

**DATED:**

**2016**

- (1) BASILDON AND THURROCK UNIVERSITY HOSPITALS NHS  
FOUNDATION TRUST**
  
- (2) SOUTHEND UNIVERSITY HOSPITAL NHS FOUNDATION TRUST**
  
- (3) MID ESSEX HOSPITAL SERVICES NHS TRUST**

---

**HEADS OF TERMS FOR THE CLOSER  
COLLABORATION AND COMMON  
WORKING BETWEEN THE TRUSTS**

---



## HEADS OF TERMS

THESE HEADS OF TERMS ARE MADE ON

2016

### PARTIES

- (1) Basildon and Thurrock University Hospitals NHS Foundation Trust of Nethermayne, Basildon, Essex, SS16 5NL (**Basildon and Thurrock**);
- (2) Southend University Hospital NHS Foundation Trust of Prittlewell Chase, Westcliff-on-Sea, SS0 0RY (**Southend**); and
- (3) Mid Essex Hospital Services NHS Trust of Court Road, Broomfield, Chelmsford, CM1 7ET (**Mid Essex**)

together **the Trusts** and each one **a Trust**.

### 1. Glossary

- 1.1. If a word or term in these heads of terms is capitalised, it will have the meaning set out in the Glossary in Schedule 1.

### 2. Background and Purpose

- 2.1. The purpose of these heads of terms is to set out the background of the intention of the Trusts to collaborate and work jointly together to create a common management model.
- 2.2. The Trusts are located in one of the three areas in England where health and care organisations will work more closely together to make improvements for patients as part of a “Success Regime”, a collaboration between NHS Improvement and NHS England. The aim of the Success Regime is to help create the conditions for success in challenged areas and its purpose is to protect and promote services for patients in areas which face financial and quality issues.
- 2.3. The Essex Success Regime recognises that in order to solve system-wide problems in Essex, it is not appropriate to focus on one organisation but instead to concentrate on the whole health and care economy, fixing problems together.
- 2.4. The Trusts have identified that a preferred model for their closer collaboration and joint working is to establish a governance structure that, so far as possible within the existing legislation, enables “group” and common decision making structures.

- 2.5. The Trusts do not intend that this governance structure will lead to a statutory merger or acquisition under section 56 or section 56A of the Act and the intention is that each body will remain in existence.
- 2.6. The aim of the Trusts is to create a synergy by working together in order to raise the quality of services for patients and solve system-wide problems by focussing on the needs across the whole health and care economy.
- 2.7. The objectives of the “group” structure are to facilitate the Trusts to:
  - 2.7.1. enable and implement the re-design of key pathways and to reconfigure clinical services, subject always to commissioner engagement and consultation duties, with a view to improving care by moving care out of the hospital and closer to home, greater use of technology and self-care and reduction in routine follow-up in outpatients;
  - 2.7.2. increase efficiencies and productivity by creating single teams across the Trusts to improve outcomes and ensure a sustainable workforce;
  - 2.7.3. ensure that the Trusts are closely aligned, to improve communication between the Trusts and to enable close working so as to implement changes and improvements in services;
  - 2.7.4. allow for contractual mechanisms for the sharing of risk and financial burden associated with changes between the Trusts.
- 2.8. The Trusts also recognise that engagement and consultation duties, relating to any changes in clinical services, rest largely with the commissioners who will lead on such changes.

### **3. Status of these Heads**

- 3.1. These heads of terms do not set out every detail about the proposed Joint Working Project.
- 3.2. With the exception of this paragraph, paragraph 10 (*Information Sharing and Due Diligence*) and paragraphs 11 to 14 inclusive (*Costs, Freedom of Information, Counterparts and Third Party Rights*) these heads of terms are not intended to give rise to binding commitments between the Parties.

### **4. Options Appraisal and Preferred Approach for Joint Working**

- 4.1. The Trusts have considered a number of options to achieve their preferred joint working model including the formation of a separate legal entity.

- 4.2. Following such consideration, the Trusts have identified a preferred approach for the structure of their joint working.
- 4.3. This preferred approach includes the indicative steps set out in paragraph 5 below but also requires the resolution of certain further issues (as more particularly set out in paragraph 6 below).
- 4.4. The Trusts have each resolved to commit further time and resource (as more particularly identified in Schedule 2 – Resourcing and Timetable) to consider and develop the preferred joint working governance model and resolve the matters set out in paragraph 6.
- 4.5. The Trusts agree to adopt the following principles when carrying out the Joint Working Project (the “**Principles**”):
  - 4.5.1. collaborate and co-operate. Establish and adhere to the governance structure set out in these heads of terms to ensure that activities are delivered and actions taken as required;
  - 4.5.2. be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in these heads;
  - 4.5.3. be open. Communicate openly about major concerns, issues or opportunities relating to the Joint Working Project;
  - 4.5.4. adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, competition law, data protection and freedom of information legislation;
  - 4.5.5. act in a timely manner. Recognise the time-critical nature of the Joint Working Project and respond accordingly to requests for support;
  - 4.5.6. manage stakeholders effectively;
  - 4.5.7. deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in these heads of terms.

**5. Steps to Implement Preferred Approach for a Joint Working Governance Model**

- 5.1. The Trusts have identified that the following possible steps and actions may to be necessary for the implementation of the Joint Working Project:

*Phase 1A – committees in common for joined up decision making*

- 5.1.1. the preparation and agreement of a joint working agreement between the Trusts, which will set out various provisions in relation to the governance of the joint working arrangements including provisions as to meetings, communications, meetings of the governors of Basildon and Thurrock and Southend, meetings of any equivalent groups in existence at the relevant time, for example the Patient Council of Mid Essex and other related provisions;
- 5.1.2. the establishment of a committee of directors of Basildon and Thurrock and the delegation to that committee of certain “joint working” decisions by Basildon and Thurrock;
- 5.1.3. the establishment of a committee of directors of Southend and the delegation to that committee of certain “joint working” decisions by Southend;
- 5.1.4. the delegation of certain “joint working” decisions by Mid Essex to a committee of the Trust consisting wholly or partly of directors of the Trust or wholly of persons who are not directors of the Trust using the powers set out in Regulation 15 of the National Health Service Trust (Membership and Procedure) Regulations 1990 ;
- 5.1.5. the preparation of terms of reference that are, as far as possible, to take into account the different statutory framework that applies to NHS trusts and NHS foundation trusts, the same for each of the committees referred to in paragraphs 5.1.1 to 5.1.4 above; and
- 5.1.6. subject to governor and other approvals, the adoption of any amendments to the constitutions of Basildon and Thurrock and Southend and amendments to the standing financial instructions of Mid Essex;

*Phase 1B – Common Appointments*

- 5.1.7. subject to the consent of the governors (where and if required by the constitutions of Basildon and Thurrock and Southend) and the directors and approval and/or appointment by NHS Improvement (where and if required by law), the appointment of the same individuals to hold director posts at each of the Trusts as more particularly set out in Schedule 3- Common Appointments; and

*Phase 2 – Contractual Joint Venture*

- 5.1.8. the agreement of a contractual joint venture agreement to include provisions for the sharing of certain back office services and the provision of certain clinical services including provisions relating to a

contractual decision-making, indemnities between the Trusts in relation to the sharing of financial risk, workforce and other matters that may arise.

- 5.2. The Trusts recognise that the matters set out in this clause 5 are unlikely to be a complete set of the steps and actions required and agree to work together to identify further steps and documents that may be required in order to complete the Joint Working Project.

## **6. Consents, Approvals and Matters to be Resolved**

- 6.1. The Trusts have identified that the following issues and matters set out below require further consideration and resolution between the Parties and agree to work together in accordance with the Principles set out in Clause 4.5 to endeavour to resolve such matters.

- 6.2. The Trusts recognise that competition law and also the competition and integration conditions of the NHS Improvement provider licence apply to the Trusts and that such provisions will be relevant to the conduct and operation of any joint working arrangements. Accordingly, the Trusts agree that their arrangements will be structured so as to ensure compliance with these obligations and in such a way as to protect and promote the best interests of patients;

- 6.3. The Trusts further recognise that EU and UK procurement law is likely to apply to the sharing of services between the Trusts and that an exemption to the requirement to follow a procurement procedure is likely to apply in certain cases. Accordingly, the Trusts agree that their arrangements will be structured so as to ensure compliance with these obligations.

- 6.4. The Trusts recognise that further work is likely to be required in relation to:

- 6.4.1. governance and operations of the Phase 1A and 1B joint working arrangements and in particular,

6.4.1.1. those decisions that are to be delegated to the committees referred to in Clause 5;

6.4.1.2. decisions that are to be reserved to the boards;

6.4.1.3. the information and role of the council of governors of Basildon and Thurrock and Southend and the Patient Council of Mid Essex; and

6.4.1.4. related governance matters.

- 6.4.2. governance and terms in relation to the agreements for Phase 2 of the joint working agreement, including the structure and terms of any contractual joint venture and risk sharing agreement.
- 6.5. The Trusts further recognise that certain business cases, procedures, consents and approvals may be required including some or all of the following:
  - 6.5.1. CMA review and consideration;
  - 6.5.2. procedures and review under the Risk Assessment Framework and/or the NHS Improvement framework for transactions (in relation to Phase 2);
  - 6.5.3. approval by the council of governors of Basildon and Thurrock and Southend and the approval by the boards of the Trusts;
  - 6.5.4. possible CQC registrations and amendments to the membership of the Trusts' NHSLA schemes;
  - 6.5.5. approval by the relevant parties of the execution of any transaction documentation; and
  - 6.5.6. commissioner consent and agreement to any changed commissioning arrangements.

## **7. Flexibility for Changing the Participants**

- 7.1. The Trusts acknowledge and recognise that, with ongoing health care developments, there may need to be flexibility in planning and implementing the joint working arrangement, for example allowing for changes in relation to the Trusts and the potential for additional organisations to enter into the arrangement. The Trusts agree to jointly consider proposals to amend the planning and implementation of the joint working arrangement and make any subsequent decisions with due regard to the Principles.

## **8. Timetable**

- 8.1. The Parties have prepared the Timetable set out in Schedule 2 – Resourcing and Timetable. The Trusts shall use their best endeavours to achieve the milestones set out in the Timetable.

## **9. Governance arrangements**

- 9.1. The Trusts agree to establish an Acute Joint Working Project Steering Group to implement the Joint Working Project. The Acute Joint Working Project Steering Group will not operate as a statutory committee or a committee with

delegated decision making. The Acute Joint Working Project Steering Group will be comprised of 3 representatives from each Party.

9.2. As at the date of these heads of terms, the Parties' representatives on the Acute Joint Working Project Steering Group are as follows:

9.2.1. the Chairman and the Chief Executive Officer of Basildon and Thurrock and one Non-Executive Director nominated by Basildon and Thurrock;

9.2.2. the Chairman and the Chief Executive Officer of Southend and one Non-Executive Director nominated by Southend; and

9.2.3. the Chairman and Chief Executive Officer of Mid Essex and one Non-Executive Director nominated by Mid Essex.

9.2.4. In addition, the Acute Joint Working Project Steering Group may invite such persons as it thinks fit to attend the Acute Joint Working Project Steering Group meetings from time to time.

9.2.5. The Acute Joint Working Project Steering Group will appoint the Chairman of Mid Essex as the Chairman of the Acute Joint Working Project Steering Group until such time as the Joint Working Project is finalised and documented.

9.3. The Acute Joint Working Project Steering Group shall meet at least monthly until Completion (unless the Trusts decide that it would be more appropriate for meetings to be held at different intervals).

9.4. The Acute Joint Working Project Steering Group shall send monthly progress updates to the Trusts and will liaise with NHS Improvement.

9.5. The Acute Joint Working Project Steering Group shall not have any authority to make binding decisions on behalf of the Trusts. Nothing in these heads of terms (including the signature by any of the Trusts of these heads of terms) will be or will be deemed to be an approval (whether express or implied) of the Joint Working Project or an assurance, warranty or confirmation by the Trusts that the joint working arrangements will proceed.

## **10. Information Sharing and Due diligence**

10.1. The Trusts acknowledge that they may need to share information in order to inform the establishment of any joint working arrangements and also in respect of any due diligence exercise that may be required under the Risk Assessment Framework and NHS Improvement guidance in relation to transactions.

10.2. The Trusts agree that prior to the sharing of any information between the Trusts, the Trusts shall prepare and agree **an information sharing protocol**, that takes into account competition law and obligations under the NHS provider licence and also sets out provisions in relation to the disclosure and sharing of any confidential information of the Trusts.

## **11. Costs**

11.1. The Parties shall agree the costs and expenses incurred in relation to this Joint Working Project, which are likely to be met by the Essex Success Regime funding.

## **12. Freedom of Information**

12.1. The Trusts acknowledge that they are subject to legal duties under the Freedom of Information Act 2000 (the “**FOIA**”) which may require them to disclose, on request, information relating to these heads of terms.

12.2. If any Trust receives a Request for Information (as defined in the FOIA), then, prior to any disclosure of information to which an exemption to the FOIA may apply (“**Potentially Exempt Information**”), it will:

12.2.1. immediately notify the other Trusts and the Acute Joint Working Project Steering Group of such Request for Information;

12.2.2. discuss the Request for Information with the other Trusts (and at the next Acute Joint Working Project Steering Group) the Trusts shall consider together whether or not an exemption to the FOIA applies and the public interest factors both for and against disclosure (if applicable depending upon the potential exemption) in accordance with the FOIA to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing such Potentially Exempt Information (as defined in the FOIA);

12.2.3. take into account any representations made by the other Parties in relation to the Request for Information and any possible exemptions;  
and

12.2.4. consult with the other Trusts in relation to any proposed disclosure as to whether any further explanatory material or advice should also be disclosed with the information in question.

12.3. The Parties acknowledge that (notwithstanding the provisions of clause 12.2) any Trust which receives a Request for Information may in its absolute discretion and in accordance with its statutory duty determine the following:

12.3.1. whether an exemption to the FOIA may apply;

12.3.2. the information to be disclosed to the requesting party; and

12.3.3. the timeliness of that disclosure.

**13. Counterparts**

These heads of terms may be executed in any number of counterparts, each of which when executed will constitute an original of these heads of terms, but all the counterparts shall together constitute the same heads of terms.

**14. Third party rights**

No person other than a Party to these heads of terms shall have any rights to enforce any term of these heads of terms.

## SCHEDULE 1

### GLOSSARY

<b>Act</b>	the National Health Service Act 2006 (as amended);
<b>Completion</b>	the coming into force of Phase 1A, 1B and 2 of the joint working arrangements as more particularly described in Clause 5;
<b>CQC</b>	the Care Quality Commission;
<b>FOIA</b>	Freedom of Information Act 2000;
<b>Joint Working Project</b>	the further work required to establish the detail for the structure of the joint working, including certain issues which will still require resolution.
<b>Monitor</b>	the regulator of NHS foundation trusts, as established by the Act;
<b>NHS Improvement</b>	the operational name for the organisation which consists of (inter alia) Monitor and the NTDA.
<b>NHSLA</b>	the NHS Litigation Authority;
<b>NTDA</b>	the NHS Trust Development Authority;
<b>Parties</b>	the Trusts, each a “ <b>Party</b> ” and together the “ <b>Parties</b> ”;
<b>Principles</b>	Has the meaning in Clause 4.5;
<b>Risk Assessment Framework</b>	NHS Improvement’s “Risk Assessment Framework”;
<b>Timetable</b>	the timetable set out in Schedule 2 – Resources and Timetable.

**Interpretation:**

- References to any statute, statutory instrument, regulations or guidance are references to the same as from time to time amended, replaced, extended or consolidated.
- References to any statutory body shall include its statutory successor(s) or assign(s).

## SCHEDULE 2

### RESOURCING AND TIMETABLE

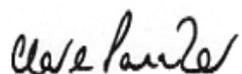
<b>Action</b>	<b>Envisaged Timescale</b>
<b>Have committee structure of Trusts in place and the Trusts to have made the appointments to their respective committees</b>	<b>End of first fiscal quarter in 2016/2017</b>
<b>Have Information Sharing Protocol in place</b>	<b>End of first fiscal quarter in 2016/2017</b>
<b>Undertaking the joint working arrangement.</b>	<b>During second and third fiscal quarter in 2016/2017</b>

### SCHEDULE 3

#### COMMON APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Common Appointment</u>
Clare Panniker	Chief Executive of Basildon and Thurrock	Secondment arrangement as Interim Chief Executive of Mid Essex

**THESE HEADS OF TERMS are executed on the date stated above by**



Clare Panniker  
Chief Executive  
For and on behalf of Basildon and Thurrock



Sue Hardy  
Chief Executive  
For and on behalf of Southend

.....  
For and on behalf of Mid Essex