is dissatisfied with the Services being or to be delivered by the Services Provider under the Services Contract, any proposed action discussed by the Parties against the Services Provider must be agreed by the JCOG including whether the Lead Partner shall take the lead in any enforcement action against the Services Provider.

2.7 Together the Parties will conduct a joint annual review with the Service Provider under the terms of the Services Contract, seeking continuous improvement and any options for potential savings.

2.8 Each Party warrants and agrees that in providing any services or in fulfilling any obligation or dealing with and administering funds under this Memorandum it will ensure it is fully compliant with EU and public sector procurement regulations and incorporate best practice principles.

### 3. DURATION

3.1 This Memorandum shall be effective from the date of its execution and shall continue until completion of the Project (“the Term”) subject to earlier termination in accordance with clause 14 or extension by the Parties.

#### **4. RESOURCES**

4.1 The Parties shall provide such resources to enable them to comply with their respective obligations as they agree to so provide.

#### **5. FURTHER ASSURANCE**

5.1 The Parties shall promptly execute and deliver all such documents and do all such things as may, from time to time, be reasonably required for the purpose of giving full effect to the provisions of this Memorandum.

#### **6. VARIATION AND WAIVER**

6.1 No variation of this Memorandum shall be valid unless it is in writing and signed by or on behalf of each of the Parties.

6.2 No delay by a Party in exercising any provision of this Memorandum constitutes a waiver of such provision or shall prevent any future exercise in whole or in part.

#### **7. SUCCESSORS AND ASSIGNS**

7.1 The agreements reached between the Parties pursuant to this Memorandum shall continue for the benefit of their respective successors and assigns.

7.2 A Party cannot assign, sub-contract or in any other way dispose of this Memorandum or any part of it to any person, firm or company without the prior written consent of the other Party.

7.3 Any assignment or transfer or subcontract shall not relieve the Parties of any of their obligations or duties under this Memorandum.

#### **8. NOTICES**

8.1 Any notice or other communication required to be given under this Memorandum, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each Party required to receive the notice or communication as set out below:

**SALFORD CITY COUNCIL:** Director of Public Health

**THE BOROUGH COUNCIL OF BOLTON:** Director of Public Health

**TRAFFORD COUNCIL:** Director of Public Health

or as otherwise specified by the relevant Party by notice in writing to each other Party.

- 8.2 Any notice or other communication shall be deemed to have been duly received:
- 8.2.1 if delivered personally, when left at the address and for the attention of the contact referred to in clause 8.1; or
  - 8.2.2 if sent by pre-paid first-class post or recorded delivery, at 11.00 am on the second business day after posting; or
  - 8.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 8.3 A notice or other communication required to be given under this Memorandum shall not be validly given if sent by e-mail.
- 8.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **9. CONFIDENTIALITY**

- 9.1 Each Party acknowledges that pursuant to this Memorandum they will each disclose Confidential Information to the other Party. In consideration of the provision of such Confidential Information, each Party undertakes to the other Party:
- 9.1.1 to keep secret and confidential all Confidential Information disclosed to it, (including its employees, servants, agents or advisers) by or on behalf of the other in relation to the agreement or the business of the other Party which is of a confidential nature and not to use such Confidential Information for any purpose other than for the purposes of this Memorandum; and
  - 9.1.2 not to disclose to any third party (other than its professional advisers or as required by law or any competent regulatory authority) any such Confidential Information other than that which comes into the public domain other than by breach of the undertakings contained in this clause 9.
- 9.2 These confidentiality undertakings shall subsist indefinitely so far as permissible by law.
- 9.3 The obligations of confidentiality set out in this clause 9 shall not apply to information already known to any Party (other than through a breach of a confidentiality undertaking), or derived independently of that received under or in connection with this Memorandum by any Party, information in the public domain or information required to be disclosed by law.

## **10. INFORMATION**

- 10.1 Each Party acknowledges that the other Party is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and co-operate with each other Party as necessary to comply with these requirements.
- 10.2 In responding to a request for information, including information in connection with the Project, each Party will use reasonable endeavours to consult with the other Party. Notwithstanding

this each Party acknowledges that the other Party may disclose information without consultation, or following consultation having taken their views into account.

- 10.3 Each Party shall ensure that all information produced in the course of the Project or relating to this Memorandum is retained for disclosure and shall provide all necessary assistance as reasonably requested to enable any other Party to respond to a request for information within the time for compliance and shall permit the other Party to inspect copies of such records as requested from time to time.
- 10.4 Each Party acknowledges that any statutory and other constraints on the exchange of information will be fully respected, including the requirements of the Data Protection Act 1998 and the Human Rights Act 1998.

## **11. LIMITATION OF LIABILITY**

- 11.1 Each Party will be released from their respective obligations under this Memorandum in the event of any cause beyond the reasonable control of the Parties which renders the performance of this Memorandum impossible, including but not limited to, national emergency, war, prohibitive government regulation, industrial action, terrorism, the act or omission of any third party not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts. Delay of less than six months shall not constitute such an event.
- 11.2 No Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or that of its employees, servants or agents.
- 11.3 Subject to clause 11.2 no Party will be liable to any other Party for:
  - a) any indirect, special or consequential loss or damage; or
  - b) any loss of profits, turnover, business opportunities or damage to reputation or goodwill (whether direct or indirect).
- 11.4 If either Party incurs a loss arising out of or in connection with the Project and/or this Memorandum and/or the Services Contract as a consequence of any act or omission of the other Party which constitutes negligence, fraud or a breach of contract in relation to this Memorandum or the Services Contract then that Party shall be liable to the other Party for that loss and shall indemnify the other Party accordingly.
- 11.5 Clause 11.4 shall only apply to the extent that the acts or omissions of one Party contributed to the relevant loss. Furthermore, it shall not apply if such act or omission occurred as a consequence of that Party acting in accordance with the instructions or requests of the other Party.
- 11.6 If any third party makes a claim or intimates an intention to make a claim against any of the Parties which may reasonably be considered as likely to give rise to liability under this Memorandum the Party that may claim against the other Party will:
  - 1.1.1 as soon as reasonably practicable give written notice of that matter to the other Party specifying in reasonable detail the nature of the relevant claim;

- 1.1.2 not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the other Party (such consent not to be unreasonably conditioned, withheld or delayed);
- 1.1.3 give the other Party and their professional advisers reasonable access to its premises and personnel and to any relevant assets, accounts, documents and records within its power or control so as to enable the other Party and their professional advisers to examine such premises, assets, accounts, documents and records and to take copies at their own expense for the purpose of assessing the merits of, and if necessary defending, the relevant claim.

1.2 Each Party shall ensure that they maintain policies of insurance in respect of all potential liabilities arising from this Memorandum.

1.3 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one party is entitled to bring a claim against the other pursuant to this Memorandum.

## **12. RECONCILIATION OF DISAGREEMENT**

12.1 Any disagreements between the Parties will normally be resolved amicably at working level. In the event of failure to reach consensus between the Parties then such failure shall be handled in the following manner:

12.1.1 the dispute shall be referred to the Parties' Directors of Public Health for resolution at a meeting to be arranged as soon as practicable after the failure to reach consensus arises, but in any event within ten business days.

12.1.2 If the dispute is not resolved at that meeting, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR and the Parties shall meet the costs of any such mediation in equal shares.

## **13. TERMINATION**

13.1 Any Party may terminate its participation in the Project or this Memorandum by a minimum of six (6) months prior notice in writing to the other Party.

13.2 On termination of this Memorandum in accordance with this clause 13, each Party shall return the pre-existing information or materials to the Party that provided the information.

13.3 In the event of termination where liabilities on the Project are still outstanding, those liabilities will survive the termination of this Memorandum and will be discharged by the Parties in proportion to their respective liabilities under this Memorandum or under the Services Contract as determined by the JCOG or, in the event of dispute, in accordance with clause 12 above.

13.4 Should either party look to terminate the Services Contract, resolution will be sought initially through the JCOG to enable continued service delivery. Should resolution of any issues which may lead to termination not be possible the parties will agree a suitable exit plan.

## **14. ANNOUNCEMENTS**

14.1 The Parties shall not make, or permit any person to make, any public announcement concerning the Project (whether before, at or after completion) except as required by law or with the prior written consent of the other Party.

## **15. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

15.1 The Parties do not intend that any term of this Memorandum shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## **16. GOVERNING LAW**

16.1 This Memorandum and all disputes or claims arising out of or in connection with the activities of the Parties in delivering the Project shall be governed by and construed in accordance with the laws of England.

## **17. PARTNERSHIP**

17.1 Nothing in this Memorandum shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between any of the Parties to this Memorandum.

## **18. PRECEDENT**

18.1 This Memorandum in no way creates a precedent for any further contracts between the Parties to this Memorandum.

## **19. WHOLE AGREEMENT & STATUS**

19.1 This Memorandum contains the whole agreement between the Parties and supersedes all previous communications, representations, or arrangements whether written or oral.

19.2 Nothing in this Memorandum will prejudice, conflict with or affect the exercise by any Party of any of its statutory functions, duties, powers, rights, responsibilities and obligations arising or imposed under any legislative provision, enactment, byelaw or regulation whatsoever, nor will it fetter the exercise of any discretion. Nothing in this Memorandum will operate as a statutory approval, consent, licence or waiver by any Party.

## **20. SEVERABILITY AND SURVIVAL**

20.1 If any part of this Memorandum is found by a court, tribunal or other competent body having jurisdiction to be invalid, unlawful or unenforceable, then that part will be severed from the remainder of this Memorandum, the remaining provisions of which will continue to be valid and enforceable to the fullest extent permitted by law. The Parties will negotiate in good faith to amend such provision so that it is valid, lawful and enforceable.

20.2 The provisions of clauses 6.2 (Waiver), 7 (Assignment), 9 (Confidentiality), 10 (IPR), 12 (Liability), 13 (Reconciliation), 14 (Termination), 16 (Third Parties), 20 (Whole Agreement) and 21 (Severability & Survival) shall survive termination of this Memorandum.

Each Party hereby confirms its agreement to the terms contained in this Memorandum.

The COMMON SEAL OF SALFORD CITY COUNCIL  
was hereunto affixed in the presence of:

.....  
*Authorised Signatory*

.....  
*Title*

.....  
*Date*

EXECUTED AS A DEED by THE BOROUGH COUNCIL OF BOLTON  
affixing its Common Seal in  
the presence of:

.....  
*Authorised Signatory*

.....  
*Title*

.....  
*Date*

EXECUTED AS A DEED by TRAFFORD COUNCIL  
affixing its Common Seal in  
the presence of:

.....  
*Authorised Signatory*

.....  
*Title*

.....  
*Date*

## **The Schedule**

### Project Management and Party Contributions

1. The estimated annual value of the Services being procured by the Lead Partner on behalf of the Parties are as follows;

Salford City Council	£[ ]
The Borough Council Of Bolton	£[ ]
Trafford Council	£[ ]

2. The Parties shall enter into the Services Contract with the Services Provider and shall manage that contract in accordance with its terms and conditions to ensure that the Services are delivered by the Services Provider in accordance with each Party's respective service specifications.

3. Each Party shall be responsible for payment of any invoices submitted by the Services Provider and shall ensure that such invoices itemise the services provided to each of the Parties during the relevant invoiced period.