

DATED 201 []

.....COUNCIL
and
.....COUNCIL
and
.....COUNCIL
and
.....COUNCIL
and
.....COUNCIL
and
.....LOCAL HEALTH BOARD

AGREEMENT MADE UNDER
SECTION 33 OF THE NATIONAL HEALTH SERVICE (WALES) ACT 2006
FOR THE
JOINT COMMISSIONING
FROM
A POOLED FUND
FOR
CARE HOME ACCOMMODATION SERVICES

As Directed Under Section 169 of the Social Services and Wellbeing (Wales) Act 2014 and
related Part 9 Statutory Guidance (Partnership Arrangements)

1	COMMENCEMENT DATE OF THIS AGREEMENT	4
2	PARTIES	4
3	DEFINITIONS AND INTERPRETATION	4
4	BACKGROUND	11
5	AIMS, BENEFITS AND OUTCOMES	12
6	DURATION OF THE AGREEMENT	13
7	DETAILS OF THE ARRANGEMENTS	14
8	FULFILMENT OF FUNCTIONS	17
9	NOTIFICATION TO THE WELSH GOVERNMENT	17
10	GENERAL PRINCIPLES	17
11	APPROVED PROVIDERS	18
12	FINANCIAL GOVERNANCE AND SCHEME OF DELEGATION	18
13	GOVERNANCE ARRANGEMENTS	19
14	THE POOLED FUND	21
15	MANAGEMENT OF THE COMMISSIONING FOR THE SERVICES	23
16	CONTRACTING	24
17	STAFFING	24
18	FINANCES AND RESOURCES	27
19	AMENDMENTS TO FINANCIAL CONTRIBUTIONS	30
20	OVERSPENDS	31
21	UNDERSPENDS	33
22	GOODS AND SERVICES IN SUPPORT OF THE PARTNERSHIP	34
23	CAPITAL EXPENDITURE	34
24	GRANTS	34
25	VAT	35
26	AUDIT AND RIGHT OF ACCESS	35
27	LIABILITIES, INSURANCE AND INDEMNITIES	36

28	STANDARDS	37
29	PERFORMANCE MANAGEMENT AND INSPECTION	38
30	CONFLICTS OF INTEREST	38
31	MONITORING, REVIEW AND REPORTING	39
32	SUBSTANDARD PERFORMANCE	40
33	COMPLAINTS	40
34	OMBUDSMAN	41
35	INFORMATION SHARING	41
36	TERMINATION & EFFECTS OF TERMINATION	42
37	CONFIDENTIALITY	48
38	FREEDOM OF INFORMATION	48
39	WAIVERS	48
40	ENTIRE AGREEMENT	49
41	CHANGES IN LEGISLATION, ETC	49
42	GOVERNING LAW	49
43	HUMAN RIGHTS	49
44	DISPUTES	50
45	TRANSFERS	51
46	NO PARTNERSHIP	51
47	NOTICES	51
48	SEVERANCE	52
49	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	52
SCHEDULE 1: SCOPE OF SERVICES, AIMS AND OBJECTIVES		55
SCHEDULE 2: FINANCE AND RESOURCE MANAGEMENT		60
SCHEDULE 3: GOVERNANCE & PERFORMANCE		66

1 COMMENCEMENT DATE OF THIS AGREEMENT - 1st APRIL 2018

2 PARTIES

2.1 COUNCIL of.....

2.2 COUNCIL of.....

2.3COUNCIL of.....

2.4COUNCIL of.....

2.5COUNCIL of.....

2.6 LOCAL HEALTH BOARD of.....

3 DEFINITIONS AND INTERPRETATION

3.1 In this Agreement the following expressions shall have the following meanings:

"Act"

means the National Health Service (Wales) Act 2006

"Agreement"

means this agreement

"Arrangements"

means the arrangements as described in Clause 7

" Approved Provider"

means the provider(s) of Care Home services, who have been approved by the Partners in accordance with Clause 11

“Board”

means the Regional Partnership Board as defined in The Partnership Arrangements (Wales) Regulations 2015

“Breaching Partner”

means any partner who commits a material breach of its obligations under this Agreement as defined in Clause 36.3

"Carers"

means those individuals including family members who are involved in providing care, help and support to Service Users, excluding those individuals who are employed or engaged by the Partners to provide such care, help and support.

“Care Home”

means the same as defined in the Care Standards Act 2000

“Care Home Accommodation Functions”

means the functions set out at Regulation 19 (2) of the Partnership Arrangements (Wales) Regulations 2015

“Central Costs”

means costs incurred over and above the operational commissioning costs incurred, which shall be audit fees and any other expenditure incurred by the Lead Commissioner in the course of fulfilling their role under this Agreement

"Commencement Date"

means 01 April 2018

“Commissioning Services”

means the services to be provided by the Lead Commissioner in performance of its obligations as Lead Commissioner pursuant to the Agreement

"Commissioning Staff"

means those persons from time to time engaged by the Lead Commissioner to undertake its duties

"Commissioning Transfer Date"

means the date on which responsibility for the provision Lead Commissioner duties transfers to another Partner

"Councils"

[[meansand their statutory successors]]

"Council Functions"

means such of those functions referred to in Regulation 6 of the Regulations and which are exercised by the Councils in relation to the Arrangements insofar as they are exercised for the purposes of the commissioning of the Services. This is subject to any exclusion agreed between the Partners or as provided in the Regulations

"Effective Date of Transfer"

means as defined by any Court or Tribunal of competent jurisdiction

"Employment Liabilities"

means without limitation any and all costs, claims, fines, liabilities or expenses however arising from:

- (a) the employment of any persons;
- (b) the termination of such employment;
- (c) the termination of any collective agreement;
- (d) any dispute whether or not the subject of litigation in any court or tribunal which relates to such employment or collective agreement or their termination.

"Employing Partner"

means any Partner which employs Staff or as defined by any Court or Tribunal of competent jurisdiction

"Executive Bodies"

means the Board of the Health Board and each of the Cabinets of each of the Councils. "Executive Body" shall be interpreted accordingly

"Financial Contribution" means the revenue contribution made to the Pooled Fund by the Partners

"Financial Year" means a year commencing on 1st April in one calendar year and ending on 31st March in the subsequent calendar year

"First Financial Year"

means the Financial Year running from the Commencement Date to 31 March 2019

"FSO"

means Financial Standing Orders or Standing Financial Instructions

"Functions"

means the Council Functions and the Health Board Functions

"Goods and Services" means the contributions identified in Schedule 2

"Health Board"

means Local Health Board and its statutory successor

"Health Board Functions"

means such of those statutory NHS functions referred to in Regulation 5 of the Regulations and which are exercised by the Health Board in relation to the Arrangements insofar as they are exercised for the purposes of commissioning the Services. This is subject to any exclusion agreed between the Partners or as provided in the Regulations

"Indemnifying Partner"

means any partner who incurs liability as defined in Clause 27.1

“Lead Commissioner”

means the Partner specified in Clause 7.1.1 as responsible for arranging the Services and who shall fulfil the role as at Regulation 7(4) of the Regulations

“Leadership Group”

“means” Health Board and the Council Directors and other officers as set out at Schedule 3 and who shall meet Monthly to discuss health and social care issues and to make decisions based on the wellbeing of patients/clients

"Mid-Year Review"

means a review held annually in accordance with Clause 31

"Month"

means a calendar month and **“Monthly”** shall be construed accordingly

"New Financial Year"

means the Financial Year succeeding the immediately previous Financial Year

“Older People”

means a person who is aged 65 years and above

"Partner"

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

"Pooled Fund"

means the pooled fund as described in Clause 14

"Pooled Fund Manager"

means the individual within the Lead Commissioner organisation appointed by that body and who shall be responsible for managing the Pooled Fund in accordance with the Regulations

"Quarter"

means each of the following periods in a Financial Year:

- 1st April to 30th June

- 1st July to 30th September
- 1st October to 31st December
- 1st January to 31st March

and “**Quarterly**” shall be construed accordingly

"Regulations"

means the NHS Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000 SI No 2993 as amended or replaced from time to time

"Services "

means the Care Home services to be arranged by the Lead Commissioner unless otherwise agreed and which are available from any Approved Provider who has been approved as suitable for meeting the needs of Older People who have been assessed as in need of Care Home accommodation services

"Service Users"

means those Older People who are assessed as eligible to receive the arranged Services. "Service User" shall be construed accordingly

"Staff"

means those persons from time to time employed by a Partner or the Lead Commissioner for the purposes of fulfilling Lead Commissioner obligations for commissioning Services under this Agreement

"Staff Costs"

means any costs, claims, liabilities, expenses and/or demands including any pension liabilities made against, suffered or incurred by a Partner as a result of any member of Staff being made redundant upon termination of this Agreement in the event that TUPE does not apply and alternative deployment arrangements cannot be agreed between the Partners or, where applicable, with the relevant member of Staff

“Standing Orders”

means rules used by the Partners for the regulation of their proceedings and business

“Statutory Guidance”

means Social Services Wellbeing (Wales) Act 2014 Part 9 Statutory Guidance (Partnership Arrangements)

“Terminating Partner”

means any Partner who by their actions causes the termination of this Agreement as defined in Clause 36.5

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014"

“Underspend”

means any surplus of money within the Pooled Fund which arises where expenditure has been less than that planned by the Partners for any Financial Year

"Withdrawing Partner"

has meaning at clause 6.2.1 and for the avoidance doubt is the Partner who issues notice to withdraw from the Partnership

"Working Day"

means Monday to Friday (inclusive) including weekends and public holidays.

3.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.

3.3 The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant Clauses to which they relate.

- 3.4 References to Schedules are references to the schedules to this Agreement and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.
- 3.5 References to a person or body shall not be restricted to natural persons and shall include a company, corporation or organisation.
- 3.6 Words importing the one gender only shall include the other genders and words importing the singular only shall include the plural.

4 BACKGROUND

- 4.1 Each Council commissions and provides social care for individuals ordinarily resident in the locality for which it is responsible.
- 4.2 The Health Board delivers and commissions health services for individuals usually resident within its administrative boundaries.
- 4.3 Statutory Directions issued under section 169 of the Social Services and Wellbeing (Wales) Act 2014 require Partnership Bodies to enter into partnership arrangements and for the establishment and maintenance of pooled funds from April 2018, for the exercise of their Care Home Accommodation Functions.
- 4.4 Section 33 of the National Health Service (Wales) Act 2006 grants powers:
 - 4.4.1 for local authorities to exercise prescribed NHS functions and for the local health board to exercise prescribed local authority health - related functions, and
 - 4.4.2 for local authorities and the local health board to establish and maintain pooled funds out of which payment may be made towards expenditure incurred in the exercise of prescribed local authority health-related functions and prescribed NHS functions.

4.5 The Partners wish to establish a Pooled Fund for the costs of Services which are to be arranged under their Care Home Accommodation Functions for Older People,

Commented [RL1]: As of course limited by the scope and content of Schedule 1 and 2 (for local completion) - see below

4.6 Schedule 1 sets out the commissioning objectives of the Partners

4.7 Schedule 2 sets out each Partner's declared contribution to the Pooled Fund

4.8 The Partners are entering into this Agreement in exercise of the powers referred to in Section 33 of the Act and the Regulations to the extent that the exercise of these powers is required.

4.9 The Partners have jointly carried out consultations with those persons who appear to be affected by these Arrangements in satisfaction of the requirements of Regulation 4(2) of the Regulations.

Commented [RL2]: There is no specific *form* of consultation required in the Regulations for S33. However, partners should have consulted jointly with such persons as appear to them to be affected by such arrangements. The nature of who is to be consulted and how should be agreed locally. Where there will be no immediate change in the service provided, or where this occurs after the partners have signed the agreement, the partners will already have other requirements for scrutiny and consultation that they would follow in the usual way.

4.10 Each of the Executive Bodies has provided authorisation to enter into this Agreement.

4.11 The Partners are satisfied that these Arrangements are consistent with the Board's objectives and those of the Partners for arranging services in Care Homes for Older People.

Commented [RL3]: Local process and approvals for the draft agreement should be considered. Time needs to be scheduled for after the drafting process, to enable agreement, and some implementation planning by April 2018 – ie the detailed work required at Schedules 1 to 3 needs to be completed early on

5 AIMS, BENEFITS AND OUTCOMES

Commented [RL4]: Are local objectives (Schedule 1 content) clear and agreed with the Regional Partnership Board and between the Partners. Do these meet local needs and the statutory requirements?

5.1 The aims, benefits and intended outcomes of the Partners in entering into this Agreement are to: -

5.1.1 provide efficient and effective commissioning for Care Home accommodation services to Older People who are assessed as in need of such care

5.1.2 offer equal outcomes and equitable provision to any Service User;

5.1.3 enable Service Users with various conditions, disabilities and medical conditions to live in an effective environment and enable the delivery

of care in accordance with the statement of well-being outcomes to be achieved for people who need care and support and carers who need support under Section 8 of the Social Services and Well-being (Wales) Act 2014;

- 5.1.4 procure the Services in order to maintain and promote quality of life for Service Users;
- 5.1.5 secure the best value care for Service Users and develop this in line with evidence based research and national and local priorities for health and social care;
- 5.1.6 treat all Service Users and Carers with dignity and respect and actively seek Service User and Carer views regarding the development of, and changes in, the strategy and planning for and provision of the Services;
- 5.1.7 further develop a quality-management system covering market development for Care Home accommodation, provider relationships, contract activity data, financial management and performance framework for continuous service improvement including risk management
- 5.1.8 provide assessment for commissioning staff with a view to workforce development and any necessary training.

6 DURATION OF THE AGREEMENT

- 6.1 The Agreement shall continue in force for so long as is necessary to comply:
 - 6.1.1 with statutory directions for a Pooled Fund under section 169 of the Social Services and Wellbeing (Wales) Act 2014; or
 - 6.1.2 until such alternative arrangements are made to comply with statutory directions for a Pooled Fund under section 169 of the Social Services and Wellbeing (Wales) Act 2014; or

Commented [RL5]: Agreement remains in place so long as Statutory Guidance requires or until alternatives to meet the statutory requirements can be agreed or in other circumstances as set out in the Clause 6.2

6.1.3 under the provisions of 6.2, below.

6.2 Where such statutory directions at 6.1.1 or 6.1.2 no longer apply, this agreement may be terminated in whole or in part on one of the following grounds:

6.2.1 on not less than 12 months' written notice to expire at the end of the next Financial Year by one Partner to withdraw from the partnership (the "Withdrawing Partner") to the others and, in such case, termination shall be limited to termination of the Agreement insofar as it relates to the Terminating Partner only and Clause 36.6 shall apply. Where the Withdrawing Partner is the Health Board, such notice to terminate may relate to all or any one or more of the administrative areas of the Councils within the Health Board's administrative area;

6.2.2 in accordance with the provisions of Clause 36; or

6.2.3 by written agreement between all of the Partners and Clause 36.8 and 36.9 shall apply.

7 DETAILS OF THE ARRANGEMENTS

7.1 The Partners have agreed that in accordance with Section 33 of the Act and with effect from the Effective Date, they will operate the following arrangements: -

7.1.1 ~~will~~ undertake the duties of Lead Commissioner for the Services;

Commented [RL6]: Need to agree which partner will be the Lead Commissioner for the first year

7.1.2 the establishment of a Pooled Fund to be administered by the Lead Commissioner for expenditure on the Services;

7.1.3 Council Functions will be delegated to the Health Board to enable ~~individuals~~ engaged by the Health Board to perform Council Functions as an officer of the Health Board in securing the Services;

Commented [RL7]: Partners will need to determine for their local arrangements which processes are undertaken by them or the Lead Commissioner, in fulfilling the statutory guidance requirements. This should be reflected in Schedules 1 and 2

7.1.4 Health Board Functions will be delegated to the Councils to enable individuals engaged by each Council to perform Health Board Functions as an officer of the Council by which they are engaged in securing the Services;

Commented [RL8]: See 7.1.3

7.1.5 the Health Board will delegate the Health Board Functions to the Lead Commissioner to the extent necessary to enable the Lead Commissioner to exercise those Health Board Functions in conjunction with the Council Functions when engaged in securing the Services; and

Commented [RL9]: See as at 7.1.3

7.1.6 the Councils will delegate the Council Functions to the Lead Commissioner to the extent necessary to enable the Lead Commissioner to exercise those Council Functions in conjunction with the Health Board Functions when engaged in securing the Services.

Commented [RL10]: See as at 7.1.3

7.2 The Lead Commissioner will identify a person to be the Pooled Fund Manager.

7.3 The Pooled Fund Manager will collect the Financial Contributions to the Pooled Fund.

7.4 In accordance with the provisions of Schedule 3, the Lead Commissioner is accountable to: -

7.4.1 the Health Board for those of the Health Board Functions which the Lead Commissioner exercises on its behalf; and

7.4.2 each of the Councils for those of the Council Functions which the Lead Commissioner exercises on their behalf;

7.4.3 all Partners for the delivery of the Services in accordance with this Agreement; and

7.4.4 all Partners for the fulfilment of its obligations under this Agreement.

7.5 Pursuant to the terms of this Agreement and in exercise of the relevant Functions, the Lead Commissioner shall be responsible for: -

7.5.1 the commissioning and procurement of the Services from the Pooled Fund

7.5.2 the management of the Pooled Fund in accordance with Clause 14,

7.5.3 performance reporting and oversight in accordance with Schedule 3.

7.6 Where the current Lead Commissioner decides that it no longer wishes to act as Lead Commissioner, it shall give the other Partners 12 Months' notice in writing to be effective from the end of the following Financial Year. The Partners shall, prior to the expiry of the notice period, decide by a majority which Partner shall take the place of the current Lead Commissioner as Lead Commissioner with effect from the date that the notice expires.

7.7 Where the Partners decide unanimously that they no longer wish the current Lead Commissioner to act as Lead Commissioner, the Partners shall give the current Lead Commissioner 12 Months' notice in writing of this which shall be effective from the end of the following Financial Year. The Partners shall, prior to the expiry of the notice period, decide which Partner shall replace the current Lead Commissioner as Lead Commissioner with effect from the date that the notice expires.

7.8 Where: -

7.8.1 the current Lead Commissioner gives the Partners notice in writing that it no longer wishes to act as Lead Commissioner in accordance with Clause 7.6 above; or

7.8.2 the Partners give the current Lead Commissioner notice in writing that they no longer wish the current Lead Commissioner to act as Lead Commissioner in accordance with Clause 7.7 above,

7.8.3 the Partners may agree that the Partner which shall take the place of the current Lead Commissioner as Lead Commissioner may do

Commented [RL11]: Partners will need to consider and agree locally how responsibilities for Pooled Fund Manager, Lead (Host) Commissioner duties and local commissioning or procurement activities of individual partners remain/change or fit within a clear governance and accountability framework

so on a date prior to the date that the 12 Month notice period expires, and the current Lead Commissioner will cease to be Lead Commissioner with effect from that date subject to the approval of the Partners.

- 7.9 Subject to the provisions of Clause 6.1 and in the event that the Partners are unable to agree which Partner shall be appointed as Lead Commissioner this Agreement will terminate automatically upon expiry of the 12 Month notice period given by the current Lead Commissioner

8 FULFILMENT OF FUNCTIONS

- 8.1 It is the Partners' intention that the Arrangements shall be the mechanism **through** which the Functions shall be fulfilled.
- 8.2 Nothing under this Agreement shall affect the liabilities of the Partners to any third parties for the exercise of their respective functions and **obligations**.

9 NOTIFICATION TO THE WELSH GOVERNMENT

- 9.1 In accordance with the relevant guidance, the Partners agree that they **shall notify the Welsh Government** of the exercise of the flexibilities in Section 33 of the Act and the Regulations in relation to the Arrangements.

10 GENERAL PRINCIPLES

- 10.1 In relation to the Arrangements, the Partners shall:
- 10.1.1 treat each other with respect and an equality of esteem;
 - 10.1.2 be open with information about the performance and financial status of each;
 - 10.1.3 provide early information and notice about relevant problems; and

Commented [RL12]: Insofar as is necessary to fulfil the requirements of the Agreement – see 4.8

Commented [RL13]: Partners will retain statutory responsibility for their functions carried out under all pooled fund arrangements. This means that the partnership agreement should include clear governance arrangements, including accountability, decision making and how the pooled budget arrangements will be managed in order to satisfy each partner. The guidance emphasises that “the general principles that should be considered include:

☐ Shared responsibility and accountability ☐ Fairness ☐ Transparency ☐ Consistency ☐ Value for money”

Commented [RL14]: Note

10.1.4 co-operate with each other to agree joint protocols and any variance in such protocols as may be required from time to time.

10.1.5 not pass a burden of service demand onto another partner, through local organisational actions.

11 APPROVED PROVIDERS

11.1 The Lead Commissioner shall only enter contracts (pursuant to Clause 7.5) with any Approved Provider which has been approved from time to time by all of the Partners or approved otherwise by an individual partner who would ordinarily have administrative responsibility for arranging the individual Service User's care in a Care Home.

Commented [RL15]: Where there is no Approved list and no Framework Agreement then partners might wish consider the need for one, as a part of a 'managed market' approach, or simply agree that Approved Providers are all registered providers of such care. It will be important for the Lead Commissioner to be clear for the purposes of managing payments on behalf of the Partners from the Pooled Fund appropriately.

Commented [RL16]: See arrangements at Schedule 2 and at Clause 4 here. As per WAG Advisory Notes and as a rule, within S33 operations, the governance arrangements of the Lead Commissioner will apply for procurement from a Pooled Fund. The Lead Commissioner may delegate its contracting powers to another Partner in order for that Partner to enter into contracts to be paid for from the Pooled Fund (Clause 16.3). If that is the case, it will need to be clear who that Partner is accountable to for the procurement, performance management of such a contract, how this is reported on to the Partners through the Pooled Fund Manager, and how the contract arrangement demonstrates who the provider of such a contracted service is accountable to.

12 FINANCIAL GOVERNANCE AND SCHEME OF DELEGATION

12.1 The Lead Commissioner shall produce and keep updated the financial governance arrangements and any scheme of delegation in respect of the lead commissioning of the Services and operation of the Pooled Fund including details of any financial delegation of commissioning from the Pooled Fund Manager to officers of other Partners.

12.2 The Leadership Group shall review operational arrangements and recommend to the Partners any changes that are considered necessary.

12.3 Financial governance for the Lead Commissioner shall be in line with the FSO of the Lead Commissioner.

13 GOVERNANCE ARRANGEMENTS

13.1 Operational oversight for the Arrangements will be conducted by the Leadership Group, which has been established to provide advice and support to: -

- 13.1.1 the Board in the exercise of its functions as described in this Clause 13; and
- 13.1.2 the Partners in exercise of decisions about use of their resources within the Pooled Fund and operation of the Arrangements
- 13.1.3 the Lead Commissioner in the performance of its obligations under this Agreement including decision making pursuant to Clause 7.

13.2 The terms of reference of the Leadership Group are set out in Schedule 3, and shall be adhered to at all times.

13.3 The Board shall in respect of the Arrangements: -

- 13.3.1 guide integration between the partners
- 13.3.2 consider strategy and objectives
- 13.3.3 ratify commissioning plans
- 13.3.4 ensure implementation as agreed by the Executive Bodies;
- 13.3.5 review performance and performance measures and recommend actions to be taken;
- 13.3.6 receive reports on the operation of the Arrangements and recommend any actions to be taken;
- 13.3.7 oversee, monitor and evaluate the Arrangements including success of the Pooled Fund;
- 13.3.8 take advice from the Leadership Group;

Commented [RL17]: Operates according to Statutory Guidance requirements and any additional duties agreed between the Partners locally. Therefore, you may wish to expand locally if required and if necessary provide more detail at Schedule 3 "Governance & Performance"

13.3.9 assist in resolving any disputes between the Partners and/or the Lead Commissioner;

13.4 The Board has been established in accordance with the Statutory Guidance and the Partners shall ensure that this is complied with always.

Commented [RL18]: Note

13.5 Each member of the Health Board or Cabinet / Executive Member of the Councils who is a Board member will have individual delegated responsibility from the Partner organisation whom they represent to make decisions which enable the Board to carry out its objectives, roles, duties and functions as set out in this Clause 13 and Schedule 3.

Commented [RL19]: Decide and be clear locally

13.6 The Executive Bodies may jointly agree from time to time to modify, extend or restrict the remit of their own individual Board member or by agreement with the Partners unanimously, they may restrict the remit of the Board as set out in this Clause 13 and Schedule 3 excepting any statutory requirements for Regional Partnership Boards.

13.7 Any variations to the Arrangements must be made with the unanimous agreement of the Partners. In the event that agreement cannot be reached in respect of any matters referred to in this Clause 13, the Partners shall follow the dispute procedure as set out in Clause 44.

13.8 Scrutiny arrangements for the Arrangements will be in accordance with each Executive Body's constitutional framework.

14 THE POOLED FUND

14.1 The Lead Commissioner shall be responsible for the commissioning of the Services in accordance with this Agreement on behalf of the Partners and, with effect from the Commencement Date, shall establish and host the Pooled Fund for the purposes of Regulations 7(4) and (6) of the Regulations.

Commented [RL20]:

14.2 The Chief Executive Officer of the Lead Commissioner shall have overall responsibility for ensuring that the Lead Commissioner properly fulfils its

obligations under this Agreement in respect of the Pooled Fund and the commissioning and procurement of Services

14.3 Without prejudice to Clause 14.2, the Chief Executive Officer of the Lead Commissioner shall ensure proper arrangements are in place for: -

14.3.1 the commissioning and procurement of the Services;

14.3.2 the management of the Pooled Fund; and

14.3.3 the management of Central Costs.

14.4 The Lead Commissioner shall ensure that arrangements are in place to account for all monies in the Pooled Fund on behalf of itself and the other Partners. The Lead Commissioner shall provide the financial administrative systems for the Pooled Fund and shall provide financial reporting and management support on the operation of the Pooled Fund to Partners.

14.5 The monies held in the Pooled Fund **may** only be used for expenditure on the Services as identified in this Agreement, and may not be transferred out of the Pooled Fund for expenditure on other services.

Commented [RL21]: Note and see remainder of Clause 14 below

14.6 The Partners may only depart from restrictions on expenditure as set out in Clause 14.5, with the unanimous approval of the Partners and only after a report from The Pooled Fund Manager which sets out the implications of any proposed change has been submitted to the Board for comment from the Board to the Partners. In the event that agreement cannot be reached in respect of any matters referred to in this Clause 14.6, the Partners shall follow the dispute procedure as set out in Clause 44.

14.7 **Provided** that such expenditure otherwise complies with this Agreement, the monies in the Pooled Fund may be expended on Council Functions and Health Board Functions in different proportions to that in which each Partner shall have contributed to the Pooled Fund.

Commented [RL22]: See Schedule 2 for local completion on the detailed budget that will be need to be created from the contributions. It is a general principle of a Pooled Fund that it is a single fund made up of contributions by the partners and out of which payments *may be made towards expenditure incurred in the exercise of any National Health Service functions or health-related functions. The budget profile will of course determine the plan for expenditure.*

14.8 The Lead Commissioner shall appoint the Pooled Fund Manager, and he/she will be authorised to delegate any duties and responsibilities as he/she deems appropriate within the delegated authorised limits of the Pooled Fund Manager.

14.9 On behalf of the Lead Commissioner, the Pooled Fund Manager shall have the following duties and responsibilities: -

14.9.1 managing the Pooled Fund and organising the preparation of Financial Year end memorandum accounts ready for external audit;

14.9.2 without prejudice to Clause 20 ensuring that expenditure from the Pooled Fund, does not exceed the financial resources available;

14.9.3 maintaining an overview of all joint financial issues affecting the Partners in relation to the Arrangements, the Services and the Pooled Fund;

14.9.4 ensuring that full and proper records for accounting purposes are kept in respect of the Pooled Fund for not less than 6 years excluding the year to which the record relates;

14.9.5 ensuring arrangements are in place to prepare consolidated **Monthly** financial reports for Partners and the Leadership Group and progress reports for the Board in accordance with Schedule 3. In addition, produce annual income and expenditure reports in respect of operation of the Pooled Fund together with a copy of Final Financial year-end audited memorandum accounts;

14.9.6 providing such other information as may be required by individual Partners, the Leadership

Commented [RL23]: Or as agreed. A minimum of quarterly is required statutorily but this may not be enough for financial control purposes

Group and the Board to monitor success and delivery of the Pooled Fund and to enable the Partners to complete their own financial accounts and returns.

- 14.9.7 Coordination of production of **that** element of the Board's annual report to the Welsh Ministers which relates to the use of the Pooled Fund in support of the Board's duties

Commented [RL24]: See section 33 to 35 the Part 9 Statutory Guidance

- 14.10 **The** Lead Commissioner may charge to the Pooled Fund all legal, human resources, financial, technical, administrative, performance, commissioning and other costs relating to the Arrangements provided such charges are reasonably incurred in securing the Services and have been unanimously agreed. Any other exceptional or unforeseen costs shall be unanimously agreed by the Partners prior to being incurred.

Commented [RL25]: Also, see Clause 22 and at Schedule 2 partners should list any goods or services (not a part of the pooled fund) which they will provide in support of the Pooled Fund arrangements

15 MANAGEMENT OF THE COMMISSIONING FOR THE SERVICES

- 15.1 Overall ongoing performance review of the Commissioned Services shall be coordinated by the Pooled Fund Manager with the support of **locally** identified managers.
- 15.2 Any **such** locally identified managers may carry out delegated decisions on use of the Pooled Fund where this is proposed by the Pooled Fund Manager and agreed by the Leadership Group in order to facilitate the smooth operation of the Pooled Fund but only where necessary for the purposes of fulfilling obligations expressly provided for in this Agreement and with the written consent of any Partner whose officers are to receive such delegation.
- 15.3 **Such** other managers of the Partners as identified at 15.2 may by agreement be employed by or seconded to the Lead Commissioner.

Commented [RL26]: Dependent upon local arrangements to be agreed and which might also include local teams, sub groups of the Leadership Group or similar for example. See at Schedule 3

Commented [RL27]: The Pooled Fund Manager can delegate decision making to another Partner (with Leadership Group Agreement) –ie to facilitate to facilitate the smooth operation of the Pooled Fund. In those circumstances, it will need to be clear what is being delegated by the Pooled Fund Manager and the full scope of any delegated decision making (over a part of the Pooled Fund).

Commented [RL28]: Partners may also wish to consider if it is beneficial to establish a local team to support any of the Joint Commissioning and procurement processes.

16 CONTRACTING

- 16.1 Where, for the purposes of fulfilling its obligations under this Agreement, the Lead Commissioner enters into a contract with any Approved Provider in

exercise of Council Functions and/or Health Board Functions, such contract shall, unless the Partners agree otherwise, be entered into in the name of the Lead Commissioner and, when entering into such contracts, the Lead Commissioner shall adhere to its FSO's and the terms of this Agreement (

16.2 The Lead Commissioner shall use all reasonable endeavours to ensure that any contracts entered into pursuant to Clause 16.1 are capable of being assigned or novated (in whole or in part) to any one or more of the Partners upon termination of this Agreement or as otherwise appropriate, including the appointment of a new Lead Commissioner.

16.3 Where it is financially or operationally beneficial for individual partners to enter directly into a contract with a third party then the Lead Commissioner may delegate its contracting powers to the appropriate Partner. In such circumstances the Partner entering into the contract shall adhere to its own FSO's and the terms of this Agreement (including any requirements set by the Partners).

Commented [RL29]: See comments at Clause 11 above

17 STAFFING

17.1 All Staff shall continue to be employed by the Partner employing them at the Commencement Date and they shall retain their current terms and conditions of employment. This will be reviewed and further agreement will be entered into if and when this position changes

Commented [RL30]: Subject to any collective agreements etc...

17.2 All Partners confirm that they will use their best endeavours to ensure that all Staff for which they are the Employing Partner are aware that they must not act outside their professional capability.

17.3 All Partners agree to comply with TUPE and all other employment legislation at all times, and the Employing Partner agrees to indemnify all other Partners for any Employment Liabilities that are associated with a decision, act or omission of the Employing Partner in this respect. In particular, all Partners agree to provide in a timely manner, and at least no later than 7 days after a request, any information about staff who may be subject to TUPE or any other employment procedure, such as a disciplinary procedure to any Partner who

requests information. All Partners also agree to support the actions of any Employing Partner undertaking any employment procedure within their administrative area.

- 17.4 Except as provided in this Clause 17, the arrangements for new appointees (whether by way of replacement of existing posts or to new posts) to support delivery of the Arrangements and whose costs are agreed by the Partners to be a charge to the Pooled Fund shall be appointed to an employer on the basis agreed by the Leadership Group.
- 17.5 Any liability as a result of the acts or omissions of any member of Staff, will be the responsibility of the Partner who employs them and each Partner agrees to indemnify all the Partners in respect of this liability.

TUPE on Commencement

- 17.6 The Partners agree that, as at the Commencement Date (01 April 2018), there were no Staff employed by any of the Partners immediately prior to the Commencement Date whose contracts of employment would, by virtue of the Partners entering into this Agreement and transferring responsibility for the performance of the Services, (including the delegation of functions pursuant to Clause 7) in accordance with this Agreement and in accordance with TUPE, have had effect after the Commencement Date (or at any other time) as if originally made between those persons and any other Partner.
- 17.7 If it is subsequently agreed or determined (by the Partners or by a court or other tribunal of competent jurisdiction) that there are Staff employed by any of the Partners on or before the Commencement Date whose contracts of employment do have effect after the Commencement Date as if originally made between those persons and the Lead Commissioner or any other Partner, then the original Employing Partner will not make any decisions or arrangements in respect of these Staff if connected with the transfer without the agreement of the Partner.
- 17.8 The Partners agree that if they were the Employing Partner prior to a transfer as described above, that they will indemnify the Lead Commissioner, or any

other Partner to whom staff are deemed to have transferred to, for all Employment Liabilities arising prior to the Effective Date of Transfer, as well as the portion of redundancy payments and Equal Pay claims which relate to the period that they were employed up to the Effective Date of Transfer.

TUPE upon change of Lead Commissioner

- 17.9 Clauses 7.6 and 7.7 enable the Partners to appoint an alternative Partner as Lead Commissioner. If, following the exercise of this power and the transfer of responsibility from the Partner previously appointed as Lead Commissioner it is agreed or determined (by the Partners or by a court or other tribunal of competent jurisdiction) that there are members of staff whose contracts of employment do have effect after the Lead Commissioning Transfer Date as if originally made between those persons and the incoming Lead Commissioner then both the outgoing and incoming Lead Commissioners will not make any decisions or arrangements about these Staff without the unanimous agreement of the Partners. The Partners also agree to share equally the Employment Liabilities for these Staff, which arise because of a change of Lead Commissioner.

TUPE Procedures

- 17.10 Without prejudice to any provision in this Agreement, in the event that TUPE is determined by Partners or by a court or other tribunal of competent jurisdiction to apply to any Staff at any time before or after the whole or partial termination or expiry of this Agreement, upon variation of this Agreement or upon the appointment of an alternative Partner Lead Commissioner, all Partners agree to comply with their obligations under TUPE and co-operate in a manner consistent with the principles of this Agreement and TUPE. All Partners agree to share equally the financial contributions and other arrangements which are thereafter required by and from each Partner in order to meet the obligations which arise under TUPE and otherwise, unless otherwise agreed by the Partners.
- 17.11 Without prejudice to Clauses, 17.4, and 17.6 (or any other provision of this Agreement), the Partners acknowledge and agree that it is their intention that upon the termination of this Agreement for any reason, each Partner shall

resume direct management control and responsibility for all Employment Liabilities arising or payable in respect of any and all of their respective Staff who were so employed by each of them immediately prior to the termination of the Agreement. The Partners also agree to share equally the Employment Liabilities which arise on termination for any Staff whose costs prior to termination had been shared through Financial Contributions to the Pooled Fund

- 17.12 Nothing within this Clause 17 shall have effect to alter the liabilities under Clause 36, which deals with if one Partner breaches or terminates the Agreement.

18 FINANCES AND RESOURCES MANAGEMENT

Key General Principles

- 18.1 The Pooled Fund is a fund overseen by the Board. Ultimately the Board makes decisions at a strategic level on what is expected from the Pooled Fund and how the Arrangements will be measured and performance of commissioning evaluated.
- 18.2 The Partners are responsible for the allocation and management of resources of the Pooled Fund and this Agreement.
- 18.3 Subject to Clause 13, the Partners will delegate day to day decision making on the Pooled Fund and associated operational issues to the Lead Commissioner as supported by Leadership Group in its role.

18.4 Key Financial Principles

- 18.4.1 With effect from the Commencement Date, the Partners agree to establish the Pooled Fund for the operational costs of the Services and with the individual Partner contributions as shown in Schedule 2.

- 18.4.2 The Pooled Fund Manager will ensure that consolidated Monthly budget monitoring reports are provided along with explanations of variances and other key issues to support good governance, scrutiny and decision making. The Monthly reports will be distributed to the Leadership Group and with a Quarterly narrative summary to the Board.
- 18.4.3 Where it is evident during the Financial Year that actual financial, performance, outcomes and activity figures are materially different from original plans then the Leadership Group will consider what action to take

18.5 Basis of Financial Contributions

- 18.5.1 It is agreed that in the First Financial Year, the Financial Contribution to the Pooled Fund shall be as shown at Schedule 2. These amounts will be reviewed annually and at any time when further change is approved
- 18.5.2 When determining the Partners' Financial Contributions to the Pooled Fund for a New Financial Year the Partners shall agree provisional Financial Contributions prior to the start of the New Financial Year taking into account any of the factors arising from management at Clause 18.4.2 to 18.4.3. For the avoidance of doubt, the Partners, through the Executive Bodies, shall confirm by 31 January prior to the start of the New Financial Year, each Partner's Financial Contribution.
- 18.5.3 in agreeing the Financial Contributions for each New Financial Year, the Partners shall take into account: -
- 18.5.3.1 their income and projections on income and any agreed cost pressure on the contracts for Services and the forecasted expenditure for the current Financial Year and/or any changes in the relevant inflation index or factors;

- 18.5.3.2 any agreed growth proposals, supported by business case submissions;
- 18.5.3.3 any changes in activity, demand or policy and legal changes to statutory duties in respect of the Services;
- 18.5.3.4 any efficiency savings requirement.

18.6 Where any of the Partners are unable to agree a figure for their Financial Contributions by the start of the New Financial Year that Partner or Partners will continue to make the most recent Financial Contribution in accordance with Clause 18.5.1 until the matter is resolved in accordance with the dispute provisions set out in Clause 44 of the Agreement.

18.7 The Partners shall act in good faith and in a reasonable manner when determining their Financial Contributions but in the event that agreement cannot be reached, Clause 44 shall apply.

18.8 Where Partners have resolved a dispute in relation to their Financial Contributions in accordance with the dispute resolution provisions of Clause 44, the Partners must make a payment into the Pooled Fund equivalent to the difference between any Financial Contributions in clause 18.6 for the duration of the dispute process, and the Financial Contributions deemed payable following completion of the dispute process in Clause 44.

18.9 Payments of the Financial Contributions

18.9.1 The Partners will fully commit their agreed Financial Contributions to the Pooled Fund and are also required to account for expenditure incurred against the Pooled Fund because of any financial delegation from the Lead Commissioner and shall provide Monthly monitoring information to the Lead Commissioner on such delegated expenditure in an agreed format for consolidation purposes.

19 AMENDMENTS TO FINANCIAL CONTRIBUTIONS

- 19.1 The Partners will have the power to approve further financial investment into the Pooled Fund and to approve disinvestment from the Pooled Fund subject to agreement of any affected Partner. Such power must be exercised with the unanimous agreement of all Partners.
- 19.2 Any additional investment approved will be apportioned on the basis of that agreed unanimously between the Partners.

Disinvestment

- 19.3 No partner shall disinvest from the Pooled Fund if it shifts a Service responsibility or a financial burden onto another partner.
- 19.4 An in-year underspend will not be a disinvestment even if the underspend is because of a deliberate decision taken by the Partners in-year. In such circumstances the in-year underspend will be treated in accordance with paragraph 21.1 of this agreement.
- 19.5 Any proposals for permanent disinvestment will need to be supported by a report to the Board from the Leadership Group and in which report is outlined an assessment of the likely impact of the proposed permanent disinvestment. The Leadership Group will then will seek comments from the Board prior to the proposed disinvestment being considered by the Partners for unanimous agreement.
- 19.6 In the event that agreement cannot be reached in respect of any matters referred to in this Clause 19, the Partners shall follow the dispute procedure as set out in Clause 44.

20 OVERSPENDS

Key General Principles

- 20.1 On behalf of the Lead Commissioner, the Pooled Fund Manager shall ensure that the costs associated with the Services can be met by the Pooled Fund in each Financial Year and do not result in an overspend.

- 20.2 On behalf of the Lead Commissioner, the Pooled Fund Manager will continually monitor expenditure from the Pooled Fund and will notify the Leadership Group whenever an overspend is projected during a Financial Year and identify the reasons.
- 20.3 Upon receipt of notification from the Pooled Fund Manager pursuant to Clause 20.2, the Leadership Group shall, taking full and proper account of the potential liabilities of each Partner for such overspend pursuant to this Clause 20, agree how to manage avoidance of the projected overspend. This will include arrangements for ensuring mitigating action is taken immediately to identify the cause and responsibility for the overspend and development and implementation of an action plan to recover the overspend in year and ensure the financial liability for the current and future years is clearly assigned and dealt with within available resources and for keeping the position under review. The Pooled Fund Manager will implement these arrangements. The Partners shall act in good faith and in a reasonable manner in agreeing the management of the Pooled Fund budget and any overspend or potential overspend.
- 20.4 Without prejudice to the obligations of the Pooled Fund Manager and the Partners pursuant to Clause 20.3, where at the end of any Financial Year or upon termination of the Agreement there is an overspend in respect of the Pooled Fund, the Pooled Fund Manager shall prepare a report for the consideration of the Partners. The deficit resulting from the overspend will be retained within the Pooled Fund until the Partners have considered this report and have unanimously agreed the cause(s) of the overspend and any necessary remedial action.

Commented [RL31]: See also 20.5

Overspends – Financial Year End or upon Termination

- 20.5 Having considered the report of the Pooled Fund manager and the causes identified pursuant to Clause 20.4, an overspend which occurs in any Financial Year, shall be dealt with as follows: -

- 20.5.1 Where it has been determined unanimously by the Partners that an overspend can be attributed to the

action or inaction of a Partner, that Partner will make an additional contribution to the Pooled Fund to the value of the overspend that is attributed to them.

- 20.5.2 Any overspend which occurs as a direct consequence of a failure by the Lead Commissioner to manage the Pooled Fund in accordance with the terms of this Agreement shall be the responsibility of the Lead Commissioner. For the purposes of this Clause, the occurrence of an overspend shall not be considered to be a failure of the Lead Commissioner's obligations under Clause 14.9 or 20.1 if such overspend has been properly projected and managed in accordance with the provisions of this Clause 20; occurred as a consequence of circumstances outside of the reasonable control of the Lead Commissioner; and/or is attributable to the acts or omissions of a Partner (including implementation of directions issued by the Partners.
- 20.5.3 Where the Partners determine that the overspend cannot be attributed to the action or inaction of a specific Partner and is not a direct consequence of a failure by the Lead Commissioner to manage the Pooled Fund in accordance with the terms of this Agreement then Partners will be required to make additional contributions in to the Pooled Fund in order to fund such overspends. In such circumstances, the additional contributions required to fund the overspend will be apportioned on a pro rata basis of the Financial Contribution of each Partner to the relevant element of the Pooled Fund for the year that the overspend occurred.
- 20.5.4 In the event that agreement cannot be reached in respect of any matters referred to in this Clause 20,

the Partners shall follow the dispute procedure as set out in Clause 44.

21 UNDERSPENDS

Key General Principles

- 21.1 All Underspends in relation to the Pooled Fund identified at the end of the Financial Year will be distributed to each Partner in direct proportion to the Financial Contribution of each Partner to the Pooled Fund for the Financial Year in which the Underspend occurred.
- 21.2 Where the Pooled Fund Manager projects that an in-year underspend may occur, this will be reported to the Leadership Group and the reasons for the underspend will need to be clearly identified. The Leadership Group will consider what actions if any, are necessary and seek the agreement of Partners unanimously where any change in use of funds is required.

22 GOODS AND SERVICES IN SUPPORT OF THE PARTNERSHIP

- 22.1 For the avoidance of doubt, the Partners shall make available other goods and services in order to ensure that the Services and the Arrangements operate in accordance with this Agreement
- 22.2 Each Partner shall ensure that they provide and fund their respective goods and services as set out at Schedule 2 and that no changes to such contributions shall be made without the agreement of the other Partners.

23 CAPITAL EXPENDITURE

- 23.1 The Pooled Fund shall not be applied towards capital expenditure.

24 GRANTS

- 24.1 Each Partner will keep under review all grants that may be available to support the Arrangements and the Services from time to time. The Partners will (where it is reasonable to do so) apply for all appropriate grants.
- 24.2 The Partners will agree (acting reasonably), the manner in which any grant application should be made, the Partner responsible for making the application and the basis on which any such grant shall be administered and applied (having regard to the grant conditions).
- 24.3 All grants received in respect of the Arrangements and/or the Services will be added as a contribution to the Pooled Fund unless ~~the~~ agreed otherwise.
- 24.4 The Partners will ensure that all monies from any grants received shall be applied in a proper manner. In the event a Partner misapplies monies received from any grant, the Partner in default shall reimburse the other Partners to the extent that the monies were misapplied.
- 24.5 Subject to Clause 24.6, nothing in this Clause 24 shall prejudice the obligations of a Partner to comply with any internal or external rules or protocols regarding applications for and expenditure of grant monies available to that Partner. Where such a rule or protocol prevents, a Partner complying with the terms of this Clause 24, it shall notify the other Partners, through the Leadership Group, immediately and an appropriate course of action will be agreed between the Partners.
- 24.6 Where any Partner decides to apply for a grant relating to the Services, it shall first notify the Lead Commissioner. The Lead Commissioner shall notify the Leadership Group of any such grant application.

25 VAT

- 25.1 As at the Commencement Date, the Partners have agreed that VAT will operate in accordance with the joint guidance issued by the Department of Health and HM Customs and Excise dated 12 June 2002 (and updated on 7 March 2003 and any subsequent updates).

26 AUDIT AND RIGHT OF ACCESS

- 26.1 The Lead Commissioner shall promote a culture of probity and sound financial discipline and control. The Lead Commissioner shall arrange for the audit of the accounts of the Pooled Fund and shall require its external auditors to make arrangements to certify an annual return of those accounts, the costs of which shall be met from the Pooled Fund.
- 26.2 All internal and external auditors and all other persons authorised by the Partners will be given the right of access by them to any document, information or explanation they require from any employee, member or contractor of any of the Partners in order to carry out their duties. This right is not limited to financial information or accounting records. If any person is concerned about giving access to non-financial information, he/she may request a discussion with the senior officer of the person requesting the information such as the senior internal auditor or senior external auditor before it is disclosed.
- 26.3 The right of access under Clause 26.2 applies equally to premises or equipment used in connection with the Arrangements. Access may be at any time without notice, provided there is good cause for access without notice.

27 LIABILITIES, INSURANCE AND INDEMNITIES

- 27.1 Each Partner shall indemnify the other Partners, their officers, employees and agents against any damage, cost, liability, loss, claim or proceedings whatsoever arising in respect of: -
- 27.1.1 any damage to property real or personal including (but not limited to) any infringement of third party patents, copyrights and registered designs;
 - 27.1.2 any personal injury including injury resulting in death;
 - 27.1.3 any fraudulent or dishonest act of any of its officers, employees or contractors;

27.1.4 any Service User or Carer complaint or investigation by the Public Service Ombudsman for Wales; or

27.1.5 any breach of statutory or common law duty,

arising out of or in connection with the Arrangements in so far as such damage, cost, liability, loss, claim or proceedings shall be due directly or indirectly to any negligent act or omission or any breach of this Agreement by the Indemnifying Partner, its officers or employees.

27.2 Where the Indemnifying Partner has only contributed partially to the cause of any damage, cost, liability, loss, claim or proceedings, it shall only be liable to indemnify the other Partners for such proportion of the total costs of such damage, cost, liability, loss, claim or proceedings as its contribution to the cause bears to the total damage, cost, liability, claim or proceedings. Where the Partners are unable to agree any such apportionment, the disputes procedure in Clause 44 shall apply.

27.3 The Partners shall ensure that they maintain policies of insurance (or in the case of the Health Board, equivalent arrangements through the schemes operated by the Welsh Risk Pool) to cover the matters referred to in Clauses 27.1 to 27.2, 17 and 43.2, including but not limited to employers' liability, public liability, clinical negligence and other liabilities to third parties.

28 STANDARDS

Standards of Conduct

28.1 The Partners shall comply with and shall ensure the Arrangements comply with all statutory requirements and all national, local and other guidance on conduct, probity and good corporate governance which apply to the Partners (including the Partners' respective Standing Orders and FSOs).

Governance

Commented [RL32]: You may wish to consider the role of Clinical Governance here and in the performance arrangements at Schedule 3

- 28.2 Each of the Partners shall ensure that they operate within frameworks through which they are accountable for continuously improving the quality of their services and safeguarding high standards of care by creating an environment in which excellence will flourish.

Corporate Governance

- 28.3 The Partners agree to comply with the principles and standards of corporate governance relevant to local health boards and to local authorities as appropriate.

General Service Standards

- 28.4 General Service standards for the Services will be set in accordance with legislation and guidance produced by the Welsh Government and as may be agreed locally by the Partners.

Equality and Equal Opportunities

- 28.5 The Partners are committed to an approach to equality and equal opportunities as represented in their respective policies. The Partners will maintain and develop these policies as applied to service provision, and may develop a joint strategy for the Arrangements.

Welsh Language Obligations

- 28.6 The Partners shall ensure compliance with their Welsh language schemes prepared under the provisions of the Welsh Language Act 1996 in relation to the Arrangements and any Welsh Language Standards imposed by the Welsh Language Commissioner and shall ensure the observance of the same by all staff.

29 PERFORMANCE MANAGEMENT AND INSPECTION

- 29.1 Details of the performance framework are set out in Schedule 3 of this Agreement. All partners are expected to comply with the performance management framework requirements including utilisation of established

Commented [RL33]: Requires local completion to reflect local targets and objectives at Schedule 3 plus financial reporting and other scheduled reports to the Board

systems, provision of information to agreed timescales, in the expected format and to expected data standards and information and explanations for variations from expected performance.

- 29.2 As set out in Clause 26 the Lead Commissioner and the other Partners will be subject to audit by Auditors appointed by the Wales Audit Office. Partners will also be subject to regulatory inspections, as appropriate, by the Care & Social Services Inspectorate Wales (CSSIW) and Health Inspectorate Wales (HIW).

30 CONFLICTS OF INTEREST

- 30.1 All Staff shall ensure that they act in the interest of all Partners.
- 30.2 No member of Staff shall put themselves in a position whereby their employment duties and private interests conflict. The Code of Conduct of the relevant employer shall apply; which should incorporate best standards of practice for public servants.

31 MONITORING, REVIEW AND REPORTING

- 31.1 The Lead Commissioner through the Pooled Fund Manager shall be responsible for co-ordinating the reporting to the Leadership Group on a Monthly basis and with narrative performance reports to the Board on a Quarterly basis. The content of reports will be as set out at Schedule 3 of the Agreement and as updated by agreement between the Partners where required.
- 31.2 Consolidated finance and performance reports to the Leadership Group will be produced so that they link in with Leadership Group meeting dates with the first report due at Quarter 1 of the Financial Year. This report will show both budgets and forecasts for the full Financial Year (Financial and Activity) as well as any key issues/risks arising.
- 31.3 Annual reports to the Leadership Group will be submitted after the Final Year End accounts have been audited and are to include:
- Financial Performance

Commented [RL34]: See Clause 29 Comments. Partners need to agree the performance reporting arrangements

- Service Delivery Performance (including narrative)
- Risks/Issues
- Complaints and Compliments
- Future plans

31.4 The Leadership Group shall monitor the effectiveness of the arrangements and shall carry out a Mid-Year review of the Arrangements in each Financial Year to inform future planning and any necessary consultation with the Board.

31.5 The Mid-Year Review will include: -

31.5.1 an evaluation of both financial and activity performance for the current financial year to date, against agreed input, output and outcome based performance measures, targets and priorities;

31.5.2 the quality of the Services funded from the Pooled Fund;

31.5.3 an evaluation of any statistics or information required to be kept by the Welsh Government from time to time; and

31.6 The Partners will use information from the Mid-Year Review to inform the financial planning, budget setting process, any Service plan and performance targets for the next Financial Year, by end-January preceding the forthcoming New Financial Year. The Lead Commissioner will prepare a report documenting these matters for presentation to the Board and the Executive Bodies.

32 SUBSTANDARD PERFORMANCE

32.1 The expectation from partners is that management processes established are capable of identifying substandard performance. The expectation is that

Commented [RL35]: It is important to have some form of Review at least annually to ensure satisfaction with Arrangements and to inform the New Financial Year planning and budget setting plus the Partnership Board and its Annual Report to Welsh Ministers. The timing and process for this needs to be considered locally alongside the locally agreed financial planning cycle.

Commented [RL36]: Of the Pooled Fund and any associated partnership arrangements agreed

the Lead Commissioner with the Leadership Group, will take all reasonable action, within any delegated authority to remedy the substandard performance and report such actions to the Board.

33 COMPLAINTS

33.1 To the extent permitted by law, Service User and/or Carer complaints relating to the Arrangements including services commissioned on behalf of a Service user will be dealt with as follows: -

33.1.1 Complaints regarding any product or service provided by (or the responsibility of) an Approved Provider for resolution in accordance with the Approved Provider's complaints procedure. If this fails to resolve the issue, the matter shall be referred to the Lead Commissioner for further investigation.

33.2 Nothing in this Clause 33 shall restrict a Service User's right to complain using the Partners' respective statutory complaints procedures.

Commented [RL37]: Note

33.3 The Partners shall co-operate with each other in connection with the investigation and resolution of complaints. Each Partner shall notify the other Partners, at frequencies to be agreed, of any complaints received relating to these Arrangements. Where a complaint relates to the Functions of more than one Partner, the relevant Partners will seek to agree how such complaint shall be managed and co-ordinated.

33.4 Where a complaint is referred to the Lead Commissioner for investigation the relevant Partners shall co-operate with the Lead Commissioner in relation to such investigations, and provide all assistance which is reasonable in the circumstances.

34 OMBUDSMAN

- 34.1 The Partners will co-operate fully with any investigation undertaken by the Public Service Ombudsman for Wales in connection with the Arrangements.

35 INFORMATION SHARING

- 35.1 The Partners shall follow and ensure that the Arrangements comply with all legislation, regulations and guidance on information sharing applicable to local authorities or Health Bodies in Wales (including for the avoidance of doubt the Data Protection Act 1998 and other data protection legislation) including the **Wales** Accord on the Sharing of Personal Information framework and its associated Information Sharing Protocols.

- 35.2 The Partners shall establish and keep operational; -

- 35.2.1 procedures (including forms) for handling Service User consent;
- 35.2.2 documentation for Service Users which explains their rights of access, the relevance of their consent, rules and limits on confidentiality, and how information about them is treated; and
- 35.2.3 such additional policies, procedures and documentation as shall be necessary in order to meet the purposes, guidance and requirements of the Welsh Government and of all relevant freedom of information and data protection legislation as they apply to the Partners and the Arrangements.

- 35.3 The Partners shall co-operate fully with each other in order to comply with any requirement under Clause 35.2.

- 35.4 The Partners must ensure compliance with applicable national data protection laws at all times for the duration of the Agreement.

- 35.5 The Partners undertake to indemnify each other and hold each other free from any cost, charge, damages, expense or loss which they cause each

Commented [RL38]: As available at <http://www.waspi.org/>

Statutory Guidance also states, "39. Regional Partnership Boards will need to ensure that information is shared and used effectively to improve the delivery of services, care and support. Use of technology and common systems should underpin this and the Regional Partnership Board will be expected to provide strategic leadership in this area"

other as a result of their breach of either of the Freedom of Information Act 2000 and the Data Protection Act 1998, or any successor legislation.

- 35.6 Each party shall perform its obligations under the Data Protection Act 1998 and the Freedom of Information Act 2000 at its own cost.

36 TERMINATION & EFFECTS OF TERMINATION

- 36.1 The Partners are required to operate a Pooled Fund under direction from Welsh Ministers

36.2 Where: -

36.2.1 a Partner commits a material breach of any of its obligations hereunder which is not capable of remedy; or

36.2.2 a Partner commits a material breach of any of its obligations hereunder which is capable of remedy but has not been remedied within 60 days after receipt of written notice from one or more of the Partners,

and no alternative form of Pooled Fund is agreed between the Partners then any Partner may refer the matter to the Welsh Ministers for consideration,

- 36.3 In circumstances other than Clause 36.1 and 36.2 and where the Partners agree unanimously that the Breaching Partner shall no longer be a party to this Agreement, they shall give the Breaching Partner a minimum of three (3) Months' written notice and, with effect from the date on which such notice expires (or such later date as may be specified) this Agreement shall be terminated in respect of the Breaching Partner and Clause 36.7 shall apply. A copy of this notice will be sent to the Executive Body of the Breaching Partner (as applicable) for the purposes of Clause 36.3.

- 36.4 In circumstances other than Clause 36.1 and 36.2 any Partner (the "Terminating Partner") may at any time by notice in writing to the other

Partners terminate this Agreement insofar as it relates to the Terminating Partner if: -

- 36.4.1 as a result of any change in law or legislation it is unable to fulfil its obligations hereunder; or
- 36.4.2 the fulfilment of its obligations hereunder would be in contravention of any guidance from any Secretary of State or the Welsh Government issued after this Agreement comes into force; or
- 36.4.3 the fulfilment of its obligations hereunder 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 in 36.4.1 to 36.4.3. Any liability arising as a direct result of a termination under this Clause 36.4 shall be apportioned in accordance with Clause 36.6.

36.5 In the case of notice pursuant to Clause 36.3. or Clause 36.4., the date of termination shall be as specified in the notice having regard to the nature of the change referred to in Clause 36.4.1 or the guidance referred to in Clause 36.4.2 as the case may be. In the case of notice pursuant to Clause 36.4.3, termination shall be as from the date of service of such notice.

36.6 In the event that any one Partner (the "Terminating Partner") terminates the Agreement insofar as it relates to the Terminating Partner (or, in the case of the Health Board, one or more of the areas served within its administrative boundaries under Clause 6.2, the Terminating Partner shall provide compensation to the Pooled Fund for such losses or shortfalls incurred by the Pooled Fund (pursuant to Clauses 17, 36.10 or otherwise) as a result of the termination. This shall include: -

- 36.6.1 any Staff Costs incurred by the Pooled Fund due to the termination;

36.6.2 a proportionate contribution to any liability incurred by the Pooled Fund arising under any contracts entered into pursuant to Clause 11 or 16 where such liability is incurred as a consequence of termination;

36.6.3 any liability incurred by the Pooled Fund due to the failure to comply with any grant agreements as a consequence of the termination. Where such termination triggers repayment of the whole or any part of a grant made available to the Arrangements then the Terminating Partner shall provide appropriate compensation to the Pooled Fund,

PROVIDED THAT all Partners will take (and will procure that their officers, employees and agents take) all reasonable steps to mitigate their losses arising out of any of the matters referred to in this Clause 36.6.

36.7 In the event that this Agreement is terminated in respect of a Breaching Partner in accordance with Clauses 36.3 and 36.4, the Breaching Partner shall provide compensation to the Pooled Fund for such losses or shortfalls incurred by the Pooled Fund (pursuant to Clauses 14, 36.10 or otherwise) as a result of such termination (including termination, where applicable, by the Corresponding Partner pursuant to Clause 36.4). This shall include: -

36.7.1 any Staff Costs incurred by the Pooled Fund as a result of the reduction in the Commissioning Services due to the termination;

36.7.2 a proportionate contribution to any liability incurred by the Pooled Fund arising under any contracts entered into pursuant to Clause 11 or 16 where such liability is incurred as a consequence of the termination; and

36.7.3 any liability incurred by the Pooled Fund due to the failure to comply with any grant agreements as a consequence of the termination. Where such termination triggers repayment of the whole or any part of a grant made available to the Arrangements then the Breaching Partner shall provide appropriate compensation to the Pooled Fund

PROVIDED THAT all Partners will take (and will procure that their officers, employees and agents take) all reasonable steps to mitigate their losses arising out of any of the matters referred to in this Clause 36.7.

36.8 In the event of termination of this Agreement (in whole or in part) under Clause 36.4 or Clause 6.2.3 or Clause 7.9 any liabilities incurred by the Pooled Fund directly as a result of the termination of this Agreement (in whole or in part) shall be apportioned directly to Partners where applicable and between the Partners in direct proportion to their respective Financial Contributions to the Pooled Fund as set out in the latest financial plan agreed at Schedule 2 (or for the duration of the Agreement where termination occurs before the first anniversary of the Commencement Date) and Such liabilities will include:

36.8.1 any Staff Costs incurred by the Pooled Fund as a result of the termination;

36.8.2 any liability incurred by the Pooled Fund arising under any contracts entered into pursuant to Clause 11 or 16 where such liability is incurred as a consequence of the termination; and

36.8.3 any liability incurred by the Pooled Fund due to the failure to comply with any grant agreements as a direct consequence of the termination including repayment of the whole or any part of a grant made available to the Arrangements.

Commented [RL39]: Note

PROVIDED THAT all Partners will take (and will procure that their officers, employees and agents take) all reasonable steps to mitigate their losses arising out of any of the matters referred to in this Clause 36.8.

36.9 The Lead Commissioner shall upon termination of this Agreement (in whole or in part) pursuant to Clauses 6.2.1, 7.9, 36.3 and 36.4, be entitled to recover the following liabilities from the Pooled Fund: -

- 36.9.1 any Staff Costs up to a maximum of the annual salary for each member of Staff in respect of which the Staff Costs are incurred;
- 36.9.2 any liability arising under any contracts entered into pursuant to Clause 11 or 16 as a direct consequence of the termination;
- 36.9.3 any liability arising through a failure to comply with any grant conditions (including repayment of the whole or any part of that grant) as a direct consequence of the termination;

PROVIDED THAT the Lead Commissioner will take (and will procure that their officers, employees and agents take) all reasonable steps to mitigate their losses arising out of any of the matters referred to in this Clause 36.9.

36.10 It is agreed that the right of the Lead Commissioner to recover the liabilities referred to in Clause 36.9 shall apply upon termination (in whole or in part) of this Agreement even where the Lead Commissioner is the Breaching Partner or Terminating Partner for the purposes of the relevant provision of this Clause 36. However, such right of recovery is without prejudice to any liability of the Lead Commissioner to the other Partners or the Pooled Fund pursuant to Clause 36.6 (where the Lead Commissioner is the Terminating Partner), Clause 36.7 (where the Lead Commissioner is the Breaching Partner) or Clause 36.9. This means that the Lead Commissioner's right to recover liabilities from the Pooled Fund pursuant to Clause 36.9 will be limited to the extent that the value of such liabilities incurred by the Lead Commissioner

exceed the value of the liabilities (if any) owed by the Lead Commissioner to the other Partners or the Pooled Fund pursuant to Clause 36.6, 36.7 or 36.9.

36.11 Subject to the provisions of this Clause 36, on termination, any underspend shall be dealt with in accordance with Clause 21 and any overspend shall be dealt with in accordance with Clause 20.

36.12 Where the Agreement is terminated in part, then except for that part of the Agreement that has been terminated, this Agreement shall continue in full force and effect. Where the Agreement is terminated in respect of one Partner then subject to Clause 36.4, the Agreement shall continue in full force and effect in relation the remaining Partners unless otherwise agreed by the remaining Partners.

36.13 Termination of this Agreement (in whole or in part) shall be without prejudice to the Partners' rights in respect of any antecedent breach and the provisions of this Clause and Clauses 4, 6.2, 8.2, 20, 21, 26, 27, 33.3, 34, 35.1, 36 (as applicable), 37, 38, 39, 40, 42, 44 to 49 (inclusive) which shall continue in full force and effect.

37 CONFIDENTIALITY

37.1 Except as required by law, each Partner agrees at all times during the continuance of this Agreement and after its termination to keep confidential all documents and papers which it receives or otherwise acquires in connection with the others and which are marked with such words signifying that they should not be disclosed.

38 FREEDOM OF INFORMATION

38.1 The Partners agree that they will each co-operate with one another to enable any Partner receiving a request for information under the Freedom of Information Act 2000 to respond to that request promptly and within the statutory timescales. This co-operation shall include but not be limited to finding, retrieving and supplying information held, directing requests to other Partners or parties as appropriate and responding to any requests by the Partner receiving a request for comments or other assistance.

39 WAIVERS

- 39.1 The failure of a Partner to enforce, at any time or for any period of time, any of the provisions of this Agreement shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Partner thereafter to enforce such provision.
- 39.2 No waiver in any one or more instances of a breach of any provision hereof, shall be deemed to be a further or continuing waiver of such provision in other instances.

40 ENTIRE AGREEMENT

- 40.1 The terms herein contained together with the contents of the Schedules constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement, and any representation promise or condition not incorporated herein shall not be binding on any Partner.
- 40.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of each of the Partners.

41 CHANGES IN LEGISLATION, ETC.

- 41.1 The Partners, shall review the operation of the Arrangements 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 Arrangements so as to ensure that the Arrangements comply with such legislation or guidance.

42 GOVERNING LAW

42.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English and Welsh Courts.

43 HUMAN RIGHTS

43.1 Each Partner shall, and shall ensure that its employees' agents and subcontractors shall, at all times act in a way which is compatible with the Convention rights within the meaning of section 1 of the Human Rights Act 1998.

43.2 Each Partner (the "First Partner") shall indemnify the other Partners ("Other Partners") against any liability, loss, claim or proceedings incurred by the Other Partners arising out of and/or in connection with any breach by the First Partner of its obligations under Clause 43.1 in respect of the Arrangements.

44 DISPUTES

44.1 In the event of a dispute between the Partners in connection with this Agreement, the matter shall be referred to the Chief Executives of the Executive Bodies who shall endeavour to resolve the dispute.

44.2 In the event that the dispute remains unresolved having followed the procedure in Clause 44.1, or where owing to the nature or level of the dispute it would be inappropriate for Chief executives to seek to resolve it, the matter shall be referred to the Executive Bodies who shall endeavour to settle the dispute between them.

44.3 In the event that the Partners remain unable to resolve the dispute between themselves within a reasonable period of time having regard to the nature of the dispute and having followed the procedure in Clauses 44.1. 44.2, the matter may be referred by the Executive Bodies for arbitration on the following basis: -

44.3.1 referral shall be to a single arbitrator selected by the Executive Bodies or, in the absence of agreement,

Commented [RL40]: Consider locally and also if you wish to use the Partnership Board in a role as a part of this process

to be nominated by the President of the Chartered Institute of Arbitration;

44.3.2 such arbitration shall be conducted in accordance with the provisions of the Arbitration Act 1996 and the arbitrator appointed shall have the power to: -

44.3.2.1 obtain the assistance of such experts as he or she shall think fit and to adopt any statement or report that is obtained; and

44.3.2.2 order and direct what he or she shall think to be done by any of the Partners respectively with regard to the matters in difference.

44.3.2.3 the decision of the arbitrator shall be final and binding on all Partners.

45 TRANSFERS

45.1 No Partner may assign, transfer, sub-contract or dispose of this Agreement or any benefits and obligations hereunder without the prior written consent of the other Partners acting through the except to any statutory successor in title to the appropriate statutory functions.

46 NO PARTNERSHIP

46.1 Nothing in this Agreement shall create or be deemed to create a legal partnership or the relationship of employer and employee between the Partners.

47 NOTICES

47.1 Any notice or communication shall be in writing.

- 47.2 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: -

.....**Council**

Officer and Address

.....**Council**

Officer and Address

.....**Council**

Officer and Address

.....**Council**

Officer and Address

.....**Council**

Officer and Address

..... **Local Health Board**

Officer and Address

- 47.3 Any notice served by delivery shall be deemed to have been served on the date it is delivered to the addressee. Where notice is posted, it shall be sufficient to prove that the notice was properly addressed and posted and the addressee shall be deemed to have been served with the notice 48 hours after the time it was posted.

48 SEVERANCE

- 48.1 If any provision of this Agreement becomes or is declared by any court of competent jurisdiction to be invalid or unenforceable in any way such enforceability shall in no way impair or affect any other provision of this Agreement the remaining provision of which will remain in full force and effect.

49 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

49.1 Unless the right of enforcement is expressly provided, no third party shall have the right to pursue any right under this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF the Partners have executed this Agreement as a Deed the day and year first above written:

Executed as a deed by affixing the
COMMON SEAL of.....**COUNCIL**

In the presence of:

Signed (Authorised Officer):
Name/Position:

Signed (Authorised Officer):
Name Position:

Executed as a deed by affixing the
COMMON SEAL of **COUNCIL**

in the presence of:

Signed (Authorised Officer):
Name/Position:

Signed (Authorised Officer):
Name/Position:

Executed as a deed by affixing the
COMMON SEAL of **COUNCIL**

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

COMMON SEAL of **COUNCIL**

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

COMMON SEAL of **COUNCIL**

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

COMMON SEAL of **LOCAL HEALTH BOARD**

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

SCHEDULE 1:

SCOPE OF SERVICES AND OBJECTIVES:

Commented [RL41]: To be completed at a local level

1 INTRODUCTION

- 1.1 The Scope of Services, Aims and Outcomes for the Services at commencement of this Agreement are as set out here.
- 1.2 The guiding principles for the design and delivery of services for Older People in the Region and provision of care homes accommodation are set out in theStatement of Strategic Intent and this document also provides the basis for integrated commissioning and pooled fund arrangements.
- 1.3 Measurement of success against objectives here at Schedule 1 will be according to the Appendix at Schedule 3 and any other means agreed from time to time.
- 1.4 Arrangements for service delivery should accord with the statement of well-being outcomes to be achieved for people who need care and support and carers who need support under Section 8 of the Social Services and Well-being (Wales) Act 2014

Commented [RL42]: Appendix to Schedule 3 requires detailed completion on what financial and commissioning performance reports will be prepared for the Partners and sufficient for the Board to fulfil its duties

Commented [RL43]: See 1.3 above and consider how reporting will operate

2 SCOPE OF SERVICES

The scope of services is as follows:

.....

.....

.....

Access to Services will be as follows:

3 AIMS & OBJECTIVES FOR 2017/18

3.1 The overarching strategic aim of this Agreement is: -

- To ensure coordinated arrangements for ensuring an integrated approach across the Partnership to the commissioning and arranging for Care Home Accommodation for Older People.
- To ensure provision of high quality, cost effective Care Home Accommodation which meets local health and social care needs, through the establishment a pooled fund
- To develop a managed market approach to the supply of quality provision to meets the needs of Older People Care Home Accommodation

4. STANDARDS FOR ENSURING SUITABLE CARE HOME ACCOMMODATION

- Services for older people will be developed in a co-productive manner in partnership with all stakeholders both at strategic and citizen levels
- Services will be designed to ensure that people have 'voice and control' in relation to how, when and where services are delivered
- Care home services should be flexible and be used when appropriate as part of a care pathway continuum.

- Shared and mutually agreed objectives with service providers and stakeholders will support innovative approaches, greater transparency and more coherent approach to commissioning and performance management and reductions in costs through avoidance of duplication.
- By adopting an integrated use of commissioning resources the information generated will support resource and budgetary decision making; ensuring the services for residents are targeted, sustainable, effective and delivering high value quality and outcomes
- Older people inregion should be supported to have their outcomes met by receiving timely assessments which lead to the provision of high quality service at the right time.
- Continuous active market engagement using well established mechanisms as well as the regional Citizens' Panel, 'Social Value Based' Provider Forum and wider citizens groups making use of established local community links will offer the opportunity to commission and provide high quality services that are person centred based on co-developed and agreed personal outcomes statements
- On the basis of considering the needs of the population we may agree sometimes to commission services on a regional, sub-regional or partnership basis to meet such needs.
- We shall ensure at all times adherence to joint safeguarding arrangements and protocol
- We shall ensure that the tenets and legal requirements of the Registration and Inspection Act 2016 are fully embedded in the regional care home market

5 STRATEGIC PLANNING IMPERATIVE

- We shall agree an integrated market position statement and commissioning strategy
- We will ensure that Care Home Accommodation Services are designed in line with and in response to the findings of the Regional Population Needs Assessment

(PNA) and the local Well-being Assessments and the Area Plan to ensure long term sustainability and sufficient supply to meet demand.

- We shall ensure that the sustainability of the market is maintained and supported as an ongoing process which will include regular demand and capacity assessment
- The approach to services will fully support the Care Closer to Home Strategy and ensure that Care Homes for Older People are considered as an important component in the overall care pathway for older people in the region.
- We will work with care home providers to develop business continuity plans in partnership with the Lead Commissioner.

We shall expect service providers to support residents to have a voice and to exercise control within their place of residence; this will include accessing advocacy services as and when required.

6 COMMISSIONING OBJECTIVES FOR 2018/19

Planning

- The Lead Commissioner will (for the agreed service areas at Schedule 1) co-ordinate the development of, and ensure maintenance of, commissioning strategies and market position statements annually.
- The Lead Commissioner will work with the Leadership Group to prepare a long term regional commissioning plan for care home services as part of a regional Older Peoples' strategy to meet the needs of the population and define service requirements.

Commissioning, Procurement and Contracting

- The Lead Commissioner will develop with Partners for agreement a single joint approach to contract management and quality performance assessment
- The Lead Commissioner will develop by.....proposals for a common contract and specification to be agreed by the Partners
- The Lead Commissioner will develop an integrated approach to quality assurance for agreement between all of the Partners by

- The Lead Commissioner will develop systems and processes to ensure that an overview of 'live' management information is available across the region covering for example, vacancies and voids, location of services and statements of purpose (previously registration categories).

Workforce and Training

- The Partners will develop through the Leadership Group a strategic cross-sector approach to tackle recruitment and retention across the region linked to the Regional Workforce and Training Partnership and Social Care Wales
- The Partners will seek through the Leadership Group a regional cross sector assessment of the likely impact of leaving the European Union on recruitment and retention on health and social care in partnership with the Regional Workforce and Training Partnership
- The Leadership Group will consider with the Board how to ensure that commissioners have been suitably trained, qualified and are sufficiently resourced to fulfil the requirements under the agreement.

Financial Targets

- The Lead Commissioner will develop with the Partners a single approach to agreeing fees with providers by.....

Commented [RL44]: Insert additional finance targets to be achieved in the Financial Year and who will lead on that process (Lead Commissioner/Leadership Group/Partners individually)

SCHEDULE 2: FINANCES AND RESOURCE MANAGEMENT

Commented [RL45]: Finance Leads to agree key content and terms – do not contradict the main Agreement preceding the Schedules

1. INTRODUCTION

- 1.1 This Schedule provides details of the budgets, goods and services to be made available by the Partners and outlines the principles governing budget setting and accounting for the use of resources.

Financial Arrangements for the Operation of the Agreement

- 1.2 The Partners will agree by 31 January each year financial procedures and arrangements for the operation of this Agreement for the following Financial Year (1 April to following 31 March).
- 1.3 This will replace the previous Schedule 2 of the Agreement and set out the budget for the Pooled Fund. This is in accordance with Clause 31 and the procedures described at Schedule 3 of the Agreement.
- 1.4 The initial budget planning assumptions of each Partner will be shared by the Partner's relevant financial leads by
- 1.5 A proposed budget will be presented to Leadership Group no later than end of in each Financial Year and the budget will be agreed by the Partners

Commented [RL46]: Finance Leads need to confirm the local process

no later than.....; subject to confirmation of Pooled Fund contributions from each Executive Body.

Pooled Funds for NHS Functions and Health Related Functions

- 1.6 The Pooled Funds Manager shall ensure that any matters relating to the Pooled Fund that might have a material effect on expenditure or income are identified and reported to the Leadership Group no later than for the following financial year's budget.
- 1.7 These matters, together with the planning assumptions and proposed budget variations referred to above, are to be considered by the Leadership Group and then for their Executive Body approval by 31 January of the budget for the following Financial Year.
- 1.8 As part of the annual budget setting process, the Partners shall ensure that their finance managers provide advice as necessary.

Financial Performance / Risk Sharing Arrangements

- 1.9 The Lead Commissioner will appoint a Pooled Funds Manager with responsibility for the Pooled Fund, subject to the Regulations, Clause 14 and governance arrangements set out in Schedule 3 to this Agreement.
- 1.10 The funds are to be used solely to achieve the aims and outcomes set out in Schedule 1 to this Agreement.
- 1.11 Each Partner will provide data to the Pooled Funds Manager by the 20th of each month to enable the Pooled Fund Manager to prepare and provide reports Monthly to the Leadership Group on the information specified at the Appendix to Schedule 3.
- 1.12 The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
- 1.13 The Pooled Fund Manager shall ensure that action is taken to manage any projected under or overspends from the budgets relating to the Funds, reporting

on the variances and the actions taken or proposed to the Leadership Group.

- 1.14 If at any time during the Financial Year, there is a projected under or overspend on the Fund the Pooled Funds Manager will prepare an action plan for presentation to and agreement of Leadership Group in order to manage the variance as quickly as possible.
- 1.15 The Leadership Group members will consider any action plan where required and amend if appropriate or agree additional actions to be taken to manage the variance.
- 1.16 The Pooled Fund Manager will provide Monthly progress reports to the Leadership Group on implementation of any action plan, until such time that the under or overspend has been dealt with to the satisfaction of the Leadership Group.

Risk Sharing

- 1.17 Risk sharing arrangements for Overspends will be in accordance with Clause 20 of the Agreement and in all other circumstances. with such risks being shared on the same basis as contribution.

Construction of Budget and Basis of Contributions

- 1.18 For the avoidance of doubt, any personal contributions payable by Service Users towards any Council services will continue to be collected by the Council, and not form a part of the pooled budget.
- 1.19 Citizen charging arrangements will remain the responsibility of each Council but promoting a consistent approach across the region will facilitate a regional wide approach into the future.

Contributions Including any Identified Grants

- 1.20 The Partner contributions to the Pooled Fund are as follows
- 1.21
- 1.22
- 1.23

Commented [RL47]: Consider and agree locally if required and what the alternatives are

Commented [RL48]: You may wish to list existing or planned contracts by Provider and as well as contributions and agree a budget plan

1.24
1.25
1.26

Provision of Goods and Services Outside of the Pooled Fund in Support of the Partnership

Lead Commissioner: Corporate Services

1.26.1 In addition to the core Lead Commissioning Team, the Lead Commissioner will provide the following services: -

- Accountancy support for the Pooled Fund arrangements;
- HR Services for Lead Commissioning staff (where appropriate);
- Procurement of services
- Legal advice as appropriate.

Lead Commissioner: Assets and Equipment

1.26.2 The Lead Commissioner shall provide and make available to the Arrangements the following assets, equipment and furniture: -

- All office furniture, equipment and premises related to the Lead Commissioning role, including for the avoidance of doubt, any accommodation charges, rent, and rates. For the avoidance of doubt, the Lead Commissioner may charge such costs to the Pooled Fund as agreed by the Partners.

Other Partners

- 1.26.3 Other partners to this Agreement, both Health and Social Care will provide resources both in terms of staff, accommodation and other expenditure so as to ensure that the Arrangements are supported.

2. PAYMENT OF CONTRIBUTIONS

- 2.1 Partners will pay their contributions to the Lead Commissioner upon receipt of an invoice. The invoice will be raised three Monthly in arrears on the last working day of the month, following the quarter end, and will be paid within 30 days.

3. COMMISSIONING AND PROCUREMENT ARRANGEMENTS

- 3.1 Where the Council is the Lead Commissioner for the Pooled Fund then the Financial, Procurement and Contract Procedure Rules of the Council will apply to all procurement activity.
- 3.2 Where the Health Board is, the Lead Commissioner for the Pooled Fund then the Standing Orders, and Standing Financial Instructions of the Health Board will apply to all procurement activity.

4. ADMINISTRATION OF THE POOLED FUND

- 4.1 The Pooled Fund Manager shall ensure that the Pooled Fund is maintained to national and professional standards and that the payment of suppliers' invoices complies with their payment terms, ensuring that no late payment charges are incurred by the pool.
- 4.2 The Pooled Fund Manager shall be responsible for ensuring that appropriate financial systems are operational and in place for the Pooled Fund in order to provide the necessary control and production of financial information.

5. TREATMENT OF SURPLUS AND DEFICIT

- 5.1 These shall be managed in accordance with Clause 20 and Clause 21 of the Agreement

Information Requirements

- 5.2 The Pooled Fund Manager shall ensure that all financial and other information required by the Partners in relation to compiling performance statistics, statutory and other returns is made available by any relevant deadlines.
- 5.3 The Pooled Fund Manager shall establish arrangements for making available all financial and other information necessary to assist the Partnership.

Audit arrangements

External Audit of the Pooled Funds

- 5.4 The Lead Commissioner's external auditors will be the external auditor of the Pooled Fund
- 5.5 It shall be the responsibility of the Lead Commissioner to include the Pooled Fund in its end of year accounting processes, produce the required memorandum account in respect of the Pooled Fund and arrange for its audit in time for its inclusion in all Partners' year end accounts
- 5.6 Should the annual audit letter contain any direct reference to the Pooled Fund, the Lead Commissioner will send copies of the relevant excerpts of the letter to each of the Partners.
- 5.7 The cost of specific audits required shall be borne by the Pooled Fund.
- 5.8 The appointed Auditor's reports relevant to the Arrangements and the Pooled Fund shall be presented to the Leadership Group and shall be made available to the Partners' internal auditors.

Internal Audit of the Pooled Funds

- 5.9 The Pooled Fund and the implications for the Services arranged from it will be incorporated into the risk assessed Internal Audit Programme of the Lead Commissioner and of the Partner's internal auditors.

VAT

- 5.10 The VAT regime will operate in accordance with partnership structure (a) or (b) as referred to in the joint guidance issued by the Department of Health and HM Customs and Excise.

Capital

- 5.11 The Pooled Fund shall not normally be applied towards capital expenditure.
- 5.12 If a need arises for the transfer of any agreed capital funds between the Partners then, unless the Partners agree otherwise, the Partners shall use the relevant grant making powers under Section 194 or Section 34 of the Act.

SCHEDULE 3: **GOVERNANCE AND PERFORMANCE OVERSIGHT**

1. INTRODUCTION

- 1.1 The Partners have agreed the governance arrangements set out in this schedule in furtherance of the aims and objectives as described in Clause 5 and Schedule 1 of the Agreement.
- 1.2 It is the intention of the Partners to review the governance arrangements at least annually as a part of the Mid-Year Review process as at Clause 31 of the Agreement.
- 1.3 The arrangements set out in this schedule shall apply until such time as the Partners agree otherwise.
- 1.4 Any changes to the content of Schedules must be agreed by the Partners.

Commented [RL49]: Partners may wish to insert a diagrammatic guide for ease of reference to the governance arrangements

2. THE REGIONAL PARTNERSHIP BOARD

- 2.1 The Board is established according to the Partnership Arrangements (Wales) Regulations 2015. Councils and Local Health Boards are required to establish Regional Partnership Boards to manage and develop services to secure strategic planning and partnership working between local authorities and Local Health Boards and to ensure effective services, care and support are in place to best meet the needs of their respective population.
- 2.2 The Board brings together statutory, third sector and independent sector partners with the collective aim of improving health and social care service delivery for citizens of the areas covered by the Board. It will build upon existing regional joint planning arrangements through the implementation of the Social Services and Well-being (Wales) Act 2014 and an on-going programme of integrating and/or aligning approaches to relevant services.
- 2.3 The Board is (responsible for the tracking of progress of the Partnership aims and objectives.

Reports

- 2.4 The Board shall receive any reports required under this Agreement and agree strategy and plans for the Pooled Fund but refer to Partners for approval of contracts and resources.

3. THE LEADERSHIP GROUP

- 3.1 The Leadership Group is a Monthly meeting for agreed Health Board and Council Directors to discuss health and social care issues and to make decisions based on the wellbeing of patients/clients.
- 3.2 It will perform the function of supporting the Board in its strategic role whilst the Leadership Group is also the point of contact for day to day business for the Partners and their Executive Bodies to manage the operations of the Agreement.
- 3.3 The Leadership Group members are authorised within the limits of delegated authority (which is received through their respective organisation's own schemes of delegation).
- 3.4 The Leadership Group shall:

- i. consider progress on the Aims and Outcomes at Schedule 1 and ensure progress against these objectives agree actions or recommendations to the Partners;
- ii. receive Monthly performance and finance reports from the Pooled Fund Manager;
- iii. monitor and benchmark progress across the region and with that beyond;
- iv. promote continuous service improvement;
- v. advise and make recommendations to the Board and Executive Bodies;
- vi. provide reports and advice to the Board and where necessary at such additional frequency as the Board requests
- vii. provide an Annual report to the Board on the outcomes of operation of the Pooled Fund
- viii. consult further and agree actions where appropriate to ensuring suitable consultation and Equality Impact Assessments are undertaken for any major changes to the Services arising from the annual plans for commissioning from the Pooled Fund;
- ix. consider and review any proposals for change, investment, disinvestment and impacts on the Services before making any necessary recommendations to the Partners.
- x. provide support and advice to the Lead Commissioner to enable the Lead Commissioner to carry out their duties and consider any impediments to the same
- xi. oversee and direct the Pooled Funds Manager

- xii. confirm and agree additional non-recurring contributions where anticipated future commitments are likely to exceed the aggregate contributions of the Health Board and the Councils to the Pooled Fund
- xiii. authorise or enter any Contract, subject to the Contract Standing Orders of the Council or the Health Board where these are necessary
- xiv. ensure a review annually the operation of the Pooled Fund plans and securing the necessary agreements to updating of the content of the Schedules for each Financial Year
- xv. establish and direct the work of any sub-groups necessary to fulfilment of the Arrangements;

Membership of the Leadership Group

3.5 The Leadership Group will comprise: -

- i. of Social Services; or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner.
- ii. of Social Services; or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner
- iii. of Social Services; or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner
- iv. of Social Services; or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner
- v. of Social Services; or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner

Commented [RL50]: Of which any one of the following from time to time is an officer of the Lead Commissioner Partner

vi.of the Health Board or a named deputy as required by any respective member above who will have the same rights on-behalf of the respective member for whom they are deputising. All deputies will be notified in writing to the other Partner.

vii. Pooled Fund Manager (non-voting member);

3.6 Any change in membership will be notified in writing by the Chief Executive or equivalent of the relevant Council or of the Health Board

3.7 The Leadership Group may from time to time invite others to its meetings and establish groups to assist it in undertaking its role and to provide such information as is necessary in the reporting framework attached to this schedule or to assist the Lead Commissioner and the Pooled Funds Manager in the review, and development of draft plans (the objectives at Schedule 1) and any other actions deemed necessary or helpful to effective arrangements for the Services from time to time.

3.8 Such invitees at 3.7 will attend and support in a non-voting capacity

Leadership Group Meetings

3.9 The Leadership Group will aim to meet Monthly and will meet at a least 10 times per annum and at a time to be agreed.

3.10 A special meeting can be called at any time by a Leadership Group Member where they deem it necessary.

3.11 The quorum for meetings of the Leadership Group shall be a minimum of 50% of its members including the Health Board member and not counting the Pooled Fund Manager or other non-voting members listed at 3.7 above.

3.12 Decisions of the Leadership Group shall be made unanimously

3.13 Minutes of all decisions shall be kept and copied to the Partners within fourteen (14) days of every meeting.

Agendas

3.14 The Leadership Group will follow a two-part agenda.

3.15 The first part will consider any reports from the Pooled Funds Manager.

3.16 The second part will consider any other matters of progress or planning referred to or from the Board or the Executive Bodies

4. THE POOLED FUND MANAGER

4.1 The Pooled Fund Manager may delegate the day-to-day management of funds and objectives in accordance with the Lead Commissioner Standing Orders, Financial Regulations and such other applicable Scheme of Delegation.

5. INFORMATION PLANNING AND REPORTS

5.1 The Pooled Fund Manager shall supply to the Leadership Group Monthly, the financial and activity information as referred to as Schedule 2 on Resources and as set out at (A) and (B) of the Appendix to this Schedule 3 as a financial and performance report as amended from time to time.

5.2 The Pooled Fund Manager shall supply a three-Monthly narrative on operation of the Pooled to Board meetings as a summary report of performance at (B) of the Appendix to this Schedule and any other matters identified for Board discussion.

5.3 The Pooled Funds Manager will refine the Aims and Outcomes set out in Schedule 1 into targets and performance measures to be agreed by the Leadership Group from time to time and in any event by 30th September each year following a strategic and financial Mid-Year Review to be led by the Lead Commissioner.

Preparation of Schedules for future Financial Years will be according to the following process in each Financial Year:

- **October- December:** The Pooled Funds Manager will prepare a draft of any proposed changes and this will be in the form of a revised Schedule 1 of Service Aims and Outcomes, a draft update of any proposed changes to financial contributions and targets and any necessary revision to financial and activity reporting content for the Leadership Group.
- **October- December:** The Leadership Group will consider the draft proposals and advise upon any necessary refinements for finalisation by the Pooled Fund Manager prior to consideration of Aims and Objectives by the Board and agreement of budget contributions by the Executive Bodies.

- **January:**
 - The Lead Commissioner will submit the draft revised Aims and Objectives to the Board for discussion and pending this draft finance proposals shall be prepared for agreement by the Executive Bodies.
 - The draft of revised Aims and Objectives and Financial contributions for the following Financial Year shall be submitted to the Executive Bodies.
- **By 31 January:** The draft proposals for the following Financial Year will be considered in the Executive Bodies' organisational budget proposals for the next Financial Year and be agreed by the Partners no later than 31 January in each Financial Year.

6. POST-TERMINATION

The Leadership Group shall continue to operate in accordance with this Schedule following any termination of this Agreement under Clause 6 and 36 of this Agreement.

APPENDIX: **PERFORMANCE MANAGEMENT**

1. Financial Performance Reports to Leadership Group **(to be completed)**

	PERFORMANCE AREA	KEY DELIVERABLES	HOW MEASURED	FREQUENCY
1	Finance	Expenditure in line with profiled budget	Budget reports – reviewed at	Monthly
2	Financial – costs of placements		Monthly review	
3	<i>Efficiency Targets</i>		meetings	

2. Service Performance and Outcomes Activity to Leadership Group and Board **(to be completed)**

- 2.1 A Quarterly narrative summary of performance will be prepared based upon the following and will be submitted to the Board along with any other necessary reports.

2.2 Reports to the Board will have been prepared by the Pooled Funds Manager in liaison with the Leadership Group.

2.3 The Quarterly narrative summary report will include progress on Aims and Objectives as set out at Schedule 1 and the following service performance data.

	PERFORMANCE AREA	KEY DELIVERABLES	HOW MEASURED	FREQUENCY
1	Performance on Objectives at Schedule 1 			
2	Commissioned service performance			
1	Workforce – Commissioners employed			Quarterly to Leadership Group and Board
2	Bed Days Commissioned – by Home			Monthly to Leadership Group Quarterly to Board
3	Quality & Outcome indicators – tbc e.g.: Complaints			Monthly to Leadership Group

	Care Outcomes Service User Feedback			Quarterly to Board
--	---	--	--	-----------------------