

DATED _____ **2019**

SWANSEA COUNCIL

and

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

and

SWANSEA BAY UNIVERSITY HEALTH BOARD

AGREEMENT

SECTION 33 OF THE NATIONAL HEALTH SERVICE (WALES) ACT 2006

OVERARCHING PARTNERSHIP AGREEMENT

for

ADULT AND OLDER PEOPLE SERVICES

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SCHEDULE 3: RESOURCES:
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THIS AGREEMENT is made the day of 2019

BETWEEN

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL (“Neath Port Talbot”) of Civic Centre, Port Talbot, Neath Port Talbot SA13 1PJ of the first part

SWANSEA COUNCIL (“Swansea”) of Civic Centre Oystermouth Road Swansea SA1 3SN of the third part

SWANSEA BAY UNIVERSITY HEALTH BOARD (“the Health Board”) of One Talbot Gateway, Baglan Energy Park, Baglan, Port Talbot, SA12 7BR of the fourth part.

WHEREAS:

- A This Agreement covers arrangements to create a regional pooled fund for care home services pursuant to Section 33 of the Act.
- B This Agreement provides for the establishment and management of individual Pooled Funds between the Health Board and the Councils where any Partner will from time to time be the Host Partner for a Scheme for the purposes of the Regulations.
- C For the purpose of the implementation of the Partnership Arrangements under this Agreement:
 - 1 The Health Board has agreed that the Council may, in conjunction with exercising its Health Related Functions, exercise the Health Board’s NHS Functions in relation to the Services and;
 - 2 The Council has agreed that the Health Board may, in conjunction with exercising its NHS Functions, exercise the Council’s Health Related Functions in relation to the Services.
- D Where the Health Board and the Council arrange Services pursuant to Section 33 of the Act the Services which the Partners arrange shall be set out according to the Schedules and the terms herein.
- E The Partners shall carry out consultation on the proposals for any Scheme with those persons, user groups, staff and statutory and non-statutory providers,

who appear to them to be affected by the arrangement, as required by Regulation 4(2) of the Regulations.

- F The Partners have agreed to enter into this Agreement to fulfil the requirements in Regulation 8(2) of the Regulations and to record their respective rights and obligations under the Partnership Arrangements and the terms on which the Partnership Arrangements will be exercised and the Service will be delivered.
- G The Partners have entered into this Agreement in order to improve the effectiveness of the Services delivered by them

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, except where the context otherwise requires, the following expressions shall have the meanings respectively ascribed to them:-

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| “Act” | means the National Health Service (Wales) Act 2006; |
| “Agreement” | means this Agreement and any variation of it from time to time agreed between the Partners; |
| “Authorised Officers” | means the persons notified in writing from time to time by each of the Partners to the other from time to time as authorised to act on behalf of that Partner in that capacity (which person shall until further notice be for the Council its Head of Paid Service and for the Health Board its Chief Executive); |
| “Budget” | means the budget for a Scheme as set out in or ascertained in accordance with Schedule 3 |
| “Commencement Date” | means 1 st April 2019 |
| “Councils” | means the first two parties to this Agreement (and any successor to their statutory function); |

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| “Directions” | means such statutory directions in respect of services as the Partners must follow; |
| “Eligibility Criteria Threshold” | means the four criteria as derived from the Welsh Government’s Guidance on “Fair Access to Care” as set out in “Creating a Unified and Fair System for Assessing and Managing Care”, April 2002 and these being critical, substantial, moderate and low. |
| “Financial Year” | means the financial year from 1st April in any year to 31st March in the following calendar year; |
| “Functions” | means the NHS Functions and the Council’s Health Related Functions which may be carried out (in whole or part) by either Partner for any Scheme approved by the Partners and which are reproduced in Schedule 2 for ease of reference |
| “Governance Arrangements” | means the arrangements that have been put in place to govern the operation of this Agreement as outlined in Schedule 4 |
| “Health Board” | means Swansea Bay University Health Board (and any successor to its statutory function); |
| “Health Related Functions” | means the Council functions set out in regulation 6 of the Regulations, which are reproduced in Schedule 2 for ease of reference; |
| “Host Partner” | means the Partner responsible for any Pooled Funds within a Scheme and its operation in accordance with Regulation 7 (4) of the Regulations; |
| “Joint Management Board” | means a group of officers for each Scheme who will assist the JPB in its activities through oversight of day to day management of the |

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| | particular agreed Scheme and in accordance with Schedule 4; |
| “Joint Partnership Board referred to by abbreviation as JPB” | means the membership set out at Schedule 4 and which is responsible for the management of any scheme established under this Agreement and its delivery in accordance with the provisions of Schedule 4; |
| “Locality” | means the administrative area of the Council; |
| “Month” | means a calendar month; |
| “NHS Functions” | means those functions set out in regulation 5 of the Regulations as reproduced in Schedule 2; |
| “Partners” | means the Councils and the Health Board, and the term “Partner” shall mean either; |
| “Partnership Arrangements” | means the arrangements as set out in this Agreement concerning the planning, or arranging of services to Adults and Older People and in accordance with the Regulations and any Scheme; |
| “Partnership Lead” | means the officer responsible within the office of the Host Partner approved by the JPB who shall be the chair of the Joint Management Board; |
| “Pooled Fund Manager” | means the person determined from time to time under Clause 7.5 and who has been identified in the particular Schedules for a Scheme agreed by the JPB; |
| “Pooled Fund/Pooled Funds” | means the joint fund or joint funds of monies administered by the Partners from time to time being shared contributions from the Partners for the purpose of securing the Services in the Locality pursuant to this Agreement; |

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| “Regulations” | means the NHS Bodies and Local Authority Partnership Arrangements Regulations 2000, S.I. No. 2993 (W.193) as amended or replaced from time to time; |
| “Revised Annual Plan” | means an annual statement of agreed intentions referred to in Schedule 4; |
| “Scheme” | means:- firstly at the Commencement Date the arrangements for the provision of Services set out in the Schedules and secondly any additional Services which may be added by the method referred to in Clause 32; |
| “Services” | means the services which are to be made available to Service Users as described in Schedule 1 and such other services as the Partners may agree to be arranged for any particular Scheme and whose costs are to be met from the Pooled Fund or in respect of which the Partners have agreed to make expenditure; |
| “Service Users” | mean the people who receive the Services to be arranged by the Partners; |
| “SSWB(W)A 2014” | means Social Services and Well-being (Wales) Act 2014 |
| “Term” | means the period from the Commencement Date and ending on 31 st March 2020 subject to earlier termination in accordance with the terms of this Agreement; |

1.2 Save to the extent that the context or the express provisions of this Agreement otherwise require:-

- 1.2.1 obligations undertaken or to be undertaken by more than a single person shall be made and undertaken jointly and severally;
- 1.2.2 words importing any gender include any other gender and words in the singular include the plural and words in the plural include the singular;
- 1.2.3 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;
- 1.2.4 Headings and the Index are inserted for convenience only and shall be ignored in interpreting or in the construction of this Agreement;
- 1.2.5 references in this Agreement to any Clause or Sub-Clause Paragraph or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause of or Schedule to this Agreement so numbered;
- 1.2.6 any obligation on any of the Partners shall be a direct obligation or an obligation to procure as the context requires;
- 1.2.7 any reference to “indemnity” or “indemnify” or other similar expressions shall mean that either Partner indemnifies, shall indemnify and keep indemnified and hold harmless the other Partner; and
- 1.2.8 any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any successor to that person or any person which has taken over the functions or responsibilities of that person but without derogation from any liability of any original Partner to this Agreement;
- 1.2.9 this Agreement and its Schedules should be read as a whole but in the event of any inconsistency the Schedules shall have precedence

2. TERM

- 2.1 This Agreement shall commence on the Commencement Date and shall continue for the Term, subject to earlier termination as provided below.
- 2.2 The Agreement may be terminated in accordance with the provisions of Clause 11.

3. AIMS AND OBJECTIVES

- 3.1 The aims, benefits and intended outcomes of the Partners in entering in to this Agreement are as outlined at Schedule 1

4 FINANCIAL CONTRIBUTIONS

- 4.1 The Budget for the first Financial Year together with the mechanism for calculating subsequent Budgets and contributions is set out in Schedule 3.
- 4.2 Any variation to the amounts described at Clause 4.1 shall be dealt with by the procedure set out in Schedule 3.
- 4.3 No provision of this Agreement shall preclude the Partners by mutual agreement making additional contributions from time to time of single non-recurring monies to the Pooled Fund but no such additional contributions shall be taken into account in the calculation of the Partners' respective contributions for the purpose of apportionment at Schedule 3.
- 4.4 Any such additional contributions of non-recurring monies shall be explicitly recorded in Joint Partnership Board minutes and recorded in the budget statement for a Scheme as a separate item.

5. NHS FUNCTIONS AND COUNCIL HEALTH RELATED FUNCTIONS

- 5.1 The NHS Functions and the Council's Health Related Functions which may be carried out (in whole or part) by either Partner from time to time according to any Scheme are set out in Schedule 2.

6. THE SERVICES

- 6.1 The Host Partner for the Scheme is identified in Schedule 1.
- 6.2 The Services shall be arranged by the JPB in accordance with the provisions of the relevant Schedules.
- 6.3 The Partners will ensure that the Welsh Government's Guidance on "Fair Access to Care" is fully implemented and that the Eligibility Criteria Thresholds as agreed by the Councils are consistently applied.
- 6.4 The Eligibility Criteria Threshold for the provision of Services will operate according to Schedule 1 for any Scheme.
- 6.5 The Partners will ensure that the Welsh Government's Guidance and Code of Practice issued under the SSWB(W)A 2014, are fully implemented and applied accordingly.

7. ARRANGEMENT OF SERVICES

- 7.1 Pooled Funds shall be established for arranging the Services.

- 7.2 For any Scheme one of the Councils or the Health Board shall be the Host Partner for the purposes of Regulation 7(4) of the Regulations.
- 7.3. The Joint Partnership Board will be established in accordance with Schedule 4 to carry out the functions as set out in Schedule 4 and shall be supported by a Joint Management Board according to that Schedule's requirements.
- 7.4 The Pooled Fund Manager shall be responsible for the management of the Pooled Fund for a Scheme.
- 7.5 The Pooled Fund Manager shall be approved by the Partners who are not the Host partner for a Scheme (such approval not to be unreasonably withheld) and affirmed in the role by the Joint Partnership Board at the outset of a Scheme.
- 7.6 The Pooled Fund Manager where the Council is the Host Partner shall be accountable directly to the Partnership Lead for an approved Scheme.
- 7.7 The Pooled Fund Manager where the Health Board is the Host Partner shall be accountable directly to the Partnership Lead for an approved Scheme.
- 7.8 The internal regulations of the Host Partner shall apply to the management of the Pooled Funds under this Agreement, insofar as the funding is held and defrayed by the Host Partner.
- 7.9 The Pooled Fund Manager shall be responsible for authorising payments and the Host Partner shall make payments from the Pooled Fund and shall be responsible for authorising payments, insofar as the funding is held and defrayed by the Host Partner, in accordance with the Service description and the Aims and Objectives, as set out in Schedule 1 provided that the Partners shall be responsible for payments under regular day to day provision of the Service supplied directly through their own employees and/or contractors.
- 7.10 The Pooled Fund Manager shall be responsible for managing the Pooled Fund and forecasting and reporting to the JPB upon the targets and information in accordance with and any further targets or performance measures that may be set by the JPB from time to time.
- 7.11 The Pooled Fund Manager shall report to the Authorised Officers in accordance with the requirements of the Regulations. The Council's Authorised Officer shall in turn ensure reporting on the same to the officer of the Council responsible for the administration of their financial affairs under Section 151 of the Local Government Act 1972.
- 7.12 Each Partner shall comply with all Statutes, Regulations, Guidance, Directions and Directives relating to the provision of the Services or any part thereof.

8. FINANCIAL PERFORMANCE AND RISK SHARING ARRANGEMENTS

- 8.1 The Pooled Funds are to be used solely to achieve the aims and objectives of a Scheme set out in Schedule 1 and according to the arrangements for spend and performance set out at Schedule 3 and 5.
- 8.2 The Pooled Fund Manager of a Scheme shall submit information monthly and report every three months in summary form to the JPB at its meetings, on spend and the performance information specified in the Appendix to Schedule 5 for a Scheme. The Partners agree to provide all necessary information to the Pooled Fund Manager in time for the reporting requirements to be met.
- 8.3 The Partners shall ensure:-
- a) The Pooled Funds are used efficiently to deliver agreed outcomes.
 - b) The expenditure and income within the Pooled Funds remain within budget, and that any exceptions to this are reported to the JPB in a timely manner.
 - c) A high level of probity in financial management arrangements.
 - d) Resources allocated to Pooled Funds are safeguarded by suitable financial and management systems in accordance with each Partners financial procedures.
- 8.4 Subject to Welsh Government approval, the benefit of any surplus in the Pooled Fund at the end of any Financial Year may:
- 8.4.1 Be used for such other expenditure of the same general nature as that contained within the Scheme as the Partners may unanimously determine and
 - 8.4.2 Where the Partners agree, remain within the Pooled Fund for a Scheme to be used to meet such other expenditure as the Partners may determine.
- 8.5 Subject to Welsh Government approval, where there is no agreement under Clause 8.4. (in full or in part), the benefit of any surplus in the Pooled Fund at the end of any Financial Year shall be distributed to the Partners pro rata to their contributions for the Financial Year.
- 8.6 The Partners shall take mitigating action as appropriate to ensure expenditure remains within the limit of a Pooled Fund and neither party shall act unreasonably to expose the other to undue financial risk.
- 8.7 Save:
- 8.7.1 to the extent that a party's liability arises pursuant to clause 12 and/or
 - 8.7.2 to the extent agreed between the parties in writing;

And subject to clauses 4.3 & 15 the Partners shall be jointly responsible (in the proportions determined according to the formula for balancing payments as at Schedule 3 to the Agreement in respect of a Pooled Fund for the Financial Year) for any such costs, claims, expenses or liabilities incurred in accordance with the terms of this Agreement.

- 8.8 The monthly reports of the Pooled Funds Manager to be submitted to the Joint Partnership Board shall include:
 - 8.8.1 Monthly financial performance reports detailing performance against agreed funding.
 - 8.8.2 A variance analysis for the period and expected forecast outturn and where required, an explanatory note setting out actions being taken to tackle areas where there is a projected underspend or overspend against agreed budgets.
 - 8.8.3 Annual statements of spend and performance against the Pooled Funds will also be provided in line with any statutory timescales required by either The Health Board or the Councils.
- 8.9 The Pooled Funds Manager shall maintain and provide in addition to information provided under Clause 8.8 above when requested by either of the members of the JPB at the expense of that Partner such information as shall be appropriate to describe the cost of arranged Services for so long as any part thereof is being provided to Service Users notwithstanding any notice of termination in accordance with Clause 11 & 25.
- 8.10 The governance arrangements shall be as set out in Schedule 4 for a Scheme.
- 8.11 Approval for all other reasonable administrative expenses incurred by the Pooled Funds outside of the budget in-year must be approved in writing in advance of spend and will require the agreement of the Partners before being accepted as an allowable charge to the particular Pooled Fund for a Scheme.

9. REVIEW

- 9.1 The Partners, through the Joint Partnership Board, shall review the operation of the Scheme annually by 1st July of every year.
- 9.2 Reviews of this Agreement shall be conducted in good faith and in accordance with the governance arrangements set out in Schedule 4; shall be based upon information to be provided as set out in Schedule 4.
- 9.3 The Partners shall review the operation of this Agreement on the coming into force (or anticipation of the coming into force) of any legislation or guidance affecting the terms of this Agreement so as to ensure that the terms of this Agreement comply with such legislation or guidance.

10. FINANCIAL PLANNING AND BUDGET SETTING PROCESS

- 10.1 The Partners will prepare planning assumptions of inflation allowances for salary and non-salary expenditure and income together with proposed variations to the expenditure budget in respect of for example:
- 10.1.1 Growth and demographic changes
 - 10.1.2 Service enhancements and reductions
 - 10.1.3 Required efficiency/quality improvements
 - 10.1.4 Cost pressures/increases in demand; and expected changes in Service delivery costs
 - 10.1.5 National initiatives
- 10.2 These will be considered in the context of the overall budget of the Council and the Health Board as applicable.
- 10.3 The Budget for a Scheme and which is to be agreed by the Partners will take into account effects on other budgets and the financial resources of the Partners.
- 10.4 Where the Partners do not agree an annual Budget by the time of the commencement of a new Financial Year they shall remain liable to contribute the same sum as was identified as their contribution in the previous Financial Year (together with any inflation on salaries including increments and pay settlements) until such time as an annual review at Clause 9 or termination takes effect.
- 10.5 As part of the annual Budget setting process, the Partners shall seek appropriate advice in respect of the factors outlined in clauses 10.1 and 10.3 above.

11. TERMINATION

- 11.1 If the Health Board or the Council(s) fails to meet any of its respective obligations under this Agreement, any Partner may by written notice request the Partner in default to take such reasonable action to rectify such failure within 60 days of the date of the notice.
- 11.2 Should the Partner in default fail to rectify such failure within such time-scale, the other Partner(s) may give a minimum of three months written notice to terminate the Agreement.
- 11.3 Any Partner shall be entitled to terminate this Agreement immediately by notice to the other Partner(s), if the other Partner(s), its employees or agents either offer, give or agree to give to anyone any inducement or reward or confers any other benefit in respect of this or any other Agreement (even if the Partner is unaware of any such action) or otherwise commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972.

- 11.4 Any Partner is entitled to terminate this Agreement forthwith by written notice to the other Partner(s) if an event of force majeure pursuant to clause 28 persists for more than 3 months.
- 11.5 Any Partner is entitled to terminate this Agreement by giving not less than twelve months written notice to the other such notice to end at the end of a Financial Year.
- 11.6 The Partners may mutually agree that this Agreement is terminated on an agreed date. For the avoidance of doubt where one Partner terminates their involvement in this Agreement the, Agreement shall remain in force subject to appropriate variations being agreed between the remaining Partners.
- 11.7 Any termination of this Agreement under this Clause shall be without prejudice to any continuing obligations of the Partners under Clause 12.
- 11.8 Any addition or removal of a Scheme or the Services provided pursuant to this Agreement shall be dealt with in accordance with Clause 32.
- 11.9 Any Partner may withdraw from this Agreement by mutual agreement of all partners at a date to be agreed by the partners.
- 11.10 Any Partner withdrawing from this Agreement pursuant to Clause 11.6 and 11.9, shall cease being part of the Partnership Arrangements upon expiry of the notice period.
- 11.11 The withdrawal of a Partner from this Agreement pursuant to Clause 11.6 and 11.9 shall not cause this Agreement to terminate, but shall entitle the remaining Partners to continue with the Partnership Arrangements.

12. EFFECTS OF TERMINATION

- 12.1 Notwithstanding any notice of termination in accordance with Clause 11 & 25
- 12.1.1 the Partners shall continue to be liable to arrange the Service within a Scheme in accordance with this Agreement until the actual date of termination;
- 12.1.2 the Partners shall remain liable to operate the Pooled Fund for a Scheme in accordance with this Agreement so far as is necessary to ensure fulfilment of the obligations in Sub-Clause 12.1.1; and
- 12.1.3 for the avoidance of doubt the Partners shall remain liable to contribute that proportion of the cost of a Scheme which comprises its contribution until the termination takes effect;
- 12.1.4 in the event that the Partners have jointly agreed to procure a contract with a provider for the provision of any part of the Services and one Partner (the "Contributing Partner") has agreed to make a contribution to

the other in respect of the costs of that contract the Contributing Partner shall continue to pay such contribution while that contract subsists.

12.1.5 the Partners shall cooperate together to ensure that any Service User who has started to receive a service under this Agreement continues to receive an appropriate service whilst the Partners make arrangements to revert to separate service provision.

12.1.6 the Partners shall cooperate together to facilitate the orderly winding up of the Partnership Arrangements and shall act to avoid any redundancies amongst staff of the Host Partner who are funded whether in part or in whole from the Pooled Fund.

12.1.7 the Partners shall contribute equally to any redundancy costs of the Host Partner arising out of the termination.

12.2 Subject to the foregoing commitments of the Partners, following termination of this Agreement, in the event that the Host Partner holds any funds surplus to any outstanding financial commitments or requirement to repay Grant Funding for the purpose of the Service those funds shall be divided between the Partners in the percentage shares identified in Schedule 3

12.3 Subject to compliance with any Grant Funding conditions, any assets purchased from the Pooled Fund will be disposed of by the Partners for the purposes of meeting any of the costs of winding up the Service or where this is not practicable such goods will be shared proportionately between the Partners in the percentage shares identified in Clause 12.2 above.

12.4 In the event that this Agreement is terminated the Partners agree to co-operate to ensure an orderly wind up of their joint activities as set out in this Agreement so as to minimise disruption to all Service Users carers and Staff, and comply with individual rights as set out in their contract of employment.

12.5 The operation of this Clause 12 together with Clauses 14, 15, 17, 18 and 19 shall survive the termination or expiry of this Agreement.

13. SCRUTINY

13.1 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 decisions taken in relation to the Services.

14. EXTERNAL INSPECTION AND MONITORING

14.1 The Partners Shall:

14.1.1 comply with any statutory inspection requirements in relation to Services and will liaise as required with the Welsh Government and the Care and Social Services Inspectorate Wales (CSSIW) and /or Healthcare Inspectorate Wales (HIW)/ Social Care Wales (SCW) and/or other relevant regulatory bodies.

14.1.2 provide appropriate access and information to any external body empowered by statute to inspect or monitor the Partners' discharge of the Services.

14.1.3 work together to ensure that recommendations made to the Council pursuant to its outcome agreement with the Welsh Government or any other administrative procedure which replaces it are implemented.

15. INDEMNITY AND INSURANCE

15.1 The Partners shall maintain (during the term of this agreement together with any period during which the Services are provided under clauses 12.1.4 and 12.1.5) employers liability insurance to a minimum level of ten million pounds (£10,000,000) per claim or aggregate cover of ten million pounds (£10,000,000) in any Financial Year and public liability insurance or its equivalent in respect of the Services provided under this Agreement to a minimum level of ten million pounds (£10,000,000) per claim or aggregate cover of ten million pounds (£10,000,000) of claims in any Financial Year and shall review the adequacy of such cover not less frequently than once in each Financial Year. Provided that the Councils acknowledge that the Health Board participates in the Welsh Risk Pool indemnity arrangements and accept that this participation satisfies the Health Board's obligations under this clause 15.1.

15.2 Any Partner shall upon request from another Partner from time to time:

15.2.1 provide evidence that the insurance arrangements required by clause 15.1 and 15.10 are fully paid up and in force;

15.2.2 allow the requesting Partner to inspect its insurance policies; and

15.2.3 provide the requesting Partner with copies of the full policy document.

15.3 Subject to Clause 15.4 each Partner (the "Indemnifying Partner") shall indemnify the other Partner, their officers, employees and agents against any damage, cost, liability, loss, claim or proceedings whatsoever arising in respect of:

15.3.1 any damage to property real or personal including (but not limited to) any infringement of third party patents copyrights and registered designs;

15.3.2 any personal injury including injury resulting in death;

15.3.3 any fraudulent or dishonest act of any of its officers, employees or contractors;

15.3.4 any negligent act or omission of its officers, employees or contractors

14.3.5 any breach of the obligations under this Agreement or any related statutory provision

- 14.3.6 any other civil claim including any claim under contract arising out of actions undertaken by the Host Partner acting within its proper authority under this agreement
or arising out of or in connection with the Service.
- 15.4 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 Partner 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 19 shall apply.
- 15.5 In the event that it cannot be determined which Partner(s) caused or contributed to any damage, cost, liability, loss, claim or proceedings then liability for such sum shall be determined in accordance with the ratio of the Partners contribution to the Pooled Fund.
- 15.6 The indemnity at Clause 15.3 shall apply to any such claim or proceeding:-
- 15.6.1 unless, as soon as reasonably practicable following receipt of notice of such claim or proceeding, the Partner in receipt of a claim shall have notified the other Partner in writing of it, and shall, upon any of the latter's request and at the latter's cost, have permitted the former to have full care and control of the claim or proceeding, using legal representation approved by the latter Partner, such approval not to be unreasonably withheld; or
- 15.6.2 if the Partner in receipt of the claim or proceeding, its employees or agents shall have made any admission in respect of such claim or proceeding or taken any action related to such claim or proceeding prejudicial to the defence of it without the written consent of the other Partner (such consent not to be unreasonably withheld or delayed), provided that this condition shall not be treated as breached by any statement properly made by the Partner in receipt of the claim, its employees or agents in connection with the operation of its internal complaints procedures, accident reporting procedures or disciplinary procedures or where such statement is required by law.
- 15.7 Each Partner shall keep the other Partners and their legal advisers fully informed of the progress of any such claim or proceeding, will consult fully with the other Partners on the nature of any defence to be advanced and will not settle any such claim or proceeding without the written approval of the other Partners affected (such approval not to be unreasonably withheld).
- 15.8 Without prejudice to the provisions of Clause 15.5, the Partners will use their reasonable endeavours to inform each other promptly of any circumstances reasonably thought likely to give rise to any such claim or proceedings of which they are directly aware and shall keep each other reasonably informed of

developments in relation to any such claim or proceeding even where they decide not to make a claim under this indemnity.

- 15.9 The Partners shall each give to the other such help as may reasonably be required for the efficient conduct and prompt handling of any claim or proceeding.
- 15.10 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 15.3 including but not limited to employers liability, public liability and other liabilities to third parties.
- 15.11 The Partners will maintain the insurances set out in Clause 15.1 and 15.10 for a period of 12 years following any termination or expiry of the Agreement

16. ADDITION VARIATION OR REMOVAL OF SERVICES

- 16.1 No variation to this Agreement shall be effective unless it is in writing and contained in an agreement executed by the Partners using the same formalities as this Agreement.
- 16.2 The Partners may (subject to Clause 16.1, the duty to consult and other constraints contained in the Regulations) by mutual consent add further Schemes or Services to this Agreement or either remove Schemes or Services from it or vary those Schemes.
- 16.3. The Schemes or Services shall be added varied or removed by such amendment to the Schedules and the body of this Agreement as the Partners may agree which may include separate description of the Schemes or Services, Pooled Funds and management arrangements such as Delivery Boards.

17. CONFIDENTIALITY AND DATA PROTECTION

- 17.1 The Partners comply and have adequate measures in place to ensure its compliance at all times with the provisions and obligations of the Data Protection Act 2018 (the “DPA”) and the General Data Protection Regulation 2016/679 (the “GDPR”). This shall include but is not limited to:
- 17.1.1 Partners shall not use Personal Data, Protected Data and Sensitive Personal Data (as both defined in the DPA and the GDPR) or any part thereof for any purposes whatsoever other than for the purpose of performing the Services
- 17.1.2 Partners shall keep and dispose of all Personal Data and Sensitive Personal Data in a safe and secure manner
- 17.1.3 Partners shall retain all Personal Data, Protected Data and Sensitive Personal Data for only as long as is necessary for performing the Services

- 17.2 Partners shall immediately inform each other in the event of any breaches or suspected breaches of the provisions of the DPA and GDPR in relation to information obtained in the course of performing the Services
- 17.3 Each Partner shall:
- 17.3.1 treat as confidential and provide appropriate safeguards for all or any information which belongs to and has been supplied by and designated as confidential by the other Partner howsoever or in whatsoever manner such information is conveyed or stored, including information which relates to the business, affairs, assets, goods or services or operations of the other Partner (“Confidential Information”); and
- 17.3.2 not disclose any Confidential Information to any other person without the prior written consent of the Partner, except to such person and to such extent as may be necessary for the performance of the Services or as required by law.
- 17.4 The Partners shall take all necessary precautions to ensure that all Confidential Information obtained from either Partner under or in connection with the Services:-
- 17.4.1 is given only to such of the staff engaged in connection with the performance of the Services as is strictly necessary for the performance of the Services and only to the extent necessary for performance of the Services;
- 17.4.2 is treated as confidential and not disclosed (without prior approval) or used by any staff otherwise than for the purposes of the Services.
- 17.5 The Partners agree that information relating to the provision of Services as defined in this Agreement may also be shared with the Welsh Government, Welsh NHS bodies, the Audit Commission and the Wales Audit Office where this is necessary for them to meet their obligations as defined by statute, regulation or contractual commitment.
- 17.6 The obligations of confidentiality in this clause 17 shall not extend to any matter which any Partner can show:
- 17.6.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under this Agreement; or
- 17.6.2 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.

18. FREEDOM OF INFORMATION

18.1 Each of the Partners is a public authority within the meaning of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). The Partners agree that they will each co-operate with one another to enable any Partner receiving a request for information under the FOIA or the EIR 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.

19. DISPUTE RESOLUTION

19.1 Prior to any dispute difference or disagreement being referred to mediation pursuant to the remaining provisions of this paragraph 19 the Partners shall seek to resolve the matter as follows:

19.1.1 in the first instance the issue shall be considered by chief officers with delegated responsibility for the Service

19.1.2 if the aforementioned chief officers are unable to resolve the matter within 30 working days then the issue shall be referred to the Head of Paid Service of the Council and the Chief Executive officer of the Health Board ('the Heads of Paid Service')

19.1.3 if the Heads of Paid Service are not able to resolve the matter within a further thirty (30) working days the provisions of paragraph(s) 19.2 and 19.3 shall take effect

19.2 In the event of the Heads of Paid Service not being able to resolve the matter shall be dealt with by the following mediation procedure:

19.2.1 for the purpose of this paragraph 19.2 a dispute shall be deemed to arise when one Partner serves on the other a notice in writing stating the nature of the dispute

19.2.2 every dispute notified under this paragraph 19.2 shall first be referred to mediation in accordance with the mediation procedures of the Alternative Dispute Resolution Group London

19.2.3 the mediator shall be agreed upon by the Partners and failing such agreement within fifteen (15) working days of one Partner requesting the appointment of a mediator and proposing a name then the mediator shall be appointed by the head of the division of the Welsh Government for the time being with responsibilities for the oversight of the Services

- 19.2.4 unless agreed otherwise the Partners shall bear their own costs of the mediation and share equally the costs of the mediator
 - 19.2.5 the use of mediation will not be construed under the doctrines of laches waiver or estoppel to affect adversely the rights of any Partner and in particular any Partner may seek a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary to avoid irreparable damage
- 19.3 In the event of the Partners failing to reach agreement following mediation the following procedure shall be followed:
- 19.3.1 in the event of the Partners failing to reach agreement on their dispute or difference following mediation pursuant to paragraph 19.2 one Partner may serve on any other a notice in writing stating the nature of the matters still in dispute
 - 19.3.2 the dispute or difference shall then be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the Arbitration Act 1996 (“the Arbitration Act”)
 - 19.3.3 in the event of failure of the Partners to make the appointment pursuant to Section 16(3) of the Arbitration Act the appointment shall be by the President (or if the President be unwilling, unable or unavailable) the Vice President for the time being of the Law Society
 - 19.3.4 the arbitration will be regarded as commenced for the purposes set out in Section 14(1) of the Arbitration Act when one Partner sends to the other written notice in accordance with the Arbitration Act
 - 19.3.5 the arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrator(s) or any amendment or modification thereof being in force at the date of commencement of the arbitration
- 19.4 This dispute resolution procedure cannot be used in relation to any dispute relating to the setting of the Budget or any revision of this Agreement

20. EXCLUSION OF PARTNERSHIP AND AGENCY

- 20.1 The Partners expressly agree that nothing in this Agreement in any way creates a legal partnership between them.
- 20.2 No Partner nor any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Partner, except where expressly permitted by this Agreement.

21. ASSIGNMENT AND SUB AGREEMENTS

- 21.1 No Partner shall assign nor transfer the whole or any part of this Agreement, without the prior written consent of the other Partner, except where expressly permitted by the Agreement.
- 21.2 Any Partner shall be entitled to assign novate or otherwise transfer its rights and obligations pursuant to this Agreement to a statutory successor. This Agreement shall be binding on and shall endure to the benefit of the Health Board and the Council and their respective successors and permitted transferees and assignees.

22. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 22.1 The Contracts (Rights of Third Parties) Act 1999 is hereby excluded.
- 22.2 No variation to this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated in any such agreement by the parties to this Agreement.
- 22.3 This Clause does not affect any right or remedy of a third party, which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

23. PROBITY AND QUALITY CONTROL

- 23.1 The Partners shall ensure that any complaints received about the Service shall be dealt with promptly and in accordance with their adopted complaints procedures.

24. COMPLAINTS

- 24.1 The Partners shall ensure that any complaints received about the Service shall be dealt with promptly and in accordance with their adopted complaints procedures.
- 24.2 In circumstances where the complaints policies and procedures of more than one Partner may apply the Partners shall agree which shall be applied and in the absence of agreement the Host Partner shall determine which policy or procedure will apply.
- 24.3 Where applicable any complaints which have not been resolved under the above sub clause shall be dealt with under any appropriate statutory complaints procedure which applies to that class of complaint.
- 24.4 The Partners shall ensure that any service providers appointed to provide the Services shall have appropriate complaints procedures which are communicated to Service Users and to confirm that Service Users have a separate right to complain to Care and Social Services Inspectorate of Wales and that appropriate liaison will take place between the Host Partners and the service provider where any complaints affect their respective responsibilities.

25. NOTICES

- 25.1 All notices under this Agreement shall only be validly given if given in writing, addressed as follows:-
- 25.1.1 if to the Health Board, addressed to its Chief Executive as above;
or
- 25.1.2 if to the Council, addressed to its Chief Executive as above.
- 25.2 Any notices required to be given under this Agreement must be in writing and may be served by personal delivery, post (special or recorded delivery or first class post) or facsimile at the address set out at the beginning of this Agreement or at such other address as each party may give to the other for the purpose of service of notices under this Agreement.
- 25.3 Notices shall be deemed to be served at the time when the notice is handed to or left at the address of the party to be served (in the case of personal delivery) or the day (not being a Saturday, Sunday or public holiday) next following the day of posting (in the case of notices served by post) or at 10 a.m. on the next day (not being a Saturday, Sunday or public holiday) following dispatch if sent by facsimile transmission.
- 25.4 To prove service of any notice, it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the case of a notice served by post that the same was duly addressed prepaid and posted special or recorded delivery or by first class post. In the case of a notice given by facsimile transmission, it shall be sufficient to show that it was dispatched in a legible and complete form to the correct telephone number without any error message on the confirmation copy of the transmission.
- 24.5 Any Partner serving a notice on another Partner under this Clause shall promptly copy such notice to the other Partners.

26. NOTIFICATION TO THE WELSH GOVERNMENT

- 26.1 In accordance with the relevant guidance the Partners agree that they shall lodge with the Welsh Government a copy of this Agreement and any Services added under Clause 32.

27. GENERAL PRINCIPLES

- 27.1 In relation to the Services, the Partners shall:
- 27.1.1 treat each other with respect and an equality of esteem;
- 27.1.2 be open with information about the performance and financial status of each;
- 27.1.3 provide early information and notice about relevant problems; and
- 27.1.4 co-operate with each other to agree joint protocols and any variance in such protocols as may be required from time to time.

28. FORCE MAJEURE

- 28.1 In this Agreement "force majeure" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order rule regulation or direction, accident, fire, flood or storm.
- 28.2 If any party is prevented or delayed in the performance of any or all of its obligations under this Agreement by force majeure, that party shall forthwith serve notice in writing on the other party or parties specifying the nature and extent of the circumstances giving rise to force majeure and shall, subject to service of such notice (and to Clause 28.4), have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events.
- 28.3 The party affected by force majeure shall use all reasonable endeavors to bring the force majeure event to a close or to find a solution by which the Agreement may be performed, despite the continuance of the force majeure event.
- 28.4 If any party is prevented from performance of any or all of its obligations for a continuous period in excess of three months the other party may terminate this Agreement forthwith by written notice, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

29. SEVERABILITY

- 29.1 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

30. WAIVER

- 30.1 The rights and remedies of any party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such party to the other nor by failure of, or delay by the said party in ascertaining or exercising of any such rights or remedies. The waiver by any party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

31. GOVERNING LAW

- 31.1 This Agreement shall be considered as a contract made in England and Wales and shall be subject to the laws of England and Wales as they apply in Wales.
- 31.2 Subject to the provisions of any jointly agreed dispute resolution procedure, all the 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.

32. ADDITION OR REMOVAL OF SERVICES

- 32.1 The Partners may (subject to the duty to consult and other constraints contained in the Regulations) by mutual consent add further Schemes or Services to this Agreement or remove Schemes or Services from it or vary those Schemes.
- 32.2 The Schemes or Services shall be added or removed by such amendment to the Schedules and the body of this Agreement as the Partners may agree which may include separate description of the Schemes or Services, Pooled Funds and management arrangements such as JPBs and Joint Management Boards.
- 32.3 These amendments shall be contained in an agreement executed using the same formalities as this Agreement

IN WITNESS whereof the Partners have executed this Agreement as a Deed the day and year first before written.

Executed as a deed by affixing the

COMMON SEAL of

SWANSEA BAY UNIVERSITY

HEALTH BOARD

In the presence of:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

COMMON SEAL of

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

In the presence of:

Signed (Proper Officer)

Name/Position

Executed as a deed by affixing the

COMMON SEAL of **SWANSEA COUNCIL**

In the presence of:

Signed (Authorised Signatory)

Name/Position