

**24.02.04 A15146 PARTNERSHIP AGREEMENT AND STATEMENT OF INTENT  
17.02.04 SM**

**STATEMENT OF INTENT FOR HEALTH AND SOCIAL  
CARE SERVICES INTEGRATION IN DEVON,  
INCLUDING THE PARTNERSHIP AGREEMENT FOR  
THE DEVELOPMENT OF LEARNING DISABILITY AND  
ADULT MENTAL HEALTH SERVICES.\***

- ❖ The Partnership Agreement includes Torbay Council and Torbay Primary Care Trust for Adult Mental Health Services and Learning Disability Services only.

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## **SECTION 1 – DATE OF AGREEMENT, BACKGROUND, DEFINITIONS**

1 Date of this Agreement 1 April 2004.

2 Parties (“The Partners”) are:

- 2.1 Devon County Council, County Hall, Topsham Road, Exeter EX2 4QR
- 2.2 Torbay Council, Oldway Mansions, Torquay Road, Paignton TZ3 2TS (for Adult Mental Health Services and Learning Disability Services only.)
- 2.3 Devon Partnership NHS Trust, Wonford House Hospital, Drydon Road, Exeter EX1 3RB.
- 2.4 Teignbridge Primary Care Trust, Bridge House, Collett Way, Brunel Trading Estate, Newton Abbot, TQ12 4PM.
- 2.5 South Hams and West Devon Primary Trust, The Lescaze Offices, Shinner’s Bridge, Dartington, Nr Totnes TQ9 6JE
- 2.6 Exeter Primary Care Trust, Dean Clarke House, Southernhay East, Exeter EX11PG
- 2.7 East Devon Primary Care Trust, Dean Clarke House, Southernhay East, Exeter EX1 1PQ
- 2.8 Mid Devon Primary Care Trust, Newcourt House, Old Rydon Lane, Exeter EX2 7JU
- 2.9 North Devon Primary Care Trust, 12 Boutport Street, Barnstaple, EX31 1RW.
- 2.10 Torbay Primary Care Trust, Rainbow House, Avenue Road, Torquay TQ2 5LS (for Adult Mental Health services and Learning Disability services only)

3 Background

- The Partners acknowledge that the narrative which follows in this clause 3 is intended as a guide to the events leading to the execution of this Agreement. The Partners also acknowledge that it may be referred to if the Partners or any of them are of the opinion

that it may assist in the interpretation of any of the provisions in this Agreement.

- On 1 April 2001 the North and East Devon Partnership NHS Trust came into being to provide specialist mental health and learning disability services to the local population.
- On 1 November 2001 the Trust also undertook to provide services to the populations of Torbay and Teignbridge. At this time the Trust changed its name to Devon Partnership NHS Trust to reflect its new responsibilities.
- On 1 July 2002 the Trust expanded to provide care to the people living in South Hams and West Devon, and also combined services with Devon County Council and Torbay Council to become a provider of an integrated health and social care service within their Council areas.
- Integrated services within the area of Devon County Council and Torbay Council include both Adult Mental Health Services and Learning Disability Services. Integrated Learning Disability Services were established in October 2002 to deliver the provisions of the White Paper 'Valuing People'.
- The lead responsibility for Learning Disability Partnership arrangements rests with Devon County Council and Torbay Council. The Councils are responsible for delivering the provisions of the White Paper 'Valuing People'.
- The lead responsibility for Adult Mental Health services rests with the Devon Partnership NHS Trust. The Trust is responsible for delivering the provisions of the National Service Framework for Mental Health.
- The rationale for entering into partnerships and integration across all services will be:
  - To improve outcomes for individuals and communities;
  - To collaborate by sharing expertise across the various organisations;
  - To avoid duplication of effort;
  - To pool scarce resources;
  - To achieve economies of scale.
- Devon County Council has agreed principles for the integration of Health and Social Care, and these principles are also applied in Torbay Council (Appendix 1). This Partnership Agreement adopts these principles and will be used as a model for future Health and Social Care Partnerships and integration in Devon and Torbay.

- An early application of the principles in Devon has been the appointment of joint Health and Social Care Managers in services for Older People and Disability Services, and in Children's Services and in Torbay. These will be built on within a framework for developing partnership working and integration in the former, and within the pathfinder Children's Trust in the latter. These will be subject to separate Partnership Agreements.
- Section 31 of the Health Act 1999 has introduced powers to enable flexible working between the NHS and Local Government, and also for NHS Trusts to exercise various Local Authority functions and for Local Authorities to exercise various NHS Trust functions. Where appropriate these flexibilities will be used to enable integrated working in the further application of these principles.
- The Strategic Health Authority has agreed the arrangements for the setting up of the Devon Partnership NHS Trust.
- The Torbay Primary Care Trust, South Hams and West Devon Primary Care Trust, Teignbridge Primary Care Trust, Exeter Primary Care Trust, East Devon Primary Care Trust, Mid-Devon Primary Care Trust and North Devon Primary Care Trust, have been involved in the development of these principles and Partnership arrangements and support them.
- The principal objectives of Devon Partnership NHS Trust are as shown in Appendix 2.
- The Councils and Trusts have undertaken consultations on the proposals for this agreement with user groups, staff, independent service providers, voluntary organisations and community groups, Primary Care Trusts, Acute Trusts, and organisations representing the interests of patients, service users and carers.

#### 4 Definitions

In this agreement the following expressions shall have the following meanings;

- 4.1 "Approved Social Worker" means an officer of a local Social Services Authority as defined in Section 145 of the Mental Health Act 1983.
- 4.2 "Capital Expenditure" means one off expenditure on goods or services which will provide continuing benefit and would historically have been funded from the capital budgets of one of the partners.
- 4.3 "Councils" means Devon County Council and Torbay Council.

- 4.4 “Adult Mental Health services” includes adults up to the age of 65. It does not include older adults with mental health difficulties in this agreement or in the associated Section 31 Agreement.
- 4.5 “Section 31 Agreement” refers to any agreements made pursuant to Act 1999.
- 4.6 “Financial Year” means each financial year running from 1 April in one calendar year until 31 March in the subsequent calendar year.
- 4.7 “First Financial Year” means the year from 1 April 2004 to 31 March 2005.
- 4.8 “Strategic Health Authority” means South West Peninsula Health Authority or its antecedents.
- 4.9 “Non-Pooled Funds” means the financial contributions of the Partners which are not included in Pooled Funds.
- 4.10 “Partner” means each of the Partners.
- 4.11 “Partners” means the parties detailed in Clause 2.
- 4.12 “Partnership Arrangements” means the arrangements described in this Agreement.
- 4.13 “Pooled Funds” means any pooled funds which the Partners may apply from time to time. As at the date of this Agreement there are no pooled funds.
- 4.14 “Quarter” means the following periods in each financial year:
- 1 April to 30 June
  - 1 July to 30 September
  - 1 October to 31 December
  - 1 January to 31 March
- 4.15 “Social Workers” means those persons appointed and/or employed by Devon County Council or Torbay Council to perform social work duties and who have attained or are working towards the Diploma of Social Work or equivalent.
- 4.16 “Staff” means the persons from time to time employed, contracted or assigned by any of the Partners to carry out the functions under the Partnership Arrangements.
- 4.17 “Trust” means the Devon Partnership NHS Trust.

- 4.18 “Trust Function” means the statutory function of the Trust for the provision of services.
- 4.19 “Host Organisation” means the Partner which has responsibility for hosting the single management arrangements.
- 4.20 “Parent Organisation” means the Partner responsible for the delivery of service under any Partnership Arrangements. Staff will be employed by a Parent Organisation.
- 4.21 “The Devon Community Strategy” means the document bearing the title and produced by Devon County Council
- 4.22 “Local Planning and Implementation Groups” means the groups bearing that title and established in accordance with and having the terms of reference set out in Appendix 5 of this Agreement.

## **SECTION 2 – OUTLINE OF THE PARTNERSHIP AGREEMENT**

### **5 Duration of the Agreement**

- 5.1 The Partnership Arrangements come into force on the 1<sup>st</sup> April 2004 (The “Commencement Date”).
- 5.2 This agreement shall continue until terminated as follows:
- 5.2.1 on not less than 12 months written notice by any Partner to the other Partners, such notice to expire at the end of a financial year.
- 5.2.2 otherwise in accordance with the terms of this Agreement.

### **6 Partnership Arrangements**

The Partnership Arrangements comprise:

- 6.1 the delegation by the Councils of the Council related functions to the Trust to enable the Trust to carry out those functions in conjunction with Trust functions.
- 6.2 the delegation by the Trust and Primary Care Trusts of health functions to the Councils to enable the Councils to carry out those functions in conjunction with Council functions.

### **7 Functions included in the Partnership Arrangements:**

The functions included in the Partnership Arrangements are:-

- 7.1 the services currently provided by the Councils in fulfilment of the Social Care functions as set out in Appendix 3 of this Agreement.
- 7.2 the services currently provided by the Trust in fulfilment of the health functions set out in Appendix 4 of this Agreement.

## 8 Fulfilment of Functions.

- 8.1 It is the intention of the Partners that the Partnership Arrangements shall be the mechanism through which the functions set out in Appendix 3 and Appendix 4 of this Agreement shall be fulfilled.
- 8.2 Any Partnership Arrangements under this Agreement shall not affect:
  - (a) the liability of the Partners to any third parties for the exercise of their respective function and obligations.
  - (b) powers or duty to recover or set charges for the provision of any services in the exercise of the functions by the Councils.
- 8.3 It is agreed that services referred to in Clause 7 may be purchased by the Partners from elsewhere and may be varied from time to time provided that no substantial development or variation in services which in the view of a majority of the Partners is substantial is made without the agreement of the Partners.

## 9 General Principles.

The Partners will in relation to the Partnership Arrangement:

- 9.1 treat each other with respect and an equality of esteem;
- 9.2 be open with information about the performance and financial status of each;
- 9.3 provide each other with information about and notice of relevant problems as soon as they arise.

## 10 Governance

- 10.1 The structures of Partnership Boards, Partnership Groups, and Executive links in Devon are set out in Appendix 5.
- 10.2 Torbay Council is represented on the Mental Health and Learning Disability Executive Management Group, and also on



the Mental Health Strategic Partnership Board (Local Implementation Team). The accountability of the Torbay representatives is to the Torbay Strategic Partnership.

- 10.3 The Partnership Boards and Partnership Groups shall include elected members, Primary Care Trust Non-executives and representatives of service users and carers.
- 10.4 Members of Partnership Boards and Partnership Groups will be nominated by their organisation to commit resources within agreed allocations. However, financial accountability will continue to rest with parent organisations.
- 10.5 Members of Partnership Boards and Partnership Groups will be responsible for overseeing any developments using the flexibilities available within Section 31 of the Health Act 1999.
- 10.6 Each Partnership Board and Partnership Group will create strong links with the Devon Strategic Partnership to ensure close alignment with work on the Devon Community Strategy.
- 10.7 Each Partnership Board and Partnership Group will be supported by an Executive Group which will have an executive and strategic overview of the work of Local Planning and Implementation Groups. Members of these groups will remain accountable to their own organisations.
- 10.8 Each Partnership Board or Group shall adopt a constitution and Terms of Reference which ensures clear and acceptable governance arrangements are in place.
- 10.9 In the area of each Primary Care Trust Local Planning and Implementation Groups will be set up to analyse local needs and develop service responses within the framework set by the Partnership Boards or Groups. Local Planning and Implementation Groups shall include service users and carers in their work. Members of Local Planning and Implementation Groups shall remain accountable to their own organisations.
- 10.10 Local Planning and Implementation Groups shall establish links with Local Strategic Partnerships to ensure an alignment with the local Community Plan and the involvement of elected members of the Councils in service planning.

## 11 Human Resources.

- 11.1 Staffing arrangements – Learning Disability Partnership.
  - Learning Disability services are planned and delivered through a structure which integrates staff from both Health

and Social Care. These staff are currently employed by Devon County Council, Torbay Council, the Trust or Primary Care Trusts. The Host Organisations for Learning Disability Services are Devon County Council and Torbay Council.

#### 11.2 Staffing Arrangements – Adult Mental Health Services.

- Adult Mental Health Services are planned and delivered through a structure which integrates staff from both Health and Social Care. These staff are currently employed by Devon County Council, Torbay Council, the Trust, or Primary Care Trusts. The Host Organisation for Adult Mental Health services is the Devon Partnership NHS Trust.

11.3 Learning Disability Services staff will be assigned from the Trust to the Councils to support the integration of service delivery. The Trust will provide a list of all staff and posts assigned pursuant to this Agreement. These staff will retain their existing terms and conditions of employment as varied to give effect to the assignment. The Human Resources protocol for staff working in Learning Disability services is shown at Appendix 6. This protocol is also applied in Torbay Council.

11.4 Mental Health Services staff will be assigned from the Councils to the Trust to support the integration of service delivery. The Councils will provide a list of all staff and posts assigned pursuant to this Agreement. These staff will retain their current terms and conditions of employment as varied to give effect to the assignment. The Human Resources protocol for staff working in Adult Mental Health services is shown at Appendix 7.

11.5 The Human Resources protocols clarify processes for dealing with the health, safety and welfare of staff working on Host Organisation premises. The Partners will work together on a more detailed health, safety and welfare protocol to cover integrated working as it develops.

11.6 The roles of staff working within the Partnership Arrangements will not be changed without the agreement of an authorised officer of the employing organisation. Authorised Officers are currently the Directors of Social Services of the Councils the Chief Executive of the Trust and the Chief Executives of Primary Care Trusts.

11.7 Approved Social Workers shall not be assigned to the Trust for the purposes of performing their statutory duties pursuant to the Mental Health Act 1983. This position will be kept under review

and may be subject to change following consultation with the employer concerned and their employing organisations.

- 11.8 The recruitment of staff to the Partnership Arrangements for Learning Disability Services will be the responsibility of the Host Organisation. The Host Organisation will apply the recruitment standards relevant to the appropriate Parent Organisation. The recruitment of staff to the Partnership Arrangements for Mental Health Services will be, with the exception of Approved Social Workers, the responsibility of the Host Organisation. The Host Organisation will apply the recruitment standards relevant to the appropriate Parent Organisation.

## 12 Professional Accountability

- 12.1 The Partners shall ensure that appropriate arrangements are in place to provide professional leadership and accountability for staff at all times.
- 12.2 The Partners shall ensure clear written guidance is available to staff showing how general management and professional leadership are complementary within single management arrangements. This guidance shall take account of the clinical governance and quality assurance requirements of host and parent organisations.

## **SECTION 3 – FINANCIAL AND RESOURCE MATTERS**

### 13 General Financial Arrangements

- 13.1 The Partners have agreed not to establish Pooled Funds as at the Commencement Date. Until such time as Pooled Funds may be established, reference to Non-Pooled Funds will mean the Partners' agreed financial contributions.
- 13.2 A plan to develop pooled arrangements may be agreed by the Partners where it is felt the use of the flexibilities of the Health Act 1999 will achieve required service outcomes.
- 13.3 On the Commencement Date the Mid Devon Primary Care Trust and the South and West Devon Primary Care Trust (hereinafter together referred to as "the Lead PCTs for Learning Disability") and Mid Devon Care Trust and Teignbridge Primary Care Trust (hereinafter together referred to as "the Lead PCTs for Adult Mental Health") shall contribute to the Non-Pooled fund financial resources at a level to be agreed with the Councils.
- 13.4 The Trust shall contribute to the Non-Pooled fund the financial resources made available to it by the Lead PCTs for Learning

Disability and the Lead PCTs for Adult Mental Health in respect of the functions of the Trust included in the Partnership Arrangements.

- 13.5 The Councils shall contribute to the Non-Pooled Funds the financial resources in respect of the functions of the Councils included in the Partnership Arrangements as determined through the Councils' annual budget setting process. The Councils will consult with the other Partners in determining the relevant financial contributions.
- 13.6 Any personal contributions payable by the user towards or in full payment for any of the Councils services forming part of the Councils' functions comprised in the Partnership Arrangements will be paid directly to the Councils. The Councils will take into account this income when determining their financial contribution to the Non-Pooled Fund.
- 13.7 Each Host Organisation shall put in place rigorous procedures to ensure income collection is maximised, and shall notify the Councils whenever it becomes apparent that income levels will be below budget.

#### 14 Financial Contributions

- 2004/05:
  - The financial contribution by the Health Community to the Non Pooled-Funds for 2004/05 is set out in Appendix 8 of this Agreement. It is based on 2003/4 figures and will be subject to the provisions set out in clause 14.
  - The financial contribution by the Councils to the Non-Pooled Funds for 2004/05 is set out in Appendix 9 of this Agreement. It is based on 2003/2004 figures which will be subject to the provisions set out in clause 14.

#### 15 Subsequent Financial Years

- 15.1 When determining the Partners' contributions to the Non-Pooled Funds and any Pooled Funds in financial years subsequent to 2004/05, it is the intention of the Partners, in normal circumstances, to apply the following principles:
  - 15.1.1 Each Partner shall take its previous year's baseline contribution and add to that the relevant inflation factor and any other cost pressure on the relevant services, subject to local and national efficiency savings requirements and longer term commissioning strategies. In the case of the Trust this will also be subject to

sufficient funding allocation to the Trust in respect of the Trust Functions through the PCTs health service commissioning arrangements.

15.1.2 In determining financial contributions for subsequent financial years the Partners will also consider whether it is possible to fund any growth proposals as identified via the Medium Term Financial Planning processes of the Councils.

15.1.3 In determining financial contributions for subsequent years the Partners will also consider any requirement to reduce service and activity levels to maintain financial balance.

15.1.4 In the event that the financial contributions of either Partner to the Non-Pooled Funds and any Pooled Funds in any financial year is:

- less than the baseline in the previous Financial Year as increased by the relevant inflation factor and/or
- does not cover cost pressures on the relevant services

15.2 The Partners shall negotiate appropriate and timely changes in services so that expenditure will be covered by the financial contributions for the new Financial Year.

15.3 The Partners shall act in good faith and in a reasonable manner but in the event that agreement cannot be reached by the commencement of a Financial Year a Partner may by notice in writing to the other Partners terminate this Agreement in relation to the Functions funded from the relevant Non-Pooled Funds or the relevant Pooled Fund as from the date of service of such notice or such later date as may be specified in the notice.

15.4 The Trust will be the lead organisation for adult Mental Health financial arrangements. The Councils will be the lead organisations for Learning Disability financial arrangements in their respective areas. Payments will be made by each Partner acting in good faith and in a reasonable manner in light of lead responsibilities.

## 16 Administration and Expenditure of Pooled Funds when established

16.1 The Trust will act as host partner and will provide the financial administrative systems for the Pooled Funds for adult Mental

Health services. The Pool Manager shall be the Chief Executive of the Trust.

- 16.2 The Councils will act as host Partner for any Pooled Funds in Learning Disability Services and will provide the financial administrative systems for the Pooled Funds. The Pool Managers will be the Learning Disability Partnership Managers of the respective Councils.
- 16.3 Each Pool Manager shall be responsible and accountable for:
  - 16.3.1 managing the Pooled Funds;
  - 16.3.2 submitting to the Partners at a frequency to be determined by the Partnership Board reports on the Pooled Funds and an annual return and all other information required by the Partners in order to monitor the Pooled Funds.
- 16.4 The monies in a Pooled Fund shall be spent in accordance with any restrictions agreed by the Partners on the establishment of the Pooled Fund or as varied by agreement between the Partners from time to time. This agreement will include the potential to spend monies in different proportion to that which the Partners have contributed.
- 16.5 The Partners agree that resources may not be transferred from a Pooled Fund in respect of one service area to another Pooled Fund in respect of another service area without the consent of all the Partners.

## 17 Managing Financial Variations on Pooled Funds

- 17.1 The Partners shall ensure that all services are provided within available resources by applying in good faith the financial planning and decision-making process described in clause 15. The Pool Manager will be responsible for keeping Partners informed on financial performance of the pool in accordance with protocols and timescales established by the Partnership Board.
- 17.2 Separate “pooled” arrangements will apply to adult Mental Health services and Learning Disability services as described in clause 16.
- 17.3 Year end financial overspends and underspends on Pooled Funds will be dealt with as follows:
  - 17.3.1 A tolerance level is set at 2% against the pooled budget. Overspend within the tolerance is rolled forward within the pool, but overspend above the

tolerance will be allocated back to the Partners proportionately to their contribution to the pooled budget.

17.3.2 A tolerance level is set at 2% against the pooled budget. Underspend within the tolerance is rolled forward within the pool, but underspends above the tolerance will be allocated back to the Partners proportionately to their contribution to the pooled budget.

## 18 Other Resources

18.1 The Partners will separately provide or make available central finance support services to support the Partnership. The management of such services shall be a matter for each Partner providing them and shall not be subject to this Agreement.

18.2 It is the aim of the Partners that support services shall become integrated within the Partnership Arrangements where it can be seen to benefit service outcomes or produce efficiencies.

18.3 It is not the Partners intention within non-pooled budgets to make any charges for central financial support services.

18.4 The Partners will consider how best to integrate clerical and administrative services to support the Partnership. Changes to these services will be subject to a process agreed by the Partners to ensure consistency but which helps meet local need.

## 19 Other Assets

19.1 There will be no change of ownership of premises pursuant to this Agreement.

19.2 The Partners will make available any premises currently used for the functions of the Partnership and any other premises by agreement in the future.

19.3 There is no intention to charge Partners rent for the use of premises for the purpose of this Agreement.

19.4 Each partner will continue to provide the same support services and facilities management to premises as it provided prior to the Commencement Date.

19.5 Where in pursuance of this Agreement the creation of a multi-agency team results in additional expenditure being incurred, all Partners shall determine the proportion of such expenditure that each of them shall meet.

20 Capital Expenditure

- 20.1 Capital expenditure shall be made by the Partners. Funding may where appropriate be transferred between the Partners and the Councils under Sections 28A or 28BB of the National Health Service Act 1977 (as amended by the National Health Service Act 1999.)
- 20.2 The appropriate Partnership manager shall consider whether there is a requirement for additional Capital Expenditure and will make proposals for such funding to the Councils and the Trust with details of:
- 20.2.1 the capital requirement
  - 20.2.2 the proportions in which it is to be met by the Partners
  - 20.2.3 which of the Partners is to make the Capital Expenditure
  - 20.2.4 any transfers of funding to be made between the Partners and the Councils.
  - 20.2.5 Ownership of any newly acquired asset and any arrangements for their use.
- 20.3 The Councils and the Trust shall give reasonable consideration to any proposal for capital expenditure but shall not be obliged to provide such funding. All requests will be considered as part of the normal capital planning processes of the Partners.

21 VAT

- 21.1 The Partners shall decide the treatment of the Partnership Arrangements for VAT purposes.
- 21.2 At the Commencement Date, the Partners agree that the Councils shall jointly act as the lead organisation for Learning Disability services for VAT purposes and the Councils' VAT regime shall apply. The Trust shall act as lead organisation for VAT purposes for adult Mental Health services and the Trust's VAT regime shall apply.
- 21.3 The Partners may review the treatment of VAT from time to time and adopt alternative regimes acceptable to HM Customs and Excise.

22 Accounting and Reporting Requirements

The Partners shall ensure that full and proper records for accounting



purposes are kept in respect of the Partnership Arrangements in line with current accounting regulations.

22.1 The Partners shall co-operate with each other in preparation of accounts in relation to the Partnerships Arrangements.

22.2 The Partners will supply all information reasonably required by:

22.2.1 persons exercising a statutory function in relation to a Partner including the external auditor of a Partner, the Department of Health, Strategic Health Authority, PCTs, the Audit Commission, the Social Services Inspectorate, the Councils' Monitoring Officers (appointed under section 5 of the Local Government and Housing Act 1989) and the Councils' Section 151 Officers (as defined by the Local Government Act 1972);

22.2.2 other persons or bodies with an authorised monitoring or scrutiny function, including a Scrutiny Committee of the Councils having regard to the Partners' obligations of confidentiality, and such information sharing protocols as shall be agreed between the Partners from time to time.

22.2.3 internal auditors of the Partners working within the protocol agreement (see Appendix 10) will be given the right of access by Partners to any document, information or explanation they require in order to carry out their duties.

## 23 Liabilities

23.1 For the purposes of this clause, "liabilities" shall include all costs claims liabilities expenses and demands made against or suffered or incurred by the relevant Partner including (but not limited to) the following matters:

23.1.1 public liability;

23.1.2 employer's liability;

23.1.3 professional indemnity (including but not limited to officers liability and clinical negligence);

23.1.4 employment claims including (but not limited to) claims for:

23.1.4.1 damages, costs and expenditure including (but not limited to) claims for wrongful and unfair dismissal and under the Transfer of Undertakings (Protection of Employment

Regulations 1981 (as amended) (TUPE) damages, costs and expenditure in relation to sex, race or disability discrimination and equal pay claims;

23.1.4.2 other claims for breach of employment contract

23.1.4.3 Ombudsman awards

23.1.4.4 claims for breach of the Human Rights Act 1998 and claims in public law.

23.2 Uninsured liabilities payment means any payment in respect of any liabilities of a Partner arising (directly or indirectly) from any of the Functions during the period in which the relevant Functions shall be included in the Partnership Arrangements to the extent that such payment shall not be recoverable from any insurance monies (or equivalent under NHS schemes) received or receivable by the relevant Partner. Liability shall be construed accordingly.

23.3 The Partners will indemnify and keep each other indemnified against all liabilities arising directly or indirectly from any events facts or omissions occurring prior to the Commencement Date. For the avoidance of doubt (and without limitation) this includes all claims by employees whose employment may have transferred to another Partner under TUPE.

23.4 Events Post Commencement Date

The Partners will indemnify and keep indemnified each other against all liabilities arising directly or indirectly from any events acts or omissions of a Partner or its employees or contractors which shall occur after the commencement Date save to the extent that such liability shall arise out of any act or omission of other Partners or their employees and contractors.

23.5 Insurance Arrangements

The Partners shall, so far as is possible at reasonable cost and allowable by law or guidance, agree and effect appropriate insurance arrangements in respect of all potential liabilities arising from the Partnership Arrangements.

In the case of the Trust it may effect, through the National Health Service Litigation Authority, alternative arrangements in lieu of commercial insurance.

The obligations in this clause shall include insurance (or equivalent) arrangements after the date of determination of this

Agreement in respect of any events, acts or omissions prior to such determination.

23.5.1 The Partners' insurers (or equivalent providers in the case of the Trust) may agree from time to time common policies and protocols for the handling of claims covered by the Partners' insurance arrangements (or equivalent) for the Functions. Such policies and protocols as are agreed may be applied to the Partnership Arrangements.

23.5.2 Each Partner agrees to discuss with its insurers (or equivalent providers) and request their agreement not to enforce any subrogated rights against the other Partner arising out of any liability under the Partnership Arrangements to the extent that the sum claimed is not recoverable under the other Partners' insurance (or equivalent) arrangements.

#### 23.6 Uninsured Liability Payments

Where a Partner makes an Uninsured Liability Payment it may elect, with the agreement of the other Partners, that the same be paid from the following:

23.6.1 any Pooled Funds

23.6.2 any Non-Pooled Funds contributed by that Partner

23.6.3 other financial resources available to that Partner.

Where the source of the payment is the Pooled or Non-Pooled Funds and the payment results in an overspend in the relevant Pooled or Non Pooled-Funds the provisions of clause 17 shall apply.

#### 24 Termination Reconciliations

24.1 Upon the termination of this Agreement any underspend in relation to any Pooled Funds upon termination shall be apportioned between the Partners in proportion to their contributions to that Pooled Fund.

24.2 Any underspend in relation to any Non-Pooled Funds upon termination shall be returned to the Partner which contributed the relevant funds.

24.3 Any overspend existing at the date of termination of this Agreement shall be apportioned between the Partners in a just and equitable manner taking into account the circumstances of and reasons for the overspend. When determining whether there

has been an underspend or overspend as at the date of termination any unquantified liabilities shall not be taken into account.

- 24.4 The Partners shall act in good faith and in a reasonable manner attempting to reach agreement on the matters referred to in Clause 24.

25 Standards of Conduct

The Partners will ensure that employees comply with all statutory requirements, national and local and other guidance (including their respective Standing Orders, Schemes of Delegation and standing Financial Instructions).

**SECTION 4 – STRATEGIC PLANNING, COMMISSIONING AND CONTRACTING**

26. Planning, Contracting and Commissioning

- 26.1 The Partners shall work together to ensure the co-ordination of strategic planning which will support the development of joint-commissioning strategies.
- 26.2 The Partnership Boards or Groups shall provide a policy and strategic framework for implementation at local level.
- 26.3 The Executive Management Groups shall be responsible for the implementation, review and evaluation of the policy and strategic programme agreed by a Partnership Board or Group.
- 26.4 The Partners shall establish joint-commissioning arrangements to ensure common problems and objectives are addressed as part of a medium term strategy in a co-ordinated way.
- 26.5 The Partners shall ensure that joint commissioning arrangements take account of the principles required of Best Value, Clinical Governance and relevant corporate governance standards.
- 26.6 The Partners shall ensure clarity and guidance between joint commissioning centrally and commissioning at locality level including the commissioning arrangements for individual care packages.
- 26.7 Partnership Boards or Groups shall monitor the effectiveness of joint commissioning and contracting by the use of agreed performance measures against service outcomes which will form part of an annual reporting cycle to consider the effectiveness of the Partnership.

27 Standards of Service

- 27.1 Service Standards within the Partnership will be set in accordance with the National Service Framework for Mental Health and the White Paper, 'Valuing People', and include any further legislation or guidance produced by the Department of Health.
- 27.2 The Partners shall comply with service specifications current from time to time for Health and Social Care related functions.
- 27.3 The Councils are subject to the duty of Best Value under the Local Government Act 1999. All Health and Social Care functions shall be subject to Best Value, and the Partners shall ensure resources are available to carry out Best Value Reviews.
- 27.4 The Partners shall, subject to resource availability, ensure that the results of any Best Value Review are incorporated and reflected in future service delivery and performance.
- 27.5 The Partners are subject to the requirements of Overview and Scrutiny Committees – Health Scrutiny, which came into force on 1 January 2003, and shall comply with all reasonable requests from such Committees.
- 27.6 The Partners are subject to a duty of clinical governance, designed to ensure continuous improvement to service quality within an environment in which excellence in clinical care will flourish. The Partners shall comply with the requirements of clinical governance.
- 27.7 The Partners will have a performance management relationship with:
- 27.7.1 Primary Care Trusts for the delivery of targets agreed with them;
  - 27.7.2 The Strategic Health Authority for overall performance;
  - 27.7.3 The Councils for the function which has been delegated to the Partners.

28 Joint Working Protocols

The Partners shall ensure that joint working protocols are in place with other agencies who work with common client groups. These shall include as appropriate:

Police;  
Probation;

Housing Authorities;  
The Prison Service;  
Other NHS Trusts and Primary Care Trusts;  
Youth Offending Teams;  
Children and Families Services;  
Education Authorities;  
Registered Social Landlords and Housing Associations;  
Voluntary Agencies and Charities;  
National Care Standards Commission.

29 Reporting and Review

29.1 The Partners shall carry out an annual review of:

29.1.1 The Partnership Arrangements;

29.1.2 Performance against delegated functions by the respective organisations.

29.2 The review shall include the publication of performance measures and outputs which show:

29.2.1 How far the aims of the Partnership Arrangements are being achieved;

29.2.2 The extent to which the outputs including timescales and milestones are being met;

29.2.3 The extent to which agreed outcomes are being fulfilled, and targets met;

29.2.4 The financial inputs and outputs;

29.2.5 The extent to which the exercise of the flexibilities in Section 31 of the Health Act 1999 is the reason for improved performance, or a reduction in the performance of the service;

29.2.6 How the Partnership Arrangements compare with the previous arrangements, and other approaches to providing the services.

30 Changes in Legislation

The Partners shall review the operation of the Partnership Arrangements, and the requirements of this Agreement on the coming into force of any legislation or guidance affecting the Partnership. The Partners agree to take all necessary steps to ensure that the Partnership Arrangements comply with such new legislation or guidance.

31 Substandard Performance

In the event that a Partner shall have any concern about the operation of the Partnership Arrangements, or the standards achieved in connection with the carrying out of functions, it may convene a review with the other Partners with a view to agreeing a course of action to resolve such concerns.

32 Performance Assessment Framework

32.1 The Councils are required to report regularly to the Department of Health on a set of indicators in the Personal Social Services Performance Assessment Framework. Health Trusts are required to report regularly to the Department of Health on a set of indicators in the NHS Performance Assessment Framework. The Partners will co-operate in collecting the data necessary to compile the Performance Assessment Frameworks and in any consequent work to improve performance.

32.2 The Partners shall make a general commitment to transparency for risk management arrangements.

33 Complaints

33.1 The existing complaints policies and procedures for the respective Partners shall continue to be used from the Commencement Date.

33.2 The Partners will work together with a view to agreeing a single complaints procedure which, subject to legal requirements, shall apply to the Partnership Arrangements from a date to be agreed

33.3 The Partners shall endeavour to promote a culture in which all forms of feedback are listened to and acted upon to ensure continuous improvement.

34 Ombudsman

The Partners will co-operate with investigations undertaken by their respective Ombudsmen.

35 Information Sharing

35.1 The Partners recognise that good quality information is fundamental to effective treatment and care, and that relevant information about service users needs to be shared for the integrated service to function effectively.

- 35.2 The Partners shall establish and keep operational an information protocol so that the arrangements for sharing information:
- 35.2.1 Comply with all relevant legislation and guidance as they apply to the Partners and Partnership Arrangements;
  - 35.2.2 Meet the objectives of the Partnership Arrangements;
  - 35.2.3 Ensure that the health and social care needs of individuals in respect of which the Partnership Arrangements may be exercised are not denied or hindered.
- 35.3 The Partners may amend the information sharing protocol from time to time to further facilitate information sharing. Any amendment shall be agreed by all the Partners.

## **SECTION 6 – TERMINATION AND OTHER PROVISIONS**

### **36 Early Termination**

- 36.1 A Partner may at any time by notice in writing to the other Partners terminate its participation in the Partnership Arrangements if:
- 36.1.1 Another Partner commits a material breach of any of its obligations within the Partnership Arrangements which is not capable of remedy;
  - 36.1.2 Another Partner commits a material breach of any of its obligations within the Partnership Arrangements which is capable of remedy but has not been remedied within three months of the receipt of written notice from the terminating Partner.
  - 36.1.3 A Partner may by written notice to the other Partners terminate its participation in the Partnership Arrangements if:
    - 36.1.3.1 As a result of any change in law or legislation it is unable to fulfil its obligations to the Partnership Arrangements;
    - 36.1.3.2 The fulfilment of its obligations to the Partnership Arrangements will be in contravention of any guidance from any Secretary of State;
    - 36.1.3.3 Its fulfilment would be ultra vires.



- 36.2 A Partner may give six month's written notice to the other Partners to terminate or reduce its participation in the Partnership Arrangements if::
- 36.2.1 for budgetary reasons, that Partner is no longer able to contribute sufficient resources to the Partnership Arrangements; or
  - 36.2.2 that Partner is of the reasonable opinion that in the light of another Partner's proposed financial contribution the Partnership Arrangements are no longer viable.

37 Winding Down

In the event that this Agreement is terminated the Partners will agree to co-operate in a winding down process which ensures minimum disruption to all users, carers and employees both within and outside the Partnership Arrangements.

38 Disputes

- 38.1 The Partners recognise that disputes under this Agreement should be resolved promptly and amicably and that disputes should be settled at the lowest practicable level within the respective organisations of the Partners concerned.
- 38.2 If a dispute cannot otherwise be resolved it shall be referred to the appropriate NHS Trust Chief Executive and Director of Social Services for resolution.

39 Variation

Any variation to this Agreement shall be of no affect unless it is agreed by the appropriate NHS Trust Chief Executive and Director of Social Services, and shall take effect at a date agreed by the Partners.

40 No Partnership

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

41 Notices

- 40.1 Any notice to be given pursuant to this Agreement shall be delivered by hand or registered post to the Directors of Social Services of the Councils and the relevant NHS Trust Chief Executives at the appropriate addresses shown in clause 2.

40.2 Any periods of time referred to in a notice will commence from the date the notice is delivered to the addressee.

SIGNATORIES TO THIS AGREEMENT:

Signed.....  
For Devon County Council

Signed.....  
For Torbay Council

Signed.....  
For Devon Partnership NHS Trust

Signed.....  
For Teignbridge Primary Care Trust

Signed.....  
For South Hams and West Devon Primary Trust

Signed.....  
For Exeter Primary Care Trust

Signed.....  
For East Devon Primary Care Trust

Signed.....  
For Mid Devon Primary Care Trust

Signed.....  
For North Devon Primary Care Trust

Signed.....  
For Torbay Primary Care Trust