

**CYFARFOD BWRDD PRIFYSGOL IECHYD
UNIVERSITY HEALTH BOARD MEETING**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	25 March 2021
TEITL YR ADRODDIAD: TITLE OF REPORT:	Pooled Funds for Adult Care Home Placements
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Jill Paterson, Director of Primary Care, Community and Long Term Care
SWYDDOG ADRODD: REPORTING OFFICER:	Sian-Marie James, Assistant Director – Corporate Legal Services and Public Affairs Anna Bird, Assistant Director – Strategic Partnerships, Diversity and Inclusion

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Ar Gyfer Penderfyniad/For Decision

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

Under the Social Services and Well-Being (Wales) Act 2014 (SSWBA), councils and health boards have a statutory obligation to establish and maintain pooled fund arrangements in relation to the exercise of their adult care home care home accommodation functions.

Attached at **Appendix 1** is a copy of the Agreement for the creation of a virtual pooled fund for older persons care home services. This is being presented to the Board to provide assurance that governance arrangements for pooled funding are in place.

Cefndir / Background

The West Wales Care Partnership (WWCP) was established in June 2016 as the Regional Partnership Board (RPB) for the West Wales area.

A regional pooled fund for older adult care home placements became effective 6th April 2018 for 12 months on a 'virtual' basis (with some exclusions, notably 'in-house', and intermediate care provision). The arrangement involves no physical transfer of funds between agencies but spend and associated activity across the region are monitored jointly by partners and commissioning arrangements are being integrated. This arrangement was approved by the Board on 29th March 2018. Following this, discussions took place for a similar Agreement for 2019/20, however this was not finalised.

The three Local Authorities and the Health Board have agreed a slightly revised Agreement for 2021/22, which is attached at **Appendix 1**.

Asesiad / Assessment

Health Board involvement in agreeing the required legal agreements and schedules to achieve statutory compliance is crucial as:

- This reflects the regional approach directed by Welsh Government.
- The NHS generally has tighter regulatory framework and shorter accounts closedown periods.
- It offers the opportunity to streamline the systems and processes in place which will be more efficient than contributing separately to the three systems which currently exist.
- The potential to maintain “grip” in relation to the management of the Continuing Health Care (CHC) budget as well as decision making in relation to eligibility and thresholds which are not politically driven. It also reflects that nursing and complex care expertise sits within the NHS.
- There is an opportunity to build on the experience that the UHB has on delivering risk sharing commissioning models e.g. Welsh Health Specialised Services Committee (WHSSC) tertiary contract.

Considerable work has been undertaken to progress the drafting of legal agreements and arrangements for the fully functional pooled fund. The Agreement has been discussed at the Integrated Executive Group of the Regional Partnership Board and will be formally approved by each statutory partner through their governance processes.

Argymhelliad / Recommendation

The Board is asked to:

- **Note** the legislative requirements necessitating the establishment of a pooled fund for adult care home placements and the approach being taken in West Wales;
- **Approve** the Pooled Fund Legal Agreement for 2021/22 in the form attached at **Appendix 1**.

Amcanion: (rhaid cwblhau)	
Objectives: (must be completed)	
Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score:	Not applicable
Safon(au) Gofal ac Iechyd: Health and Care Standard(s): Hyperlink to NHS Wales Health & Care Standards	Governance, Leadership and Accountability
Amcanion Strategol y BIP: UHB Strategic Objectives: Hyperlink to HDdUHB Strategic Objectives	4. Improve the productivity and quality of our services using the principles of prudent health care and the opportunities to innovate and work with partners.
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019	8. Transform our communities through collaboration with people, communities and partners

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	This is a requirement within the Social Services and Well-being (Wales) Act 2014.
Rhestr Termau: Glossary of Terms:	Contained within the body of the report.
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol: Parties / Committees consulted prior to University Health Board:	A detailed Service Integration and Pooled Funds paper was presented to: <ul style="list-style-type: none"> • West Wales Regional Partnership Board meeting on 27th October 2017 • Public Board on 25th January 2018 • Public Board on 29th March 2018

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	Establishing pooled funding arrangements for care homes and integrated family support services is a statutory requirement of the SSWBA.
Ansawdd / Gofal Claf: Quality / Patient Care:	Not applicable
Gweithlu: Workforce:	The work of the RPB in delivering its statutory duties is focused upon changing culture and developing meaningful partnership working between professionals. Additional service capacity is being funded through the deployment of Welsh Government Integrated Care Fund.
Risg: Risk:	The Health Board is required to have a legal agreement in place.
Cyfreithiol: Legal:	Legal requirement under Part 9 of the <i>Social Services and Well-being (Wales) Act 2014</i> and Section 33 of the <i>National Health Service (Wales) Act 2006</i> .
Enw Da: Reputational:	Welsh Government monitor compliance.
Gyfrinachedd: Privacy:	Not applicable
Cydraddoldeb: Equality:	An equality impact assessment has not be undertaken as this is a legal agreement

DATED _____ 2020

CARMARTHENSHIRE COUNTY COUNCIL

and

CEREDIGION COUNTY COUNCIL

and

PEMBROKESHIRE COUNTY COUNCIL

and

HYWEL DDA UNIVERSITY LOCAL HEALTH BOARD

**AGREEMENT FOR THE CREATION OF A VIRTUAL POOLED FUND FOR
OLDER PERSONS CARE HOME SERVICES**

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SCHEDULE 1: SCOPE OF SERVICES

SCHEDULE 2: PARTNERS INDICATIVE BUDGET ASSUMPTIONS FOR FINANCIAL CONTRIBUTION

1 DATE OF THIS AGREEMENT

2 PARTIES

2.1 **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall, Carmarthen, SA31 1JP

2.2 **CEREDIGION COUNTY COUNCIL** of Penmorfa, Aberaeron, Ceredigion SA46 0PA

2.3 **PEMBROKESHIRE COUNTY COUNCIL** of County Hall, Haverfordwest, Pembrokeshire, SA61 1TP

2.4 **HYWEL DDA UNIVERSITY LOCAL HEALTH BOARD** of Ystwyth, Hafan Derwen, St David's Park, Carmarthen SA31 3BB

3 DEFINITIONS AND INTERPRETATION

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

“Adult”

means a person who is aged 18 years and above

“Additional Cost Calculation”

Means the sum of money which a relative or third party associated with a Service User pays towards the Care Home fee over and above the funding made available by the Councils and/or Health Board (as applicable)

"Agreement"

means this agreement

“Applicable Law”

means all applicable laws, statutes, regulations, regulatory requirements, guidance and codes of practice in any relevant jurisdiction as amended, updated or replaced from time to time, including the Data Protection Laws

"Arrangements"

means the arrangements as described in Clause 7

“Care Home”

means the same as defined in the Care Standards Act 2000

“Care Home Accommodation Functions”

means the care home accommodation functions as defined at Regulation 19 (2) of the Partnership Arrangements (Wales) Regulations 2015, which for the avoidance of doubt relates to Adults

"Councils"

means Carmarthenshire County Council, Ceredigion County Council and Pembrokeshire County Council and their statutory successors

“Data”

means any data, document, code, information, Personal Data in connection with this Agreement.

“Data Incident”

means the reasonable suspicion of, discovery by, or notice to a party that (a) Data has been or is likely to be accessed or obtained by an unauthorised person; or (b) a party’s systems have been or are likely to be compromised or vulnerable; or a person has threatened the unauthorised access to or obtaining of any Data

“Data Protection Laws”

Means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**"), the DPA to the extent that it relates to processing of personal data and privacy; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended

“Data Subject”

shall have the meanings set out in the GDPR

“DPA”

means the Data Protection Act 2018 and any subordinate legislation

“DP Regulator”

means any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws.

“Effective Date”

means the 1 April 2020 and accurately reflects the arrangements between the parties at that date.

“Executive Directors”

means the statutory Director of Social Services for each Council and the Director of Primary Care, Community & Long Term Care and the Director of Partnerships & Corporate Services for the Health Board or such other officers from time to time as may be notified by one party to the other parties acting by unanimous agreement to undertake the Joint Aims.

"Financial Contribution" means the revenue contribution made to the Pooled Fund by the Partners as set out in the Clause 9 for the term of this Agreement.

"Financial Year" means a year commencing on 1st April 2020 and ending on 31st March 2021

“FOI Legislation”

means the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004

"Health Board"

means Hywel Dda University Local Health Board and its statutory successor

“Joint Aims”

means the aims, benefits and intended outcomes of the Partners in establishing the Pooled Fund and entering into this Agreement as set out in Clause 5.

"Month"

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

“Older Person”

means a person who is aged sixty five (65) years and above and “Older Persons” shall be construed accordingly

"Partner"

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

“Personal Data”

has the meanings set out in the GDPR for personal data governed by such laws and shall also include “Personal Information” classified as “personal information” or “personally identifiable information” or similar term under the Applicable Law governing a person’s processing of personal information about an individual;

"Pooled Fund"

means the virtual pooled fund as described in Clause 9

“Pooled Fund Information”

means the information defined within clause 17.2

“Population Assessment”

means the assessment undertaken by the Partners in accordance with section 14(1) of the Social Services and Well-being (Wales) Act 2014

"Quarter"

means each of the following periods in a Financial Year:

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

“Regional Partnership Board”

means the West Wales Regional Partnership Board as defined in the Regulations

"Regulations"

means the Partnership Arrangements (Wales) Regulations 2015 as amended or replaced from time to time

"Services "

means the services associated with the Care Home Accommodation Functions for Older Persons which are set out in Schedule 1

“Standard Rate”

means the standard rate per week of care which applies to each category of placement within the Services for each Partner, as set out in Schedule 2 in relation to the indicative budget assumptions for the Financial Contributions

“Standing Orders”

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

“Term”

means the period from the Effective Date and ending on 31 March 2021 subject to earlier termination in accordance with the terms of this Agreement

- 3.2 References to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted (whether before or after the Commencement Date) from time to time.
- 3.3 The headings of the Clauses in this Agreement are for reference purposes only and shall not be construed as part of this Agreement or deemed to indicate the meaning of the relevant Clauses to which they relate.
- 3.4 References to Schedules are references to the schedules to this Agreement and a reference to a Paragraph is a reference to the paragraph in the Schedule containing such reference.

3.5 References to a person or body shall not be restricted to natural persons and shall include a company, corporation or organisation.

3.6 Words importing the one gender only shall include the other genders and words importing the singular only shall include the plural.

4 BACKGROUND

4.1 Each Council commissions and provides social care for individuals for which it is responsible.

4.2 The Health Board plans, delivers, contracts and commissions health services for individuals usually resident within its administrative boundaries.

4.3 The Regulations require the Partners to establish and maintain pooled funds from April 2018, for the exercise of their Care Home Accommodation Functions.

4.4 Regulation 14 of the Regulations grants powers to local authorities to carry out prescribed functions on behalf of any of the Partners and for the local health board to carry out prescribed local authority functions on behalf of any of the Partners.

4.5 From 1 April 2018 – 31 March 2019 and from 1 April 2019 – 31 March 2020, the Partners entered into an Agreement in similar terms for a 12-month period that expired on 31 March 2020, but the service has been continuous.

4.6 The purpose of this Agreement is to continue to facilitate a Pooled Fund for the costs of Services which are to be provided under their Care Home Accommodation Functions.

4.7 Schedule 1 sets out the scope of the Services falling within the Pooled Fund.

4.8 Each Partner confirms it has the necessary authorisation to enter into this Agreement.

4.9 The Partners are satisfied that these Arrangements are consistent with the directions of the Regional Partnership Board and those of the Partners for exercising Care Home Accommodation Functions.

5 AIMS, BENEFITS AND OUTCOMES

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

5.1.1 provide efficient and effective commissioning for the Services through an integrated commissioning strategy reflecting the outcomes of the Population Assessment;

5.1.2 develop comprehensive market intelligence to shape and influence future service provision to respond to needs/ demand;

5.1.3 drive service quality and service improvement;

5.1.4 inform a single joint approach to contract management and quality assurance; and

5.1.5 enable greater transparency regarding activity and expenditure.

6 TERM OF THE AGREEMENT

6.1 1 April 2020 to 31st March 2021, subject to earlier termination.

7 DETAILS OF THE ARRANGEMENTS

7.1 The Executive Directors shall have responsibility for undertaking the Joint Aims in relation to the Pooled Fund.

7.2 For the avoidance of doubt, the Executive Directors shall not have responsibility for the delivery of the Care Home Accommodation Functions on behalf of any Partner.

8 GENERAL PRINCIPLES

8.1 In relation to the Arrangements, the Partners shall:

8.1.1 treat each other with respect and an equality of esteem;

8.1.2 provide early information and notice about relevant problems;

8.1.3 co-operate with each other to agree joint protocols where necessary and any variance in such protocols as may be required from time to time; and

8.1.4 not pass a burden of service demand onto another Partner through local organisational actions.

8.2 Nothing under this Agreement shall affect the liabilities of the Partners to any third parties for the exercise of their respective functions and obligations.

9 THE POOLED FUND

9.1 The Pooled Fund shall be a virtual fund and will not require any financial payments to be made between the Partners.

9.2 The value of the Pooled Fund will be the total value of the respective Financial Contributions of each of the Partners for the Financial Year for the Services. It will be calculated on the basis of the previous year out-turn spend on externally commissioned in-scope placements.

9.3 The indicative budget assumptions of each Partner for their Financial Contribution to the Pooled Fund is set out in Schedule 2.

9.4 For the duration of this Agreement, each Partner shall retain their respective Financial Contributions for the purposes of performing their Care Home Accommodation Functions and shall retain statutory responsibility for those functions.

9.5 Each Partner shall be responsible for managing any overspend or underspend in respect of their Financial Contribution in accordance with their respective Standing Orders.

10 NO ADJUSTMENT TO FINANCIAL CONTRIBUTIONS

10.1 Financial liability for any Care Home Accommodation Functions which are delegated between Partners shall be dealt with separately and shall not result in any reduction or increase to the Partners' Financial Contributions to the Pooled Fund under these Arrangements.

11 CAPITAL EXPENDITURE

11.1 The Pooled Fund shall not be applied towards capital expenditure.

12 AUDIT AND ACCOUNTING

12.1 Each Partner shall be responsible for the accounting and audit of their own Financial Contribution to the Pooled Fund. For the avoidance of doubt, each Partner's accounting and audit information in relation to its Financial Contribution shall not be Pooled Fund Information for the purposes of Clause 17.

13 LIABILITIES

13.1 Nothing in this Agreement shall limit or exclude a Partner's liability:

(a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;

(b) for fraud or fraudulent misrepresentation;

(c) for breach of any obligation as to title or quiet possession implied by statute; or

(d) for any other act, omission, or liability which may not be limited or excluded by law.

13.2 Subject to Clause 13.1 and clause 13.3, no Partner shall have any liability to any other Partner, whether in contract, tort (including negligence), breach of statutory duty, or otherwise arising under or in connection with the Agreement.

13.3 In relation to Clauses 15 (*Information Sharing*) and 17 (*Confidentiality and Access to Information*), each of the Partners (acting severally) shall indemnify and keep indemnified the other Partners against all losses, claims, expenses, actions, demands, costs and liabilities which the other Partners may incur ("the Indemnified Partners") by reason of or arising out of any wilful default or breach by a Partner of its obligations under Clauses 15 or 17 (and "wilful" in this context shall, for the avoidance of doubt,

not include matters which are outside the reasonable control of that Partner or matters arising from any negligent act or omission in relation to such obligations) unless and to the extent that the same result from a breach by the Indemnified Partner of any such obligations.

- 13.4 The amount to be paid to the Indemnified Partners by any of the other Partners under Clause 13.3 shall be borne by each of the Partners to the extent of its responsibility.
- 13.5 A Partner which receives a claim for losses, expenses, actions, demands, costs and liabilities which relates to this Agreement shall notify and provide details of such claim as soon as is reasonably practicable to the other Partners.
- 13.6 No Partner shall be indemnified in accordance with clause 13.3 unless it has given notice in accordance with clause 13.5 to the other Partner against whom it shall be enforcing its right to an indemnity under this Agreement.
- 13.7 Each Partner shall not be obliged to indemnify the other Partners to the extent that the insurances maintained by the other Partners at the relevant time provide an indemnity against the loss giving rise to a claim and to the extent that another Partner recovers under a policy of insurance save that the Partner responsible for liabilities suffered by another Partner shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance.

14 REPORTING AND MONITORING

- 14.1 The Partners will provide the Executive Directors with quarterly reports containing relevant financial and performance information which will evidence and monitor the Joint Aims. Such reports shall, where necessary, be authorised in accordance with any relevant financial standing orders of the Partners prior to submission to the Executive Directors. The format, content and due dates for such reports shall be agreed by the Executive Directors at their first meeting following the Commencement Date and communicated by the Executive Directors to the Partners.
- 14.2 The Executive Directors shall meet quarterly in order to consider reports received since the previous meeting and to discuss and consider progress and recommendations in relation to the Joint Aims.

14.3 The Executive Directors shall act unanimously so as to ensure each Director acts within their statutory or other delegated responsibilities that each Director has from its respective Council or Health Board.

14.4 The Executive Directors shall provide a report to the Regional Partnership Board in each Quarter in relation to the progress of the Joint Aims.

15 INFORMATION SHARING

15.1 Data Protection

15.1.1 The Partners will act as joint data controllers in relation to the information processed as part of this Agreement.

15.1.2 The Partners shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement. Details of the processing, including categories of Data Subjects, nature and purposes, and duration/retention periods, shall be set out in a document to be agreed by the Partners.

15.1.3 Each Partner shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

15.1.4 To the extent any Partner processes any Personal Data on behalf of another Partner the processing Partner shall:

- (i) Process such Personal Data only in accordance with the other Partner's written instructions from time to time and only for the duration of this Agreement.
- (ii) Not process such Personal Data for any purpose other than those set out in this Agreement or otherwise expressly authorised by the other Partner.

- (iii) Take reasonable steps to ensure the reliability of all its personnel who have access to such Personal Data, limit such access to its personnel who require access, and remove, when no longer required, such access to the Personal Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Personal Data.
- (iv) Implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Personal Data, including protecting such Personal Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access.
- (v) Not transfer such Personal Data outside the European Economic Area without the prior written consent of the other party.
- (vi) Inform the other Partner within twenty four (24) hours if any such Personal Data is (while within the processing Partner's possession or control) subject to a personal data breach (as defined in Article 4 of GDPR) or within such other time period as required under other Data Protection Laws, or is lost or destroyed or becomes damaged, corrupted or unusable.
- (vii) Only appoint a third party to process such Personal Data with the prior written consent of the other Partner.
- (viii) Not use or disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Partner or as expressly provided for in this Agreement.
- (ix) Return or irretrievably delete all Personal Data on termination or expiry of this Agreement and not make any further use of such Personal Data.
- (x) Provide to the other Partner and any DP Regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause and the Data Protection Laws.
- (xi) Permit the other Partner or its representatives to access any relevant premises, personnel or records of the processing Partner on

reasonable notice to audit and otherwise verify compliance with this clause.

- (xii) Take such steps as are reasonably required to assist the other Partner in ensuring compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR and other applicable Data Protection Laws.
- (xiii) Notify the other Partner within two (2) business days if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; and
- (xiv) Provide the other Partner with its full co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data.

15.1.5 If any Partner receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by another or to another Partner's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other Partner and it shall provide the other Partner with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

15.1.6 If a Partner requires another Partner to make any disclosures or provide any information in respect of this Agreement in order to enable that party to meet its obligations under the Data Protection Laws the other Partner shall do so.

15.1.7 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

15.2 Freedom of Information

15.2.1 Each Partner acknowledges that it and the other Partners are subject to the requirements of FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of a request for information.

15.2.2 Where a Partner receives a request for information under either the FOI Legislation in relation to information which it is holding on behalf of any of

the other Partners in relation to this Agreement, it shall inform the Executive Directors and the other Partners of the request and its response.

15.2.3 The Executive Directors shall be required to assist any of the Partners in responding to a request for information to the extent that it relates to this Agreement. This shall include co-ordinating the response when requested to do so by any of the Partners.

15.2.4 Any Partner which receives a request for information under FOI Legislation shall be responsible for determining in their absolute discretion whether any information requested under FOI Legislation:

- a) Is exempt from disclosure under FOI Legislation; and
- b) Is to be disclosed in response to a request for information.

15.2.5 Each Partner acknowledges that any of the Partners may be obliged under FOI Legislation to disclose information:

- (a) Without consulting the other Partners where it has not been practicable to achieve such consultation; or
- (b) Following consultation with the other Partners and having taken their views into account.

16 TERMINATION

16.1 The Partners agree that this Agreement may be determined upon terms agreed by all the Partners.

17 CONFIDENTIALITY AND ACCESS TO INFORMATION

17.1 Except as required by law, each Partner agrees at all times during the continuance of this Agreement and after its termination to keep confidential all documents and papers which it receives or otherwise acquires in connection with this Agreement unless the Executive Directors have agreed that such a document or paper may be placed in the public domain or otherwise disclosed to a third party.

17.2 Any Director named as one of the Executive Directors may request a copy of a document from any other Partner which has been or is being prepared on behalf of the Executive

Directors in relation to any of the performance or financial reporting or monitoring arrangements referred to in this Agreement or is being held on behalf of the Executive Directors (“Pooled Fund Information”). Where such a request is made the Partner to whom the request is made shall promptly provide the requesting Director with a copy of such Pooled Fund Information. Subject to Clause 15, should any Director named as one of the Executive Directors receive a request for access to Pooled Fund Information from an officer or member of their own Partner, that Director shall at his discretion and subject to that Partner’s constitution, decide whether the relevant Pooled Fund Information shall be disclosed to the officer or member in question with full consideration given to ensure compliance with Data Protection Laws. Where practicable, the Director who so receives a request shall consult with the other Executive Directors and consider their views in exercising his discretion under this clause. Any Pooled Fund Information shared will be processed to ensure that the minimum amount of Personal Data is made available and, whenever possible, that any such information is fully anonymised as provided in Clause 17.3.

- 17.3 Any Partner preparing Pooled Fund Information shall ensure that it does not include the identity of any individual service user or carer (or their families) and any such information must be appropriately anonymised.

18 WAIVERS

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

19 ENTIRE AGREEMENT

- 19.1 The terms herein contained together with the content of the Schedule constitute the complete agreement between the Partners with respect to the subject matter hereof and supersede all previous communications representations understandings and agreement, and any representation promise or condition not incorporated herein shall not be binding on any Partner.

19.2 No agreement or understanding varying or extending or pursuant to any of the terms or provisions hereof shall be binding upon any Partner unless in writing and signed by a duly authorised officer or representative of each of the Partners.

20. CHANGES IN LEGISLATION, ETC.

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

21 GOVERNING LAW

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

22 DISPUTES

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

22.2 In the event that the dispute remains unresolved having followed the procedure in Clause 22.1, or where owing to the nature or level of the dispute it would be inappropriate for the Executive Directors to seek to resolve it, the matter shall be referred to the Chief Executives of the Partners who shall endeavour to settle the dispute between them.

23 TRANSFERS

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

24 NO PARTNERSHIP

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

25 SEVERANCE

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

26 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

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

Executed as a deed by affixing the

COMMON SEAL of CARMARTHENSHIRE COUNTY COUNCIL

In the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name Position:

Executed as a deed by affixing the

COMMON SEAL of CEREDIGION COUNTY COUNCIL

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

COMMON SEAL of PEMBROKESHIRE COUNTY COUNCIL

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

Executed as a deed by affixing the

Pooled Fund for Older Persons Care Home Services Agreement

COMMON SEAL of HYWEL DDA UNIVERSITY LOCAL HEALTH BOARD

in the presence of:

Signed (Authorised Officer):

Name/Position:

Signed (Authorised Officer):

Name/Position:

SCHEDULE 1

SCOPE OF SERVICES

1.1 The scope of the Services includes externally commissioned Nursing and Residential placements for Older Persons including:

- Standard Local Authority Rate and Funded Nursing Care (FNC) Placements (Joint funded packages and out of county packages);
- Standard Local Authority Rate and Funded Nursing Care (FNC) Placements for Dementia/EMI (Joint funded packages and out of county packages);
- Standard Rate Residential Placements (Joint funded packages and out of county packages);
- Standard Rate Residential Placements for Dementia/EMI. (Joint funded packages and out of county packages); and
- Standard Rate Continuing NHS Health Care Placements (and out of county packages).

Externally commissioned Nursing and Residential placements for Older Persons also include, Respite, Short Term, Temporary and Permanent placements.

The Financial Contribution for such services shall reflect the cost of the service for each Partner excluding service user's assessed charge and excluding Additional Cost Calculation.

1.2 The Scope of the Services expressly excludes care home placements which have been externally commissioned where the main assessed need is one of the following:

- Learning Disability;
- Physical or Sensory Impairment;
- Mental Health Impairment (apart from where the condition is associated with old age);
- Bespoke packages of care and
- Placements/services provided directly by the Partners (not commissioned)

SCHEDULE 2

PARTNERS INDICATIVE BUDGET ASSUMPTIONS FOR FINANCIAL CONTRIBUTION (EXTERNALLY COMMISSIONED PLACEMENTS ONLY)

The figures provided below are end of year outturn figures for 2019-20 in £'000

Residential Care Placements			EMI - Residential Care Placements			Nursing Care Placements (excluding FNC)			EMI Nursing Care Placements (excluding FNC)		
Residential (Carms)	Residential (Pembs)	Residential (Cere)	Emi - Residential (Carms)	Emi - Residential (Pembs)	Emi - Residential (Cere)	Nursing (Carms)	Nursing (Pembs)	Nursing (Cere)	Emi Nursing (Carms)	Emi Nursing (Pembs)	Emi Nursing (Cere)
Carms	Pembs	Cere	Carms	Pembs	Cere	Carms	Pembs	Cere	Carms	Pembs	Cere
9,031	6,554	1,428	8,449	5,025	3,536	2,363	918	1,733	1,178	1,544	351

Pooled Fund for Older Persons Care Home Services Agreement

Funded Nursing Care (FNC)	Joint Packages	Joint Packages	Joint Packages	Nursing Care Placements (CHC)
Nursing FNC (HDda)	All (Carms)	All (Pembs)	All (Cere)	Nursing Care CHC (HDda)
Hdda	Carms	Pembs	Cere	Hdda
2,985	1,006	867	0	11,193

Totals

Carms	Pembs	Cere	Hdda	Total
22,027	14,928	7,049	14,178	58,182

The Standard Rates¹ for each Partner in relation to the 2019-20 financial year are set out below:

Residential Care Placements			EMI - Residential Care Placements			Nursing Care Placements (excluding FNC)			EMI Nursing Care Placements (excluding FNC)			Funded Nursing Care (FNC)	
Residential (Carms)	Residential (Pembs)	Residential (Cere)	Emi - Residential (Carms)	Emi - Residential (Pembs)	Emi - Residential (Cere)	Nursing (Carms)	Nursing (Pembs)	Nursing (Cere)	Emi Nursing (Carms)	Emi Nursing (Pembs)	Emi Nursing (Cere)	FNC (HDda)	FNC (LA)
£566.74	£577.58	£580	£591.45	£609.13	£619	£548.79	£584.64	£592	£631.71	£618.60	£630	£172.96	£7.01

¹ 2019-20, externally commissioned placements.