

**DRAFT****DATE****2017**

- 1. NHS SWINDON CLINICAL COMMISSIONING GROUP**
- 2. SWINDON BOROUGH COUNCIL**
- 3. GREAT WESTERN HOSPITALS NHS FOUNDATION TRUST**

**MEMORANDUM OF UNDERSTANDING  
FOR THE DEVELOPMENT OF ACCOUNTABLE CARE IN SWINDON**

<b>No</b>	<b>Date</b>	<b>Version Number</b>	<b>Author</b>
1	04/04/2017	1 – Draft 1 04/04/17	JL
2	10/04/2017	2 – Draft 2 10/04/2017	JL
3	27/04/2017	3 – Draft 3 post GB meeting on 27/04/2017	JL
4	4/5/2017	4 – Draft 4 post GWH Board	JL
5			
6			

**Date:**

**2017**

This Memorandum of Understanding (**MoU**) is made between:

1. **NHS SWINDON CLINICAL COMMISSIONING GROUP** of The Pierre Simonet Building, North Swindon Gateway, North Latham Road, Swindon SN25 4DL;
  2. **SWINDON BOROUGH COUNCIL** of Civic Offices, Euclid Street, Swindon SN1 2JH;
  3. **GREAT WESTERN HOSPITALS NHS FOUNDATION TRUST** of Great Western Hospital, Marlborough Road, Swindon SN3 6BB;
- (each a “**Party**” and together the “**Parties**”).

## **RECITALS**

1. The Five Year Forward View published in October 2014 (the “**Forward View**”) sets out a clear goal that “the NHS will take decisive steps to break down the barriers in how care is provided between family doctors and hospitals, between physical and mental health, between health and social care.” This is further supported by the Next Steps on the NHS Five Year Forward View published in March 2017.
2. In entering into and performing their obligations under this MoU, the Parties are working towards the implementation of an integrated care model which is comparable to those highlighted in the Forward View. In particular, this MoU is intended to support the parties’ ongoing work towards the establishment of accountable care (“**AC**”) for Swindon.
3. This MoU sets out the Swindon AC Alliance Board’s shared commitment to AC, what it means for organisations that want to be part of the AC construct and what it means for those that do not want to be part of it.
4. The Parties will set out a timetable for the AC development that incorporates the due diligence process as set out in this MoU and the intent that the AC will become operational from May 2017.
5. All Parties acknowledge that there is further work to be completed to fully describe the concepts within AC (e.g. how will the capitated budget be calculated and how will risk and reward be calculated) and to meet the timetable.
6. The Parties are committed to ensuring that all communications relating to AC are easily understood and are transparent.

## **OPERATIVE PROVISIONS**

### **1. Definitions and interpretation**

- 1.1 In this MoU, capitalised words and expressions shall have the meanings given to them in this MoU.
- 1.2 In this MoU, unless the context requires otherwise, the following rules of construction shall apply:

1.2.1 a reference to a “**Party**” is a reference to a party to this MoU and includes its personal representatives, successors or permitted assigns and a reference to “**Parties**” is a reference to all parties to this MoU;

1.2.2 a reference to writing or written includes faxes and e-mails.

## **2. Purpose and effect of MoU**

2.1 The Parties have agreed to work together on behalf of patients and the population of Swindon and Shrivenham to ensure that integrated, high quality, affordable and sustainable health and care services are delivered in the most appropriate way to the patients and population of Swindon and Shrivenham to ensure that everyone lives a healthy, safe, fulfilling and independent life and is supported by thriving and connected communities. The Parties wish to record the basis on which they will collaborate with each other in developing a model for AC in this MoU.

2.2 This MoU sets out:

2.2.1 The Parties’ commitment to the AC Principles as organisations;

2.2.2 what is expected of Parties who are to be part of the AC;

2.2.3 what is expected of Parties who are not to be part of the AC; and

2.2.4 what is expected from the due diligence process.

2.3 The Parties agree that, notwithstanding the good faith consideration that each Party has afforded the terms set out in this MoU, save as provided in paragraph 2.4 below, this MoU shall not be legally binding.

2.4 Paragraphs 10, 11 and 13 shall come into force from the date hereof and shall give rise to legally binding commitments between the Parties.

2.5 In addition to the MoU, the Parties will seek to agree the following additional documents to manage their relationships for confidentiality, conflicts of interest and sharing of information between themselves in more detail:

2.5.1 a standalone confidentiality agreement;

2.5.2 a protocol to manage conflicts of interest; and/or

2.5.3 a protocol to manage the sharing of information in accordance with competition law requirements.

## **3. Commitments to the AC Principles**

3.1 The Parties agree to the following commitments in relation to the principles of the operation of AC in Swindon.

3.2 The Parties intend that AC shall:

- 3.2.1 Work towards a shared vision of integrated service provision to benefit the people of Swindon and Shrivenham, retain a local feel and be simple to understand for both patients and service users.
- 3.2.2 Ensure that 'Team Swindon' is seen in a positive way to describe the system working together and across organisational barriers. People need to feel that 'Team Swindon' is a great place to work, which will involve a degree of cultural and organisational change.
- 3.2.3 Ensure staff feel empowered to work differently and to think holistically about patients.
- 3.2.4 Reduce health inequalities by targeting specific areas and groups in Swindon.
- 3.2.5 Ensure clarity and consistency of communication.
- 3.2.6 Ensure agreed and meaningful organisational clinical outcomes/priorities to guide decisions.
- 3.2.7 Operate within one budget for Swindon – living within our means (the Swindon pound).
- 3.2.8 Ensure the free flow of information to reduce transactional costs.  
(the “**AC Principles**”).

#### **4. AC Membership**

- 4.1 The Parties intend that any organisation who is to be a member of the AC proposals shall:
  - 4.1.1 commit to the AC Principles and shared outcomes. The Parties acknowledge that the delivery of health outcomes twinned with sustainability for the whole system are the biggest determining factor for success of AC (in other words, the organisational success of each Party is not a determining factor in judging the success of AC). The whole being greater than the sum of the parts;
  - 4.1.2 agree to actively work towards developing shared responsibility for the system-wide financial sustainability including risk and reward and scoping the potential financial arrangements that could underpin such a system for example, the development of capitated budgets;
  - 4.1.3 commit to being part of AC at this stage and shall engage with further work to define the financial arrangements;
  - 4.1.4 acknowledge that the consequence of the financial arrangements is that each Party will have a share in the financial risk and reward;
  - 4.1.5 agree to work towards developing how the principle of proportionality of impact and risk share will operate within the AC governance and decision making; and

- 4.1.6 It is acknowledged that each party has its own distinct governance arrangements and is accountable to its own Board of Directors. But at the same time in taking their own organisational decisions, to ensure that those are aligned to the goal of AC in Swindon and not contrary to the outcomes parties are seeking to achieve together.

## **5. Other AC providers**

- 5.1 The Parties accept that a number of organisations may not be appropriate to be or wish to be AC members and consider that organisations that deliver services to the population of Swindon and Shrivenham who are not AC members shall:
- 5.1.1 contribute to the health and wellbeing of the population through the delivery of their contracted services;
  - 5.1.2 acknowledge that AC shall determine the clinical strategy and direction and contracts are set to deliver the clinical strategy;
  - 5.1.3 have a voice in developing the clinical pathways as AC will need to harness the clinical expertise of all providers of services to the population of Swindon and Shrivenham; and
  - 5.1.4 acknowledge that in relation to commissioning arrangements, contracts with organisations outside the AC membership could be separate from the capitated arrangements that operate for organisations within the AC membership as set out in Paragraph 4 above.

## **6. Involvement of Primary Care**

- 6.1 Whilst this MoU does not include providers of primary care services at this stage the Parties all acknowledge that primary care is a vital aspect in the creation of an effective AC construct for Swindon and Shrivenham. The involvement of primary care representatives will be a key consideration and the Parties agree that representatives of primary care will be invited to consider their position under this MoU at such point as the providers of primary care services have agreed their operating structure to engage with the Parties in the AC process.

## **7. Due Diligence**

- 7.1 The Parties each commit in principle to operating as a member of the AC and shall work through a due diligence process together during 2017/18 to assess the viability and detail of the AC construct.
- 7.2 Any Parties who have not decided as to whether they intend to be an AC member or to be a provider working outside of the AC at the date of this MoU shall confirm their position to the other Parties as soon as practicable and thereafter undertake due

diligence in an agreed process if they decide that they are committed to being a AC member. The admission process for new members to the AC will require the approval of at least 75% of the existing members allowing for the entry of additional parties at later stages.

- 7.3 Parties that have decided not to be part of the AC do not need to engage in the due diligence process.

## **8. Term and Termination**

- 8.1 This MoU shall commence on the date of signature by all the Parties, and shall expire on the earlier of the execution of a formal legally binding agreement between the Parties in connection with the delivery of AC or 31 March 2018.
- 8.2 Any Party may withdraw from this MoU by giving at least 90 calendar days notice in writing to the other Parties.

## **9. Variation**

- 9.1 This MoU, may only be varied by written agreement of the Parties signed by, or on behalf of, each of the Parties.

## **10. Charges and liabilities**

- 10.1 Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU including in respect of any losses or liabilities incurred due to their own or their employee's actions.
- 10.2 No Party intends that any other Party shall be liable for any loss it suffers as a result of this MoU.

## **11. No partnership**

- 11.1 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party as the agent of another Party, nor authorise any of the Parties to make or enter into any commitments for or on behalf of the other Parties.

## **12. Counterparts**

- 12.1 This MoU may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this MoU, but all the counterparts shall together constitute the same agreement.
- 12.2 The expression "counterpart" shall include any executed copy of this MoU transmitted by fax or scanned into printable PDF, JPEG, or other agreed digital format and transmitted as an e-mail attachment.
- 12.3 No counterpart shall be effective until each Party has executed at least one counterpart.

### 13. Governing law and jurisdiction

13.1 This MoU shall be governed by and construed in accordance with English law and each Party agrees to submit to the exclusive jurisdiction of the courts of England.

We have signed this Memorandum of Understanding on the date written at the head of this memorandum.

<b>SIGNED</b> by	)	.....
Duly authorised to sign for and on	)	Authorised Signatory
behalf of	)	Title:
<b>NHS SWINDON</b>	)	
<b>COMMISSIONING GROUP</b>	)	DATE:

<b>SIGNED</b> by	)	.....
Duly authorised to sign for and on	)	Authorised Signatory
behalf of	)	Title:
<b>SWINDON BOROUGH COUNCIL</b>	)	
	)	DATE:

<b>SIGNED</b> by	)	.....
Duly authorised to sign for and on	)	Authorised Signatory
behalf of	)	Title:
<b>GREAT WESTERN HOSPITALS NHS</b>	)	
<b>FOUNDATION TRUST</b>	)	DATE: