TFA document

Supporting all NHS Trusts to achieve NHS Foundation Trust status by April 2014

Tripartite Formal Agreement between:

- North Cumbria University Hospitals NHS Trust
- NHS North West
- Department of Health

Introduction

This tripartite formal agreement (TFA) confirms the commitments being made by the NHS Trust, their Strategic Health Authority (SHA) and the Department of Health (DH) that will enable achievement of NHS Foundation Trust (FT) status before April 2014.

Specifically the TFA confirms the date (Part 1 of the agreement) when the NHS Trust will submit their "FT ready" application to DH to begin their formal assessment towards achievement of FT status.

The organisations signing up to this agreement are confirming their commitment to the actions required by signing in part 2a. The signatories for each organisation are as follows:

NHS Trust – Chief Executive Officer
SHA – Chief Executive Officer
DH – Ian Dalton, Managing Director of Provider Development

Prior to signing, NHS Trust CEOs should have discussed the proposed application date with their Board to confirm support.

In addition the lead commissioner for the Trust will sign to agree support of the process and timescales set out in the agreement.

The information provided in this agreement does not replace the SHA assurance processes that underpin the development of FT applicants. The agreed actions of all SHAs will be taken over by the National Health Service

Trust Development Authority (NTDA)[1] when that takes over the SHA provider development functions.

The objective of the TFA is to identify the key strategic and operational issues facing each NHS Trust (Part 4) and the actions required at local, regional and national level to address these (Parts 5, 6 and 7).

Part 8 of the agreement covers the key milestones that will need to be achieved to enable the FT application to be submitted to the date set out in part 1 of the agreement.

Standards required to achieve FT status

The establishment of a TFA for each NHS Trust does not change, or reduce in any way, the requirements needed to achieve FT status.

That is, the same exacting standards around quality of services, governance and finance will continue to need to be met, at all stages of the process, to achieve FT status. The purpose of the TFA for each NHS Trust is to provide clarity and focus on the issues to be addressed to meet the standards required to achieve FT status. The TFA should align with the local QIPP agenda.

Alongside development activities being undertaken to take forward each NHS Trust to FT status by April 2014, the quality of services will be further strengthened. Achieving FT status and delivering quality services are mutually supportive. The Department of Health is improving its assessment of quality. Monitor has also been reviewing its measurement of quality in their assessment and governance risk ratings. To remove any focus from quality healthcare provision in this interim period would completely undermine the wider objectives of all NHS Trusts achieving FT status, to establish autonomous and sustainable providers best equipped and enabled to provide the best quality services for patients.

[1] NTDA previously known as the Provider Development Authority – the name change is proposed to better reflect their role with NHS Trusts only.

Part 1 - Date when NHS foundation trust application will be submitted to Department of Health

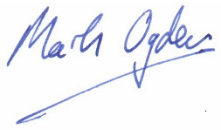
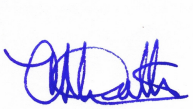
November 2012

Part 2a - Signatories to agreements

By signing this agreement the following signatories are formally confirming:

- their agreement with the issues identified;
- their agreement with the actions and milestones detailed to support achievement of the date identified in part 1;
- their agreement with the obligations they, and the other signatories, are committing to;

as covered in this agreement.

Neil Goodwin, (Interim CEO of NHS Trust)	Signature  Date: 21 September 2011
Mark Ogden, (CEO of SHA)	Signature  Date: 21 September 2011
Ian Dalton, Managing Director Provider Development	 Signature Date: 27 September 2011

Part 2b – Commissioner agreement

In signing, the lead commissioner for the Trust is agreeing to support the process and timescales set out in the agreement.

Sue Page, (CEO of NHS Cumbria)	Signature  Date: 21 September 2011

Part 3 – NHS Trust summary

Short summary of services provided, geographical/demographical information, main commissioners and organisation history.

Required information

Current CQC registration: The Trust has full registration with the CQC with no restrictions.

Financial data (figures for 2010/11 should to be based on latest forecast)

	2009/10 £'000	**2010/11 £'000**
Total income	216,098	222,538
EBITDA	16,810	15,682
Operating surplus\deficit (normalised)	327	1,356
CIP target	12,800	21,000
CIP achieved recurrent	11,300	8,400
CIP achieved non-recurrent	1,500	3,700

The NHS Trust's main commissioners: NHS Cumbria.

North Cumbria University Hospitals NHS Trust is a medium sized university hospital comprising the Cumberland Infirmary in Carlisle (CIC) and West Cumberland Hospital (WCH) Whitehaven. The Trust has c400 beds at CIC and c200 beds at WCH.

The NHS Trust serves a resident population of approximately 320,000 people across the most geographically dispersed county within the country. It provides a comprehensive range of acute hospital services for emergency and elective patients with both sites providing key services including A & E, Obstetrics, and ITU as well as a broad base of out-patient, diagnostic and elective care. Cancer services including radiotherapy are provided at the Cumberland Infirmary.

The Trust Board has approved at FBC for a £90m capital development of WCH, funded through £70m treasury, £10m SHA and £10m Trust capital. The FBC for this redevelopment is currently under consideration by the SHA but subject to costing of the overall clinical strategy. The earliest date for submission to the SHA Board is September 2011.

The hospital in Carlisle was the first NHS PFI in the country and includes both hard and soft service provision. The scheme opened in 2000 and was refinanced in 2009/10. The UP in 2010/11 including VAT is £21.3m; excluding VAT the UP is £17.9m.

By 2005/06, the cumulative deficit of the Trust stood at £6.4m and this was to be recovered by no later than 2015/16. The Trust also took out three working capital loans totalling £12.8m in March 2007 with a 15 year term, the loans are due to be repaid by 2021/22.

2010/11 saw a reduction by the PCT in contract income of 5.5% and a proposed contract reduction in 2011/12 of a further £18m, 10.5%. The PCT has previously expressed to the Trust that it would not support a standalone FT application and the combination of proposed financial settlements and lack of support have rendered it impossible for the Trust to contemplate progression as an autonomous FT.

In 2010/11 the SHA provided strategic resource of £20.6m to support the maintenance of services within the Trust. Given the forecast contractual settlement the strategic resource required in 2011/12 to maintain a flat cash position will be circa £27m.

To improve the financial and organisational position, the Trust has taken a number of key decisions.

1. Dr Neil Goodwin has been appointed as interim CEO from 6 June

Dr Goodwin will focus on delivering a successful acquisition and preparing the organisation for the acquisition. This means, among other things, addressing operational deficiencies, clarifying strategic change requirements, improving external relationships and confidence in the Trust, and agreeing an acceptable contract settlement with commissioners.

2. Internal Turnaround Programme

From the original 17 workstreams and additional schemes the programme now has over 100 individual initiatives, each backed with a specific project plan profiled over 11/12 and annualised for 13/14. The key financial, metric and milestone profiles are tracked and monitored by the Programme Management Office and overall performance is monitored through a weekly Corporate Recovery Board led by the Chief Executive and including all Directors, Divisional General Managers and the Associate Medical Directors. A further list of potential savings and increased productivity schemes has been developed and is being prioritised for scoping and consideration through a structured weekly Directors' review and challenge process. The current value of the identified schemes, following risk assessment, is £7.5m in savings and £2.0m in additional income. The 11/12 impact of the savings delivered to date at the end of August 2011 is £2.9m with a further £2.0m in income. Each of the five main plan themes (Clinical Productivity and Outcome, Workforce organisation and Structure, Corporate, Commissioning Intentions and Income, and Management and Utilisation of Assets) is led by a Trust Director.

3. Acquisition Process

The Trust Board, in taking its decision to look for a partner rather than pursue FT autonomously holds the provision of high quality patient care at the centre of this process. It determined that given what would be necessary from a financial perspective that services would potentially be unsafe to achieve the correct financial position and therefore this would not be an acceptable approach. A project to seek a Foundation Trust to acquire North Cumbria University Hospitals NHS Trust was set up March 2011. Details of the milestones of this project are detailed in section 8 of this agreement

Part 4 – Key issues to be addressed by NHS trust

Key issues affecting NHS Trust achieving FT	
Strategic and local health economy issues	
Service reconfigurations	☐
Site reconfigurations and closures	☐
Integration of community services	☐
Not clinically or financially viable in current form	☒
Local health economy sustainability issues	☒
Contracting arrangements	☒
Financial	
Current financial Position	☒
Level of efficiencies	☐
PFI plans and affordability	☒
Other Capital Plans and Estate issues	☐
Loan Debt	☒
Working Capital and Liquidity	☒
Quality and Performance	
QIPP	☐
Quality and clinical governance issues	☐
Service performance issues	☐
Governance and Leadership	
Board capacity and capability, and non-executive support	☐

Please provide any further relevant local information in relation to the key issues to be addressed by the NHS Trust:

- **Financial Balance**

The Trust has established an internal turnaround team to tackle the cost base and control issues within its sphere of influence. However it has been identified that the issues above relate largely to the economy rather than exclusively the Trust and therefore an economy wide turnaround programme led by Deloitte and Finnamore fully engaging both primary and secondary care is being developed.

The Deloitte/Finnamore activities have 9 specific deliverables across three key areas, these being;

- Review of historic and baseline positions within both primary and secondary care to ensure a shared understanding from which to move on;
- A review of the current costs of providing the care currently delivered in the current configuration and the near term forecast to support contractual agreements;
- Granular development of the Trust/PCT high level clinical strategy to provide a fully costed implementation plan to fundamentally change clinical pathways and balance service delivery with a sustainable and affordable model into the future

Reduction in contract income (movement from base of £182m);

£m's			
2011/12	**2012/13**	**2013/14**	**Cumulative**
-27.0	-8.4	-7.6	-43.0

Delivery of National CIP Requirements;

£m's			
2011/12	**2012/13**	**2013/14**	**Cumulative**
-8.0	-7.0	-7.0	-22.0

Resolution to Trust Underlying Deficit;

£m's			
2011/12	**2012/13**	**2013/14**	**Cumulative**
-7.2	-5.0	0.0	-12.2

Aggregating these issues provides a future requirement to reduce the Trusts cost base, secure additional income or a combination of both to deliver;

Forecast Income Based Upon PCT Commissioning Intentions	**£m's**			
Forecast Financial Pressures - Movements from Breakeven	11/12	12/13	13/14	Cumulative
Income Reductions Forecast by PCT Closer to Home	-27.0	-8.4	-7.6	-43.0
Underlying Deficit to be addressed	-7.2	-5.0	0.0	-12.2
Forecast CIP requirement	-8.0	-7.0	-7.0	-22.0
Total Additional Income/Cost Base Reduction Required	-42.2	-20.4	-14.6	-77.2

Given the scale of the challenge the Trust Board has determined that it will not be able to meet the financial requirements to achieve FT status within the required timescales autonomously. Consequently the Board resolved to work to find an existing FT partner to either be acquired by or merge with. The Trust will not therefore be submitting an independent FT application to the Department of Health.

Depending upon the procurement route agreed, if the Trust were to pursue the preferred partner route, the date for completion would be September /October 2012 at the latest, however, the Trust will aim to complete as close to February 2012.

- **Local Health Economy Sustainability Issues**

The development of a sustainable and affordable clinical strategy with primary care and community services is central to the local health economy sustainability. Following a series of clinical workshops a redefined strategy was jointly developed by the Trust and NHS Cumbria for north Cumbria services. This interim strategy was subsequently published by NHS Cumbria in March 2011.

This strategy sets out the next steps for delivering the Closer to Home Strategy and unpinning arrangements required to support future commissioning intentions. Since the development of the strategy further clinical workshops and working groups have been undertaken looking at specific aspects of service models for unplanned and planned care.

The Trust and NHS Cumbria has commissioned Deloitte and Finnamore to continue this work and develop a fully costed implementation plan to fundamentally change clinical pathways and balance service delivery with a sustainable and affordable model into the future. This work needs to be concluded by both parties in order to align commissioning intentions with the clinical models for delivering hospital services across two acute hospitals sites which are 40 miles apart.

Part 5 – NHS Trust actions required

Key actions to be taken by NHS Trust to support delivery of date in part 1 of agreement	
Strategic and local health economy issues Integration of community services	☐
Financial Current financial position	☒
CIPs	☒
Other capital and estate Plans	☐
Quality and Performance Local / regional QIPP	☐
Service Performance	☐
Quality and clinical governance	☐
Governance and Leadership Board Development	☐
Other key actions to be taken (please provide detail below)	☒

The Trust is reviewing organisational capacity in key areas and is undertaking a comprehensive review of Governance following the suspension of the Breast Screening service which will be concluded by July.

Describe what actions the Board is taking to assure themselves that they are maintaining and improving quality of care for patients.

Review Governance Arrangements

As described above a review of Clinical Governance commenced in January 2011. The review is based on eight core objectives and is supported with detailed terms of reference on how these objectives will be delivered. The review is scheduled to conclude in July 2011. The recommendations from the review will be reported and endorsed by the Trust Board to address any required areas of improvement or development. The Trust Board will continue to receive performance reports which include the key quality and safety indicators as set out in the Operating Framework as well as local quality indicators. The Trust Board will also continue to review monthly the key governance issues across the organization including the management of risk. The Governance and Quality Committee and supporting structure will continue to provide assurance regarding the organisation's core pillars of governance and ultimately the quality and safety of the services provided.

Please provide any further relevant local information in relation to the key actions to be taken by the NHS Trust with an identified lead and delivery dates:

A project to seek a Foundation Trust to acquire North Cumbria University Hospitals NHS Trust was set up March 2011. Details of the milestones of this project are detailed in section 8 of this agreement

Part 6 – SHA actions required

Key actions to be taken by SHA to support delivery of date in part 1 of agreement	
Strategic and local health economy issues Local health economy sustainability issues (including reconfigurations)	☒
Contracting arrangements	☒
Transforming Community Services	☐
Financial CIPs\efficiency	☐
Quality and Performance Regional and local QIPP	☐
Quality and clinical governance	☐
Service Performance	☐
Governance and Leadership Board development activities	☐
Other key actions to be taken (please provide detail below)	☒

Please provide any further relevant local information in relation to the key actions to be taken by the SHA with an identified lead and delivery dates.

Local milestones will be monitored by the Transition Director

Monthly stakeholder group meetings will be chaired by the Transition Director.

- An interim CE has been appointed with extensive NHS experience including SHA CE, Trust CE and Strategic reviews of several NHS organisations.
- Oversight of the health economy is being provided by Sir Ian Carruthers who will make recommendations on strategic planning.
- A health economy Turnaround Director has been appointed by the SHA – Turnaround programme has been agreed and is being implemented.
- Changes to key senior posts are being implemented to ensure focus on turnaround and acquisition programmes.
- Accountability agreement – PCT cluster involvement.

The SHA is contributing to the national work on PFI and will work with the Trust in resolving the outstanding PFI issues as a result of the national financial review.

Part 7 – Supporting activities led by DH

Actions led by DH to support delivery of date in part 1 of agreement	
Strategic and local health economy issues Alternative organisational form options	☒
Financial NHS Trusts with debt	☒
Short/medium tem liquidity issues	☐
Current/future PFI schemes	☒
National QIPP workstreams	☐
Governance and Leadership Board development activities	☐
Other key actions to be taken (please provide detail below	☐

Please provide any further relevant local information in relation to the key actions to be taken by DH with an identified lead and delivery dates:

1. The Trust has appointed Deloitte and Wragge & Co as specialist advisers for the acquisition process. The SHA and advisers to the Trust have developed an accelerated and 'restricted' competitive process with the following objectives;
   - Ensure that the process is swift and managed effectively with a clear identification of a preferred partner(s) in a reasonable timeframe.
   - Run a process that is fair and transparent and allows equal access and consideration for all respective parties
   - Take into account the wide varying views of a broad range of external stakeholders who are keenly interested in the transaction.
   - Provide sufficient time post selection of a preferred Foundation Trust acquirer for a detailed and full merger and integration planning phase.

   The process which has been developed for NCUH will therefore involve a 'restricted' competition based on an assessment of a limited number of Foundation Trusts who will be approached formally to put forward information. The assessment will be on the basis of agreed strategic objectives and criteria in conjunction with a separate financial assessment.

2. The Trust is currently operating with an underlying deficit which is a key factor in progressing the acquisition process.

3. A national financial review of Trusts with a PFI hospital is taking place to gain a common understanding of any issues that might be an obstacle to passing the financial elements of the FT assessment process. Some elements contained within the TFA will be subject to the outcome of this review in enabling any issues outlined in this agreement to be resolved. This will be confirmed on a case by case as the PFI work is completed and communicated.

Part 8 – Key milestones to achieve actions identified in parts 5 and 6 to achieve date agreed in part 1

The Trust has agreed internally and with the SHA that the approach which should be undertaken is the selection of an acquiring partner (NHS). The process will be undertaken in two phases; selection of a preferred partner in a 'restricted' competitive process over 28 weeks followed by a detailed planning and due diligence phase over a maximum of 50 weeks.

Phase 1	**Start Date**	**End Date**
Establishment of Project	Complete	Complete
Determining entity for acquisition	Complete	Complete
Board agreement on criteria for partner selection	May 2011	7 June 2011
Information process and development	May 2011	6 September 2011
Partner selection move to phase 2	6 September 2011	8 November 2011
Phase 2		**Milestone Date**
Milestone		
Confirm Board decision to move to phase 2 and agree process		8 November 2011
Commence detailed planning process and due diligence		8 November 2011
Confirm and gain agreement to and approvals for transaction type (formal acquisition by contract or franchise)		February 2012
Commence transaction development and approvals period		February 2012
Approvals achieved – Monitor, CCP, DoH Contract exchange		February – September 2012
Dissolution of North Cumbria University Hospitals NHS Trust Contract Completion Transfer of all assets and liabilities		Estimated September 2012
Provide detail of what the milestones will achieve\solve where this is not immediately obvious. For example, resolves underlying financial problems – explain what the issue is, the proposed solution and persons\organisations responsible for delivery.		

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The timeline below sets out the key milestones currently envisaged for Phase 1 of this project. Clearly, some of these are still subject to some iteration as meetings over the coming weeks take place.
Furthermore the process must be flexible responding to the views of key stakeholders and the FTs expressing an interest in acquiring NCUH. The time line below should therefore not be taken as final, but as an early guide to the approximate timings.

TASK	**TIMESCALE**
Evaluation requirements and questions to ask FT bidders	May 2011
FTs Providing Information (financial & non-financial)	June 2011
Evaluation of FT responses	July 2011
Clarification meetings with FTs	July/August 2011
Moderation and finalised analysis	August 2011
FT Meeting with External Stakeholder Group	12 October 2011
Trust and PCT/GP Commissioner Board to Board	20 October 2011
Trust Board meeting with FTs	1 November 2011
Board sign off	8 November 2011

At the conclusion of the review/evaluation process Deloitte will produce a Feasibility Report and present the conclusions for consideration by the Trust Board during August /

September. It is likely that this will summarise the FT responses and through an option appraisal and make a recommendation on the relative benefits of each potential partner for the Trust, based on the performance against the assessment financial and non-financial criteria. The recommendations in the report will be shared with the SHA and External Stakeholder Group for their consideration with consensus next steps agreed with the Trust.

Key Milestones will be reviewed every quarter, so ideally milestones may be timed to quarter ends, but not if that is going to cause new problems. The milestones agreed in the above table will be monitored by senior DH and SHA leaders until the NTDA takes over formal responsibility for this delivery. Progress against the milestones agreed will be monitored and managed at least quarterly, and more frequent where necessary as determined by the SHA (or NTDA subsequently). Where milestones are not achieved, the existing SHA escalation processes will be used to performance manage the agreement. (This responsibility will transfer to the NTDA once it is formally has the authority)

Part 9 – Key risks to delivery

Risk	Mitigation
Partner selection process takes longer than planned and therefore places DH timeline at risk	• Consider best route to select a partner to minimise timeframes e.g. restricted competitive process
Challenge to the process undertaken either by an unsuccessful bidder or non preferential partner	• Legal advisors involved at early stage of process • Process soundings with Monitor and CCP • Openness and transparency on route selected and criteria applied • Full engagement with SHA to ensure support for chosen process
No bidder forthcoming – lack of market interest in transaction	• Provide bidders with appropriate information • Engage clinical teams in scoping potential opportunities • Involve NHS Cumbria, SHA and DH in developing appropriate incentives/assurance • Ensure operational effectiveness and productivity improvements in the current business to improve attractiveness • Proactive engagement by CEO and team
Bids received but not viable/acceptable (Negotiations are not concluded)	• Clear criteria and process for bid evaluation • Robust financial and non-financial evaluation • Commissioning assurance undertaken by NHS Cumbria • Involvement of stakeholders and commissioners in key stages of process • Key levers to be identified with SHA and DH at early stage of process
Historic and future financial pressures can not be resolved to the satisfaction of partners – transitional financial requirements	• Early discussions on an open book basis with potential partners • Early engagement with SHA/DH on potential solutions e.g. contract • Options for transitional requirements to be developed at an early stage
Once preferred bidder is identified the project will have a high dependence on their input and will not be within the full control of North Cumbria University Hospitals NHS Trust	• Development of clear transitional agreement with preferred bidder which will identify the responsibilities of both parties and timelines for delivery
Maintaining safe, high quality and efficient services during a period of significant change	• Risk assess turnaround plans and ensure impact assessment is robust (safety risks identified and mitigated) • Ensure governance arrangements and compliance systems are robust (Governance Review) • Monthly assurance through Governance Committee and reporting to Trust Board
Increased turnover in the management team during transaction period and lack of continuity	• Assess key risks and 'hot spots' • Develop succession plan which identifies organisational and personal potential in line with key roles • Review structure and support any weak areas • Use interim or outsource solutions where appropriate
Negative publicity	• Detailed discussions with prospective NHS bidders to encourage bids. • Communications plan agreed with Trust. • Close involvement of Borough Council and local MPs in process. • Communications lead recruited to Provider Development team.