DATED 2012

IMPERIAL COLLEGE OF SCIENCE, TECHNOLOGY AND MEDICINE and (1)

CENTRAL LONDON COMMUNITY HEALTHCARE NHS TRUST and (2)

CENTRAL NORTH WEST LONDON NHS FOUNDATION TRUST and (3)

CHELSEA AND WESTMINSTER NHS FOUNDATION TRUST and (4)

EALING HOSPITAL NHS TRUST and (5)

HILLINGDON HOSPITALS NHS FOUNDATION TRUST and (6)

HOUNSLOW AND RICHMOND COMMUNITY HEALTHCARE NHS TRUST and (7)

IMPERIAL COLLEGE HEALTHCARE NHS TRUST and (8)

NORTH WEST LONDON HOSPITALS NHS TRUST and (9)

ROYAL BROMPTON AND HAREFIELD NHS FOUNDATION TRUST and (10)

WEST LONDON MENTAL HEALTH NHS TRUST and (11)

WEST MIDDLESEX UNIVERSITY HOSPITAL NHS TRUST (12)

MEMBERS’ AGREEMENT
relating to the Imperial College Health Partners

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THIS AGREEMENT is made on 2012

BETWEEN

(1) IMPERIAL COLLEGE OF SCIENCE, TECHNOLOGY AND MEDICINE of Sherfield Building, Exhibition Road, South Kensington Campus, London, SW7 2AZ;

(2) CENTRAL LONDON COMMUNITY HEALTHCARE NHS TRUST of 7th Floor, 64 Victoria Street, London, SW1E 6QP;

(3) CENTRAL NORTH WEST LONDON NHS FOUNDATION TRUST of Riverside Centre, Hillingdon Hospital, Pield Heath Road, Uxbridge, UB8 3NN;

(4) CHELSEA AND WESTMINSTER NHS FOUNDATION TRUST of Chelsea and Westminster Hospital, 369 Fulham Road, London, SW10 9NH;

(5) EALING HOSPITAL NHS TRUST of Ealing Hospital, Uxbridge Road, Southall, UB1 3HW;

(6) HILLINGDON HOSPITALS NHS FOUNDATION TRUST of Hillingdon Hospital, Pield Heath Road, Hillingdon, Uxbridge, UB8 3NN;

(7) HOUNSLOW AND RICHMOND COMMUNITY HEALTHCARE NHS TRUST of Thames House, 180 High Street, Teddington, TW11 8HU;

(8) IMPERIAL COLLEGE HEALTHCARE NHS TRUST of St Mary's Hospital, Praed Street, London, W2 1NY;

(9) NORTH WEST LONDON HOSPITALS NHS TRUST of Northwick Park Hospital, Watford Road, Harrow, HA1 3UJ;

(10) ROYAL BROMPTON AND HAREFIELD NHS FOUNDATION TRUST of Harefield Hospital, Hill End Road, Harefield, Uxbridge, UB9 6JH;

(11) WEST LONDON MENTAL HEALTH NHS TRUST of Uxbridge Road, Southall, UB1 3EU; and

(12) WEST MIDDLESEX UNIVERSITY HOSPITAL NHS TRUST of Twickenham Road, Isleworth, Middlesex, TW7 6AF.
BACKGROUND

(A) The Company was incorporated in England and Wales as a private limited company limited by guarantee on [DATE] with registered number [COMPANY NUMBER] under the Companies Act 2006.

(B) The Partners are together the members of the Company (as set out in [Schedule 1]) as at the date of this agreement and have agreed to enter into this Agreement to record their understanding of how the Company will operate, the relationship between the Partners, and the relationship between the Partners and the Company.

OPERATIVE CLAUSES

1 **Interpretation**

1.1 In this Agreement unless consistent with the context the following expressions have the following meanings:

“agreed form” means in relation to any document, the form agreed by the parties at the date of this agreement and initialled by or on behalf of the parties for identification;

“Annual Business Plan” means a business plan in a form to be prepared and adopted pursuant to clause 6 in respect of the Company for each year;

“Articles” means the Articles of Association in agreed form to be adopted by the Company on Completion and references to an Article shall mean a specific Article in the Articles as amended from time to time;

“Authority” means any competent governmental, administrative, supervisory, regulatory, judicial, determinative, disciplinary, enforcement or tax raising body, authority, agency, board, department, court or tribunal of any jurisdiction and whether supranational, national, regional or local;

“Board” means the Directors, or such of those Directors present at a duly convened meeting of the Directors at which a quorum is present in accordance with the Articles;

“Business” means the business as described in clause 4 and/or such other business as may from time to time be carried on by the Company and/or its Subsidiaries in accordance with this Agreement;
“Business Day” means any day (other than a Saturday, Sunday or bank or public holiday in England);

“CAG” means clinical academic group;

“Companies Act 2006” means the Companies Act 2006 (as amended from time to time);

“Company” or “Partnership” means [PLACEHOLDER] Limited (registered number [COMPANY NUMBER]);

“Completion” means the performance by the parties of their respective obligations under clause 2;

“Confidential Information” means has the meaning given to that expression in clause 13.1;

“Director” means any duly appointed director of the Company for the time being or a duly appointed alternate of any Director;

“Electronic form” has the meaning given in section 1168 of the Companies Act 2006;

“Encumbrance” includes any interest or equity of any person (including, without prejudice to the generality of the foregoing, any right to acquire, option, right of pre-emption or right of conversion) or any mortgage, charge, pledge, lien or assignment or any other encumbrance, priority or security interest or arrangement of whatsoever nature over or in the relevant property;

“Financial Year” means any accounting reference period of the Company, of whatever duration;

“First Annual Business Plan” means the agreed form Annual Business Plan for the first Financial Year of the Partnership;

“Group Company” means any company which is for the time being a Holding Company or a Subsidiary of a Partner;

“Holding Company” has the meaning given to it by section 1159 of the Companies Act 2006;
“Intellectual Property” means all intellectual and industrial property of any kind whatsoever in connection with the undertaking of the Company or its activities, whether as part of a formal secondment to the Company or in conjunction with other Partners or otherwise, including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright, database rights, topography rights, and any other rights in any invention, discovery or process, in each case in all countries in the world and together with all renewals, extensions, continuations, divisionals, reissues, re-examinations and substitutions;

“Managing Director” means the managing director appointed to manage the Partnership;

“Members” means those Partners (and, where relevant, former Partners) that are from time to time members of the Company (whether alone or jointly with others and “Member” and “former Member” shall be construed accordingly;

“Partnership” or “Company” means [PLACEHOLDER] Limited (registered number [COMPANY NUMBER]);

“Partners” means the signatures to this document and those organisations subsequently joining the Partnership by entering into a Deed of Adherence but does not include any organisation that has ceased to be a Partner under clause [tbc];

“Recognised Investment Exchange” has the meaning given to the expression by section 285(1) Financial Services and Markets Act 2000;

“the Statutes” means the Companies Acts as defined in section 2 of the Companies Act 2006 and every other statute, order, regulation, instrument or other subordinate legislation for the time being in force relating to companies and affecting the Company;

“Subsidiary” has the meaning given to it by section 1159 of the Companies Act 2006;

“Taxes Act” means the Income and Corporation Taxes Act 1988;

“VAT” means Value Added Tax;
“in writing” means hard copy form or, to the extent agreed (or deemed to be agreed by virtue of a provision of the Statutes) electronic form or website communication.

1.2 References to any statute or statutory provision include a reference to that statute or statutory provision as modified, re-enacted or consolidated and in force from time to time, whether before or after the date of this Agreement and any subordinate legislation made pursuant to it whether before or after the date of this Agreement.

1.3 References to persons will be construed so as to include bodies corporate, unincorporated associations and partnerships.

1.4 All covenants, agreements, undertakings and warranties by a Partner to do or refrain from doing anything shall be deemed to include an obligation to procure that each of its Group Companies will do or refrain from doing anything which the Partner has agreed to do or refrain from doing.

1.5 References to clauses and the Schedules are to clauses of and the Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedules in which such references appear and references to this Agreement include the Schedules and any documents in agreed form.

1.6 Any phrase introduced by the term “include”, “including” “in particular” or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.

1.7 The word “connected” has the meaning given in relation to both a director and shareholder to it by section 252 of the Companies Act 2006.

1.8 The word “address” where it appears in this Agreement includes postal address and electronic address.

1.9 The headings to the clauses of this Agreement and to the paragraphs of the Schedules will not affect its construction.

2 Completion and First Board Meeting

2.1 Immediately following signature of this agreement:

2.1.1 Imperial College London and the Company shall enter into the Trademark Licence; and immediately thereafter
2.1.2 the members of the Company shall pass a written resolution of the members to:

(i) change the Company’s name to Imperial College Health Partners Limited; and

(ii) adopt new Articles of Association in the agreed form.

2.2 Following completion of the matters set out in clause 2.1 each of the Partners shall (if they are not already Directors) appoint its initial nominated Directors in accordance with clause 5.1.1 and Article [tbc], who shall be the persons listed in Schedule 2, by written notice to the Company.

2.3 Following appointment of the Directors under clause 2.2 there shall be a meeting of the Board at which:

2.3.1 the registered office of the Company shall be confirmed as Fountain House, 130 Fenchurch Street, London, EC3M 5DJ or changed to such other address as the Board shall agree;

2.3.2 an appropriate firm shall be appointed as the auditors of the Company;

2.3.3 the Company’s accounting reference date shall confirmed as 31 March (with the first accounting reference period ending on 31 March 2013) or changed to such other date as the Board shall agree;

2.3.4 an appropriate bank shall be appointed as the bankers to the Company;

2.3.5 the Company shall adopt the First Annual Business Plan.

2.4 Following adoption of the First Annual Business Plan as set out in clause [2.3.5] each of the Partners shall pay to the Company the membership fees set out against their respective names in Schedule 3.

2.5 The joint announcement in agreed form about the creation of the Partnership will be issued by [the Partners].

3 The Mission and its Practical Implementation

3.1 The mission of the Company is to bring about real, practical improvements to the quality of healthcare delivery across and the health of the whole population,
principally that of North West London but extending also to the population of the UK as a whole and beyond.

3.2 The Company will build on translating the existing research and innovation infrastructure of each of the Partners to strengthen the coordination and adaptation of innovation, and exploit commercial opportunities from harnessing the expertise of leading healthcare providers. In particular, the Company will fulfil the Mission by:

3.2.1 achieving population wide health benefits in North West London and beyond through collaborative research and the more systematic dissemination of proven innovation and best practice (closing the gap between "what we know and what we do");

3.2.2 contributing to and co-ordinating the health system improvements and developments in North West London from a provider and academic perspective;

3.2.3 participating fully in the healthcare workforce education, training and leadership development agenda through the forming Local Education and Training Boards (LETB) which will be responsible for setting the strategy and commissioning budget of £260million in North West London. As provider led boards it is proposed to constitute the North West London LETB within the partnership, subject to confirmation from Health Education England;

3.2.4 exploiting commercial opportunities in the UK and beyond. The Partners agree that there is growing demand in a number of countries to work with NHS healthcare providers at all levels but the NHS has traditionally been slow in taking up these opportunities compared to countries like the US. Part of the problem has been a lack of coordination and scale. The partnership will therefore help in exploiting the income raising and broader economic opportunities arising from the Partners' combined capabilities, located in London, and reach across an extensive population in terms of research, trials and incubating innovations in health delivery and governance.

3.3 With regard to all opportunities and issues that directly affect or benefit the Company, every Partner will endeavour to consider them in the light of what is in the best
interests of the fulfilment of the Mission, and not solely in relation to the narrower interests of their own organisation.

4 **Membership**

4.1 The Partnership will have one single tier of Membership, within which all Members have equal rights and obligations. Each Membership equals one vote but a Membership can be shared by up to i) three NHS Trust or NHS Foundation Trust Partners, or ii) up to four primary care provider or public health Partners.

4.2 The organisations entitled to become Members (either alone or - on the basis set out in clause [4.3.2] - together with other Partners) are the organisations listed in clause 1.2, and any organisation that is subsequently invited and approved by the Board of the Partnership to become a Member. Members have the following rights and responsibilities:

4.2.1 each Member has one vote on matters to be decided by the Members;

4.2.2 membership can be shared by up to three community or secondary provider organisations / Partners or up to four primary care or public health organisations / Partners;

4.2.3 Partners that share a Membership shall each have a seat on the Board. However, Partners that share a Membership will only have one vote between them;

4.2.4 in case of shared Membership, where the constituent Partners cannot agree on a matter amongst themselves they will have to abstain from voting;

4.2.5 each Member will be liable to make an annual financial contribution set out in clause 6. Where organisations share Membership they are free to determine how to split the financial contributions among themselves but the Partnership may collect the Member’s contributions from any of the constituent Partners;

4.2.6 any Partners contemplating a combined Membership of this nature will have to provide formal notice to all other Partners via the Board secretary (to be appointed by the Board) at least four months in advance of the start
of the financial year from which they wish this combined Membership to take effect;

4.2.7 if two or more Partners who are Members plan to merge their organisations together, then their separate votes will become one single vote, and their two separate annual financial contributions will become one contribution;

4.2.8 all members at the founding of the Partnership commit to remain members of the Partnership for at least three years after the founding date. Upon the expiry of two years after the founding date, any member wishing to leave the Partnership can give 12 months’ notice. Thereafter the opportunities for giving notice to leave will be set at successive two year intervals after each three year anniversary of the founding date. This means that the dates upon which members can give notice to leave are 2, 5, 8 etc years after the founding date: the dates upon which members actually leave the Partnership are 3, 6, 9 etc years after the founding date. Any outgoing Partner will retain its rights and obligations (including the obligation to make an annual financial contribution) during the notice period;

4.2.9 new candidates for Membership of the Partnership must be proposed by one or more of the Members. Such a proposal should outline the contribution or benefits that this / these organisations might bring to the Partnership, and will require approval of the Board of Members at one of its quarterly meetings. The Board shall have an absolute discretion in determining whether to accept or reject any application for Membership and shall not be bound to assign any reason for their decision.

4.3 It is likely that further institutions or stakeholder groups may join the Partnership. Once the number of Partners extends beyond 16, a working party made up of a sub-group of existing Partners will be convened to determine procedural and other methods to minimise any risk of lack of agility and cohesion. If no effective methods / options to minimise this risk can be determined that are acceptable to the Board of Members, a maximum of 20 Partners should be set.

4.4 In the unlikely event that the number of Members should fall to below 8, due to Partners merging or exiting the Partnership, then a working party (similar to that
referred to in clause 4.3) will develop options that look both to maintain the viability of
the Partnership and its ongoing programmes, whilst also ensuring that the annual
financial contribution made by the remaining Members remains affordable. In the
event that none of these options are accepted by the Board, then the Partnership will
dissolve.

5 Governance and Operational Structure

5.1 The Partnership will be governed by the Board. The Board has the power to take all
executive decisions including appointing new Members, setting the annual
membership fee, and agreeing investment decisions:

5.1.1 the Board will comprise the CEO or the Chair or the Deputy CEO (or, in
each case, their equivalent within the Partner) of each of the Partners
(Partners may send only one, of their CEO, Chair or Deputy CEO to each
meeting), as well as the Managing Director of the Partnership’s executive
team (see clause 5.2 below);

5.1.2 the Board will meet quarterly;

5.1.3 the Board will be chaired by a Partnership Chair who will be appointed by
the Board for a three year tenure in the first instance. He/she will not have
a vote;

5.1.4 decisions at the Board require a qualified majority of two thirds of the
Members;

5.1.5 a quorum of 50% of Board members will apply.

5.2 The Board will be supported by an executive team run by the Managing Director. The
team will have a small number of directors appointed by the Managing Director. The
Managing Director will have a vote on the Board.

5.3 There are currently three options for the basis of employment for the Managing
Director and the executive team. These options are laid out in clauses 5.3.1 - 5.3.3
below, and will be more fully developed, explored and discussed by Board members.
One of these options (or another if determined by the Board members as preferable)
will be approved by the Board as soon as is practicable after the launch of the
Partnership:
5.3.1 option 1: the Chair, the Managing Director and the rest of the executive team will be employed by one of the Partners ("Employing Partner") and seconded to the Partnership, subject (where relevant) to the Secretary of State’s agreement for the secondee to continue participating in the NHS pension scheme whilst on secondment. The other Partners shall covenant directly with the Employing Partner to pay their share of the Employing Partner’s costs of its contractual and statutory obligations to secondees, to the extent not met by the Partnership for any reason. These principles shall apply equally to any Clinical Academic Group Directors (see clause 5.4) whom the parties agree shall be employed by an Employing Partner and seconded to the Partnership;

5.3.2 option 2: an entity that has or may have an adjacent or related role to the Partnership will employ the Chair, the Managing Director and the rest of the executive team, and the Clinical Academic Group Directors. It is likely that the employer will require the safeguards set out in Option 1. Whether staff will be able to join/remain in the NHS pension scheme will depend on the status of the employer and the rules of the pension scheme at that time, but it should be assumed that the NHS pension scheme will not be available;

5.3.3 option 3: the Chair, the Managing Director, the rest of the executive team and the Clinical Academic Group Directors will be employed by the Partnership or by an independent third party entity. It is likely that the employer will require the safeguards set out in Option 1. Whether staff will be able to join/remain in the NHS pension scheme will depend on the status of the employer and the rules of the pension scheme at that time, but it should be assumed that the NHS pension scheme will not be available.

5.4 The Partnership will conduct its main business through Clinical Academic Groups:

5.4.1 each CAG will have a Director proposed by members of the CAG and ratified by the Board. The CAG Director may come from Member organisations or from elsewhere;

5.4.2 CAGs will be accountable to the Board and be supported by the Executive Team;
5.4.3 each CAG workstream and composite programmes of work will have to be approved by the Board. Members are able to put forward proposals for a programme of work or indeed for a new CAG to the Board for approval;

5.4.4 if separate and additional funding for individual CAG programmes is needed, then this funding is (a) provided by the Partners involved in that particular project, separately from the infrastructure of the Partnership as set out in clause 7.4 or (b) provided centrally through grant or other funding sources applied for by the Executive team or CAG.

5.5 The Partnership may set up an external Advisory Board with membership from the private sector, academia, policy and international experts. The role of the Advisory Board is to provide challenge and advice to the Partnership. The membership of the advisory will be reviewed annually by the Board.

5.6 The Partnership may align its governance structure over time with other bodies such as Local Education and Training Boards and existing innovation bodies.

5.7 The Partnership Board will agree a corporate governance structure for the Partnership, which will include a formal audit committee and a scheme of delegation.

6 Accounting Matters, Business Plans

6.1 The Partners shall procure that:

6.1.1 the Company and each of its Subsidiaries shall maintain accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting practices applicable in the United Kingdom;

6.1.2 the Company shall prepare monthly management accounts and reports in relation to the Company containing such information as each party shall reasonably require and which shall be despatched by the Company to each of the parties within 30 days of the end of the month concerned; and

6.1.3 each Partner and their respective authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and each of its Subsidiaries and to discuss their affairs with their directors and senior management.
6.2 The Partners shall procure that the Company shall prepare a business plan for the Company and its Subsidiaries for each Financial Year in accordance with clause 6.3.

6.3 Each Annual Business Plan shall include the following:

6.3.1 an estimate of the working capital requirements of the Company and its Subsidiaries incorporated within a cashflow forecast together with an indication of the amount (if any) which it is considered prudent to retain out of the profits of the previous Financial Year to meet such working capital requirements;

6.3.2 a projected profit and loss account;

6.3.3 an operating budget (see clause 7.2) and balance sheet forecast;

6.3.4 a review of projected business;

6.3.5 a summary of business objectives; and

6.3.6 a financial report which includes an analysis of the results of the Company and its Subsidiaries for the previous Financial Year compared with the business plan for that Financial Year, identifying variations in sales, revenues, costs and other material items.

6.4 The First Annual Business Plan for the Financial Year ending on 31 March 2013 is annexed hereto and marked “C”. Annual Business Plans for subsequent Financial Years shall be submitted for approval by the Board not later than 60 days before the commencement of the Financial Year to which they relate.

7 Annual Membership Fees and Exceptional Contributions

7.1 Each Member will pay an annual Membership fee. The level of the fee will be set by the Board in line with the operating budget (see clause 7.2). The fee will cover the infrastructure costs of the Partnership, including the salaries for the Executive Team, CAG Directors and the Partnership Chair.

7.2 To determine this annual Membership fee, the operating budget will be prepared by the executive team and presented to the Board by the Managing Director three months in advance of the start of each financial year. The operating budget will include all elements required to operate the Partnership, such as staff costs, staff-related overheads and corporate costs (such as the remuneration of financial
auditors). An indicative operating budget for each of the first three years of the Partnership is:

7.2.1 the operating budget has been derived in order to be sufficient to fund an executive team and a set of CAG Directors able to support and guide respectively the successful development of at least six CAG workstreams;

7.2.2 this operating budget for the first Financial Year has been set at £70,000, per Member to reflect the expectation that recruitment of the executive team and CAG directors will take several months. If the cumulative initial membership fees of £770,000 paid to the Partnership exceed the Partnership’s funding requirements in the first year, the excess will be used to offset each Member’s expected fee of £110,000 in the second year;

7.2.3 the annual operating budget for the second and subsequent years will be subject to prior agreement by the Board but will not be less than (and if no other agreement is reached the operating budget will be) £1.2m or £110,000 per Member, if higher);

7.2.4 given the annual financial commitment that is being made by all Members, it is mandatory that all CAG workstreams and their composite programmes have in place a clear set of objectives that are in alignment with the Mission of the Partnership; a set of performance indicators that are effective in measuring progress towards these objectives; and robust mechanisms to report regularly on this progress to the Partnership Board. The executive team and the CAG Directors have clear accountability for the achievement of these objectives.

7.3 Any income generated by the Partnership will be accumulated in a separate fund for re-investment in ongoing ‘pump-priming’ activities but the Board has the power to use this funding to offset Members’ annual financial contributions.

7.4 The central infrastructure supporting the CAGs – the executive team and the CAG Directors - will be funded through the Membership fee. However, any additional and one-off funding requirements incurred by individual programmes within the CAG – eg to hire a venue to host a public consultation event – will not be covered by the Membership fee and will need to be met by the CAG funding for that particular
programme (although clearly these Partners or the Executive team will be able to seek this funding from sources such as industry and other external partners).

7.5 Fees are to be paid annually in advance after the Operating Budget has been agreed.

7.6 The Partnership does not affect the liability of individual organisations under their pre-existing contracts or arrangements.

7.7 Members and former Members shall be liable to contribute to any losses of the Partnership and on the same basis shall share liability for the acts and omissions of the Partnership (unless otherwise agreed) on the basis set out in this clause 7.7. Losses and liabilities shall be shared equally between those Members and former Members who were Members in the year in which the liability was incurred (“relevant year”), irrespective of when the liability came to light, subject to a maximum contribution equal to the amount of their annual Membership Fee in the relevant year. The aggregate liability of each Member and former Member under this clause shall be limited to an amount equal to the highest year’s annual Membership Fee the Member or former Member paid (or ought to have paid) during the period for which they were Members.

8 **Intellectual Property**

8.1 Within six months following the date of this Agreement the Partners shall agree a protocol governing the owners and use of any Intellectual Property generated or acquired by the Company.

8.2 The Partners shall exercise their voting and other rights as sole or joint Members to ensure that the protocol is adopted by the Company.

9 **Value Added Tax**

9.1 The Board will procure that the Company will take appropriate VAT and transfer pricing advice in respect of its activities and proposed activities.

10 **Conduct of the Company’s Affairs**

10.1 Each Partner covenants with the others that so long as this Agreement remains in full force and effect it will:

10.1.1 be just and true to, and act in good faith towards, the others;
10.1.2 promptly notify the others of any matters of which it becomes aware which may materially affect the Partnership;

10.1.3 generally do all things necessary to give effect to the terms of this Agreement;

10.1.4 take all steps available to it to ensure that any meeting of the Board or any committee of the Board or any general meeting has the necessary quorum throughout;

10.1.5 exercise all voting and other rights and powers of control as are from time to time respectively available to it under this Agreement and the Articles and otherwise in relation to the Company and its beneficial holdings in it and will execute and deliver such waivers and shall take or refrain from taking all other appropriate action within its power so as to procure that the provisions of this Agreement binding on it are duly observed and complied with and given full force and effect and all actions required by it are carried out promptly;

10.1.6 without prejudice to the generality of clause 10.1.5, procure that (subject to their fiduciary duties) each of the Directors of the Company appointed or deemed to be appointed by it under the Articles will execute and do all acts and things and give and confer all powers and authorities as they would have been required to execute, do, give or confer had they been a party to this Agreement and had consented in the same terms as the Partner which appointed them (if a Director);

10.1.7 if it shall not be possible to secure the operation of this Agreement as set out in clauses 10.1.5 and 10.1.6 by reason of any contrary provision of the Memorandum of Association of the Company or the Articles, exercise all voting and other rights and powers respectively available to it to procure the alteration of the Memorandum of Association of the Company or the Articles to the extent necessary to permit the affairs of the Company to be so operated;

10.1.8 subject to the preceding provisions of this clause 10.1, observe the provisions of the Memorandum of Association of the Company and the Articles.
10.2 The undertakings of each Partner under this clause 10 shall in each case be several so that each Partner shall only be liable for its own actions or failures to act in accordance with them, and none of them shall be liable for a failure to procure anything required by this clause 10 where such failure is attributable to any action or failure to act by another Partner, but without prejudice to the liability of such other Partner.

10.3 The Company and all the Partners acknowledge that each Partner has its own distinctive sense of purpose and identity. Nothing in this Agreement shall oblige a Partner to do anything or refrain from doing anything which would:

10.3.1 limit the discretion of any Partner to act in its own interests and to conduct its respective operations and activities as it sees fit; or

10.3.2 limit the discretion of any Partner to pursue its own fundamental mission or impose on any Partner a change in such mission (without such Partner’s express approval).

10.4 Notwithstanding any other provision of this Agreement, should any Partner or any other person connected with it be in dispute with or have a conflict of interest with the Company, such Partner shall not, and shall procure the Director or Directors appointed or deemed to be appointed by it shall not, do or omit to do anything which would or would be likely to prevent the Company from exercising or from deciding whether or not to exercise such rights as it may have against the Partner in dispute with it, or in respect of the matter in relation to which the conflict of interest arises.

10.5 The management of the Company shall be vested in the Board provided that the day to day management of the Company will be the responsibility of the Managing Director. The job specifications and responsibilities of the Managing Director shall be determined by the Board from time to time. Without prejudice to the generality of the foregoing and subject to the express provisions of this Agreement, the Board will determine the general policy of the Company and the manner in which that is to be carried out and will reserve to itself all matters involving major or unusual decisions and will procure that the Company will:

10.5.1 transact all their respective business on arm’s length terms;

10.5.2 maintain adequate insurance against all risks usually insured against by companies carrying on the same or a similar business;
10.5.3 comply with the provisions of clause 10.1.

10.6 Each Director, and each director of any Subsidiary of the Company, will be entitled while he holds that office to make full disclosure to the Partner appointing him of any information relating to the Company or such Subsidiary which that Partner may reasonably require.

10.7 The Partners through the Board shall procure that the Company shall not do any of the matters set out in Schedule 2 otherwise than in accordance with the provisions of Schedule 2.

10.8 This clause 10 and Schedule 2 applies to each Subsidiary of the Company to the same extent as they apply to the Company (unless inconsistent with the context).

11 New Partners and Transfer of Partnership Interests

Admission of Partners

11.1 The Board shall have an absolute discretion in determining whether to accept or reject any application for Partnership and shall not be bound to assign any reason for their decision.

11.2 It shall be a condition of any person who was not previously a Partner becoming a Partner entering into a deed of adherence in such form as the remaining Partners reasonably require so that such incoming Partner is treated equally with all other Partners.

11.3 Each of the Partners undertakes that it will not create or permit to exist any Encumbrance over or in respect of all or any part of its interest in the Partnership nor assign or otherwise purport to deal with its beneficial ownership in, or any right relating to, its interest in the Partnership separate from the legal ownership of such interest.

Transfer of Partnership Interest

11.4 No Partner may transfer any interest in the Partnership.

12 Termination

12.1 This Agreement shall terminate when:
12.1.1 all the Partners agree in writing to its termination;

12.1.2 all of the interests in the Partnership become beneficially owned by any one Partner;

12.1.3 the Company passes a resolution for its winding up, is subject to an order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off or has an administrator appointed in respect of it.

12.2 The following provisions of this Agreement remain in full force after termination:

12.2.1 Clause 1 (interpretation);

12.2.2 Clause 7.7;

12.2.3 Clause 9, (VAT);

12.2.4 this clause 12;

12.2.5 Clause 13 (confidentiality);

12.2.6 Clause 16 (waiver);

12.2.7 Clause 17 (variation);

12.2.8 Clause 19 (notices);

12.2.9 Clause 20 (severability);

12.2.10 Clause 22 (entire agreement); and

12.2.11 Clause 28 (governing law and jurisdiction).

12.3 Termination of this Agreement shall not affect any rights or liabilities that the Partners have accrued under it.

12.4 Where the Company is to be wound up the Partners shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

12.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
12.4.2 the Company shall not enter into any new contractual obligations; and

12.4.3 the Company is dissolved and its assets are distributed as soon as practicable in accordance with its Memorandum of Association.

12.5 If at any time a Partner ceases to hold a Partnership Interest this Agreement (save for clauses referred to in clause 12.2 above) shall terminate with respect to that Partner.

13 Confidentiality and Announcements

13.1 In this clause the expression "Confidential Information" means any information:

13.1.1 which any of the Partners may have or acquire (whether before or after the date of this Agreement) in relation to the customers, business, assets or affairs of the Company (including any information provided pursuant to clause [9] as a consequence of the negotiations relating to this Agreement or the performance of this Agreement) or patients of any Partner of the Company;

13.1.2 which any Partner or any of its Group Companies may have or acquire (whether before or after the date of this Agreement) in relation to the customers, business, assets or affairs of another party, or any Group Companies of another party, as a consequence of the negotiations relating to this Agreement or the performance of this Agreement; or

13.1.3 which relates to the contents of this Agreement (or any agreement or arrangement entered into pursuant to this Agreement),

but excludes the information in clause 12.

13.2 Information is not Confidential Information if:

13.2.1 it is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement; or

13.2.2 any Partner can establish to the reasonable satisfaction of the other Partners that it found out the information from a source not connected with the other Partners or their respective Groups and that the source was not under any obligation of confidence in respect of the information; or
13.2.3 any Partner can establish to the reasonable satisfaction of the other Partners that the information was known to it before the date of this Agreement and that it was not under any obligation of confidence in respect of the information; or

13.2.4 the Partners agree in writing that it is not confidential.

13.3 Each Partner shall at all times use all reasonable endeavours to keep confidential any Confidential Information and shall not use or disclose any such Confidential Information except:

13.3.1 to another member of its Group or to a Partner’s professional advisers where such disclosure is for a proper purpose related to the operation of this Agreement; or

13.3.2 with the consent in writing of such of the Company, its Subsidiaries, the Partners or any of their respective Group Companies to which the information relates; or

13.3.3 as may be required by law or regulation, when the Partner concerned shall, if practicable, supply a copy of the required disclosure to the other Partners, in sufficient time before it is disclosed to enable the other Partners to consider and suggest amendments to it, and incorporate any amendments reasonably required by the others; or

13.3.4 to any tax authority to the extent required by such authority with respect to the Partner concerned or any of its Group Companies; or

13.3.5 if the information comes within the public domain (otherwise than as a result of the breach of this clause 13.3).

13.4 Each Partner shall inform (and shall use all reasonable endeavours to procure that any Group Company and the Company shall inform) any officer, employee or agent or any professional adviser advising it in relation to the matters referred to in this Agreement, or to whom it provides Confidential Information, that such information is confidential and shall require them:

13.4.1 to keep it confidential; and
13.4.2 not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

13.5 Upon termination of this Agreement, any of the Partners may demand from the others and the Company the return of any documents containing Confidential Information in relation to that Partner or any of its Group Companies by notice in writing whereupon the other Partners shall (and shall use all reasonable endeavours to ensure that its Group Companies, and the officers, employees, agents and professional advisers of it and those of its Group Companies and of the Company) shall (save for any submission to or filings with any Authority):

13.5.1 return such documents; and

13.5.2 destroy any copies of such documents and any other document or other record reproducing, containing or made from or with reference to the Confidential Information.

13.6 Any return or destruction pursuant to clause 13.5 shall take place as soon as practicable after the receipt of any such notice.

13.7 The obligations of each of the Partners in this clause 13 shall continue without limit in time and notwithstanding termination of this Agreement for any cause.

13.8 None of the parties shall make or permit or authorise the making of any press release or other public statement or disclosure concerning this Agreement or any transaction contemplated by it or its termination or cessation without the prior consent in writing of the other parties (except as required by law or regulation) but before any party makes any such release, statement or disclosure it shall where practicable first supply a copy of it to the other parties and shall incorporate any amendments or additions they may each reasonably require.

13.9 The parties recognise that each of the Partners may be subject to The Freedom of Information Act 2000 and all parties shall work together to ensure that such Act is complied with and nothing in this Agreement shall override the said Act.
14 **Warranties**

14.1 Each Partner warrants to the others that, at the date of this Agreement it has full power and authority, and has obtained the consent of any third party necessary, to enter into and perform this Agreement.

15 **No Partnership or Agency**

15.1 Notwithstanding the use of the term “Partner” to designate the members of the Company, nothing in this Agreement shall constitute a partnership between the Partners, or refer to a partnership under the Partnership Act 1890, a limited partnership established under the Limited Partnerships Act 1907 or a limited liability partnership established under the Limited Liability Partnerships Act 2000.

15.2 Nothing in this Agreement shall constitute one the agent of another and none of the Partners shall do or suffer anything to be done whereby it shall or may be represented that it is the partner or agent of another Partner unless such Partner is appointed partner or agent of that other Partner with the consent in writing of that Partner.

16 **Waiver**

16.1 The waiver by any Partner of any default by any other Partner in the performance of any obligation under this Agreement shall not affect such Partner’s rights in respect of any other default nor any subsequent default of the same or of a different kind nor shall any delay or omission of any Partner to exercise any right arising from any default, affect or prejudice the rights of that Partner as to the same or any future default.

17 **Variation**

17.1 Any variation of any term of this Agreement shall be in writing duly signed by the Partners.

18 **Conflict with Articles**

18.1 Where the provisions of the Articles conflict with the provisions of this Agreement, the Partners agree that the provisions of this Agreement shall prevail, to the intent that they shall if necessary in any case procure the amendment of the Articles to the
extent required to enable the Company and its affairs to be administered as provided in this Agreement.

19 **Notices**

19.1 Subject to the provisions of the Articles regulating certain types of notices from the Company to the Partners:

19.1.1 any demand, notice or other communication given or made under or in connection with this Agreement will be in writing;

19.1.2 any such demand, notice or other communication will, if given or made in accordance with this clause 19, be deemed to have been duly given or made as follows:

(i) if sent by prepaid first class post, on the second Business Day after the date of posting; or

(ii) if delivered by hand, upon delivery at the address provided for in this clause 19; or

(iii) if sent in electronic form, on the day of transmission;

provided however that, if it is delivered by hand or sent in electronic form on a day which is not a Business Day or after 4.00 pm on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

19.2 Any such demand, notice or other communication will, in the case of service by post or delivery by hand, be addressed to the recipient at the recipient’s address stated in this Agreement or at such other address as may from time to time be notified in writing by the recipient to the sender as being the recipient’s address for service.

19.3 Any such demand, notice or other communication will, in the case of service in electronic form, be sent to the recipient using an electronic address then used by the recipient.

19.4 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.
20  **Severability**

20.1 The illegality, invalidity or unenforceability of any provision of this Agreement will not affect the legality, validity or enforceability of the remainder. If any such provision is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without rendering them illegal, invalid or unenforceable.

21  **Exercise of Powers**

21.1 Words denoting an obligation on a party to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow so far as the same is possible infringement of that restriction.

21.2 Where any Partner is required under this Agreement to exercise its powers in relation to the Company to procure a particular matter or thing, such obligation shall be deemed to include an obligation to procure that any Director appointed by it shall procure such matter or thing, subject to the Director acting in accordance with his fiduciary duty to the Company.

22  **Entire Agreement**

22.1 This Agreement and the Articles constitute the entire contractual relationship between the parties in relation thereto and there are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to therein. This clause does not restrict liability of any party arising as a result of any fraud.

23  **Assignment**

23.1 None of the Partners shall assign or transfer or purport to assign or transfer any of its rights or obligations hereunder without the prior consent in writing of the other Partners.

24  **Contracts (Rights of Third Parties) Act**

24.1 This Agreement shall be binding on and enforceable by the Partners.
24.2 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

25 Further Assurance

25.1 Without prejudice to any other provision of this Agreement, each Partner and the Company shall promptly execute and deliver all such documents, and do all such things, as the Company or any other Partner may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

26 Counterparts

26.1 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each party had executed the same document.

27 Agreement Survives Completion

27.1 This Agreement (other than obligations that have been fully performed) remains in full force after Completion.

28 Governing Law and Jurisdiction

28.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be governed by the law of England and Wales.

28.2 The courts of England and Wales will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

THIS AGREEMENT has been entered into by the parties on the date stated at the beginning of this Agreement.
## Schedule 1

### Members

<table>
<thead>
<tr>
<th>Name of Partner</th>
<th>Membership Level (Sole/Joint)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imperial College of Science, Technology and Medicine</td>
<td>Sole</td>
</tr>
<tr>
<td>Central London Community Healthcare NHS Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>Central North West London NHS Foundation Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>Chelsea and Westminster NHS Foundation Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>Ealing Hospital NHS Trust</td>
<td>Joint&lt;sup&gt;1&lt;/sup&gt;</td>
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<tr>
<td>Hillingdon Hospitals NHS Foundation Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>Hounslow and Richmond Community Healthcare NHS Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>Imperial College Healthcare NHS Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>North West London Hospitals NHS Trust</td>
<td>Joint&lt;sup&gt;2&lt;/sup&gt;</td>
</tr>
<tr>
<td>Royal Brompton and Harefield NHS Foundation Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>West London Mental Health NHS Trust</td>
<td>Sole</td>
</tr>
<tr>
<td>West Middlesex University Hospital NHS Trust</td>
<td>Sole</td>
</tr>
</tbody>
</table>

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<sup>1</sup> Member jointly with North West London Hospitals NHS Trust

<sup>2</sup> Member jointly with Ealing Hospital NHS Trust
### Schedule 2

**Initial Directors**

<table>
<thead>
<tr>
<th>Partner</th>
<th>Director</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imperial College of Science, Technology and Medicine</td>
<td></td>
</tr>
<tr>
<td>Central London Community Healthcare NHS Trust</td>
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<tr>
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</tr>
<tr>
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<tr>
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<td></td>
</tr>
<tr>
<td>West London Mental Health NHS Trust</td>
<td></td>
</tr>
<tr>
<td>West Middlesex University Hospital NHS Trust</td>
<td></td>
</tr>
</tbody>
</table>
**Schedule 3**

**Initial Annual Contributions**

<table>
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<th>Initial Annual Contribution (£)</th>
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<tbody>
<tr>
<td>Imperial College of Science, Technology and Medicine</td>
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<tr>
<td>Central London Community Healthcare NHS Trust</td>
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<tr>
<td>Central North West London NHS Foundation Trust</td>
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<tr>
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<td>West London Mental Health NHS Trust</td>
<td>70,000.00</td>
</tr>
<tr>
<td>West Middlesex University Hospital NHS Trust</td>
<td>70,000.00</td>
</tr>
</tbody>
</table>
Signed for and on behalf of

**Imperial College of Science, Technology and Medicine**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Central London Community Healthcare NHS Trust**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Central North West London NHS Foundation Trust**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Chelsea and Westminster NHS Foundation Trust**

Print name…………………………………………………………

Position…………………………………………………………
Signed for and on behalf of

**Ealing Hospital NHS Trust**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Hillingdon Hospitals NHS Foundation Trust**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Hounslow and Richmond Community Healthcare NHS Trust**

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

**Imperial College Healthcare NHS Trust**

Print name…………………………………………………………

Position…………………………………………………………
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North West London Hospitals NHS Trust

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Position…………………………………………………………

Signed for and on behalf of

Royal Brompton and Harefield NHS Foundation Trust

Print name…………………………………………………………

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West London Mental Health NHS Trust

Print name…………………………………………………………

Position…………………………………………………………

Signed for and on behalf of

West Middlesex University Hospital NHS Trust

Print name…………………………………………………………

Position…………………………………………………………
AGREED FORM DOCUMENTS

ARTICLES OF ASSOCIATION

FIRST ANNUAL BUSINESS PLAN

ANNOUNCEMENT