

Dated

2020

SHARED SERVICE AGREEMENT

between

DORSET COUNCIL

and

**BOURNEMOUTH CHRISTCHURCH AND
POOLE COUNCIL**

THIS AGREEMENT is dated

2020

Parties

- (1) **DORSET COUNCIL** of South Walks House, South Walks Road, Dorchester, DT1 1UZ ("Dorset").
- (2) **BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL** of Town Hall, Bourne Avenue, Bournemouth, BH2 6EB ("BCP").

Background

- (A) The Parties exercise the Functions pursuant to the Act.
- (B) The Parties are committed to the effective and comprehensive provision of the Functions across their Areas and have agreed to the shared provision of the Functions with Dorset as the lead authority, and therefore propose to enter into the arrangements as set out in this Agreement.

Agreed Terms

1. DEFINITION AND INTERPRETATION

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

Act: Health and Social Care Act 2012

Areas: the geographical areas of the Parties

Arrangements: the arrangements for the shared exercise of the Functions by the Parties described in this Agreement

Commencement Date: 1 April 2020

Financial Contributions: the annual Public Health grant allocations less any retained amounts as reviewed and agreed annually by the Joint Public Health Board as set out in Appendix 2.

Financial Year: 1 April to 31 March

Functions: the public health functions which are to be discharged in relation to their Areas by the Parties pursuant to the Act or Regulations made under the Act

Joint Public Health Board: the joint executive body established by the Parties as described in clause 7

Parties: the parties to this Agreement

Pooled Fund: a pooled fund comprising the Parties' Financial Contributions for the Functions, out of which payments may be made by Dorset towards expenditure incurred in the exercise of the Functions

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI/2006/246).

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 Words in the singular include the plural and vice versa.
- 1.4 A reference to one gender includes a reference to the other genders.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to a document is a reference to that document as varied or novated at any time.
- 1.7 References to clauses are to the clauses of this Agreement.

2. **ARRANGEMENTS**

- 2.1 The Parties enter into these Arrangements to exercise the Functions on a shared basis to better discharge the Functions in their respective Areas than if the Parties were operating independently.
- 2.2 The Arrangements shall comprise:
 - (a) the operation and management of a Pooled Fund for the Functions in accordance with the Arrangements set out in this Agreement;
 - (b) the operation of a Joint Public Health Board comprising elected members of the Parties to oversee the exercise of the Functions in the Areas, in accordance with the Terms of Reference set out in Appendix 1.
- 2.3 The lead officer for the Joint Public Health Board will be the Director for Public Health for Dorset and BCP. It is intended that the Joint Public Health Board will meet as a minimum four times a year. The Director will recommend to the Joint Public Health Board a proposed scheme of delegation to officers.
- 2.4 Dorset shall host and provide the financial and administrative systems for the Pooled Fund, although BCP will make desks available at their offices for staff involved in the exercise of the Functions. Provided that the Parties agree such amendments in advance and in writing; the Parties may agree an appropriate charge in respect of IT, equipment or other administrative support provided by one Party to the other under these

Arrangements.

2.5 Dorset shall be responsible for:

- (a) managing the Pooled Fund on behalf of the Parties;
- (b) managing expenditure from the Pooled Fund within the budgets and plans set by the Parties.

2.6 This Agreement shall apply from the Commencement Date until it expires or is terminated in accordance with clause 9.

3. **DELEGATION OF FUNCTIONS**

For the purposes of the implementation of the Arrangements, BCP shall delegate the exercise of its Functions to Dorset to exercise alongside Dorset's Functions.

4. **PROVISION OF FUNCTIONS**

4.1 Dorset shall be the host authority for the Functions and shall act as lead provider of the Functions.

4.2 Dorset shall provide the Functions across the Areas:

- (a) to ensure the proper discharge of the Parties' Functions;
- (b) with reasonable skill and care, and in accordance with best practice guidance and all applicable laws and regulations;
- (c) in accordance with the decisions of the Joint Public Health Board;
- (d) in accordance with its standing orders and other rules (except to the extent that these are superseded by the provisions of this Agreement); and
- (e) in accordance with applicable laws.

4.3 The Joint Public Health Board will review the operation of the Arrangements on an annual basis as part of its work programme and in particular will ensure that discussions take place at the appropriate time in order to agree the financial basis of the Arrangements.

5. **FINANCIAL CONTRIBUTIONS**

- 5.1 BCP shall pay its Financial Contribution to Dorset to allocate to the Pooled Fund.
- 5.2 Dorset shall contribute its Financial Contribution to the Pooled Fund.
- 5.3 The Parties shall pay the Financial Contributions into the Pooled Fund quarterly in advance.
- 5.4 The Parties shall contribute all Financial Contributions, grants or other allocations that are intended to support the provision of the Functions. Amounts retained by the individual Parties shall be reviewed and agreed annually by the Joint Public Health Board.

6. **OVERSPENDS AND UNDERSPENDS**

- 6.1 Dorset shall use all reasonable endeavours to arrange for the discharge of the Functions in the Areas within the Financial Contributions available in each Financial Year.
- 6.2 Dorset shall use all reasonable endeavours to manage any in-year overspends within its commissioning arrangements for the Functions.
- 6.3 Dorset by notice from its Section 151 Officer to the BCP Section 151 Officer shall make them aware of any potential overspend as soon as it becomes aware of this possibility. Dorset will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the Pooled Fund back to balance.
- 6.4 If, at the end of the Financial Year or on termination or expiry of the Arrangements, it becomes apparent that there has been an overspend of the Pooled Fund, the Parties shall meet the overspend proportionately to their respective Financial Contributions and BCP shall indemnify Dorset accordingly.
- 6.5 Dorset shall make BCP aware of any potential underspend in relation to Financial Contributions prior to the end of the Financial Year. Dorset shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

- 6.6 To the extent that the Parties are not required to return any underspend to the Department of Health, and in recognition of national grant conditions that determine how public health grant is intended to be used and the Parties acknowledging and agreeing to act in good faith at all times with respect to this Agreement, the benefit of any net underspend at the end of the Financial Year or on termination or expiry of the Arrangements shall:
- (a) if the Parties agree, be applied to the Functions, as the Joint Public Health Board shall determine; or
 - (b) if the Parties agree, be deducted proportionately from the Parties' Financial Contributions for the following Financial Year; or
 - (c) if the Parties cannot agree, be returned to the Parties in proportion to their Financial Contributions for the Financial Year.
- 6.7 In the event that there is a need for Dorset to make redundancies from amongst the Public Health staff in order to remain within the Pooled Fund budget then Dorset shall consult with BCP and use all reasonable endeavours to minimise the need for any redundancy or other cost falling upon the Parties. If there is a need for redundancies to be made then, consistent with clause 6.4 and the treatment of overspends, costs will be shared by the Parties proportionately to their respective financial contributions and BCP shall indemnify Dorset accordingly.

7. **GOVERNANCE**

- 7.1 The Joint Public Health Board shall discharge the Functions in accordance with its Terms of Reference at Appendix 1.
- 7.2 Each of the Parties shall appoint two voting members to the Joint Public Health Board who shall be members of the Parties' executives.
- 7.3 Each of the Parties may also nominate a member to attend the Joint Public Health Board as a non-voting member. A non-voting member shall be entitled, subject to the relevant rules of procedure and the decision of the chair, to take part in meetings of the Joint Public Health Board
- 7.4 Membership of the Joint Public Health Board shall also comprise a nominated director from NHS Dorset Clinical Commissioning Group who shall be a non-voting member.
- 7.5 The quorum for meetings of the Joint Public Health Board shall be one voting member for each Party. The chair shall rotate between the Parties and will usually be member of the executive of the Party hosting the meeting.
- 7.6 The Joint Public Health Board shall where appropriate liaise with the Health and Wellbeing Boards operating in the Areas in the performance of its Functions and shall provide information and reports as requested by those Boards.

8. **CONFIDENTIALITY**

The Parties agree to keep confidential all confidential information relating to or received from another Party pursuant to this Agreement and only to use the same for the purposes envisaged by the Agreement.

9. **TERMINATION**

9.1 A Party shall be able to terminate its participation in the Arrangements at any time by giving at least six months' written notice to the other Party.

10. **CONSEQUENCES OF TERMINATION**

10.1 On the termination of the Arrangements:

- (a) assets purchased from the Pooled Fund shall be disposed of by Dorset and the proceeds of sale allocated according to the Parties' Financial Contributions or, if otherwise agreed and subject to the conditions of such agreement, shall be retained by Dorset;
- (b) to the extent that TUPE does not apply, Dorset may make redundant such members of staff employed in the exercise of the Functions as is appropriate to reflect its consequent reduced workload.
- (c) the Parties shall co-operate in respect of contracts entered into by Dorset on behalf of both Partners. The obligations under such contracts shall be split on termination of the Arrangements and each Party agrees to assume liability and responsibility for such contractual obligations as pertain to their respective areas for the duration of the contract.

10.2 Overspends (including without limitation, redundancy costs) shall be dealt with in accordance with clause 6.4.

10.3 Subject to clause 10.4, underspends shall be dealt with in accordance with clause 6.6.

10.4 Dorset shall be entitled to direct any underspends to the following purposes:

- (a) to meet obligations under contracts;
- (b) to meet the costs of any employment claims.

11. **DISPUTES**

11.1 Should any dispute arise as to the interpretation or operation of this Agreement or any other matter relating to the Functions (the "Dispute"), any duly authorised officer of the Party in dispute may serve written notice on the other setting out brief details of the Dispute (the "Dispute Notice") and the Parties shall use all reasonable endeavours to settle the Dispute by good faith negotiation between directors of the relevant service areas.

11.2 If the directors are unable to settle the Dispute within fifteen calendar days of the date of service of the Dispute Notice, or if in the opinion of directors such dispute might be more effectively resolved in another forum, they shall refer the Dispute to the Chief Executives and/or Leaders of the parties or their nominees who shall use all reasonable endeavours to settle the Dispute by good faith negotiation.

11.3 If the Chief Executives and/or Leaders of the parties or their nominees do not reach such a settlement within a period of thirty calendar days from service of the Dispute Notice, then upon written notice by either Party to the other the Dispute shall be referred to mediation in accordance with the Centre For Effective Dispute Resolution Model Mediation Procedure. If the parties cannot agree on a mediator, the mediator shall be nominated by CEDR. The Parties shall bear their own costs in relation to the mediation.

11.4 Failing resolution through mediation, the Dispute shall be referred to arbitration and the following provisions shall apply:

11.4.1 the arbitrator shall be appointed jointly by the Parties or, failing agreement, by the President for the time being of the Chartered Institute of Arbitrators

11.4.2 the procedure and venue for arbitration shall be agreed by the Parties or, failing agreement, determined by the arbitrator;

11.4.3 if any Party fails to comply with any procedural order made by the arbitrator, the arbitrator shall have power to proceed in the absence of that Party and deliver the award; and

11.4.4 the arbitrator's decision shall be final and binding on the Parties and

11.4.5 the costs of the arbitration shall be paid as directed by the arbitrator

12. **NO PARTNERSHIP**

Nothing in this Agreement shall be construed as constituting a legal partnership between the Parties or as constituting one Party as the agent of the other Party for any purpose whatsoever.

13. **GOVERNING LAW AND JURISDICTION**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

Executed as a Deed
by affixing the Common Seal of
DORSET COUNCIL
in the presence of:

.....
Authorised Signatory

Executed as a Deed
by affixing the Common Seal of
BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL
in the presence of:

.....
Authorised Signatory

Appendix 1

Joint Public Health Board Terms of Reference

(a) Role

The Joint Public Health Board (the Board) is a joint executive body for the delivery of the public health functions carried out by the shared public health service (known as Public Health Dorset) on behalf of Dorset Council and Bournemouth, Christchurch and Poole Council. The Board will continue to be the joint executive for so long as the two councils are working in partnership.

(b) Membership

The Board will consist of two voting members drawn from the executives of each of the two partner councils (a total of four members), plus a nominated Director from Dorset Clinical Commissioning Group.

Each council may at any time appoint replacement members to serve on the Board provided that any such member must be a member of that authority's executive.

Notice of any change should be provided to the Democratic Services Manager of Dorset Council as the host authority for the shared service.

Each authority may also nominate one non-executive member to attend the Board as a non-voting member.

(c) Chairmanship

The Chairman shall rotate each meeting and it will be usually an executive from the Council hosting that particular meeting.

(d) Quorum

The quorum for meetings of the Board shall be one voting member from each of the two councils.

(e) Frequency of meetings

The Board shall meet as a minimum four times a year, usually in July, November, February and May and subject to room availability the venue for meetings will rotate meeting by meeting around the offices of the two partners.

Additional meetings of the Board shall take place as determined by the Board in order to fulfil its work programme.

Further meetings shall be convened if requested by any two members of the Board.

(f) Officers

The lead officer for the Board shall be the Director of Public Health.

As host authority Dorset Council will convene meetings of the Board and will provide administrative, financial and legal advice.

(g) Standing Orders

The business of the Board shall be regulated by the standing orders and procedure rules of Dorset Council as the host authority except to the extent that they are superseded by the Shared Service Agreement between the two partner councils.

(h) Terms of Reference

I. Discharge of the public health functions of the two councils under the Health and Social Care Act 2012 through the shared service.

II. Approve, monitor and provide assurance on the delivery of the functions referred to in I. (above) via an annual Public Health Business Plan.

III. Receive and respond to reports from any subgroups of the Board.

IV. Monitor progress and performance in the delivery of mandated public health programmes across and within the two local authorities. In doing so, draw on local and national indicators and outcome measures.

V. Acting within the requirements of the Code of Practice in Local Government Publicity, seek to influence

and advise, local and central government and other agencies on public health issues.

VI. Ensure that the shared service (Public Health Dorset) provides effective and timely public health advice to the NHS and local Councils.

VII. Support the host authority and the Director of Public Health in the performance of their functions.

VIII. Receive and approve the annual budget; monitor budget spend in accordance with the Ring-fenced Grant conditions as set out by Public Health England.

Appendix 2

Finance Appendix (to be inserted)