

DATED _____ **2011**

HEREFORDSHIRE COUNCIL (1)

and

HEREFORDSHIRE PRIMARY CARE TRUST (2)

and

HEREFORD HOSPITALS TRUST (3)

**SHARED SERVICES UMBRELLA
AGREEMENT**

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THIS AGREEMENT is made on

2011

BETWEEN:

(1) **HEREFORDSHIRE COUNCIL (“the Council”)** whose address is Brockington, 35 Hafod Road, Hereford, HR1 1SH;

(2) **HEREFORDSHIRE PRIMARY CARE TRUST (“the PCT”)** whose address is NHS Herefordshire, Brockington, 35 Hafod Road, Hereford, HR1 1SH; and

(3) **HEREFORD HOSPITALS NHS TRUST (“the Trust”)** whose address is Union Walk, Hereford, HR1 2ER.

1 Background

1.1 The Parties are committed to working with each other in sharing the provision of back office functions.

1.2 The Parties have each entered into an agreement with The Shared Services Partnership Limited (“JVCo”) for the provision of the Services.

1.3 The Trust is committed to fully participating in the arrangement once certain pensions related issues have been resolved.

2 Definitions

2.1 In this Agreement unless the context otherwise requires:

“Admin Regs”	means the Local Government Pension Scheme (Administration) Regulations 2008;
“Agreement Term”	means a period of five calendar years ending on the fifth anniversary of this Agreement;
“Community Admission Body”	Has the same meaning ascribed to it by Regulation 5 of the Admin Regs;
“Direction Body Status”	
“Law”	means: (a) any applicable statute or proclamation or any delegated or subordinate legislation,

	<p>(b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</p> <p>(c) any applicable guidance, direction or determination with which the Parties are bound to comply to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Parties; and</p> <p>(d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;</p> <p>in each case in force in England and Wales;</p>
“LGPS”	means the Local Government Pension Scheme;
“NHS”	means the National Health Service or any successor body;
“Regulations”	means the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended or modified from time to time;
“Secretary of State”	means the/or any Secretary of State of Her Majesty’s Government;
“Shared Services Agreement”	<p>means one of the following:</p> <p>(1) an agreement dated 1 April 2011 between the Council and the JVCo for the provision of the Shared Services;</p> <p>(2) an agreement dated 1 April 2011 between the Council (on behalf of the Trust) and the JVCo for the provision of the Shared Services; and</p> <p>(3) an agreement dated 1 April 2011 between the Council and the PCT for the provision of the Shared Services.</p>
“Services”	means the range of services to be provided by JVCo to the Customer as set out in each

	Shared Services Agreement;
“Transferee Admission Body”	has the same meaning ascribed to it by Regulation 6 of the Admin Regs;
“Transferring Employees”	means those employees of the Customer Transferring to JVCo on the Transfer Date;

3 Interpretation

3.1 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

3.1.1 The headings and marginal notes and references to them in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.

3.1.2 Except where the context expressly requires otherwise, references to Clauses, Sub-clauses, paragraphs, sub-paragraphs, parts and Schedules are references to Clauses, sub-clauses, paragraphs, sub-paragraphs and parts of and Schedules to this Agreement.

3.1.3 The Schedules to this Agreement are an integral part of this Agreement and a reference to this Agreement includes a reference to the Schedules.

3.1.4 Words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organisations having legal capacity.

3.1.5 Where the words day, month or year are used they are reference to a calendar, day, month or year.

3.1.6 Where the context so requires words importing the singular only also include the plural and vice versa and words importing the masculine shall be construed as including the feminine or the neuter or vice versa.

3.1.7 The language of this Agreement is English. All correspondence, notices, drawings, data, reports, certificates, specifications and information shall be in English. All operating and maintenance instructions, identification

labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Agreement shall be in English.

- 3.1.8 References to any agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments to agreements or documents) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned.
- 3.1.9 References to any Law are to be construed as references to that Law as from time to time amended or to any Law from time to time replacing, extending, consolidating or amending the same.
- 3.1.10 References to a public organisation (other than a Party) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than a Party) shall include their successors and assignees.
- 3.1.11 The words in this Agreement shall bear their natural meaning. The Parties have had the opportunity to take legal advice on this Agreement and no term shall, therefore, be construed contra proferentem.
- 3.1.12 Reference to "Parties" means the Parties to this Agreement and references to "a Party" mean one of the Parties to this Agreement.
- 3.1.13 In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 3.1.14 Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of Business Days after a stipulated date or event the

latest time for performance shall be noon on the last Business Day for performance of the obligations concerned.

4 Commencement and Duration

4.1 This Agreement shall commence on the date hereof and shall end on the fifth anniversary of the date hereof unless and to the extent terminated in accordance with the provisions of this Agreement.

5 Mutual Obligations

5.1 The Parties shall act reasonably and co-operate with each other at their own expense in fulfilling the purpose and intent of this Agreement.

5.2 Each Party agrees that they will not take any steps to terminate their respective Shared Services Agreement with the JVCo without first having given 15 days notice to all of the other Parties to this Agreement.

6 The Trust's Obligations

6.1 The Trust agrees that in the event that the Secretary of State for Health grants Direction Body Status to JVCo it will use its reasonable endeavours to commence the provision of the Services from the JVCo under its respective Shared Services Agreement within 30 days of receipt of the said notification from the Secretary of State for Health.

7 The PCT's Obligations

7.1 The PCT agrees that in the event that the Secretary of State for Health grants Direction Body Status to JVCo it will use its reasonable endeavours to commence the provision of the Services from the JVCo under its respective Shared Services Agreement within 30 days of receipt of the said notification from the Secretary of State for Health.

8 Council's Obligations

8.1 In the event the Trust commences the provision of the Services by the JVCo (as defined by the Shared Services Agreement) without:

- 8.1.1 having obtained Direction Body Status for the Transferring Employees or other provision allowing the Transferring Employees to remain in the NHS Pensions Scheme; or
- 8.1.2 if the Secretary of State for Health does not confer Direction Body Status on the JVCo,

then the Council shall do the following:

- (i) provided that JVCo is under the Control of the Council, for the purpose of Schedule 2, Part 2, paragraph 5 of the Admin Regs, the Council shall designate for the purpose of Regulation 4 of the Admin Regs, that all employees of the JVCo, including those transferring from the Trust to the JVCo under the Regulations, shall be eligible and shall remain eligible for active membership of the LGPS for so long as the JVCo remains under the control of the Council, for the purposes of Schedule 2, Part 2 paragraph 5 of the Admin Regs; and
- (ii) in the event JVCo ceases to be under the control of the Customer, for the purposes of Schedule 2, Part 2 paragraph 5 of the Admin Regs, JVCo shall use its reasonable endeavours to procure that it shall become a Community Admission Body, for the purposes of Regulation 5 of the Admin Regs, or a Transferee Admission Body, for the purposes of Regulation 6 of the Admin Regs, so that all employees, including those transferring from the Trust, shall remain eligible for active membership of the LGPS.

9 Costs and Expenses

- 9.1 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

10 Mitigation

- 10.1 The Parties shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.

11 Compliance with Enactments

11.1 In performing the Services and in the performance of all its duties and obligations under this Agreement JVCo shall comply at all times with:

11.1.1 all applicable Laws (including, regulations and orders made pursuant to any statutory instrument and all applicable European Community Regulations) and all applicable decisions of the European Court;

11.1.2 all applicable regulations or bye-laws of any local authority;

11.1.3 such contract procedures and financial regulations as are from time to time agreed between the Parties; and

11.1.4 all applicable rules or regulations of any statutory undertaker which has jurisdiction with regard to the Services.

12 No Partnership or Agency

12.1 Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) between the Parties.

13 Severability

13.1 If any provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement

13.2 Agreement shall so survive and be enforceable notwithstanding such termination or expiry.

14 Waiver

14.1 Failure by either Party to exercise an option or right conferred by this Deed shall not of itself constitute a waiver of such option or right.

15 Privity

15.1 Save where expressly provided to the contrary in this Agreement, it is agreed for the purposes of the Contracts (Rights of Third Parties) Act 1999 that this Agreement is

not intended to, and does not, give to any person who is not a Party to this Agreement any rights to enforce any provisions contained in this Agreement.

16 **Notices**

16.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally, or by sending it by prepaid recorded delivery or special delivery to the address and for the attention of the relevant person set out in Clause 16.2 (or as otherwise notified by that Party). Any such notice shall be deemed to be received:

16.1.1 If delivered personally, at the time of delivery

16.1.2 In the case of recorded delivery or special delivery, two Business Days after the date of posting

Provided that if deemed receipt occurs before 9.00am on a Business Day the notice shall be deemed to have been received at 9.00am on that day and if deemed receipt occurs after 5.00pm on a Business Day the notice shall be deemed to have been received on the next Business Day.

16.2 The addresses of the Parties for service of notices are as follows:

The Council:-

Herefordshire Council, Brockington, 35 Hafod Road, Hereford, HR1 1 SH

for the attention of the Chief Executive

The PCT:-

NHS Herefordshire, Brockington, 35 Hafod Road, Hereford, HR1 1 SH

for the attention of The Managing Director

The Trust:-

Union Walk, Hereford, HR1 2ER

for the attention of the Chief Executive

or such other addresses and/or named representatives as may be notified in writing from time to time by the relevant Party to the other Party.

16.3 For the avoidance of doubt notice under this Agreement shall not be validly served if sent by fax or e-mail.

17 Further Assurance

17.1 Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

18 Jurisdiction and Governing Law

18.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales.

18.2 Subject to the provisions of the Dispute Resolution Procedure, both Parties agree that the courts of England and Wales shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement and irrevocably submit to the jurisdiction of those courts.

19 Execution

19.1 This Agreement is executed as a deed and was delivered when it was dated.

The Common Seal of **HEREFORDSHIRE**)
COUNCIL was hereunto affixed in)
the presence of:)
)

.....
Authorised Signatory

The Common Seal of **HEREFORD**)
HOSPITALS NHS TRUST was hereunto)
affixed in the presence of)
)

.....
Authorised Signatory

.....
Authorised Signatory

The Common Seal of **HEREFORDSHIRE**)
PRIMARY CARE TRUST was hereunto)
affixed in the presence of)
)

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Authorised Signatory

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Authorised Signatory