

Appendix 1  
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Dated 2012  
Agreement for the provision of certain Public Health  
Services  
between  
(1) NHS Merseyside  
And  
(2) Halton Borough Council

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- 1.7 **“Level of Authority”** means the delegated level of authority of the DPH to incur expenditure on behalf of NHSM.
- 1.8 **“the Liverpool City Region CE Group”** means the group of Chief Executives in Merseyside including those from Halton Borough Council, Knowsley Borough Council, Halton Borough Council, St Helens Borough Council, Sefton Borough Council and NHSM or their representatives.
- 1.9 **“Merseyside Public Health Transition Leads Group”** means the group which provides oversight of the transition of public health services across Merseyside and which reports to the Liverpool City Region CE Group and NHS Merseyside Transition Group.
- 1.10 **“NHSCBA”** means the National Health Service Commissioning Board Authority, a Special Health Authority, and any successor in title.
- 1.11 **“NHSCBA Functions”** means those functions and services which are to be carried out by the NHSCBA commencing on the 1<sup>st</sup> April 2013 and which are set out as a non-exhaustive list below:-
- (a) Cancer and Non Cancer Screening Programmes.
  - (b) Children 0-5 including commissioning of Healthy Start Vitamins, Childhood Immunisation programmes and Targeted Neonatal Immunisation programmes.
  - (c) Seasonal Flu and Pneumonia Immunisation programmes.
  - (d) TD/IPV and HPV Immunisation programmes.

(e) Contraception – additional GP service.

(f) Prison Public Health.

1.12 **“NHS Merseyside”**

means the sub-committee of NHSM which has been established for the purposes of carrying out and performing certain statutory duties and obligations on behalf of NHSM and other PCTs in Merseyside, including those relevant to this agreement.

1.13 **“NHS Merseyside Transition Group”**

means the group responsible for reporting to NHS Merseyside upon (amongst other matters) the progress of the transitional planning arrangements for the Public Health Functions.

1.14 **“the Parties”**

means the Council and NHSM.

1.15 **“Public Health Functions”**

means such of those functions to be undertaken by the DPH and NHSM during the Transitional Period and to be shadowed by the Chief Executive of the Council, and which are to become the responsibility of the Council on the 1<sup>st</sup> April 2013 and which are more particularly set out in the Department of Health’s Paper and Factsheets in the Gateway Paper reference:- 16747.

1.16 **“the Public Health Transition Group”**

means the group responsible for preparing and developing the Public Health Transition Plan which includes membership from the Council and NHSM and which will be responsible for reporting to the Merseyside Public Health Leads Transition Group.

1.17 **“the Public Health Transition Plan”**

means the plan dated March 2012 and prepared by the Public Health Transition Group for the purposes of ensuring the safe

transition of Public Health Functions from NHSM to the Council and to its statutory successors (Appendix 1).

1.18 **“PHE”**

means Public Health England, an executive agency of the Department of Health to be established on the 1<sup>st</sup> April 2013 for the purposes of supporting local health services, provide strategic leadership and vision for the protection and improvement of the nation’s health.

1.19 **“PHE Functions”**

means those functions and services which are to be carried out by PHE commencing on the 1<sup>st</sup> April 2013 on which are more particularly described in the Department of Health’s Gateway Paper 16912:- “Public Health England’s Operating Model” and as may be amended from time to time.

1.20 **“Quarter”**

means the following periods in the Financial Year:

- (a) 1<sup>st</sup> April to 30<sup>th</sup> June;
- (b) 1<sup>st</sup> July to 30<sup>th</sup> September;
- (c) 1<sup>st</sup> October to 31<sup>st</sup> December;
- (d) 1<sup>st</sup> January to 31<sup>st</sup> March.

1.21 **“SHA”**

means the North of England Strategic Health Authority Cluster.

1.22 **“Term”**

means the term of this agreement which shall commence on the date hereof and end on the 31<sup>st</sup> March 2013.

1.23 **“the Transitional Period”**

shall mean the period starting on the 1<sup>st</sup> April 2012 and ending on the 31<sup>st</sup> March 2013.

## **2. PURPOSES OF THIS AGREEMENT**

- 2.1 The Parties have agreed that in order to ensure a seamless transition of the Public Health Functions to the Council on the 1<sup>st</sup> April 2013 pursuant to the Act and to encourage early engagement and integration with all key stakeholders and/or as may be required by the Secretary of State for Health from time to time, the Council shall shadow the Public Health Functions during the Transitional Period.
- 2.2 The parties have agreed that during the Transitional Period NHSM will permit the Chief Executive of the Council (or such Chief Officer as the Chief Executive of the Council may direct) to have oversight of and make recommendations to the DPH in relation to all actions that the DPH may take in pursuance of the Public Health Functions, whilst remaining accountable to the Board of NHSM for statutory public health functions (including, without limitation, the Public Health Functions) as covered by this agreement.
- 2.3 The Parties have prepared and agreed the Public Health Transition Plan for the commissioning and provision of the Public Health Functions during the Transitional Period.
- 2.4 The DPH will continue to be responsible for the PHE Functions and the NHSCBA Functions that are transferring to PHE or NHSCBA in 2013 ~~but~~ and will be accountable for all actions taken in pursuance of these functions to the Chief Executive of NHSM.

## **3. AIMS AND OBJECTIVES OF THIS AGREEMENT**

- 3.1 The aims and objectives of this agreement are:-
- 3.1.1 to allow the Council to oversee the Public Health Functions undertaken by the DPH and NHSM;
- 3.1.2 to give effect to the terms of the Public Health Transition Plan insofar as they affect or relate to the Public Health Functions transferring to the Council on 1<sup>st</sup> April 2013; and
- 3.1.3 to prepare the Council for the integration of the Public Health Functions into the day to day work of the Council from the 1<sup>st</sup> April 2013.

- 3.2 In order to meet the objectives in Clause 3.1 the Parties shall:
- 3.2.1 communicate openly about major concerns, issues or opportunities relating to the Public Health Functions;
  - 3.2.2 discuss the financial controls and commercial arrangements (including without limitation contractual arrangements with third parties, human resources and general resources such as premises and utilities) required for the transition of the Public Health Functions to the Council from 1<sup>st</sup> April 2013;
  - 3.2.3 share information, experience, materials and skills in relation to the Public Health Functions;
  - 3.2.4 behave in a positive and proactive manner;
  - 3.2.5 comply with all applicable laws and standards including, without limitation, those concerning EU procurement, data protection and freedom of information ; and
  - 3.2.6 manage stakeholders effectively.
- 3.3 NHSM shall during the Transitional Period:
- 3.3.1 comply with all relevant national guidance relating to the Public Health Functions;
  - 3.3.2 maintain and develop arrangements for the monitoring of all public health performance indicators and outcomes that are a requirement of national, SHA, PCTs and local partnership commitments and targets;
  - 3.3.3 ensure that the current quality of the public health service is maintained;
  - 3.3.4 undertake such mitigating actions as are necessary to improve performance in line with local priorities and public health performance indicators and outcomes;
  - 3.3.5 develop the Public Health Functions across a broader footprint (as appropriate);



- 3.3.6 provide requisite advice and assistance to CCGs, NHS Commissioners, NHSCBA and the HWBB;
  - 3.3.7 participate in and promote other public health networks across Cheshire and Merseyside; and
  - 3.3.8 lead the development of the JSNA with CCGs in line with national guidance.
- 3.4 For the avoidance of doubt, nothing in this agreement shall operate to transfer to the Council responsibility for the undertaking of the Public Health Functions during the Transitional Period. NHSM acknowledges that it shall continue to undertake the Public Health Functions during the Transitional Period and shall indemnify the Council for any costs, claims and demands suffered by the Council in relation to the performance or non-performance of the Public Health Functions during the Transitional Period.

#### **4. DECISION MAKING AND DELEGATION PROCEDURE**

- 4.1 The DPH will continue to be responsible for taking all day to day decisions in relation to the Public Health Functions during the Transitional Period and shall report jointly to the Chief Executive of the Council (or such Chief Officer as the Chief Executive of the Council may direct), to enable the Chief Executive or Chief Officer (as applicable) to have oversight and to make recommendations to the DPH in respect of the Public Health Functions covered by this agreement and to the Accountable Officer of NHSM in respect of the Public Health Functions and all other public health related functions.
- 4.2 The DPH will be responsible for continuing to provide support, advice and assistance to CCGs and all NHS Commissioners.
- 4.3 The DPH will work with the Council to agree strategic planning issues relating to the delivery of the Public Health Functions.
- 4.4 The DPH will meet with the Accountable Officer or his deputy at the end of every Quarter to review and monitor both the terms of this agreement and the progress in meeting the objectives of the Public Health Transition Plan.
- 4.5 Responsibility for the supervision of and dealing with matters relating to the conduct (including, without limitation, compliance with the Council's Health and

Safety Policy and ICT Policy, policies relating to confidentiality and data protection, and any other relevant policies whilst on the Council's premises) and contracts of employments of all of NHSM's employees engaged in or assigned to the Public Health Functions, complaints, FOI requests, serious untoward incidents and professional conduct issues, insofar as they relate to the Public Health Functions, will remain with NHSM and NHSM shall indemnify the Council for any costs claims or demands arising from such matters (including, without limitation, any claim brought by an employee of NHSM against the Council on the basis that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") applies to the arrangements hereby agreed).

- 4.6 There will be no pooled fund for the purposes of this agreement and all income and revenue and expenditure associated with the Public Health Functions will be retained by NHSM during the Transitional Period and any such income revenue or expenditure or any other financial matters to be incurred by the Council appertaining to this agreement and the Public Health Functions (including, without limitation, the costs of accommodating and providing office facilities to any NHSM staff performing the Public Health Functions) shall be reimbursed to the Council by NHSM upon demand.
- 4.7 The Level of Authority at the date of this agreement is £100,000.00.
- 4.8 The DPH will provide a leadership role for Public Health Functions during the Transitional Period and ensure that appropriate arrangements for the oversight of such services are put in place so as to report on the progress of the implementation of Public Health Transition Plan.
- 4.9 NHSM shall be responsible for providing sufficient support to the DPH in order to carry out the Public Health Functions, such support to include (without limitation) HR and Workforce, Commissioning and Contracting, Payroll and Finance.

## **5. GENERAL PROVISIONS**

- 5.1 The Parties agree that no staff shall transfer from the employment of the PCT into the employment of the Council during the Transitional Period and that nothing done pursuant to this agreement shall constitute a relevant transfer for the purposes of TUPE.

- 5.2 This agreement shall continue for the Term, but either Party may terminate this agreement during the Transitional Period by the serving of no less than 3 months previous notice in writing.
- 5.3 Notwithstanding the provisions set out in Clause 5.2, NHSM reserves the right to rescind this agreement with immediate effect if any action is reasonably considered by it to adversely compromise the Accountable Officer's statutory accountabilities or duties as Accountable Officer.
- 5.4
- 5.4.1 The failure of either of the Parties to enforce at any time or for any period of time any of the provisions of this agreement shall not be construed to be a waiver of any such provision and shall in no way affect the right of the Parties thereafter to enforce such provision.
- 5.4.2 No waiver in any one or more instances of a breach of any provision hereof shall be deemed to be a further or continuing waiver of such provision in other instances.
- 5.5 The Parties may review the operation of this agreement and all or any procedures or requirements of this agreement on the coming into force of any relevant law or guidance affecting the Public Health Functions so as to ensure that this agreement complies with such law or guidance.
- 5.6 This agreement shall be governed by and construed in accordance with the Law of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English Courts.
- 5.7
- 5.7.1 In the event of a dispute between the Parties in connection with this agreement the Parties shall refer the matter to the Chief Executives of both Parties or their nominated deputies. The Parties' representatives to whom the dispute is referred shall endeavour to settle the dispute between them as quickly as possible.
- 5.7.2 If after the dispute being referred to the persons identified in clause 5.7.1, it remains the case that no agreement or resolution has been reached within a reasonable period of time having regard to the nature of the

dispute the Parties may refer the dispute to the SHA for determination or in the alternative either of the Parties may terminate this agreement in accordance with the terms of this agreement.

5.8 The Parties may not assign this agreement or any benefits and/or obligations hereunder except to any statutory successor in title with the appropriate statutory functions and obligations as herein before referred to.

5.9 Nothing in this agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the Parties.

5.10

5.10.1 Any notice or communication hereunder shall be in writing.

5.10.2 Any notice or communication to the relevant Party shall be deemed effectively served if sent by registered post or delivered by hand at the address of the Parties set out above and marked for the Chief Executive of the relevant Party or to such other addressee and address notified from time to time to the other Party.

5.10.3 Any notice served by delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted it shall be sufficient to prove that the notice was properly addressed and posted in accordance with Clause 5.10.2 and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

5.11

5.11.1 The Contracts (Rights of Third Parties) Act 1999 ("CRTPA") shall not apply to this agreement and accordingly the Parties do not intend that any person not party to this agreement should have any rights in respect of it by virtue of CRTPA.

5.11.2 For the avoidance of doubt the Parties may amend, vary or rescind this agreement in accordance with its terms without the consent of any third party, even if such variation or rescission affects the benefits of such third party.

5.12

5.12.1 The Parties may agree in writing variations to this agreement.

5.12.2 Such variations shall only be made in accordance with all applicable law and guidance and after such consultation as shall be required by law and guidance.

5.12.3 No variations shall be binding on the Parties unless made in writing and signed by a duly authorised officer or representative of each of the Parties.

5.13 Neither Party shall be liable for delay in performing or failure to perform any of its obligations under this agreement, if such delay or failure results from any of the following:

5.13.1 acts of God;

5.13.2 outbreak of hostilities, riot, civil disturbance, acts of terrorism;

5.13.3 fire or explosion; or

5.13.4 any cause or circumstance whatsoever beyond the particular Party's reasonable control ("**Force Majeure**").

5.13.5 If either Party is prevented or delayed in the performance of any of its obligations under the agreement by Force Majeure, that Party shall serve notice on the other Party specifying the nature and extent of the circumstances giving rise to Force Majeure and shall have no liability in respect of the performance of such of its obligations as are prevented by Force Majeure during the continuation of such Force Majeure, except that rights and liabilities which have accrued prior to such Force Majeure shall continue to subsist.

**IN WITNESS WHEREOF** this agreement has been executed as a Deed by the Parties on the date of this agreement

**EXECUTED** (but not delivered until the date )  
hereof) as a deed by affixing the Common Seal )  
of Halton Borough Council )

**THE COMMON SEAL** of\_  
**NHS MERSEYSIDE**  
has hereunto been  
affixed the day and year first before written  
in the presence of:-

**EXECUTIVE DIRECTOR**

**EXECUTIVE DIRECTOR**

## APPENDIX 1

### Local Public Health Transition Plan

This was presented to Halton Borough Council Cabinet on 16 March 2012

Paper: Public Health Transition (ASC/12)



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Halton Transition\Tra

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