Appendix B

DATED

MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF JOINTLY COMMISSIONED COMMUNITY SERVICES

between

BEDFORDSHIRE CLINICAL COMMISSIONING GROUP

and

CENTRAL BEDFORDSHIRE COUNCIL

AND

BEDFORD BOROUGH COUNCIL

LGSS LAW LIMITED

LGSS Law, Third Floor, Scott House, Huntingdon.

CONTENTS

CLAUSE

ANNEX

THIS AGREEMENT is dated [DATE]

PARTIES

(1) **Bedfordshire Clinical Commissioning Group** of Capability House, Bedford MK45 4HR (**BCCG**).

(2) **Central Bedfordshire Council** of Priory House Monks Walk Chicksands Shefford Bedfordshire SG17 5TQ (**CBC**).

(3) **Bedford Borough Council** of Cauldwell Street Bedford MK42 9AP (**BBC**).

individually a 'Party', together the 'Parties'.

1. DEFINITIONS

Commissioning Bodies: means each of the Parties as commissioner

CHS Partner Board: means the body which will oversee the delivery of the partnership for the joint commissioning of community Health Services programme and on completion of the procurement phase will, subject to the Parties agreement, assume the role of overseeing the management of the commissioning arrangements post implementation. The CHS Partner Board shall undertake the role of strategic oversight and decision making.

Programme Delivery Team (PDT): means the stakeholder forum with representatives from the commissioning bodies and stakeholders who will contribute to the delivery of the procurement process reporting into the CHS Partner Board as necessary to enable it to perform its oversight role. The PDT shall, subject to the agreement of the Parties, become the forum for maintaining ongoing operational management of the contractual arrangements post implementation and shall report into the CHS Partner Board as the oversight and decision making body.

Leaders Group: means the group comprised of senior officer representatives and Elected Members from the Commissioning Bodies.

Programme SRO: Interim Director of Strategy and Transformation, BCCG. BCCG Representative on and Chair of the CHS Partner Board.

Programme Manager: Interim Programme Lead BCCG. Responsible for day to day management of the procurement programme including liaison with Attain, BCCG's procurement adviser and other relevant contacts. Shall act as Chair of the Programme Delivery Team.

2. BACKGROUND

2.1. The Parties have agreed to work together to jointly commission and manage community health services to deliver integrated services (**Commissioned Services**) for the population of Bedfordshire (the **Programme**). The Parties shall establish a Partner Board (CHS **Partner Board**) for the purpose of overseeing the partnership arrangements, the procurement process and subject to the Parties agreement, the, joint commissioning and management of the Commissioned Services.

2.2. The Parties agree that the CHS Partner Board shall function in accordance with the terms of this Memorandum of Understanding (**MoU**) which the Parties hereby adopt.

2.3. Each of the Parties is responsible, and shall remain responsible, for the performance and exercise of its statutory duties and functions to meet the needs of its population.

2.4. The Parties wish to record the basis on which they will work together on the Programme. This MOU sets out :

2.4.1. the key objectives of the Programme;

2.4.2. the governance structures the Parties will put in place; and

2.4.3. the respective roles and responsibilities the Parties will have during the duration of the Programme.

3. PROJECT PRINCIPLES

3.1. Each Party agrees that the principles underpinning the Programme are to act collaboratively in the procurement of Commissioned Services and the management of services in order to support the Parties in achieving their objectives.

3.2. The Parties agree to adopt the following principles when carrying out the Programme (**Principles**):

3.2.1. collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;

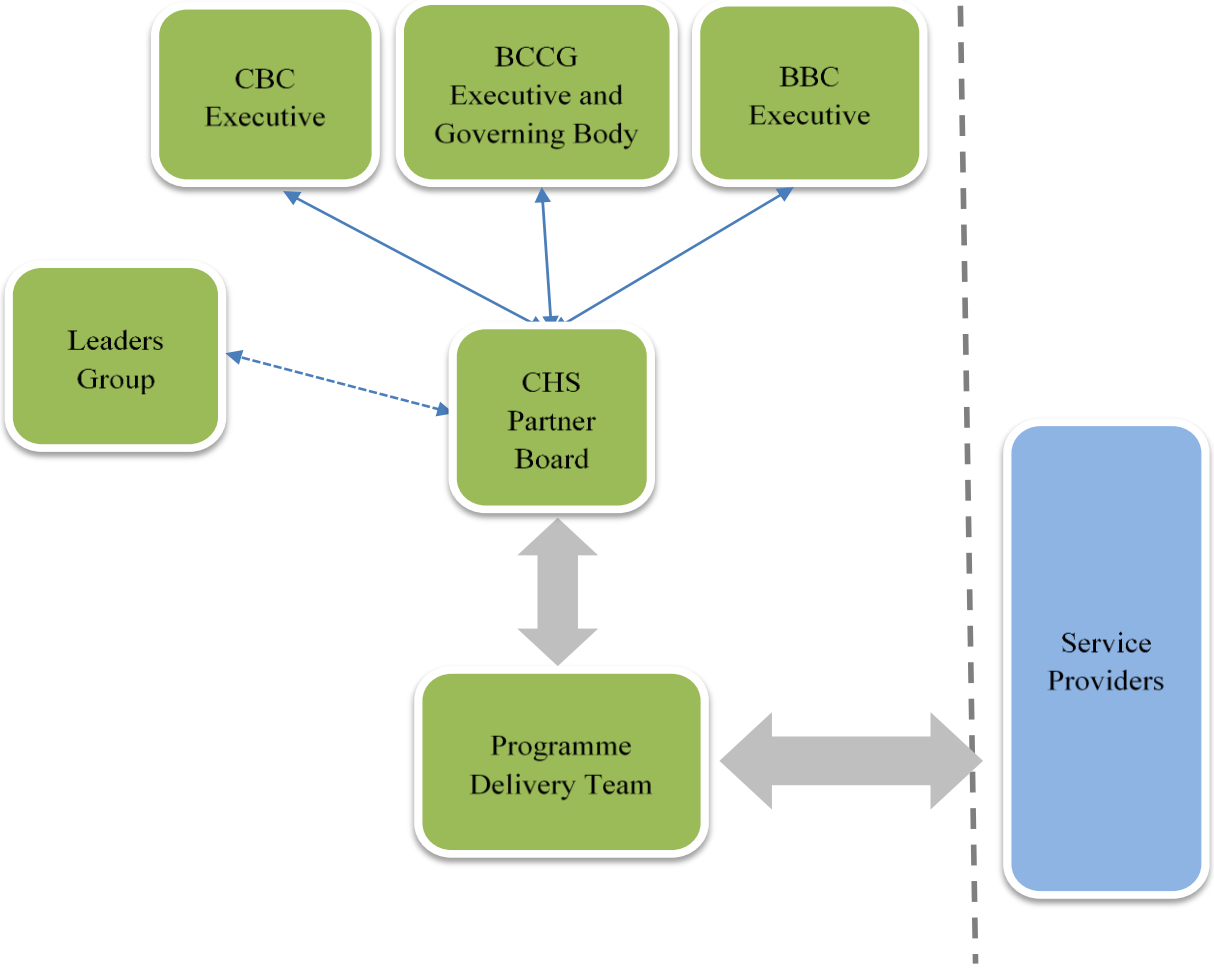
3.2.2. be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;

3.2.3. be open. Communicate openly about major concerns, issues or opportunities relating to the Programme in a timely manner;

3.2.4. learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;

3.2.5. adhere to statutory requirements and best practice. Comply with applicable laws and standards including EU procurement rules, fair treatment of potential providers, data protection and freedom of information legislation;

4. GOVERNANCE STRUCTURE



5. FUNCTIONS OF THE CHS PARTNER BOARD

5.1. To represent and act on behalf of the Parties to oversee and co-ordinate:-

5.1.1. the partnership arrangements between the Commissioning Bodies including but not limited to the following:-

- Agree the programme delivery plan and regularly monitor progress against the targets.
- Monitor spend against agreed programme budget and consider any requests to alter the budget.
- Oversight of risks and their management by the Programme Manager and PDT.
- Approve proposed procurement scope, specifications and sign off the issuing of tender.
- Agree appointments to evaluation/negotiation panel.

5.1.2. the development of the Parties' proposals for the commissioned services and their subsequent procurement and

5.1.3. subject to the agreement of the Parties, provide strategic oversight and act as decision makers in connection with the on-going contract management and development of the Commissioned Services so as to meet the health needs of the local population.

5.2. CHS Partner Board Members

5.2.1. The CHS Partner Board shall comprise one representative appointed from time to time, by each of the Commissioning Bodies. The initial representatives are as follows:-

BCCG: Clare Steward – Director of Strategy & Transformation. Chair of the Partner Board.

CBC: MURIEL SCOTT – Director of Public Health CBC.

BBC: KEVIN CROMPTON – Director of Children's and Adult's Services BBC.

5.2.2. It is recognised that each of the Parties has different internal decision making rules and each CHS Partner Board member shall ensure that they have the appropriate authority to make decisions on behalf of their appointing organisation and shall meet all appropriate reporting requirements.

5.3. Meetings and Procedure

5.3.1. The CHS Partner Board shall hold monthly meetings or at such other dates and times as it shall determine.

5.3.2. The quorum for a meeting of the CHS Partner Board shall include all three representatives (or their duly nominated substitute) of the Commissioning Bodies. Each representative shall have one vote.

6. FUNCTIONS OF THE PROGRAMME DELIVERY TEAM (PDT)

6.1. During the procurement phase the PDT shall act as the Programme team for and consist of officers nominated by the Commissioning Bodies who are responsible for the development of the specification and the procurement of the Commissioned Services.

6.2. Post procurement, subject to the agreement of the Commissioning Bodies, the PDT shall act as a forum for officers nominated by the Commissioning Parties who are responsible for the ongoing operational management of the arrangements for delivery of the Commissioned Services.

6.3. Membership

6.3.1. The membership shall include the Interim Programme Lead who shall act as Chair and at least one officer from each of the Commissioning Bodies to be determined and appointed by the CHS Partner Board.

6.4. Meetings and Procedure

6.4.1. The PDT shall hold fortnightly meetings or on such other dates as it shall at determine.

6.5. Working Groups

6.5.1. The PDT may from time to time establish Working Groups to support particular tasks within the Programme.

7. REPORTING

7.1. In relation specifically to the Commissioned Services, the PDT as determined by the Programme Manager, shall regularly report to the CHS Partner Board as to the progress of the programme activities including but not limited to:

7.1.1. Monthly project progress reports and risk log;

7.1.2. monthly activity and performance reports received pursuant to the Commissioned Services contracts;

7.1.3. any other information received from the service provider(s) under monthly reporting provisions and by virtue of the monthly and annual review meetings in accordance with the Commissioned Services contract(s); and

7.2. Each Commissioning Body shall provide to the CHS Partner Board with such information as may be required in a timely manner to enable the negotiation of Commissioned Services contracts.

7.3. In relation to the information required to be delivered by the Service Provider to the CHS Partner Board under the Commissioned Services contract(s), the Commissioners shall:

7.3.1. agree the range and scope of such information in order to ensure that the individual requirements of each Commissioning Body are met; and

7.3.2. ensure that, in so far as is possible, the information requirements imposed on the Service Provider(s) are reasonable, and that the Provider is not required to duplicate the provision of information to individual Commissioning Bodies.

8. ROLES AND RESPONSIBILITIES

8.1. The Parties shall undertake the following roles and responsibilities to deliver the Project:

Activity	**BCCG**	**CBC**	**BBC**
[DETAILS]	[Lead **OR** Assure]	[Lead **OR** Assure]	[Lead **OR** Assure]
Procurement of Services	Lead	Assure	Assure

8.2. For the purpose of the table above:

8.2.1. **Lead**: the Party/Parties who have principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must act in compliance with the Principles set out at Clause 2 above at all times, and consult with the other Party in advance if they are identified as having a role to Assure the relevant activity;

8.2.2. **Assure**: the Party/Parties that will defer to the Lead on a particular task, but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns regarding compliance with the terms of this MoU.

9. DECISION MAKING

9.1. In determining which Commissioned Services contracts to award under this MoU the ultimate decision making body shall be that set out in the table below unless otherwise delegated by that body.

Decision required	Decision required by date	BCCG	CBC	BBC
Who will lead the procurement	Sep 16	Executive	Executive	Executive
Outline financial envelopes	Sep 16	Executive	Executive	Executive
Definitive year one scope and future scope options	Sep 16	Executive	Executive	Executive
Procurement route i.e. restricted or competitive dialogue	Sep 16	Executive	Dir of Public Health in consultation with Executive Member	Executive
Decision to proceed with procurement	End of Sept 16	Governing Body	Executive	Executive
CHS Partner Board membership and Terms of Reference (to be agreed by lead organisation)	Sep 16	TBC	Dir of Public Health in consultation with Executive Member	TBC
Contract type and lead contractor arrangements	Sep 16	Executive	Executive	Executive
Procurement process e.g. evaluation panel	Sep 16	Executive	Executive	Executive
Decision to award the contract	End Sept 17	Governing Body	Executive	Executive

10. ESCALATION

10.1. If any Party has any issues, concerns or complaints about the Programme, or any matter in this MoU, that Party shall notify the other Party and the Parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be

escalated to the CHS Partner Board, which shall decide on the appropriate course of action to take should the Parties be unable to agree an approach.

10.2. If the matter cannot be resolved by the CHS Partner Board within thirty (30) days, the matter may be escalated to the Leader Group. If any Party receives any formal inquiry, complaint, claim or threat of action from a third Party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the CHS Partner Board, (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Programme, without the prior approval of the CHS Partner Board (or its nominated representatives).

11. CONFLICTS OF INTEREST

11.1. Officers and representatives of the Commissioning Bodies are responsible for declaring any conflicts of interest as soon as they arise and these shall be duly noted in the minutes of meetings or otherwise recorded for audit purposes.

12. PERFORMANCE OF STATUTORY DUTIES

12.1. Each Commissioning Body remains responsible for performing and exercising its statutory duties and functions for delivery of the commissioned services to its population and its service users, including (without limitation):

12.1.1. assessing individual service user cases;

12.1.2. complaints and complaints procedures;

12.1.3. individual contract exclusions;

12.1.4. emergencies;

12.1.5. ensuring effective clinical governance systems and systems for monitoring the same are in place; and

12.1.6. agreeing clinical policies in relation to the Commissioning Contract in line with commissioning arrangements.

12.2. Each Commissioning Body remains responsible for modelling its own demand (in the first instance) for each commissioned service at the pre-negotiation and negotiation stages of the procurement phase and subject to approval, throughout the life of it and shall deliver its written initial demand model (as and when required).

13. TERM AND TERMINATION

13.1. This MoU shall commence on the date of signature by all Parties, and shall expire on completion of the Programme **OR** such other date as determined by the CHS Partner Board.

13.2. All Parties may terminate this MoU by giving at least twelve (12) months' notice in writing to the other Party at any time.

13.3. If a Party or Parties fails to participate actively in the making of decisions necessary for the management of the Commissioned Services or to provide responses on any contract management issues in a timely fashion, the CHS Partner Board may serve on that Party a written warning notice setting out the concerns and setting a deadline to rectify the issues that led to the serving of the warning notice.

13.4. This Agreement may:

13.4.1. Be terminated in whole or in part by a decision of the CHS Partner Board in a meeting at which all Parties shall be entitled to attend and vote. Such a decision shall take binding effect, on all Parties; or

13.4.2. Expire automatically upon the Expiry of the last Commissioned Services contract to expire (the **Termination Date**); or

13.4.3. Be extended for the same term as the term of any extension of the Commissioned Services contract; or

13.4.4. Terminate in accordance with any termination of the Commissioned Services contract (the **Termination Date**).

14. VARIATION

This MoU, including the Annexes, may only be varied by written agreement of the CHS Partner Board.

15. REVIEW

This MOU shall be subject to review by the Parties every 3 months or sooner by agreement to ensure it is meeting the needs of the Programme.

16. CHARGES AND LIABILITIES

16.1. Except as otherwise provided, the Parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU. These shall be proportionate to the commissioning expenditure as detailed in Annex B.

16.2. Each Party shall be responsible for payment of the Commissioned Services in accordance with the relevant contract, the price or prices of the activity volume having been appropriated to that Party with reference to the relevant specifications, sections and schedule of the Commissioned Services contract, or after any in-year and/or end-of-year Commissioned Services contract reconciliation process or other adjustments.

16.3. This shall apply to Commissioned Services contracts with every Provider (with any modifications approved by the CHS Partner Board and agreed with the Provider).

16.4. Each Party recognises and agrees that the Commissioning Bodies will each be separately and solely liable to the Service Provider, under the Commissioned Services contract for payment of the prices for its Commissioned Services. For the purposes of this MoU and as between all the Parties, each of them undertakes to make separately scheduled payments, and indemnifies each of the others against any liability for its separately scheduled payments;

17. STATUS

17.1. This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the Parties from this MoU. The Parties enter into the MoU intending to honour all their obligations.

17.2. Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitutes either Party as the agent of the other Party, nor authorises either of the Parties to make or enter into any commitments for or on behalf of the other Party.

18. GOVERNING LAW AND JURISDICTION

This MoU shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in clause 10 above, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of Bedfordshire Clinical Commissioning Group

Signature: .....
Name: .....
Position: .....
Date: .....

Signed for and on behalf of Central Bedfordshire Council

Signature: .....
Name: .....
Position: .....
Date: .....

Signed for and on behalf of Bedford Borough Council

Signature: .....
Name: .....
Position: .....
Date: .....

Annex A. The Project

Background

BCCG commissions a wide range of community health services to meet the needs of children and adults within Bedfordshire with an approximate annual value of £30 million. In October 2015, responsibility for commissioning the health visiting services (0-5 Healthy Child Programme) transferred to Local Authorities. CBC together with BBC provide community beds, rehabilitation, reablement services and domiciliary care in the respective council areas.

BCCG, BBC and CBC are, in principle, committed to working together to jointly procure community health services to deliver integrated services for the population of Bedfordshire. During 2015/16, 60% of the adults' community services budget is already included through the Better Care Funds with BCCG, BBC and CBC. There are considerable opportunities to expand this further, for example children's services and domiciliary care.

Additional Services many also be commissioned through this MoU should the Collaboration Committee deem them beneficial and appropriate to meet the needs and demands of the Project.

The following paragraphs set out the lead responsibilities of individual Parties:

Planning

The Parties have a responsibility to:

- Contribute clinical leadership and advice to the process;
- Through the PDT and CHS Partner Board, agree the 'negotiable/non-negotiable' priorities for each Party which will form the basis for contract negotiations;
- Through the PDT and CHS Partner Board take an active role in the contracting process to monitor negotiations and advise on flexibilities for negotiation regarding the Commissioned Services;
- In order to ensure productivity and the full utilisation of the MoU the Parties shall elect a Lead Commissioner (**Lead Commissioner)**. The Lead Commissioner shall undertake the roles and responsibilities as set out below and shall be determined upon the basis of the Party who procures, utilises and commissions the highest value of Commissioned Contracts under this MoU. The consent of all Parties must be obtained before a single Party can commence the role as Lead Commissioner.

Lead Commissioner Role

Lead Commissioner Responsibilities (with assistance from the PDT where relevant) –

- The Lead Commissioner shall co-ordinate all planning inputs from its commissioning partners, including but not limited to commissioning intentions, affordability, Quality, Innovation, Productivity and Prevention (QIPP), CQUINs and risk management. The Lead Commissioner shall co-ordinate and lead contract negotiations with the providers as set out below and agree appropriate communication and engagement strategy with the other collaborative partners.
- The Lead Commissioner shall co-ordinate the on-going development of strategy and long term planning with main providers, ensuring appropriate engagement and input from Commissioning Bodies.

- The Lead Commissioner will provide an overview of contract type, currencies, financial envelope, relevant national/local policies, current contract performance etc. The purpose of this is that each Party shall have a common understanding of the provider, resources available and constraints which may/may not be outside their control. The Lead Commissioner will also provide:
    - A timetable for the commissioning process with key dates, milestones and interdependencies to Parties.
    - A model of the information it requires about constituent Parties in order to inform the planning process, this may include health need analysis, activity data (incl trends), Party commissioning intentions, demand management schemes.
    - Any nationally prescribed CQUINs and local flexibilities to incentivise quality improvement

Party responsibilities to Lead Commissioner -

- Provide details of all QIPP or efficiency initiatives impacting on each provider organisation
- Identify, collect and agree the local CQUIN for inclusion into contract process
- Gaps in service provision
- Quality impact assessment of current service (service quality – safety, effectiveness and patient experience)
- Proposals to address gaps in service and/or new services to meet health need. Includes market analysis of alternative service provision where required.
- 'Top five' service priorities for each Party, with indication of 'negotiable/non-negotiable' priorities which will form the framework for negotiation. The Partner Board will oversee development of the final negotiating principles and framework which the Lead Commissioner will use during contract negotiations.

Obtain and Deliver:

Lead Commissioner Responsibilities

The Lead Commissioner shall co-ordinate a 'market analysis' with the support of the PDT and present back to each Party the market management options available to them (eg new provider, use of contractual levers/sanctions etc) based upon previous performance of provider and priorities. The CHS Partner Board will oversee the process to:

- Agree contract negotiation team, to include Parties providing tangible commitment to process. This should be appropriate senior management and/or clinical expertise;
- Co-ordinate development of new/amended service specifications with representation from each Party;
- Ensure that the PDT provides financial, planning and contracting expertise to the process;
- 'Sign-off' commissioning intentions in support of key priorities agreed for each Party which will be addressed through contract negotiations;

- Provide a reporting/feedback process to each Party during negotiation to maintain communications and receive guidance/advice from Parties; and
- Define the process for contract 'sign-off' by each Party.

Party responsibilities

- Individual Parties will support the Lead Commissioner in the procurement element of the process to develop service specifications, contribute to contracting team and work to the agreed timetable.
- The Parties will:
    - Take part in contract negotiations if desired/needed as identified at procurement stage above.
    - Work together to implement and deliver agreed QIPP initiatives.
    - Provide clinical input and expertise to the Programme.
    - 'Sign-off' commissioning intentions and identify Party priorities.
    - Agree mandate with Lead Commissioner in the Partner Board regarding negotiating flexibilities.
    - Contribute to feedback process.
    - 'Sign-off' contract within agreed timetable.

Monitor:

Lead Commissioner Responsibilities

- The Lead Commissioner has, subject to the agreement of the Commissioning Bodies, overall responsibility to monitor the contract with agreed support and input from each Party and the PDT. The Lead Commissioner with support from the PDT will :
    - Ensure the provision of a reporting mechanism for all partners and timetable to monitor key elements of the contract.
    - Ensure regular monthly performance management of all main provider contracts, encompassing benchmarking analysis.
    - Establish and lead regular performance review meetings with main providers.
    - Co-ordinate 'quality visits' to providers, utilising hosted staff of PDT staff as appropriate.
    - Give notice to provider of any contract variations, sanctions, improvement notices etc.

Party responsibilities

- Provide evidenced feedback from clinical and patient experience regarding services provided.
- Support 'quality visits' as required by providing appropriate clinical/managerial resources.

Annex B. Cost Sharing Protocol

In division of the financial costs incurred arising from undertaking the procurement and the on-going support for the Partner Board, it is agreed that this will be shared in proportion to the commissioning expenditure of the Parties, to reflect the disparity between the commissioning costs of BCCG as against the two local authorities.

The total contract value is estimated to be £37,600,000 with percentage contributions as follows:	
CBC & BBC (Local Authorities (combined) Children's and Adults services)	(22.87%)
BCCG	77.13%

In addition, both BBC and CBC are reviewing the options for including additional services within this process. The contributions will depend on the final model that we are developing jointly.

Annex C. Information Sharing Protocol

CONTENTS

Preface

This high level document has been jointly developed by public sector organisations to facilitate the sharing of information amongst key organisations.

This Information Sharing Protocol has been developed following consultation and working experience over a period of over 10 years by participating bodies, chiefly public authorities such as the Police, Health and Local Authorities.

1. Introduction

1.1 This document is an Information Sharing Protocol (for the purpose of this protocol, the terms data and information are synonymous). The aim of this document is to facilitate sharing of all personal, sensitive and non personal data between the public, private and voluntary sectors so that members of the public receive the services they need.

1.2 Organisations involved in providing services to the public have a legal responsibility to ensure that their use of personal data is lawful, properly controlled and that an individual's rights are respected. This balance between the need to share personal data to provide quality service and protection of confidentiality is often a difficult one to achieve.

1.3 The legal situation regarding the protection and use of personal data can be unclear. This situation may lead to information not being readily available to those who have a genuine need to know in order for them to do their job properly.

1.4 There are fewer constraints on the sharing of non-personal data that is data which either does not identify a living individual or when combined with other information that is in or may come into the organisation's possession will not identify a living individual.

1.5 Each partner to this protocol should ensure that all of their staff who are affected by it are

- aware of its contents and
- the obligations it and any information sharing agreements (ISA) which are created between the organisation signed up to it bring to them.

1.6 Each partner should also ensure that revisions to the protocol and ISA raised in it are signed in good time, which should be before any sharing takes place.

2. Scope

2.1 This overarching protocol sets out the principles for information sharing between Partner Organisations.

2.2 This protocol sets out the rules that all people working for or with the Partner Organisations must follow when using and sharing information.

2.3 This protocol applies to all information shared by Partner Organisations. Sharing is not restricted solely to information classified as Personal Data by the Data Protection Act 1998. This includes the following information:

a) All information processed by the organisations including electronically (e.g. computer systems, CCTV, Audio etc), or in manual records;
b) Anonymised, including aggregated data. The considerations, though less stringent, must take into account factors such as commercial or business, sensitive data, and the effect of many data sets being applied.

2.4 This Protocol will be further extended to include other public sector, private and voluntary organisations working in Partnership to deliver services.

2.5 The specific purpose for use and sharing information will be defined in the Information Agreements that will be specific to the Partner Organisations sharing information.

3. Aims and Objectives

3.1 The aim of this protocol is to provide a framework for the Partner Organisations and to establish and regulate working practices between Partner Organisations. The protocol also provides guidance to ensure the secure transfer of information, and that information shared is for justifiable legal purposes (see 6.3 and 11.5).

3.2 These aims include:

a. To guide Partner Organisations on how to share personal information lawfully.
b. To explain the security and confidentiality laws and principles of information sharing.
c. To increase awareness and understanding of the key issues.
d. To emphasise the need to develop and use Information Sharing Agreements.
e. To support a process that will monitor and review all information flows.
f. To encourage flows of information.
g. To protect the Partner Organisations from accusations of wrongful use of personal data.
h. To identify the legal basis for information sharing.

3.3 By becoming a Partner to this Protocol, Partner Organisations are making a commitment to:

a. Apply the Information Commissioner's Code of Practice's 'Fair Processing' and 'Best Practices' Standards;
b. Adhere to or demonstrate a commitment to achieving the appropriate compliance with the Data Protection Act 1998;
c. Develop local Information Sharing Agreements (ISA) that specify transaction details.

3.4 Partner Organisations are expected to promote staff awareness of the major requirements of Information Sharing. This will be supported by the production of appropriate guidelines where required that will be made available to all staff via the Partners' Intranet sites and/or via other communication media.

4. The Legal Framework

4.1 The principal legislation concerning the protection and use of personal information is listed below and further explained in:

- Human Rights Act 1998 (article 8)
- The Freedom of Information Act 2000
- Data Protection Act 1998
- The Common Law Duty of Confidence
- Computer Misuse Act
- Civil Contingencies Act 2004

4.2 Other legislation may be relevant when sharing specific information.

4.3 As part of each ISA, Partner Organisations should identify how they will meet its legal obligations and the legal basis (legislation and appropriate section(s)) under which information may be shared.

5. Information covered by this Protocol

5.1 All Information, including personal data and sensitive personal data as defined in the Data Protection Act 1998 (DPA).
In order to reduce the risks of DPA compliance and security breaches where possible anonymised data should be used.

5.2 Personal Data

5.2.1 The term 'personal data' refers to **any** data held as either manual or electronic records, or records held by means of audio and/or visual technology, about an individual who can be personally identified from that data.

5.2.2 The term is further defined in the DPA as:

- Data relating to a living individual who can be identified from those data;

or

- Any other information which is in the possession of, or is likely to come into the possession of the data controller (person or organisation collecting that information).

5.2.3 The DPA also defines certain classes of personal information as 'sensitive data' where additional conditions must be met for that information to be used and disclosed lawfully.

5.2.4 An individual may consider certain information about themselves to be particularly private and may request other data items to be kept especially confidential e.g. any use of a pseudonym where their true identity needs to be withheld to protect them.

5.3 Anonymised Data

5.3.1 Organisations should ensure anonymised data, especially when combined with other information from different agencies, **does n**ot identify an individual, either directly or by summation.

5.3.2 Anonymised data about an individual can be shared without consent (subject to certain restrictions regarding health/social care records), in a form where the identity of the individual cannot be recognised i.e. when:

- Reference to any data item that could lead to an individual being identified has been removed;
- The data cannot be combined with any data sources held by a Partner to produce personal identifiable data.

6. RESPONSIBILITIES WHEN Sharing Information

6.1 General

Each Partner Organisation is responsible for ensuring that their organisational and security measures protect the lawful use of information shared under this Protocol.

6.1.1 Partner Organisations will ensure a reasonable level of security for supplied information, personal or non-personal, and process the information accordingly.

6.1.2 Partner Organisations accept responsibility for independently or jointly auditing compliance with the Information Sharing Agreements in which they are involved within reasonable time-scales.

6.1.3 Every organisation should consider making it a condition of employment that employees will abide by their rules and policies in relation to the protection and use of confidential information. This condition should be written into employment contracts and any failure by an individual to follow the policy should be dealt with in accordance with that organisation's disciplinary procedures.

6.1.4 Every organisation should ensure that their contracts with external service providers include a condition that they abide by their rules and policies in relation to the protection and use of confidential information.

6.1.5 The Partner Organisation originally supplying the information should be notified of any breach of confidentiality or incident involving a risk or breach of the security of information.

6.1.6 Partner Organisations should have a written policy for retention and disposal of information.

6.1.7 Partner Organisations must be aware that a data subject may withdraw consent to processing (i.e. Section 10 DPA) of their personal information. In this case processing can only continue where an applicable Data Protection Act Schedule 2, and if relevant Schedule 3, purpose applies.

6.1.8 Where the Partner Organisations rely on consent as the condition for processing personal data then withdrawal means that the condition for processing will no longer apply. Withdrawal of consent should be communicated to Partner Organisations and processing cease as soon as possible.

6.2 Personal Data

Personal data should only be shared for a specific lawful purpose or where appropriate consent has been obtained.

6.2.1 Staff should only be given access to personal data where there is a legal right, in order for them to perform their duties in connection with the services they are there to deliver.

6.2.3 This agreement does not give licence for unrestricted access to information another Partner Organisation may hold. It sets out the parameters for the safe and secure sharing of information for a justifiable need to know purpose.

6.2.4 Each signatory organisation to an ISA is responsible for ensuring every member of its staff is aware and complies with the obligation to protect confidentiality and a duty to disclose information only to those who have a right to see it.

6.2.5 Each signatory organisation should ensure that any of its staff accessing information under an ISA is trained and fully aware of their responsibilities to maintain the security and confidentiality of personal information.

6.2.6 Each signatory organisation should ensure that any of its staff accessing information under an ISA to follow the procedures and standards that have been agreed and incorporated within this Information Sharing Protocol and any associated Information Sharing Agreements.

6.2.7 Each Partner Organisation will share information in compliance with the principles set out at section 4 and any other obligations detailed in both the ISP and relevant ISA.

6.2.8 Personal data shall not be transferred to a country or territory outside the EEA without an adequate level of protection for the rights and freedoms of the data subject in relation to the processing of personal data.

6.3 Non-Personal Data

6.3.1 Partner Organisations should not assume the non-personal information is not sensitive and can be freely shared. This may not be the case and the partner from whom the information originated from should be contacted before any further sharing takes place.

7. Restrictions on use of Information Shared

7.1 All shared information, personal or otherwise, must only be used for the purpose(s) specified at the time of disclosure(s) as defined in the relevant Information Sharing Agreement unless obliged under statute

or regulation, or under the instructions of a court or as agreed elsewhere. Therefore any further uses made of this data will not be lawful or covered by the ISA.

7.2 Restrictions may also apply to any further use of non-personal information, such as commercial sensitivity or prejudice to others caused by the information's release, and this should be considered when considering secondary use for non-personal information. If in doubt the information's original owner should be consulted.

7.3 Additional Statutory restrictions apply to the disclosure of certain information for example Criminal Records, HIV and AIDS, Assisted Conception and Abortion, Child Protection etc. Information about these will be included in the relevant ISA.

8. Consent – Applies to Personal Data only

8.1 Consent is not the only means by which personal data can be disclosed. Under the Data Protection Act 1998 in order to disclose personal data at least one condition in schedule two must be met. In order to disclose sensitive personal data at least one condition in both schedules two and three must be met.

8.2 Where a Partner Organisation has a statutory obligation to disclose personal data then the consent of the data subject is not required; but the data subject should be informed that such an obligation exists.

8.3 If a Partner Organisation decides not to disclose some or all of the personal data, the requesting authority must be informed. For example the Partner Organisation may be relying on a lawful exemption from disclosure or on the inability to obtain consent from the data subject.

8.4 Consent has to be signified by some communication between the organisation and the Data Subject. If the Data Subject does not respond this cannot be assumed as implied consent. When using sensitive data, explicit consent must be obtained subject to any existing exemptions. In such cases the data subject's consent must be clear and cover items such as the specific details of processing, the data to be processed and the purpose for processing.

8.5 If consent is used as a form of justification for disclosure, the data subject must have the right to withdraw consent at any time.

8.6 Specific procedures will apply where the data subject is either not considered able to give informed consent itself because of either the data subject's age (Gillick Competency) or where the data subject has a condition which means the data subject does not have the capacity to give informed consent. In these circumstances the relevant policy of the Partner Organisation should be referred to.

9. INDEMNITY

9.1 Each partner organisation will keep each of the other partners fully indemnified against any and all costs, expenses and claims arising out of any breach of this agreement and in particular, but without limitation, the unauthorised or unlawful access, loss, theft, use, destruction or disclosure by the offending partner or its

sub-contractors, employees, agents or any other person within the control of the offending partner of any personal data obtained in connection with this agreement.

10. SECURITY

10.1 It is assumed that each Partner Organisation has achieved or will be working towards ISO 27001, the International Standard for Information Security Management, compliance or a similar level of compatible security. Partner Organisations should ensure that the minimum standards of security, that they require, are agreed with Partner Organisations with whom their information will be shared and included in the ISA. This should take account of the security classification of the information.

10.2 It is accepted that not all Partners will have security classification in place. .

10.3 Each partner signing this protocol and any individual signing the confidentiality agreement, agrees to adhere to the agreed standards of security. If there is a security breach in which information received from another party under this ISA is compromised, the originator will be notified at the earliest opportunity via the post-holder identified at 3.2 of the ISA, who must forward details to the Information Security Section.

10.4 Where a partner has regular, specific security requirements, for example a corporate policy, either these or, if available, a hypertext link to the protocol should be included. This should help to avoid reviewing standards agreed previously when each new ISA is set up.

10.5 Security requirements will not be included in individual Information Sharing Agreements except where they are unique to that Agreement. This will ensure requirements are kept current, as notified, and avoid errors arising from having more than one copy of a Partner's standard requirements.

11. INFORMATION QUALITY

11.1 Information quality needs to be of a standard fit for the purpose information is to be used for, including being complete, accurate and as up to date as required for the purposes for which it is being shared. Without this any decision made on the information may be flawed and inappropriate actions may result. Partner Organisations are expected to ensure that the Personal Data and Sensitive Personal Data that it holds is processed in accordance with DPA principles: this includes ensuring that the Data is accurate, complete and up-to-date and is not kept any longer than is necessary.

11.2 Where Partner Organisations share information under this Protocol it is expected that Partner Organisations will either have an Information Quality Strategy and the supporting processes and procedures in place or be formally working towards this.

11.3 All Partner Organisations are expected to give undertakings that information meets a reasonable quality level for the proposed purposes for which it is being shared and be able to evidence this.

11.4 It is expected that all partner organisations will have or be working towards an organisational Information Quality Strategy. In generating and maintaining this policy due regard should be paid to the Information Quality Assurance Strategy.

11.5 Audit

Where a partner requires the ability to audit a Partner Organisation's Information Quality standards, for example as part of a Local Area Agreement (LAA) in which the receiving partner is the lead LAA partner, this and the obligations on the partners should be identified in the contract or ISA relevant to the sharing.

12. TRAINING

12.1 All Partner Organisations staff processing information shared under this Protocol and its associated ISA are expected to be trained to a level that enables them to undertake their duties confidently, efficiently and lawfully. This is an obligation on each Partner Organisation and responsibility for it cannot be assigned to another organisation, although delivery of training can with that third party's consent.

12.2 To minimise the costs associated with training and to ensure that all staff participating in activities based on information shared under a specific ISA it is strongly advised that partners collaborate in the development and delivery of training. Obligations and costs arising out of such collaborative working should be clearly identified in the ISA.

12.3 For the avoidance of doubt, where collaborative training is not adopted this should be stated in the ISA.

13. Individual Responsibilities

13.1 Every individual working for the organisations listed in this Partnership Agreement is personally responsible for the safekeeping of any information they obtain, handle, use and disclose.

13.2 Every individual should know how to obtain, use and share information they legitimately need to do their job.

13.3 Every individual has an obligation to request proof of identity, or takes steps to validate the authorisation of another before disclosing any information requested under this protocol and associated ISA's.

13.4 Every individual should uphold the general principles of confidentiality, follow the guide-lines set out in this Protocol and seek advice when necessary.

13.5 Every individual should be aware that any violation of privacy or breach of confidentiality is unlawful and a disciplinary matter that could lead to their dismissal. Criminal proceedings might also be brought against that individual.

14. General Principles

14.1 The principles outlined in this protocol are recommended good standards of practice or legal requirements that should be adhered to by all Partner Organisations.

14.2 This protocol sets the core standards applicable to all Partner Organisations and should form the basis of all Information Sharing Agreements established to secure the flow of personal information.

14.3 This protocol should be used in conjunction with local service level agreements, contracts or any other formal agreements that exist between the Partner Organisations.

14.4 All parties signed up to this protocol are responsible for ensuring that organisational measures are in place to protect the security and integrity of personal information and that their staff are properly trained to understand their responsibilities and comply with the law.

14.5 This protocol has been written to set out clear and consistent principles that satisfy the requirements of the law that all staff must follow when using and sharing personal information.

14.6 The specific purpose for use and sharing information will be defined in the Information Sharing Agreements that will be specific to the Partner Organisations sharing information.

15. Review Arrangements

15.1 This overarching agreement will be formally reviewed annually.

15.2 Any of the signatories can request an extraordinary review at any time where a joint discussion or decision is necessary to address local service developments.