

Agenda Item:



Name of Committee:	Cabinet
Date of Meeting:	04/03/2019
Relevant Scrutiny Committee:	Healthy Living and Social Care
Report Title:	Cardiff and Vale of Glamorgan Joint Commissioning and Pooled Budget for Older People Services
Purpose of Report:	To extend existing agreement between the Authorities in order to allow for ongoing arrangements for a pooled budget for older people care accommodation from 1st April 2019 until 31st March 2020
Report Owner:	Cabinet Member for Social Care, Health and Leisure
Responsible Officer:	Director of Social Services
Elected Member and Officer Consultation:	Head of Resource Management and Safeguarding
Policy Framework:	This is a matter for Executive decision by Cabinet

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Executive Summary:

- To seek Cabinet approval to extend the Deed in order to allow for ongoing arrangements for a pooled budget for older people care accommodation from 1st April 2019 until 31st March 2020.

1. Recommendation

- 1.1** Cabinet notes the further progress regarding meeting the Part 9 requirements which includes the ongoing pooled budget for care accommodation.
- 1.2** Cabinet approves the Deed (Appendix 1) of extension which allows for the ongoing arrangements for a pooled budget for older people care accommodation from 1st April 2019 until 31st March 2020 which will automatically renew going forward every 12 months (unless terminated or varied by any partner), with Cardiff Council to act as the host organisation.
- 1.3** Cabinet delegates the authorisation of the Partnership Agreement in relation to the pooled budget to the Director of Social Services.
- 1.4** Cabinet delegates authority for any future termination of the Pooled budget and Partnership Agreement to the Director of Social Services in conjunction with the Monitoring Officer/Head of Legal and Democratic Services and the Head of Finance.

2. Reasons for Recommendations

- 2.1** The pooled budget arrangements for the Cardiff and Vale of Glamorgan region have been reviewed and it is proposed that the arrangements for a pooled budget for older people care accommodation continue from 1st April 2019 until 31st March 2020. This will therefore automatically renew every 12 months

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(unless terminated or varied by any partner) with Cardiff Council to act as the host organisation.

- 2.2** This will ensure that the Cardiff and Vale of Glamorgan region continues to meet the requirements for Regional Partnership Boards to establish pooled funds in relation to care homes for older people. The Regional Partnership Board continues to gather evidence to enable the development of a market position statement in relation to care homes for older people. At this stage, the Partnership is not considering a pooled budget for commissioning care for other client groups. This position is consistent with other Regional Partnership Boards across Wales.

3. Background

- 3.1** Part 9 of the Social Services and Well-being (Wales) Act 2014 (SSWWA 2014) requires Local Authorities and the Local Health Board for each region to establish and maintain pooled funds in relation to the exercise of care home accommodation functions by 6th April 2018. The region consists of Cardiff and Vale University Health Board (UHB), together with Cardiff Council and the Vale of Glamorgan Council as the statutory bodies within the pooled budget.
- 3.2** The purpose of the pooled funds arrangements is to ensure that Local Health Boards and Local Authorities work together to maximise their influence to shape the future development of services. This includes ensuring there is sufficient capacity, sustainability and an appropriate range of good quality services to respond to demand.
- 3.3** The work to develop the pooled budget was overseen by the Cardiff and Vale of Glamorgan Regional Partnership Board (C&VGRP). It is important to recognise that, whilst the C&VGRP retains the oversight of developments of the pooled budget, the decision making responsibilities (i.e. for agreeing the pooled budget and its management) rests with Cardiff County, the Vale of Glamorgan Council and Cardiff and Vale University Health Board.
- 3.4** On 21st May 2017, the then Minister for Social Services and Public Health wrote to the Chairs of Regional Partnership Boards (RPBs) setting out Welsh Government's expectations: "You will be aware that the requirements to establish pooled funds in relation to the exercise of care home accommodation functions will come into effect next April. My expectation is that there will be a single pooled fund established jointly at the regional level between the health board and all the local authorities within the partnership area. This approach is essential to ensure that partnership boards deliver an integrated and collaborative approach to meeting care and support needs."
- 3.5** In addition to the requirements for pooled funds in relation to care home accommodation functions, Local Authorities and Health Boards are also expected to:

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- Undertake a population needs assessment and market analysis to include the needs of self-funders.
- Agree an appropriate integrated market position statement and commissioning strategy.
- Agree a common contract and specification (for use between the care home providers and the statutory bodies).
- Develop an integrated approach to agreeing fees with providers.
- Develop an integrated approach to quality assurance.
- The Cardiff and Vale region has made good progress regarding all of these key requirements.

3.6 During 2017/18 a project team, made up of the service leads and legal and finance representatives from the three partner organisations, developed pooled budget arrangements for the Cardiff and Vale of Glamorgan region.

3.7 The pooled budget focused on care accommodation for older people, including those whose care is funded by NHS Continuing Health Care (NHS CHC), Funded Nursing Care (FNC) and local authority funded long term care home placements.

3.8 Following formal approval of the arrangements by each of the three partners in January 2018, the pooled budget arrangements were subject to a written partnership agreement between Cardiff Council, Vale of Glamorgan Council and Cardiff and Vale UHB which was finalised and signed on the 31st March 2018 (Appendix 2). The Partnership Agreement covered the pooled budget arrangements as well as governance structures, accountability and decision making from April 2018 until 31st March 2019.

3.9 For the 2018/19 financial year, one pooled budget has been established across the region with effect from 1st April 2018. During this first year of the new pooled budget arrangements, Cardiff Council has acted as the host organisation for these arrangements. These host arrangements for a pooled budget for older people care accommodation are now due to be reviewed for beyond 31st March 2019.

4. Key Issues for Consideration

4.1 Whilst there is one pooled budget in place, the processes for commissioning and payment for services has remained with the three organisations, with each partner continuing to be responsible for their own budget and expenditure. The accountability for the functions of the statutory bodies remains with each individual organisation, in accordance with the Part 9 Guidance under SSWWA 2014.

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- 4.2** In order to reflect the relevant costs of the three organisations within the pooled budget, transactions have been undertaken on a quarterly basis. This operated so that the costs incurred by each of the three organisations during each quarter were charged to the pooled budget held by Cardiff Council, as the host organisation at the end of each quarter. These costs were offset by the contributions made by each of the partners to the pooled budget, also on a quarterly basis. The contributions were based on the actual costs incurred in that quarter and have been timed to coincide with the charges so that no adverse cash flow implications were incurred by any of the three partners.
- 4.3** At the end of the financial year, the pooled budget will therefore provide an overall record of the costs incurred by the three organisations in relation to long-term care home placements, FNC and NHS CHC costs for older people. These will be fully offset by the partners' contributions which will be equivalent to their actual costs in that year. Each of the three partner organisations will therefore continue to pay and be responsible for their own net costs, reflected as their individual contributions to the pooled budget. There is no risk sharing in this arrangement.
- 4.4** The agreed arrangements for the pooled budget means that there is no possibility of any potential cross-subsidisation between the parties (e.g. between the UHB and both local authorities).
- 4.5** The operation of the pooled budget transactions have been reported on a quarterly basis to the C&VGRP and the supporting Strategic Leadership Group. Reporting on activity and expenditure has also continued to be made through existing mechanisms within each of the partner organisations. These arrangements have enabled greater transparency regarding expenditure and have helped to facilitate increased joint working between partners regarding engagement with providers in relation to market shaping and fee setting.
- 4.6** The Welsh Government launched a consultation on 31st August 2018 on the proposed amendments to the regulations under Part 9 of the Social Services and Well-being (Wales) Act 2014 which provide for Regional Partnership Boards. The amendments to the regulations were required to reflect that on 1st April 2019, healthcare services in the Bridgend County Borough Council area will transfer to Cwm Taf University Health Board from Abertawe Bro Morgannwg University Health Board, moving the health board boundary accordingly.
- 4.7** In addition Welsh Government have used the opportunity to revise other aspects of the Partnership Regulations, specifically to:
- Clarify requirements for Regional Partnership Boards to establish pooled funds in relation to care homes for older people;
 - Require housing representation on Regional Partnership Boards;

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- Require Regional Partnership Boards to produce regional commissioning strategies; and clarify the date when regional partnership boards must produce annual reports.

4.8 The consultation document did not suggest change to the requirement that pooled budgets are established within the Partnership area. Therefore there is an expectation, following the amendments to the regulations in March 2019, that there will still be the requirement for a single pooled fund in relation to care homes for older people, established jointly at the regional level, between the health board and all the local authorities within the partnership area.

5. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 5.1** The proposals consider the long-term commissioning and sustainability arrangements for accommodation with care within the Vale of Glamorgan and the potential impact that this could have on citizens.
- 5.2** Consultation with and involvement of citizens would take place on the proposed changes to the market position statement.
- 5.3** The associated market sustainability statement that will be developed alongside pooled budgets will identify challenges regarding resilience for future service delivery, with the ongoing financial climate.
- 5.4** Integration and collaboration via services provided by partnership arrangements, such as the pooled budget, are covered by the proposed charges.

6. Resources and Legal Considerations

Financial

- 6.1** The operation of the pooled budget transactions have been reported on a quarterly basis to the C&VGRP and the supporting Strategic Leadership Group. Reporting on activity and expenditure has also continued to be made through existing mechanisms within each of the partner organisations. These arrangements have enabled greater transparency regarding expenditure and have helped to facilitate increased joint working between partners regarding engagement with providers in relation to market shaping and fee setting.
- 6.2** The expenditure in relation to the 'in-scope' services and current commitments for 2018/19 has been reported as:

	Cardiff	Vale of Glamorgan	UHB	Total spend
Q1	£5,522,686	£2,158,379	£6,838,272	£14,519,337
Q2	£7,225,617	£2,373,195	£6,715,911	£16,314,723
Q3	£5,285,511	£2,456,276	£6,933,673	£14,675,460
Q4				
Total to date	£18,033,814	£6,987,850	£20,487,856	£45,509,520

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Employment

6.3 There is no-one employed as a result of the Single Pooled Budget arrangement.

Legal (Including Equalities)

6.4 Part 9 of the Social Services and Well-being (Wales) Act 2014 (SSWWA 2014) requires Local Authorities and the Local Health Board for each region to establish and maintain pooled funds in relation to the exercise of care home accommodation functions by 6th April 2018. It will be necessary for the Monitoring Officer / Head of Legal and Democratic Services to execute the deed evidencing the extension.

7. Background Papers

Social Services and Well-being (Wales) Act 2014 - Part 9 Statutory Guidance
(Partnership Arrangements)

Report to Cabinet - 22nd January 2018 - Minute No. C196

THIS DEED is made on

BETWEEN

- (1) **THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of County Hall Atlantic Wharf Cardiff CF10 4UW (“Cardiff Council”);
- (2) **THE VALE OF GLAMORGAN COUNCIL** of Civic Offices, Holton Road, Barry, Vale of Glamorgan CF63 4RU (“the Vale Council”);
and
- (3) **CARDIFF AND VALE UNIVERSITY HEALTH BOARD** of Cardiff and Vale University Health Board, University Hospital of Wales (UHW), Heath Park, Cardiff CF14 4XW (“the Health Board”)

RECITALS

- (A) The Partners are party to a Partnership Agreement dated 9th April 2018 in relation to a pooled fund for care home accommodation services for older people (“**the Agreement**”). Pursuant to the Agreement each Partner agreed to the establishment of a Pooled Fund as detailed in the Agreement.
- (B) Clause 3.1 of the terms in the Agreement allows the Partners to extend the duration of the Agreement for an agreed period or periods in twelve (12) monthly periods and on varied terms as they agree. The Partners wish to exercise that right to extend the Agreement.
- (C) The Agreement shall be extended for twelve (12) months and shall automatically renew for further twelve (12) month periods on the same terms and conditions as set out in the Agreement, unless otherwise terminated or varied by the Partners in accordance with the Agreement.

OPERATIVE PROVISIONS

1. In this Deed unless the context otherwise requires words and expressions shall have the same meaning as is given to them within the Agreement and subject to the terms set out herein the terms and conditions of the Agreement shall continue to apply.
2. This Deed shall commence on 1 April 2019 and will automatically renew annually unless it is otherwise terminated or varied in accordance with the Agreement.

IN WITNESS whereof the Partners enter into this Deed on the date, month and year stated at the beginning of this Deed.

THE COMMON SEAL OF THE COUNTY
COUNCIL OF THE CITY AND COUNTY OF
CARDIFF was affixed in the presence of

.....
Authorised Signatory

THE COMMON SEAL OF THE VALE
OF GLAMORGAN was affixed in the presence of

.....
Authorised Signatory

THE COMMON SEAL OF THE
CARDIFF AND VALE HEALTH BOARD
was affixed in the presence of)

.....
Authorised Signatory

Dated

PARTNERSHIP AGREEMENT
In relation to a pooled fund for care home accommodation services for older people

Between

THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF
VALE OF GLAMORGAN COUNCIL
CARDIFF AND VALE UNIVERSITY HEALTH BOARD

Sections 166-169 of the SSWB Act makes provision for partnership arrangements between local authorities and Local Health Boards.

Regulation 19(1) of the Partnership Arrangements (Wales) Regulations 2015 (as amended) – requires the Regional Partnership Board to establish and maintain pooled funds in relation to the exercise of their care home accommodation functions.

Regulation 19(2) of the said regulations defines “care home accommodation functions” and it includes:-

- i. where it has been decided to meet the adult’s needs by providing or arranging to provide accommodation in a care home under sections 35 and 36 of the SSWB Act;
- ii. the functions of a Local Health Board under section 3 of the National Health Service (Wales) Act 2006 in relation to an adult, in cases where
 - a. the adult has a primary need for health care and it has been decided to meet the needs of the adult by arranging the provision of accommodation in a care home (‘NHS continuing healthcare’), or
 - b. the adult’s needs can only be met by the local authority arranging for the provision of accommodation, together with nursing care (‘Funded Nursing Care’).

Section 2 of the Local Government Act 2000 contains powers to do anything which it considers is likely to achieve one or more of the following benefits: the promotion or improvement of the economic, social or environmental wellbeing of the area.

Section 111 of the Local Government Act 1972 provides for a local authority to have the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions.

Section 1 Local Authority (Goods and Services) Act 1970 contains the power to enter into an agreement for all or any of the following purposes, namely, supply by a local authority of goods and materials, administrative, professional or technical services, use of vehicles, plant or apparatus or works of maintenance in connection with land or buildings.

(F) Each of the Partners retain their statutory responsibilities in relation to their care home accommodation functions.

(G) Each of the Partners has received the necessary authority to enter into this Agreement.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings

“Agreement” means this Agreement and the attached Schedule

“Care Home Accommodation Functions” means the functions set out under Regulation 19(2) of the Partnership Arrangements (Wales) Regulations 2015 insofar as they relate to adults aged 65 or over unless varied otherwise under this Agreement.

“Commencement Date” means 1 April 2018

“Confidential Information” means any information, data or material of any nature which:

- a) has been designated as confidential by a Partner in writing; or
- b) the release of which is likely to prejudice the commercial interests of a Partner; or
- c) that ought to be considered as confidential (however it is conveyed or on whatever media it is stored)

including information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of any of the Partners, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 (as may be amended from time to time), subject to the provisions set out in clause 12 (Confidentiality) and clause 10 (Freedom of Information).

“Councils” means Cardiff Council and the Vale Council and their statutory successors

“Data Protection Legislation” means the Data Protection Act 1998, as amended, or its legislative replacement post 25 May 2018, and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

“Dispute Resolution Procedure” means the procedure set out in clause 17

“EIR” means the Environmental Information Regulations 2004.

“Financial Contributions” means the Quarterly payments made to the Pooled Fund by the Partners as defined further under clause 2 of Schedule 1

“Financial Year” means 1 April to 31 March

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation

“Health Board” means Cardiff and Vale University Health Board and its statutory successor

“Host Authority” shall mean Cardiff Council during the Initial Term, thereafter shall mean the Host Authority as determined in accordance with the provisions of clause 4.1.3

“Information” has the meaning given under Section 84 of FOIA

“Initial Term” means the period commencing on the Commencement Date and ending on the first anniversary of the Commencement Date subject to the right to extend

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy guidance or industry code, rule of court, directives or requirements of any Regulatory Body, delegated or subordinate legislation, or notice of any Regulatory Body

“Partner” means each of the Councils and the Health Board who comprise the Partnership Bodies and are the Parties to this Agreement and “Partners” shall be construed accordingly

“Partnership Arrangements” means the arrangements made between the Partners under this Agreement as detailed under Clause 4

“Partnership Bodies” include Cardiff Council, the Vale Council and the Health Board and who are Parties to this Agreement

“Partnership Regulations” means the Partnership Arrangements (Wales) Regulations 2015, as amended

“Personal Data” means personal data as defined by (i) the Data Protection Act 1998, as amended, or (ii) its legislative replacement post 25 May 2018

“Pooled Fund” means the fund established by the Partners, and, within the parameters of this Agreement, administered by the Host Authority on behalf of the Partners, under which payments shall be made by the Partners and the Host Authority in accordance with the provisions of this Agreement

“Quarter” means one of the following periods in each Financial Year:-

- (a) 1 April to 30 June (“Quarter 1”);
- (b) 1 July to 30 September (“Quarter 2”);
- (c) 1 October to 31 December (“Quarter 3”); and
- (d) 1 January to 31 March (“Quarter 4”).

“Regional Partnership Board” or **“RPB”** means the Cardiff and Vale Regional Partnership Board comprising of Cardiff Council, the Vale Council and the Health Board established pursuant to Regulation 4 of the Partnership Regulations, the objectives of which for the purposes of this Agreement are set out BACKGROUND (B) above

“Regulatory Body” means those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this arrangement under this Agreement.

“Services” means the care home accommodation services commissioned by a Partner in respect of the individual Partner’s Care Home Accommodation Functions

“Term” means the period of the Initial Term as may be varied by (i) any extensions to this Agreement that are agreed under Clause 3.1, or (ii) the earlier termination of this Agreement in accordance with its terms

- 1.2 Clause, Schedule and paragraph headings shall not effect the interpretation of this Agreement.
- 1.3 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes fax and email and including electronic transmission of information.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or to allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedule are to the clauses and Schedule of this Agreement. References to paragraphs are to paragraphs of relevant schedule.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue for the Term to be reviewed before the first anniversary of the Commencement Date or as may otherwise be agreed in accordance with the terms of this Agreement.

3. EXTENDING THE INITIAL TERM

- 3.1 The Partners may agree unanimously to extend this Agreement for an agreed period or periods in twelve (12) monthly periods and on varied terms as they agree, beyond the Initial Term, subject to approval of the individual Partner’s internal approval processes.
- 3.2 The Partners acknowledge that the arrangements under this Agreement are developing and that it may be necessary to modify or replace this Agreement in order to reflect how the arrangements develop and to that end the Partners agree to work together in good faith.

4. PARTNERSHIP ARRANGEMENTS

- 4.1 The Partners have agreed that with effect from the Commencement Date they will operate the following arrangements:-
- 4.1.1 the establishment of a Pooled Fund (as detailed in this Agreement) to be administered by the Host Authority;
 - 4.1.2 Each Partner to retain statutory responsibility in relation to their respective Care Home Accommodation Functions. For the avoidance of any doubt, each Partner shall be responsible for all costs associated with its provision of the Services and/or individuals placed by the relevant Partner in accordance with its Care Home Accommodation Functions.
 - 4.1.3 Cardiff Council shall act as the Host Authority during the Initial Term of this Agreement. Should the Agreement be extended in accordance with the provisions of clause 3.1 the Partners shall decide unanimously, prior to the expiry of the Initial Term and, where appropriate, any further extended 12 month periods, that either (i) Cardiff Council continues to act as Host Authority for the duration of the extended term concerned or (ii) which Partner shall act as the replacement Host Authority in respect of the extended term concerned.
 - 4.1.4 Nothing in this Agreement shall prejudice or affect the Partners in the exercise of their functions as public bodies or in any other capacity.
 - 4.1.5 Necessary Consents – each Partner hereby represents to the other Partners that it has obtained all necessary consents sufficient to ensure the responsibilities provided for by this Agreement.

5. PAYMENTS TO AND FROM THE POOLED FUND

- 5.1 The Partners and the Host Authority shall make payments to and from the Pooled Fund in accordance with the provisions in Schedule 1.

6. PARTNERSHIP MANAGEMENT GOVERNANCE

- 6.1 In accordance with its obligations under Regulation 10(c) of the Partnership Regulations, the Regional Partnership Board shall provide overall strategic oversight to the Partnership Arrangements under this Agreement.

7. MONITORING, REVIEW AND REPORTING

- 7.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within thirty (30) days of the end of each Quarter.
- 7.2 The Section 151 Officer (or equivalent) of the Host Authority or his/her nominated representative shall provide (i) Quarterly reports to the Regional Partnership Board outlining the financial position of the Pooled Fund during the Financial Year concerned, and (ii) an annual outturn report in order to outline the financial position of the Pooled Fund once the financial accounts in relation to the Financial Year concerned are closed.

8. VARIATIONS

- 8.1 This Agreement may be varied by the Partners at any time in accordance with the Partners' internal decision-making processes subject to the express written agreement of each of the Partners.

9. EQUALITY DUTIES

- 9.1 The Partners, employees, or agents shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination whether in race, gender, religion, disability, sexual orientation or otherwise. The Partners shall take all reasonable steps to secure the observance of this clause by all employees, agents and all suppliers and sub-contractors employed in the execution of this Agreement.

10. FREEDOM OF INFORMATION

- 10.1 The Partners acknowledge that each is subject to the requirements of FOIA and the EIR, and shall assist and co-operate with one another to enable each Partner to comply with these information disclosure requirements, where necessary.

11. DATA PROTECTION AND INFORMATION SHARING

- 11.1 Each Partner shall comply with any notification requirements under Data Protection Legislation. All Partners shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.
- 11.2 The Partners shall share information with regards to activity and expenditure incurred in relation to their respective Care Home Accommodation Functions to improve the quality of care and facilitate integrated working in accordance with the Data Protection Legislation, The Human Rights Act 1998 and the common law duty of confidentiality and any other information sharing legislation, regulation or guidance. The Partners shall adhere to any Information Sharing Protocols that are developed in accordance with the WASPI Framework when sharing information under this Agreement.
- 11.3 Each Partner shall perform its obligations under the Data Protection Legislation and FOIA at its own cost.

12. CONFIDENTIALITY

- 12.1 The Partners agree to keep confidential all documents relating to or received from the other Partner under this Agreement that are labelled as confidential.
- 12.1.1 Where a Partner receives a request to disclose Information that the other Partner has designated as confidential, the receiving Partner shall consult with the other Partner before deciding whether the Information is subject to disclosure.
- 12.2 The provision of clauses 12.1 and 12.2 shall not apply to any confidential information received by one Partner from the other:-
- 12.2.1 which is or becomes public knowledge (otherwise than by breach of this clause); which was in the possession of the Partner, without restriction as to its disclosure, before receiving it from the disclosing Partner;
- 12.2.2 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 12.2.3 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the disclosing Partner making the disclosure, including any requirements for disclosure including any requirements for disclosure under the FOIA or the EIR.

- 12.3 Nothing in this clause shall prevent the Host Authority disclosing any Confidential Information for the purpose of:
- (i) the examination and certification of any Partner financial contributions; or
 - (ii) any examination pursuant by a regulatory body.
 - (iii) to any person engaged in providing any services to the authority for any purpose relating to or ancillary to the Agreement;

Provided that in disclosing information under this sub-clause the Host Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence.

13. AUDIT

- 13.1 The Host Authority shall arrange for the audit of the accounts of the Pooled Fund in accordance with its statutory audit requirements and any costs incurred by the Host Authority in connection with the same shall be borne equally by the Partners.
- 13.2 The financial arrangements under this Agreement will be subject to the normal annual auditing requirements of each Partner.
- 13.3 The Partners shall co-operate in the provision of Information, access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

14. INSURANCE

- 14.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement. For the avoidance of doubt, this requirement shall not be necessary where a Partner has self-insurance arrangements already in place.
- 14.2 Without prejudice to the generality of clause 14.1, the Host Authority shall effect and maintain appropriate professional indemnity and fidelity guarantee insurance in relation to the specific operation of the Pooled Fund.

15. INDEMNITIES

- 15.1 Each Partner (Indemnifying Partner) shall indemnify and keep indemnified the other Partners (indemnified Partner/s) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to wilful negligence, wilful default or fraud of itself, the indemnifying Partners employees, or any of its representatives or sub-contractors, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Partner or its representatives.

16. LIABILITIES

- 16.1 Except as otherwise provided, the Partners shall each bear their own costs and expenses incurred in complying with their obligations under this Agreement.
- 16.2 Each Partner shall remain liable for any losses or liabilities incurred due to its own or its employee's actions.

17. DISPUTE RESOLUTION

- 17.1 In the event of a dispute between the Partners in connection with this Agreement, the matter shall be referred to the Director of Social Services for Cardiff Council, the Director of Social Services for the Vale Council and the Chief Operating Officer for the Health Board (or equivalent post holders) who shall use their best endeavours to resolve the dispute.
- 17.2 In the event that the dispute remains unresolved having followed the procedure in Clause 17.1 the matter shall be referred in writing by any Partner or Partners to the Chief Executives (or equivalent) of the Partners who shall endeavour to settle the dispute between them.
- 17.3 If the Chief Executives fail to resolve the dispute within twenty (20) working days of the dispute having been referred to them, the dispute shall be referred to mediation pursuant to the procedure set out in clause 17.5.
- 17.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Partners shall comply fully with the requirements of the Agreement at all times.

17.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- a. A neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Partners, or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Partner to the other Partners or if the Mediator agreed upon is unable or unwilling to act, any of the Partners shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to the other Partners that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
- b. The Partners shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Partners may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- c. Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Partners in any future proceedings.
- d. If the Partners reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Partners once it is signed by their duly authorised representatives.
- e. Failing agreement, any of the Partners may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of the Partners.
- f. If the Partners fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Partners, then any dispute or difference between them may be referred to the Courts.

18. TERMINATION

18.1 The Partners are required to operate a pooled fund pursuant to the statutory obligation set out under Regulation 19(1) (a) of Partnership Arrangements (Wales) Regulations 2015 (as amended).

18.2 Where a Partner (“the Defaulting Partner”):-

18.2.1 commits a material breach of any of its obligations under this Agreement and the same is not capable of remedy: or

18.2.2 commits a material breach of any of its obligations under this Agreement which is capable of remedy but has not been remedied within twenty eight (28) days of receipt of written notice from one or more of the non-defaulting Partners

and no alternative form of pooled fund is agreed between the Partners then one or more of the non-defaulting Partners may terminate this Agreement by serving seven (7) days written notice.

18.3 If this Agreement is terminated by any of the non-defaulting Partners pursuant to Clause 18.2 the costs occasioned to the non-defaulting Partners shall be met by the Defaulting Partner and the Defaulting Partner shall indemnify the non-defaulting Partners against any such losses or costs which the non-defaulting Partners suffer as a result of such termination.

18.4 Any Partner (“the Terminating Partner) may terminate this Agreement at any time by giving at least three (3) months written notice to the other Partners insofar as it relates to the Terminating Partner if:-

- a. As a result of any change in law or legislation it is unable to fulfil its obligations under this Agreement:
- b. The fulfilment of its obligations under this Agreement would be in contravention of any guidance issued by Welsh Government or the UK government after this Agreement comes into force; or
- c. The fulfilment of its obligations under this Agreement would be ultra vires; AND the Partners are unable to agree a modification or variation to this Agreement so as to enable the Terminating Partner to remedy any circumstances set out under 18.4 (a) to 18.4 (c). Any liability arising as a direct result of termination under this Clause 18.4 shall be apportioned equally between the Partners.

18.5 Should this Agreement be superseded by the Partners entering into a replacement agreement in relation to their statutory obligation referred to under clause 18.1 (as may be amended) and/or joint working arrangements in relation to their Care Home Accommodation Functions, this Agreement shall terminate upon the commencement date of the said replacement agreement.

18.6 The Partners acknowledge and agree that if a Partner/Partners are considering whether to exercise a right to terminate under this Agreement (and prior to exercising such a right), the Partners shall exhaust all reasonable avenues to rectify matters and /or to maintain the Pooled Fund, including a right for a non-defaulting Partner to refer the matter to the Welsh Minister for consideration.

19. CONSEQUENCES OF TERMINATION

- 19.1 If the Agreement is terminated in accordance with clause 18 (Termination), save for Clause 10 (FOIA), Clause 12 (Confidentiality), Clause 16 (Liabilities), and Clause 19 (Consequences of Termination) the Partners shall be released from their respective obligations described in this Agreement, save to the extent that there are any sums due to be paid into the Pooled Fund or in the case of the Host Authority paid out of the Pooled Fund.

20. THIRD PARTY RIGHTS

- 20.1 No term of this Agreement is intended to confer a benefit on or to be enforceable by any person who is not a party to this Agreement.

21. NOTICES

- 21.1 Any notice or communication shall be in writing.
- 21.2 Any notice or communication sent by a Partner shall be deemed effectively served if sent by first class post or delivered by hand to the addressee and address set out below or such other addressee and address notified in writing from time to time by a partner to the other Partners:-

The County Council of the City and County of Cardiff
For the attention of: Director of Social Services
Address: County Hall, Atlantic Wharf, Cardiff CF10 4UW

The Vale of Glamorgan Council
For the attention of: Director of Social Services
Address: Docks Offices, Ffordd Y Mileniwm, Barry CF63 4RT

Cardiff and Vale University Health Board
For the attention of: Chief Executive
Address: Cardiff and Vale University Health Board, Headquarters, University Hospital of Wales (UHW), Heath Park, Cardiff CF14 4XW

- 21.3 Correctly addressed notices sent by first class mail shall be deemed to have been delivered forty eight (48) hours after posting.

22. ENTIRE AGREEMENT

- 22.1 This Agreement, the schedule and the documents annexed to it or otherwise referred to in it contain the whole Agreement between the Partners relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the Partners relating to that subject matter.
- 22.2 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

23. CHANGES IN LEGISLATION

- 23.1 The Partners shall review the operation of the Partnership Arrangements under this Agreement and all or any procedures or requirements of this Agreement on the coming into force of any relevant statutory or other legislation or guidance affecting the Partnership Arrangements to ensure that the Partnership Arrangements comply with such legislation or guidance.

24. GOVERNING LAW AND JURISDICTION

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the Law of England and Wales.

This Agreement has been executed as a deed and is delivered and takes effect on the date at the beginning of it.

THE COMMON SEAL OF THE
COUNTY COUNCIL OF THE CITY
AND COUNTY OF CARDIFF
Was affixed in the presence of:

Authorised Signatory

THE COMMON SEAL OF THE
VALE OF GLAMORGAN COUNCIL
Was affixed in the presence of:

Authorised Signatory

THE COMMON SEAL OF THE
CARDIFF AND VALE HEALTH BOARD
Was affixed in the presence of:

Authorised Signatory

Schedule 1

1. In relation to the Pooled Fund, each Partner agrees to make Financial Contributions to the Host Authority Quarterly in arrears and the Host Authority agrees to reimburse each Partner the sum of their Financial Contributions Quarterly in arrears as set out in this Schedule 1.
2. In respect of each Quarter, each Partner's Financial Contribution shall be calculated by the individual Partner with reference to the actual costs the Partner has incurred in respect of the Services commissioned during the Quarter concerned, with the actual cost incurred meaning the net cost being the gross cost incurred in respect of the Services commissioned less any contributions received from clients or third parties, including deferred income.
3. In relation to Quarter 1, Quarter 2 and Quarter 3-
 - a. each Partner shall calculate the sum of their Financial Contribution and advise the Host Authority of the same within seven (7) working days of the last day of the relevant Quarter;
 - b. Subject to receipt of the relevant information referred to in clause 3.a), the Host Authority shall invoice each Partner to the value of their respective Financial Contributions within 15 Working Days of the last day of the relevant Quarter;
 - c. On or before the twentieth (20th) Working Day following the last day of the relevant Quarter the Partners shall make a payment to the Host Authority by way of cleared funds and to the value of the sum set out in the invoice referred to under 3.b).
 - d. Provided always that the Host Authority:-
 - i. is in receipt of a Partner's Financial Contribution by way of cleared funds;
 - ii. is in receipt and agreement of an invoice submitted by the Partner within fifteen (15) Working Days of the last day of the relevant Quarter, such invoice reflecting the sum of the Financial Contribution referred to in clause 3 b)
 - e. the Host Authority shall pay on or before the twentieth (20th) Working Day to the individual Partner that Partner's respective Financial Contributions.
4. In relation to Quarter 4 the following provisions shall apply:
 - a. each Partner shall calculate the sum of their Financial Contribution and advise the Host Authority of the same within fifteen (15) Working Days of the last day of Quarter 4;
 - b. Subject to receipt of the relevant information referred to in clause 4.a), the Host Authority shall invoice each Partner to the value of their respective Financial Contributions within twenty (20) Working Days of the last day of the Quarter 4;

- c. On or before the twenty fifth (25th) Working Day following the last day of Quarter 4 the Partners shall make a payment to the Host Authority by way of cleared funds and to the value of the sum set out in the invoice referred to under 4.b)
 - d. Provided always that the Host Authority:-
 - i. is in receipt of a Partner's Financial Contribution by way of cleared funds;
 - ii. is in receipt and agreement of an invoice submitted by the Partner within twenty (20) Working Days of the last day of Quarter 4, such invoice reflecting the sum of the Financial Contribution referred to in clause 4 b)
 - e. the Host Authority shall pay on or before the twenty fifth (25th) Working Day to the individual Partner that Partner's respective Financial Contributions.
5. The Host Authority shall hold all transactions (that is, the financial payments paid into and out of the Pooled Fund) relating to the Pooled Fund as separate ring-fenced transactions to other transactions for the Host Authority.