

DATED **2013**

**HEREFORDSHIRE CLINICAL
COMMISSIONING GROUP (1)**

and

**THE COUNTY OF HEREFORDSHIRE
DISTRICT COUNCIL (2)**

AGREEMENT Under

**Section 75 of the National Health
Service Act 2006**

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This AGREEMENT is dated

PARTIES

(1) The County of Herefordshire District Council (“the Council”) of “Brockington”, 35 Hafod Road, Hereford HR1 1SH

(2) Herefordshire Clinical Commissioning Group (“the CCG”) of “Brockington”, 35 Hafod Road, Hereford, HR1 1SH

BACKGROUND

(A) Section 75 of the National Health Service Act 2006 contains powers enabling NHS bodies (as defined in sections 275 and 276 of the NHS Act 2006) to exercise certain local authority functions and for local authorities to exercise various NHS functions. The Partners are entering into this Agreement in exercise of those powers under and pursuant to the NHS Regulations 2000.

(B) The Partners are committed to better integration of NHS functions and the Council’s health-related Functions to achieve the Aims and Outcomes, and therefore wish to enter into the arrangements under this Agreement.

AGREED TERMS

1. DEFINITION AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Agreement: this Agreement between the CCG and the Council comprising these terms and conditions together with all schedules attached to it.

Aims and Outcomes: the objectives of the Partners, setting out how the Partnership Arrangements are likely to lead to an improvement in the way the Functions are exercised, as described in clause 6 and Schedule 1.

CCG’s Functions: [shall have the meaning set out in regulation 5 of the NHS Regulations 2000.

CCG’s Authorised Officer: The CCG’s Accountable Officer or any properly appointed successor.

CCG’s Financial Contribution: The CCG’s financial contribution for the relevant Financial Year. The CCG’s Financial Contribution for the First Financial Year is set out in Schedule 3.

Council’s Authorised Officer: The Council’s Director of People Services or any properly appointed successor.

Council’s Financial Contribution: The Council’s financial contribution for the relevant Financial Year. The Council’s Financial Contribution for the First Financial Year is set out in Schedule 3.

Change in Law: a change in Law that impacts on the Partnership Arrangements, which comes into force after the Commencement Date.

Commencement Date: the date of this Agreement.

Data Protection Act means the Data Protection Act 1998

Dispute Resolution Procedure: the procedure set out in clause 27.

Financial Contributions: the financial contributions of the Partners as set out in Schedule 3.

Financial Year: 1 April to 31 March.

First Financial Year: The financial year 2013-14.

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

Functions: the CCG Functions and the Council's Functions.

Information: has the meaning given under section 84 of FOIA.

Information Sharing Protocol: the protocol describing how the Partners will share Information as contained in Schedule 5, or such document that the Council shall adopt to replace it which shall be incorporated into this Agreement under the provisions of clause 15.

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

NHS Act 2006: National Health Service Act 2006.

NHS Regulations 2000: the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (SI 2000/617).

Partner: either the CCG or the Council, and "Partners" shall be construed accordingly.

Partnership Arrangements: the arrangements made between the Partners under this Agreement.

Personal Data: shall have the same meaning as set out in the DPA 1998.

Pooled Fund: a pooled fund comprising the Council's Financial Contribution and the CCG's Financial Contribution for the Services designated in Schedule 2

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

Representative: a Partner's employee, agent or subcontractor of the other Partner including any employee who is seconded to a Partner and is acting in accordance with that Partner's instructions.

Request for Information: a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (SI 2004/3391) (EIR).

Service Provider: a third-party provider of any of the Services, as commissioned by the NHS Body or the Council before the Commencement Date or the Council from the Commencement Date.

Service Users: individuals who are eligible to receive the Services.

Services: the services to be delivered by or on behalf of the Partners under this Agreement, as more particularly described in Schedule 2.

Working Day: any day other than Saturday, Sunday, a public or bank holiday in England.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.4 Words in the singular include the plural and vice versa.

1.5 A reference to one gender includes a reference to the other genders.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to writing or written includes faxes and e-mail.

1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall take effect on the Commencement Date and shall continue until 31st March 2016 unless further extended under clause 3.

3. EXTENDING THE TERM

3.1 The Partners may extend this Agreement for a period and on varied terms as they agree, beyond the initial term in accordance with the procedure contained in clause 15

4. PARTNERSHIP ARRANGEMENTS

4.1 The Partners enter into these Partnership Arrangements under section 75 of the NHS Act 2006 to commission integrated health and social care services to better meet the needs of the Service Users than if the Partners were operating independently.

4.2 From the Commencement Date, any previous Section 75 agreements between the Partners or their predecessors are replaced by the provisions of this Agreement.

4.3 The Partners will when commissioning ensure the proper discharge of their statutory responsibilities.

4.5 A Section 75 Board (“the S75 Board”) will be established to oversee the operation of all joint working arrangements and its functions are further detailed in clause 12.

5. FUNCTIONS

5.1 The CCG Functions to which the Partnership Arrangements relate are as set out in regulation 5 of the NHS Regulations 2000 and relating to Service Users and providing or making arrangements for the provision of acute and community based health services to adults including day services and facilities.

5.2 The Council Functions to which the Partnership Arrangements relate are as defined in the Regulations and are further specified in:

5.2.1 Schedule 1 to the Local Authority Social Services Act 1970, as amended and subject to Regulation 6(a) and referring to the Mental Health Act 1983 Parts II, III and VI, Sections 66, 67, 69(1), 116 and 117 (except for the acceptance of guardianship applications under Section 8(1) and the receipt of Notices under Regulation 12 of the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983), Sections 21 to 27, 29 to 30, 48 of the National Assistance Act 1948, Health Services and Public Health Act 1968, Section 65 as it relates to other

assistance to voluntary organisations, Chronically Sick and Disabled Persons Act 1970, Sections 1 and 2, Housing Act 1985 Section 72(b), National Health Service and Community Care Act 1990 Sections 46 and 47, Carers (Recognition and Services) Act 1995, Housing Act 1996 Section 213(1).

5.2.2 Regulation 6(b) of the NHS Regulations 2000, as such functions relate to Service Users

5.2.3 The Mental Health Act 2007 with regard to Approved Mental Health Practitioners (AMPH) and Section 12 Approved Medical Practitioners.

6. AIMS AND OUTCOMES

6.1 The intended aims of the Partnership Arrangements are to:

6.1.1 Promote the independence of people (including children and families) through a strategic shift to, health promotion, prevention, early intervention and supported self-management to produce better outcomes and greater efficiency for the health and social care system;

6.1.2 Focus on helping people who may be at risk of needing health and social care support to remain independent for as long as possible;

6.1.3 Prioritise the development of services that support people's recovery after an accident or episode of ill-health (including reablement, intermediate care, crisis response and telecare);

6.1.4 Ensure that personalisation works for those with on-going needs so they are able to plan and direct their own support and have a choice of cost effective solutions;

6.1.5 Tailor interventions and support services which better understand and respond to the needs of the whole person and those of their carers;

6.1.6 Make access to education, social care and support services as easy as possible for the people with assessed eligible needs;

6.1.7 Ensure that each person who needs education, social care and support services can identify a single professional who has overall responsibility for the arrangements being made to help them, and who is in a position to deal rapidly and effectively with changes in the person's circumstances;

6.1.8 Ensure that decisions about the level and nature of the services are made in a manner that is fair and easy to understand, importantly these will be jointly agreed so there is no dispute about one Partner making decisions which affect the other over such issues as eligibility for care;

6.1.9 Promote wide involvement of voluntary and community organisations, patients and service users, professionals and other staff in the development of approaches that promote well-being and prevent the need for acute and intensive interventions;

6.1.10 Facilitate the development of a skilled and motivated health and social care and early intervention workforce, with easy access to high quality training and development opportunities, with clearly defined pathways and communications between health and social care to ensure a seamless customer journey;

6.1.11 Actively involves Service Users and their carers in decisions about their care and proposed developments of services;

6.1.12 Maintain good governance and transparency to drive effective partnership working;

6.1.13 To make the most effective possible use of the overall funding and resources available in responding to Service Users' needs;

6.1.14 To ensure the interdependencies of each partner's strategic plans are addressed in the delivery of better outcomes:

6.1.15 to ensure there is clarity on decision-making and accountabilities for effective operation and management of the partnership

6.1.16 to achieve the overall Aims and Outcomes stated in Schedule 1

6.2 It is agreed that the Partnership Arrangements will enable the CCG and the Council to maintain improvements in the ways in which the CCG Functions and Council Functions respectively are exercised by continuing to effectively address the issues of:

6.2.1 Inconsistency and inequality of access to and outcomes from service; and

6.2.2 Inefficient use of resources arising from unnecessary duplication and organisational boundaries.

7. SERVICES

7.1 The Council agrees to act as lead commissioner of the Services listed in Part 1 of Schedule 2

7.2 The CCG agrees to act as lead commissioner of the Services listed in Part 2 of Schedule 2

7.3 Both Partners shall provide or procure the Services and shall be accountable to each other for the Functions for the benefit of Service Users:

7.3.1 To ensure the proper discharge of the Partners' Functions;

7.3.2 with reasonable skill and care, and in accordance with best practice guidance;

7.3.2 In all respects in accordance with the Aims and Outcomes, the specifications of the Services and their relevant contract monitoring provisions and the provisions of this Agreement.

7.3.3 In accordance with its standing orders or other rules on contracting; and

7.3.4 In accordance with all applicable Law.

7.4 Each Partner shall provide such information:

7.4.1 As is required by the other Partner for the purpose of monitoring the management and provision of the other's Functions;

7.4.2 Necessary to enable the other Partner to have assurance of fulfilling its statutory obligations;

7.4.3 Unless a Partner considers that provision of such information would be in contravention of the Data Protection Act or prohibited by any other law or binding guidance to which that Partner is subject to any confidentiality undertakings with a third party, legal or professional privilege.

8. PERFORMANCE MANAGEMENT

8.1 The Partners shall appoint the Authorised Officers to be their representatives in managing this Agreement

8.2 The Authorised Officers will arrange for and attend monitoring meetings on a bi-monthly basis to discuss the performance of this Agreement and in particular to monitor whether the Services are being performed in accordance with their contractual specifications, and applicable Key Performance Indicators ("KPI's").

8.3 Special meetings of the Authorised Officers can be called by any of the Partners with at least 1 day notice by E-mail to each member in the following circumstances:

8.3.1 Urgent matters relating to the safety and welfare of patients and service users

8.3.2 In response to a quality, performance or financial query by any regulator or other competent body

8.3.3 For any purpose one of the Partners considers of sufficient importance that it cannot wait until the date of the next monthly meeting

8.5 Notes shall be kept of all proceedings and agreements of the Authorised Officers' meetings and copies shall be circulated to all Partners by E-mail within five (5) working days after the end of the meeting to which they relate.

8.6 Copies of notes discussions and recommendations of the meetings will be retained by a designated secretary, with historic notes and records being passed to any new secretary on appointment.

9. FINANCIAL CONTRIBUTIONS

9.1 This Agreement envisages that each Partner's Financial Contribution will be set out in Schedule 3 for each Service.

9.2 The CCG shall be responsible to pay the sums agreed in Schedule 3 in accordance with this Agreement.

9.3 The Council shall also be responsible to pay the sums agreed in Schedule 3 in accordance with this Agreement.

9.4 The Partners shall agree the Financial Contribution for each following Financial Year before the expiry of the preceding Financial Year.

9.5 The Council's Financial Contribution is deemed to include the sums it may recover from the Service Users, irrespective of whether they are actually recovered.

9.6 The Partners shall contribute all grants or other allocations that are intended to support the provision of the Services to the relevant fund.

9.7 The Herefordshire Council and the Herefordshire CCG will continue to retain separate accountability for their use of financial resources and will have separate director level finance representation and audit arrangements. Apart from pooled budgets where agreed, health and social care funding will be held in separate budgets, although these may be managed in an aligned way to facilitate joint approaches.

9.8 The following principles will be applied in reaching a decision on joint working of any type which has a financial impact on one or both Partners:

9.8.1 The proposed arrangement should bring qualitative, productivity or direct financial benefits which demonstrate a sound return on any investment required

9.8.2 The sharing of the benefits between the Partners is clearly articulated and agreed

9.8.3 The balance of risk between the Partners is clearly articulated along with plans for mitigation or sharing of risk

9.8.4 The mechanism for either Partner to withdraw from the arrangement and the allocation of responsibility for exit costs and residual liabilities are explicit.

9.8.5 The financial principals, mechanisms and frequency of reporting and reviewing financial and performance are included in Schedule 6, and the financial position shall be reported quarterly to the Section 75 Board.

9.9 The financial position in respect of the Agreement shall be reported quarterly to the Section 75 Board.

10. OVERSPENDS AND UNDERSPENDS

10.1 Both Partners shall use all reasonable endeavours to arrange for the discharge of the Council Functions and the CCG Functions within the Financial Contributions available in each Financial Year.

10.2 Both Partners shall endeavour to manage any in-year overspends within its commissioning arrangements for the Services.

10.3 Both Partners shall make each other aware of any potential overspend as soon as it becomes aware of this possibility. They will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.

10.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend of either Partner's Financial Contribution then the Partners shall meet the overspend in accordance with the provisions of paragraph 2 of Schedule 6;

10.5 Both Partners shall make each other aware of any potential underspend in relation to Financial Contributions, prior to the end of the Financial Year. The Partners shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

10.6 The benefit of any underspend at the end of the Financial Year or on termination or expiry of this Agreement (whichever is appropriate) shall:

10.6.1 If the Partners agree, be returned to the Partners in proportion to their Financial Contribution for the Financial Year in accordance with Schedule 6 ;or

10.6.2 If the Partners agree, be deducted proportionately from the Partners' Financial Contributions for the following Financial Year; or

10.6.3 Re-invest the sums in such manner as both Partners agree.

11. SET UP COSTS

11.1 Each Partner shall bear its own costs of the establishment of the Partnership Arrangements under this Agreement.

12. GOVERNANCE

12.1 Schedule 4 sets out the overall governance structure for this Agreement. Central to this will be the operation of the S75 Board. This will comprise of the Partners' Authorised Officers and such other members as shall be agreed. The remit of the S75 Board will cover performance management and monitoring the Agreement and it will report on a bi-annual basis through the CCG's Board and the Council's Cabinet to the Health and Wellbeing Board. The S75 Board's operation shall be informed by input from the Children and Young People's Partnership Forum, the Children and Families Commissioning Group and the Adult Commissioning Group. The Health and Wellbeing Board will have a system wide focus for Herefordshire and will approve strategic plans and priorities, including those for substantial service change to benefit the whole population.

12.2 The Partners will make arrangements to ensure that all Service Users are safeguarded and their welfare is promoted. The Partners will lead and support the organisation and development of the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board. They will ensure services commissioned have clear safeguarding policies with policies/procedures agreed by the Herefordshire Safeguarding Children Board and the Herefordshire Safeguarding Adults Board.

12.3 Partners will ensure services commissioned adhere to safeguarding policies, and procedures which will be made clear in all contracts and framework agreements. These will be monitored and action will be taken where breaches occur.

12.4 The Partners will also be able to demonstrate that they have:

12.4.1 Clear priorities for early intervention (including the use of Common Assessment Framework), safeguarding and promoting the welfare of children, young people and vulnerable adults in their strategic plans

12.4.2 A clear commitment by senior managers to the importance of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare and the need to work across organisations to be effective in safeguarding the public.

12.4.3 That the responsibilities to safeguarding and promoting the welfare of children, young people and adults are integral to each member of staff's work and are integrated into corporate plans.

12.4.4 A culture of listening to and engaging dialogue with children, young peoples and vulnerable adults seeking their views in ways appropriate to their age and competency and

taking account of these in individual decisions and the establishment or development and improvement of services

12.4.5 Clear plans (whether corporate or for individual Service Users) which demonstrate that personalised care is central to all clinical or social interventions

12.4.6 Clear lines of accountability and governance across the organisation for the provision of services which take account of early intervention, safeguarding and promoting children, young peoples and vulnerable adult's welfare

12.4.7 Arrangements to work effectively across organisations including clear policies and protocols regarding sharing information to enable staff to safeguarding and promoting the welfare of children, young people and vulnerable adults

12.4.8 Clear policies to safeguard and promote the welfare of children, young people and vulnerable adults including effective complaints policies, whistle blowing policies and procedures for dealing with allegations against a member of staff or volunteers which members of staff/volunteers are made aware of.

12.4.9 There are clear care pathways and care plans for times of transitions for children/young people and adults who receive treatment both within and outside Herefordshire.

12.4.10 Arrangements to ensure all staff receive the appropriate training (and refresher training) to equip them to carry out their responsibilities with regard to safeguarding effectively

12.4.11 That there is an effective complaints process in place and available to all staff and Service Users

12.4.12 That there is a clear equality and diversity statement in place and training in equality and diversity issues is available to staff.

12.4.13 There is a process for recording incidents, concerns and referrals in relation to children, young people and vulnerable adults and the actions that result from these

13. QUARTERLY REVIEW AND REPORTING

13.1 The Partners shall carry out a quarterly review of the Partnership Arrangements within 30 days of the end of each Quarter.

13.2 The Authorised Officers shall submit a quarterly report setting out:

- (a) The performance of the Partnership Arrangements in the preceding Quarter; and
- (b) Any forecast overspend or underspend of the Financial Contributions.

14. ANNUAL REVIEW

14.1 The Partners agree to carry out a review of the Partnership Arrangements within two months of the end of each Financial Year (“Annual Review”), including:

14.1.1 The performance of the Partnership Arrangements against the Aims and Outcomes;

14.1.2 The performance of the individual Services against the KPI’s, service levels and other targets contained in the relevant contracts;

14.1.3 plans to address any underperformance in the Services;

14.1.4 Actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;

14.1.5 Review of plans and performance levels for the following year; and

14.1.6 Plans to respond to any changes in policy or legislation applicable to the Services or the Partnership Arrangements.

14.2 The Partners shall prepare an annual report following the Annual Review for submission to the Partners' respective boards.

15. VARIATIONS

15.1 Any variation to this the Agreement shall only take effect upon written Agreement of the terms between the Council and CCG.

15.2 The Partners agree that variations to the Agreement shall primarily be used as a means of developing and refining the Services and the Agreement.

15.3 If any requested variation/change cannot be agreed or the terms of its implementation cannot be agreed, either Partner may refer the variation/change to the Dispute Resolution procedure in Clause 27.

16. EQUALITY DUTIES

16.1 The Partners acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.

16.2 In Commissioning the Services, the Partners shall:

16.2.1 Adopt and maintain anti-discriminatory and equal opportunity policies and practices and shall provide copies of all such policies to the other Partner promptly on request;

16.2.2 Take account of the Human Rights Act 1998 and in performing the Agreement not do anything in breach of that Act.

16.2.3 Have due regard for the requirements of the public sector equality duty as contained in Chapter 1 Part 11 of the Equality Act 2010.

17. FREEDOM OF INFORMATION

17.1 The CCG and the Council both being public bodies are subject to the Freedom of Information Act 2000 (“the Act”). In compliance with the Act the Partners agree that requests under the Act will be dealt with as follows,

17.2 Upon receipt of a request by a Partner (“the Receiving Partner”) that Partner is responsible or the reply to the request, but:

17.2.1 if the request relates solely to information the Receiving Partner does not have and which is owned by the other Partner the request will be transferred to the respective Partner within 20 Working Days;

17.2.2 If the request relates to information being held by one Partner on behalf of another Partner then the Partners will consult on the request but the responsibility for the request will remain with the Receiving Partner.

17.2.3 For the avoidance of doubt the delegation of a Partner’s functions under this Agreement does not include a delegation of that Partner’s Chief Executive role as a Qualified Person under Section 36 of the Act.

18. SCRUTINY

18.1 The Partners acknowledge that the Partnership Arrangements and Services shall be monitored and reviewed by the CCG Board and the Council’s cabinet and functions as well as any properly authorised regulator.

18.2 The Partners will make senior officers available to attend each other’s committees and boards with responsibility for the development of policy and the scrutiny of commissioning decisions taken in relation to the Services.

18.3 The Partners will also supply monitoring information for consideration by such committees and boards, and will also comply with any other reasonable request for information from those committees and boards.

18.3 The Partners shall maintain and comply with their own separate whistleblowing policies in regard to this Agreement.

19. DATA PROTECTION AND INFORMATION SHARING

19.1 Each Partner shall (and shall procure that any of its Representatives involved in the provision of the Services shall) comply with any notification requirements under the Data Protection Act. Both Partners shall duly observe all their obligations under the Data Protection Act, which arise in connection with this Agreement.

19.2 The Partners shall share information about Service Users to improve the quality of care and enable integrated working. The Partners shall adhere to the Information Sharing Protocol when sharing information under this Agreement.

19.3 The Partners acknowledge and agree that the Information Sharing Protocol has been developed to ensure compliance with:

19.3.1 The Data Protection Act and the Freedom of Information Act 2000;

19.3.2 Guidance on information sharing as described in the "Guidance on the Section 75 Partnership Arrangements" referred to in HSC 2000/010 and other relevant guidance;

19.3.3 The principles of confidentiality that apply to the health and social care of individuals;

19.3.4 The common law rules of confidentiality;

19.3.5 Any information which is to be shared by reference to any protocol under the Crime and Disorder Act 1998; and

19.3.6 The requirements for safeguarding adults and children as may be required from time to time.

19.4 The Partners agree that principles set out in clause 25.3 and the Information Sharing Protocol shall be observed and shall operate to ensure that the objectives of the Partnership Arrangements are met and that the health and social care needs of individuals in respect of which the Partnership Arrangements may be exercised are not denied or hindered.

19.5 When either Partner obtains access to Personal Data (as defined in the Data Protection Act) obtained by or in the possession of the other Partner, it shall ensure that both it and its employees will duly observe all their obligations under the Data Protection Act and under this Agreement in respect of such information.

19.6 The Partners agree that any sharing of information about Service Users in order to improve the quality of care commissioned shall be subject to the Data Protection Act, the Information Sharing Protocol. The Protocol applies to disclosures where consent has been obtained.

19.7 Subject to the following provisions of this section the Partners shall work together to establish effective arrangements to permit and control the exchange of information to support the Partnership Arrangements.

19.8 Each Partner shall use its best endeavours to keep in strict confidence (and shall bind its employees and agents to keep in strict confidence) any personal or other information of a confidential nature relating to this Agreement.

19.9 Neither Partner shall use or disclose any such personal or confidential information other than as permitted by the Data Protection Act.

19.10 Without prejudice to any other provision of this Agreement, each Partner shall at times comply with the requirements of the Data Protection Act in respect of any personal data howsoever acquired or processed for the purposes of, or in the operation of, the Partnership Arrangements and no personal data collected or processed for any purposes connected with this Agreement will be disclosed to any other person otherwise than in strict accordance with the provisions of the Data Protection Act.

19.11 Each Partner shall ensure that it has notified the Information Commissioner in respect of any personal data processed by it for the purposes of this Agreement.

19.12 Each Partner shall ensure that in order to process any information for the purposes of this Agreement lawfully and fairly in accordance with the first data protection principle that it shall notify the subject of such personal information of the purposes for which it is gathered and for which it may be disclosed. Where necessary, the Partners will obtain the consent of Service Users and other data subjects to disclose personal information to be used for the purposes of this Agreement.

19.13 Any data disclosed by a Partner to the other for use in carrying out the purposes of this Agreement will be held and processed strictly in accordance with the Data Protection Act and any common law obligation of confidentiality.

20. CONFIDENTIALITY

20.1 Each Partner undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority, any confidential information concerning the business or affairs of the other Partner which may have or may in future come to its knowledge and each of the Partners shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

21. AUDIT

21.1 The Partners shall arrange for the audit of the Services and accounts of their Financial Contributions and any Pooled Fund in accordance with any statutory audit requirements and the costs of such audits shall be shared equally between the Partners. .

21.2 Each Partner shall provide the other with any reports required concerning their respective Functions on reasonable notice.

21.3 The Partners shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with any statutory inspection requirements, or other monitoring or scrutiny functions. The Partners shall implement recommendations arising from these inspections, where appropriate.

22. INSURANCE

22.1 The Partners shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.

22.2 The Partners shall follow the Guidance and Protocol which was issued by the Department of Health in respect of claims associated with NHS bodies and local authorities implementing partnership arrangements under Section 31 of the Health Act 1999 and any future guidance issued under Section 75 of the NHS Act 2006.

23. INDEMNITIES

23.1 Without prejudice to the primary liability of each Partner for its respective functions, preserved by Section 75(5) (a) and (b) of the NHS Act 2006, the following indemnity provisions will apply.

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

24. LIABILITIES

24.1 Subject to clause 24.2, neither Partner shall be liable to the other Partner for claims by third parties arising from any acts or omissions of the other Partner in connection with the Services before the Commencement Date.

24.2 Liabilities arising from Services provided or commissioned under any previous Section 75 Agreements shall remain with the Partner for the Service under the relevant agreement.

24.3 Each Partner shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Partner is entitled to bring a claim against the other Partner under this Agreement.

25. COMPLAINTS AND INVESTIGATIONS

25.1 Subject to statutory requirements, the Partners will deal with complaints about Services commissioned in accordance with the complaints procedures of the Partner commissioning the Services and where appropriate the procedures of the CCG for the Purchase of NHS-Funded Nursing Care. Complaints made in respect of NHS Continuing Healthcare and about health care staff shall be dealt with in accordance with the Complaints Procedure of the CCG.

25.2 The Partners shall each fully comply with any investigation by any properly appointed Ombudsman ("the Ombudsman"), including providing access to Information and making staff available for interview.

25.3 Upon notification of an investigation to be undertaken by the Ombudsman, each Partner will use their best endeavours to ensure that the provider of the Services responds to requests for information and/or interview within time limits set by the Ombudsman and provide access to relevant records.

25.4 The Partners will ensure that all safeguarding complaints are investigated in line with the Partners statutory responsibilities and best practice. The outcomes of the complaints and the investigations will be reported to the appropriate bodies, including progress against any remedial actions.

25.5 The Partners will keep these arrangements under review with the aim of establishing a fully integrated process for handling all complaints about Services.

26. HEALTHWATCH

27.1 The Partners shall co-operate with each other to enable each Partner to comply with its duties under Part 14 of the Local Government and Public Involvement in Health Act 2007 as amended ("2007 Act"). Such co-operation shall include, without limitation:

27.1.1 Allowing Healthwatch organisations to view and observe the carrying-on of activities on premises from which the Services are provided; and

27.1.2 Responding to requests for information made by Healthwatch organisations and making such information available

27.1.3 Promoting and facilitating the involvement of Service Users, carers and members of the public in decision-making concerning the Partnership Arrangements and the Partners shall pay due regard the role and functions of Healthwatch organisations as they affect the operation of this Agreement .

27.1.4 The Partners shall ensure their contracts with Service Providers require co-operation with HealthWatch organisations as appropriate.

27. DISPUTE RESOLUTION

27.1 Any dispute arising under, or in connection with this Agreement shall be dealt with in accordance with this clause and neither the Council nor the CCG shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this clause have been exhausted.

27.2 Clause 27.1 shall be without prejudice to the rights of termination stated in clause 28 and in addition shall not prevent the Council or the CCG from applying for injunctive relief in the case of breach or threatened breach of confidentiality.

27.3 All disputes between the Council and the CCG arising out of or relating to this Agreement shall be referred by the Council's Authorised Officer or the CCG's Authorised Officer to the other for resolution.

27.4 If any dispute cannot be resolved pursuant to the provisions of clause 27.3 within ten (10) Operational Days, that dispute shall be referred to the Council's Chief Executive and the CCG's Clinical Leader for resolution.

27.5 If any dispute cannot be resolved pursuant to the provisions of clause 27.4 within ten (10) Operational Days, the Partners shall arrange for an external independent party to mediate ("the mediator"), and:

27.5.1 The mediator shall meet with the Partners and work to gain resolution to the dispute. Where there is Agreement, the mediator shall set out the Agreement in writing and each Partner shall sign the Agreement which shall be binding on both of them.

27.5.2 Where Agreement cannot be reached at or following mediation, the Partner shall be free to pursue legal proceedings as specified in clause 27.1.

28. TERMINATION

28.1 The Partners may at any time terminate this Agreement by written notice, giving six months' notice if:

28.2 There is a fundamental breakdown in the Partner's relationship such that they cannot reasonably work together as intended by this Agreement; and/or

28.3 There is a fundamental breach by any Partner which is either:

28.3.1 Not capable of remedy, or

28.3.2 Capable of remedy but has not been remedied within a reasonable time following receipt of written notice by a Partner not in breach which required the breach to be remedied; and/or

28.3.3 As a result of any change in law or legislation a Partner is unable to fulfil its obligations; and/or

28.3.4 Its fulfilment of its obligations would be in contravention of any guidance from any Secretary of State issued after the date hereof; and/or

28.3.5 Its fulfilment would be ultra vires.

28.4 A Partner giving notice under this clause shall have regard to the need to make suitable alternative arrangements for users of the Services when determining the period of notice:

28.4.1 both Partners shall at their own cost provide reasonable assistance to each other for up to a period of 12 months in order to establish alternative arrangements for users of the Services ; and

28.4.2 If termination has been for breach then the Partner not at fault shall be entitled to recover from the other such additional costs as it reasonably incurs in establishing the alternative arrangements.

29. CONSEQUENCES OF TERMINATION

29.1 In the event of termination of this Agreement:-

29.1.1 Within 13 weeks of termination of this Agreement any surplus or uncommitted monies held in a Pooled Fund shall be returned to the Partners pro-rata their contributions to the Pooled Fund during the 12 months' period preceding termination subject to retention or additional contributions of sufficient funds by Host Partners

29.1.2 There shall be an end of the exercise by the Council Functions and the Council's participation in the CCG Functions in such a manner as to ensure orderly and economic hand over to the Council or any new provider of the health-related services, continuity of provision of the CCG Functions and continuity of health/social care to individuals receiving care under this Agreement at the date of termination;

29.1.3 A mutually acceptable hand over period will be agreed between the Partners and any new provider of care;

29.1.4 Where the termination is by expiry of the Term or otherwise by agreement, the additional costs of termination shall be agreed between both Partners, but if agreement cannot be reached the Partners shall resolve the matter in accordance with clause 27; and

29.1.5 Any assets used in connection with the Partnership Arrangements shall remain in the ownership of the Partner which purchased it and shall be returned to that Partner.

30. PUBLICITY

30.1 The Partners shall use reasonable endeavours to consult one another before making any press announcements concerning the Services or the discharge of either Partner's Functions under this Agreement.

31. NO PARTNERSHIP

31.1 Nothing in this Agreement shall be construed as constituting a legal partnership between the Partners or as constituting either Partner as the agent of the other for any purpose whatsoever, except as specified by the terms of this Agreement.

32. THIRD PARTY RIGHTS

32.1 Any rights of any third party to enforce all or any part of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

33. NOTICES

33.1 Any notices given under this Agreement shall be in writing and shall be served by hand, post, or E-mail by sending the same to the address for the relevant Partner or to such address as a Partner may notify to the other from time to time.

33.2 Notices:

33.2.1 By post shall be effective upon the earlier of actual receipt, or five (5) working days after mailing;

33.2.2 By hand shall be effective upon delivery;

33.2.3 By E-mail shall be effective when sent in legible form subject to no automated response being received

34. ASSIGNMENT AND SUBCONTRACTING

34.1 This Agreement and any right and conditions contained in it may not be assigned or transferred by either Partner without the prior written consent of the other Partner, except to any statutory successor to the relevant function.

35. SEVERABILITY

35.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

36. WAIVER

36.1 The failure of either Partner to enforce any of the provisions of this Agreement at any time or for any period of time 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.

36.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

37. ENTIRE AGREEMENT

37.1 This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Partners relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the Partners relating to that subject matter.

38. FORCE MAJEURE

38.1 Neither Partner will be liable to the other for any delay in or failure to perform its obligations as a result of any cause beyond its reasonable control, including but not limited to, fire, natural disaster, flood, shortage or delay of power, fuel or transport.

39. FAIR DEALINGS

39.1 The Partners recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

40. GOVERNING LAW AND JURISDICTION

40.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales, and the Partners irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

IN WITNESS WHEREOF the Partners have signed this Agreement on the date shown below

The County of Herefordshire District Council

Authorised Officer

Print Name

Signature

Date

Herefordshire Clinical Commissioning Group

Authorised Officer

Print Name

Signature

Date

SCHEDULE 1

AIMS AND OUTCOMES

The delivery of the Herefordshire Health and Wellbeing Strategy's Vision and Guiding Principles:

Vision: Herefordshire residents are resilient; leading fulfilling lives; are emotionally and physically healthy and feel safe and secure.

Overall Outcome: To increase healthy life expectancy, and reduce differences in life expectancy between communities.

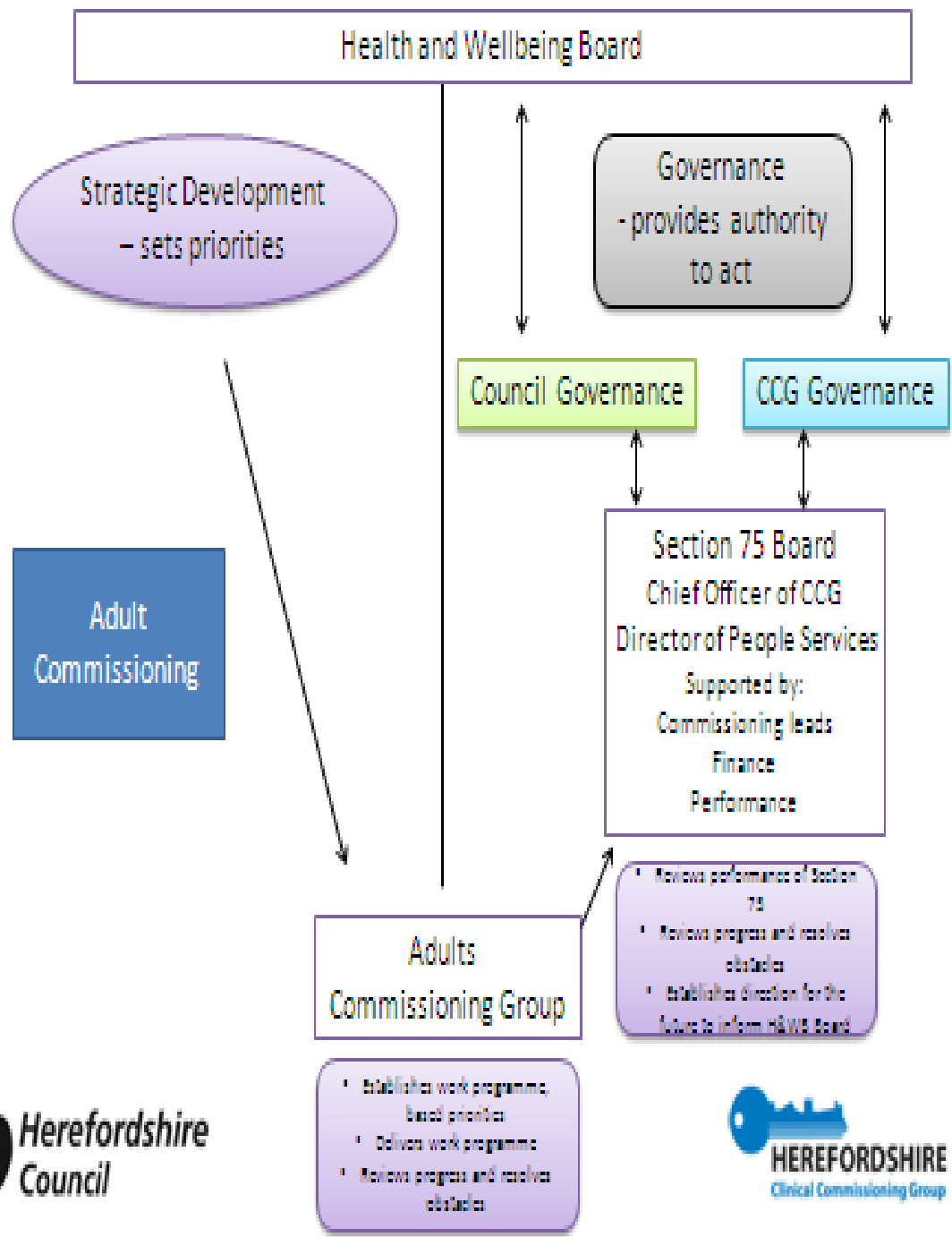
SCHEDULE 2
SERVICES

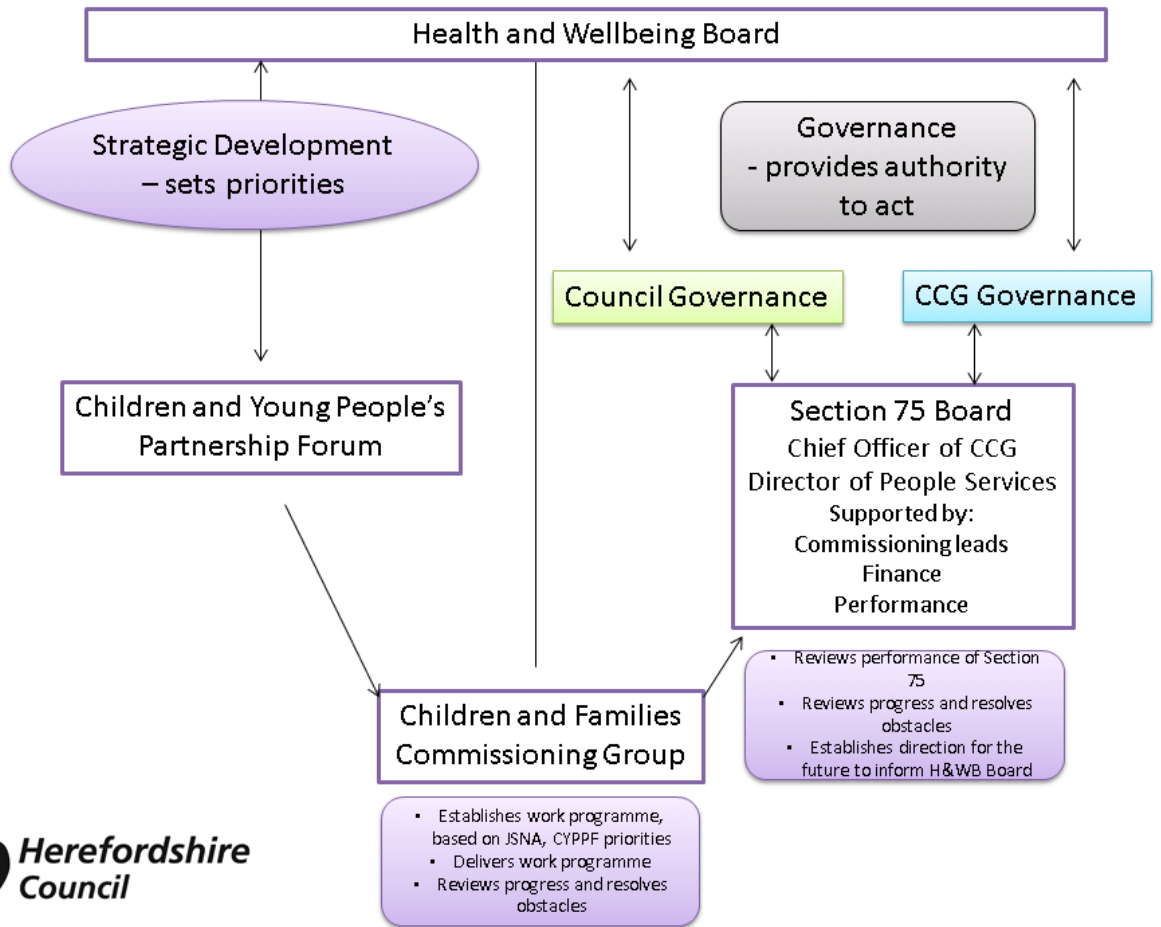
Part 1: Services where Council is lead commissioner

Part 2: Services where CCG is lead commissioner

SCHEDULE 3
CONTRIBUTIONS

SCHEDULE 4
GOVERNANCE STRUCTURE





SCHEDULE 5

INFORMATION SHARING PROTOCOL

SCHEDULE 6

Financial Arrangements

1) Budget Setting

- a) Budgets will run for a full financial year from 1st April to 31st March and will be reviewed and agreed annually by both Partners, and will be formally approved the authority and CCG 30 days prior to the start of each financial year.
- b) The agreed budgets will be formally approved by both Partners in accordance with the reporting arrangements outlined in this agreement preferably before the start of the financial year, but within 3 months of the start of the financial year.
- c) Budgets agreed retrospectively will be deemed to be in effect from 1st April of the financial year unless an alternative commencement date is jointly agreed by both Partners and ratified by the S75 Board.
- d) In the event that internal cost reductions or efficiency schemes of either Partner will give rise to a reduction in contributions to under this Agreement this should be notified in writing to the S75 Board and other partner no later than three months before the commencement of the financial year in which the reduction will take effect. This is to enable effective alternative financial arrangements to be put in place.
- e) In the event that budgets are not jointly agreed prior to the start of the year financial year a provisional budget will be agreed and finalised within 3 months of the start of the financial year.
- f) In the event that financial agreement cannot be reached on funding for a particular service within the period specified that service will cease to be part of the S75 arrangements, at the end of the 3 month provisional budget period.
- g) The joint budget setting discussions will consider and agree on the impact of the section 75 budgets of:
 - i) Inflation assumptions
 - ii) Demographic or other population assumptions
 - iii) Efficiency or cost savings requirements from either party
 - iv) Any other changes having a financial impact on the budget under consideration

2) Budget Monitoring and Reporting

- a) Each Partner has a duty to remain within the budget set. Both Partners will endeavour to maximise Value for Money and efficient and effective use of funds.
- b) A quarterly finance and budget review meeting will meet to consider cumulative expenditure and income and projected expenditure and income for the remainder of the year for the S75 budgets.
- c) The Council will also provide a quarterly summary of actual and planned expenditure on the S256 funds passported from the local area team (NHS England).

- d) Where specific services have a monthly reporting schedule (eg Complex Needs) these reports will be distributed to partners and form part of the overarching quarterly finance report.
- e) Prior to the quarterly finance meetings the responsible Partner will produce a report detailing year to date income and expenditure versus budget and projected outturn together with a narrative reporting on current financial performance and any anticipated movements. The report should flag any under or over spends as soon as they emerge with the reasons for the changes so that action can be taken to mitigate.
- f) Following the quarterly finance meetings a consolidated finance report will be drafted for presentation to the next board meeting.
- g) UNDERSPENDS
 - i) In the event that a Service is likely to deliver an under spend this will be monitored and reported. At the end of the financial year the under spend will be shared between the Partners in the ratio of contributions agreed for the Service.
- h) OVERSPENDS
 - i) No Service is expected to overspend its budget but in the event that an over spend is predicted to arise the responsible Partner should take whatever mitigating action is practicable to minimise the impact on the budget.
 - ii) In the event that the over spend (or income shortfall) cannot be fully mitigated the default position will be that the risk share is in the ratio of partner's contributions to the service, unless the over spend has arisen through the specific demands of either partner in which case the partner responsible for the over spend bears the full additional cost. The risk share arrangements must be agreed in the quarterly finance review meeting.

3) Contract Variations

- a) In year contract variations will be actioned where fixed budget contributions have been agreed by both Partners to under / over spend.
- b) In year contract variations will also be raised where both Partners agree to the commencement of a new service from a date other than 1st April of the financial year.
- c) Or termination of a service where both Partners agree a service will change or terminate prior to the end of the financial year.

4) Payment of Contributions

- a) All Partners are expected to make contributions promptly i.e. within 30 days of commencement of financial year for pooled budget arrangements (or start date if not full year arrangement), or of receipt of funds.
- b) All invoices to be settled within 30 days of issue. In the event that an invoice is disputed and remains unresolved after 60 days this should be raised for resolution at the next quarterly finance review.
- c) Either Partner may reserve the right to charge late payment interest in the event of invoices not being paid by the due date

5) Year End and Audit Arrangements

- a) Accounts will be produced under accruals accounting methodology.
- b) Both Partners will provide final financial reporting information in accordance with the financial reporting timetable and requirements of both Partners.
- c) A final outturn report for all S75 expenditure will be prepared and presented to the Board within 3 months of the year end.
- d) Access to financial information will be made available to the auditors of either party as required.

6) VAT

- a) The VAT regime applied will seek to maximise the recovery of tax incurred within these arrangements.
- b) The Partners will jointly endeavour to minimise the complexity of VAT and other taxation.
- c) The Partners shall comply with HM Customs and Excise guidance dated March 2003 in respect of the pooled fund. The Council shall consult with HM Customs and Excise to agree an appropriate scheme for recovery of VAT.

7) Termination of Services

In the event that one party gives notice to withdraw from contributing to a service included within this Agreement notice must be given in writing and 3 months prior to any change taking effect. In the event that the withdrawal results in the necessity to make staff redundant or incurs other costs solely arising from the termination these costs will be borne by the partner withdrawing unless the agreement to terminate is mutual in which case the costs will be borne in ratio to the partners