

18<sup>th</sup> Feb

2013

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- (1) CONWY COUNTY BOROUGH COUNCIL
- (2) DENBIGHSHIRE COUNTY COUNCIL
- (3) FLINTSHIRE COUNTY COUNCIL
- (4) GWYNEDD COUNCIL
- (5) ISLE OF ANGLESEY COUNTY COUNCIL
- (6) WREXHAM COUNTY BOROUGH COUNCIL

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**INTER-AUTHORITY AGREEMENT  
REGIONAL SCHOOL EFFECTIVENESS AND  
IMPROVEMENT SERVICE**

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THIS AGREEMENT is made on *16 Feb* 2013

## BETWEEN

- (1) **CONWY COUNTY BOROUGH COUNCIL** of Bodlondeb, Conwy, North Wales, LL32 8DU ("**Conwy Council**");
- (2) **DENBIGHSHIRE COUNTY COUNCIL** of Council Offices, Ruthin, Denbighshire, ("**Denbighshire Council**");
- (3) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Mold, Flintshire, CH7 6NB ("**Flintshire Council**");
- (4) **GWYNEDD COUNCIL** of Council Offices, Shirehall Street, Caernarfon, Gwynedd, LL55 1SH ("**Gwynedd Council**");
- (5) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Anglesey, LL77 7TW ("**Isle of Anglesey Council**"); and
- (6) **WREXHAM COUNTY BOROUGH COUNCIL** of the Guildhall , Wrexham LL11 1AY ("**Wrexham Council**")

(together referred to as the "**Councils**" and individually as a "**Council**")

## BACKGROUND

- (A) The Councils have agreed to work together in a partnering relationship to establish a Regional School Effectiveness and Improvement Service to be accountable to, and undertake the statutory functions of the Councils in respect of school improvement and effectiveness (the "**Service**").
- (B) The Council's vision is to establish a Regional School Effectiveness and Improvement service to be accountable to, and undertake the statutory responsibilities of, the six local North Wales Authorities in respect of the duties to monitor; challenge; provide support services for curriculum continued professional development and management of schools, and in addition provide services that can be commissioned by schools and local authorities.

- (C) The Councils have agreed to enter into this Agreement to formalise their respective roles and responsibilities in relation to the Service and the appointment of Gwynedd Council as Host Authority in implementing and maintaining and carrying out the Service in accordance with the terms of the agreed Final Business Case.
- (D) The Councils wish to enter into this Agreement and implement the Service pursuant to the powers conferred on them by Section 9 of the Local Government Wales Measure 2009, Section 2 of the Local Government Act 2000 Sections 101 and 102 of the Local Government Act 1972 and associated Regulations.
- (E) The Councils acknowledge that this Agreement sets out the basis on which they will establish and manage the Service.

## 1. Definitions and Interpretation

- 1.1 In this Agreement, unless, the context otherwise requires the following terms shall have the meaning given to them below:-

“Assets”	means the Assets identified in Clause 9
“Business Day”	means any day other than a Saturday or Sunday or a public or bank holiday in Wales
“Chair”	means the chair of the Joint Committee (duly appointed pursuant to Clause 8.13)
“Chief Officer”	means the Chief Officer of the Service
“Commencement Date”	means the date hereof
“Commissioning Model”	The Model by which the Services to be provided to Councils, schools and learning settings will be



	established and agreed – Schedule 1B
“Confidential Information”	means all information whether commercial, financial, technical or otherwise relating to the business of Councils, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content of the context of disclosure
“DPA”	means the Data Protection Act 1998
“Directive”	means Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses as applied by the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector
“Employee”	means all those persons employed by the Councils in relation to the Service Functions under a contract of employment (excluding for the avoidance of doubt any person so engaged as an independent contractor or person employed by any sub-contractor employed by a Council in relation to a Service function in the period prior to the Implementation Date)
“Employee	means the information pertaining to the Transferring

Information”	Employees to be supplied by the Councils pursuant to Clause 15 and Schedules 5 and 6
“Final Business Case”	means the Final business case dated February 2012 (as amended from time to time) prepared and approved by the Councils before submission to Welsh Government for funding to support the Service
“Financial Year”	the period between 1 April and 31 March (inclusive)
“Fund”	the Gwynedd Pension Fund within the LGPS;
“Host Council”	means the Council appointed under Clause 6 as the administering authority for the Service whose duties are set out in this Agreement
“Implementation Date”	means the 1st day of April 2013 or such other date as may be agreed by the Councils being the date upon which the Service becomes operational
“Intellectual Property”	means any and all patents, trade marks, trade names, copyright, moral rights, rights in design, rights in databases, know-how and all or other intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating to them and the right to apply for registration of them
“IP Material”	means the Intellectual Property in the Material
“Joint	shall have the meaning given to it in Clause 8.1

Committee”	
“Joint Committee Meeting”	means a meeting of the Joint Committee duly convened in accordance with Clause 8
“Key Aims”	means the aims listed in Clause 4.2
“Lead Finance Officer”	means the person so appointed from time to time by the Host Council to represent the interests of the Councils in respect of financial matters of the Service
“Lead Legal Officer”	means the person so appointed from time to time by the Host Council to represent the interests of the Councils in respect of legal matters of the Service
“LGPS”	the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under section 7 and 12 of the Superannuation Act 1972 as amended from time to time
“LGPS Regulations”	the Local Government Pension Scheme (Administration) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Transitional Provisions) Regulations 2008, as amended from time to time
“Liabilities”	all costs, expenses, losses, claims, proceedings, damages, awards and other liabilities including reasonable legal and other professional fees and expenses) whenever arising or brought



“Local Authority”	means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in Wales established as a successor of a principal council
“Loss”	actions, proceedings, losses, damages, awards, orders, liabilities (including any liability to taxation), claims, costs, demands and expenses, including fines, penalties, reasonable legal and other professional fees and expenses and “Losses” shall be construed accordingly
“Material”	means all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement unless before the first use or supply, the Council notifies the other Councils that the data, text supplied is not to be covered by this definition
“Matters Reserved To The Councils”	means the matters as defined in Clause 7.1.2
North Wales Consortium	The North Wales Consortium of Education Services.
“Outcomes”	The Outcomes set out in the Full Business Case and recited in clause 11.1
“Partnership Contributions”	Means the contribution of each Council towards the Service Budget calculated in accordance with the terms of this agreement
“Model”	means the Centre for Dispute Resolution Model

"Procedure"	Mediation Procedure
"Personal Data"	means personal data as defined in the DPA
"Records"	all books and records relating to the Service, the Assets and the Employees (including personnel files) to the extent the same are owned by and are in the possession and control of a Council and subject to any restrictions on records having transferred under legislation (including data protection) or by virtue of any confidentially restrictions to which a Council is subject and Host Council Officers or their agents shall be granted full access rights to those records which relate to the period prior to the Implementation Date
"Region"	Means the collective administrative areas of the Councils
"Regional Partnership Board"	Means the Partnership Board of the Leaders and Chief Executives of the Councils
"Relevant E L Policy"	means any contract of insurance remaining in force at the Implementation Date giving a Council indemnity against liability as an employer to Employees and, for the avoidance of doubt, a Relevant E L Policy will include compulsory employer's liability policies, employment protection policies and any other policy which is designed to protect the Council from liability to Employees
"Relevant Employer"	means an employer providing services to a Council whether directly as main contractor or indirectly as

	sub-contractor to whom the contract of employment of any Transferring Employee or any other employee Council be employed in relation to the Service transferred or alleged to be transferred pursuant to the TUPE Regulations and/or the Directive
"Rights"	means the benefits of all rights, entitlements and claims (whether actual, prospective or contingent) to which Councils are entitled in relation to any Assets (including the benefit of any warranty, condition, guarantee, indemnity or policy of insurance) up to the Implementation Date and as of the Implementation Date
"Services"	Mean the Functions and Services set out in Schedule 1A
"Service"	means the North Wales Regional School Effectiveness and Improvement Service established pursuant to this agreement
"Service Budget"	Means the annual baseline budget for the Service as agreed between the Councils
"Service Employees"	Means staff employed from time to time by the Host Authority in that capacity
"SLA"	means an annual Service Level Agreement agreed between the Service and a Council or school or learning setting defining the respective roles and responsibilities of the Service and the Council or school and the Services ( including standards and

	performance ) which will be provided to that pursuant to this agreement and the relevant Commissioning Plan
“Service Section 151 Officer”	means the person so appointed by the Host Council (as their officer appointed pursuant to section 151 of the Local Government Act 1972) as the officer responsible for the proper administration of the financial affairs under the Service and who shall manage the Lead Finance officer and collate regular reports on Service accounting matters (provided that for the avoidance of doubt each Council’s own officer appointed pursuant to section 151 of the Local Government Act 1972 shall be entitled to attend Service Board Meetings and Joint Committee Meetings from time to time
“Transferring Employees”	means any employee of a Council in respect of whom the particulars set out in Schedule 5 of this Agreement are supplied to The Host Council as provided for in Clause 14 and whose contract of employment takes effect on the Implementation Date as if originally made between the Host Council and such employee
“TUPE Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any subsequent re-enactment thereof as applied by the Cabinet Office Statement of Practice: Staff Transfers in the Public Sector
“User Group”	Means the RESIS Schools and Governors User Group established in accordance with Clause 9

“Vice-Chair”	means the vice-chair of the Joint Committee (duly appointed pursuant to Clause 8.13)
“Warranties”	means the warranties set out or referred to in Clause 13 and Schedule 4
“WG”	means the Welsh Government

1.2 Except where the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Agreement;
- 1.2.3 any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.4 any reference to legislation shall be construed as a reference to any legislation as amended, replaced, consolidated or re-enacted;
- 1.2.5 a reference to a public organisation (to include, for the avoidance of doubt, any Council) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the schools and education functions and responsibilities of such public organisation;



- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 the schedule, clause, sub-clause and (where provided) paragraph headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- 1.2.8 words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words; and
- 1.2.9 any reference to the title of an officer or any of the Councils shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Council as that Council may from time to time appoint to carry out the duties of the officer referred to.

### 1.3 Schedules

The Schedules to this Agreement form part of this Agreement.

## 2. Commencement, duration and termination

2.1 This Agreement shall continue in full force and effect from the Commencement Date until the earlier of the following dates:-

- 2.1.1 all the Councils agree in writing to its termination; or
- 2.1.2 there is only one remaining Council who has not withdrawn from this Agreement in accordance with Clause 21( Withdrawal) or 22 (Service Underperformance).

2.2 Without prejudice to any other rights or remedies, this Agreement may be terminated in relation to any Council ("**Defaulter**") by the other Councils ("**Non-Defaulting Councils**") acting unanimously in giving written notice to the Defaulter ("Termination Notice") effective on receipt where the

Defaulter materially breaches any of the provisions of this Agreement and in the case of a breach capable of remedy fails to remedy the same within sixty (60) Business Days (or such other period as agreed by the Councils) of being notified of each breach in writing by the Non-Defaulting Councils and being required to remedy the same. The decision to Terminate shall be a matter reserved to the Councils.

2.3 In determining or responding to any decision or proposal to terminate the Agreement in accordance with this clause all Councils including, for the avoidance of doubt the Defaulting Council, shall have regard to the Partnership Principles and the appropriateness of instigation of the Dispute Resolution Procedure ( Clause 32) with a view to identifying a solution which maintains the Partnership.

2.4 The service of a Termination Notice shall be treated as if it were a Withdrawal Notice pursuant to Clause 21 and the provisions of the said clause in relation to the procedure to be followed by the Council's in response and the liabilities of the Defaulting Council shall apply accordingly.

2.5 The following clauses shall continue to apply after the termination or withdrawal from this agreement: clause 13 clause 14 and clause 16 and the associated schedules.

2.6 Termination or withdrawal from this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

### **3. Principles**

3.1 The Councils intend this Agreement to be legally binding.

3.2 The Councils agree to work together to carry out the Service in accordance with the terms of this Agreement.

- 3.3 Without prejudice to the terms of this Agreement, the Councils agree that they will conduct their relationship in accordance with the following principles:-

**Openness and Trust**

in relation to this Agreement the Councils will be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the joint working successful;

**Commitment and Drive**

the Councils will be fully committed to working jointly, will seek to fully motivate employees and will address the challenges of the Service with drive, enthusiasm and a determination to succeed;

**Skills and Creativity**

the Councils recognise that each brings complementary skills and knowledge which they will apply creatively to achieving the Councils' objectives, continuity, resolution of difficulties and the development of the joint working relationship and the personnel working within it;

**Effective Relationships**

the roles and responsibilities of each Council will be clear with relationships developed at the appropriate levels within each organisation with direct and easy access to each other's representatives;

**Developing and Adaptive**

the Councils recognise that they are engaged in what could be a long term relationship which needs to develop and adapt and will use reasonable endeavours to develop and maintain an effective joint process to ensure that the relationship develops appropriately and in line with these principles and objectives;

### **Reputation and Standing**

the Councils agree that, in relation to this Agreement and the Service generally, they shall pay the utmost regard to the standing and reputation of one another and shall not do or fail to do anything which may bring the standing or reputation of any other Council into disrepute or attract adverse publicity to any other Council;

### **Reasonableness of Decision Making**

the Councils agree that all decisions made in relation to this Agreement and the Service generally shall be made by them acting reasonably and in good faith;

### **Necessary Consents**

each Council hereby represents to the other Councils that it has obtained all necessary consents sufficient to ensure the delegation of functions and responsibilities provided for by this Agreement; and

### **Members and Officers' Commitments**

each Council shall use its reasonable endeavours to procure that their respective members and officers who are involved in the Service shall at all times act in the best interests of the Service, and respond in a timely manner to all relevant requests from the other Councils.

## **4. The Service Functions**

4.1 Subject to this Agreement and as further particularised in Schedule 1 the Service shall have the function of implementing the Full Business Case by undertaking the following to achieve the Key Aims set out in 4.2 below:-

- 4.1.1 supporting the Councils to undertake their statutory functions in relation to school effectiveness;
- 4.1.2 provide support for both the Councils and Schools (jointly and separately as the case may be) in School Improvement activity;

- 4.1.3 specifically undertaking responsibility for the Implementation of SEF and for CIF accountability\*;
  - 4.1.4 making provision for the development, maintenance, and review of regional frameworks on a commissioned basis.
- 4.2 The Key Aims of the Service will be:-
- 4.2.1 Implementing the National School Effectiveness Framework to raise standards and improve wellbeing by reducing variations within and between schools and local authorities whilst taking account of local need;
  - 4.2.2 respond to the Estyn inspection regime;
  - 4.2.3 identify efficiency savings;
  - 4.2.4 provide a foundation that allows for the future regionalisation of education related services.
- 4.3 Nothing in this Agreement shall permit the Service to implement or consult on implementation of any statutory intervention in a specific school, Federation or cluster of schools pursuant to Section 15 of the Schools Standards and Framework Act 1998 or such other equivalent statutory power or provision which permits a Council to directly assume powers of management or re-organisation in respect of such establishments or in relation to the management of staff.
- 4.4 Subject to this agreement the Services will be provided to individual Councils, schools or learning settings under the terms of an SLA prepared in accordance with the Commissioning Model.

\* references to SEF and CIF shall be presumed to include any amendments or superseding policies or frameworks in so far as and to the extent that they encompass the Service Functions.



## **5. Language**

- 5.1 The Joint Committee shall within 12 months of the Commencement Date agree and implement a Welsh Language Scheme or Strategy for the Service in accordance with the Full Business Case in order to provide a bilingual service that can fully provide Welsh medium support across the Region.

## **6. Duties Of The Host Council And Other Councils**

- 6.1 The Councils (acting severally) have agreed, with effect from the Commencement Date, that Gwynedd Council will be the Host Council for the Service which shall be carried out for and on behalf of itself and the Councils and Gwynedd Council agrees to act in that capacity subject to and in accordance with and to the extent provided for by the terms of this Agreement For the avoidance of doubt the role of Host Council includes:-

- 6.1.1 subject to the indemnities and warranties act as the employing authority for any staff engaged in the discharge of the Service's functions (appointing, employing or accepting the secondment of staff) in accordance with this Agreement;
- 6.1.2 being the legal point of contact for the purposes of managing the Service;
- 6.1.3 providing such administrative resources and facilities that may be necessary for the purpose of discharging the Service and hold all central funds;
- 6.1.4 providing such Human Resources Services that may be necessary for the purpose of discharging the Service and hold all central funds;
- 6.1.5 provide senior officers who will act as Secretary, Monitoring Officer, and Treasurer (who will also be the section 151 officer) for the Service and who will therefore act as the primary legal and financial advisers to the Service;

- 6.1.6 power to enter into contracts for supplies and services as required for the purposes of the Service.
- 6.2 For the avoidance of doubt the duties and responsibilities of the Host Authority pursuant to this agreement shall only bind the Host Authority to the extent that they have been resourced by the Councils through this Agreement.
- 6.3 Save and except where otherwise required by law all staff employed by the Host Authority pursuant to this agreement shall be employed on the Host Authority's relevant terms and conditions of employment and related staff policies including salary structures.
- 6.4 If the Host Council defaults and the Agreement is terminated in respect of it pursuant to Clause 2 (Termination) or the Host Council withdraws pursuant to Clauses 21 (Withdrawal) or 22 Service Underperformance then a replacement Host Council will be appointed by the Councils and the withdrawing/defaulting Host Council will not have the right to vote in regard to any such appointment.
- 6.5 For the duration of this Agreement, the Host Council shall act diligently and in good faith in all its dealings with the other Councils and
- 6.6 For the duration of this Agreement, the other Councils shall act diligently and in good faith in all their dealings with the Host Council and shall use their reasonable endeavours to assist the Host Council to support the Service.

## 7. **Decision Making**

- 7.1 The Councils have identified the following two categories of decisions together with the means by which they will be taken:-
- 7.1.1 **"Joint Committee Matter"** – being a matter which is to be decided upon at a quorate meeting of the Joint Committee by those present and entitled to vote and any such decision will be binding on all the Councils;

7.1.2 **"Matter Reserved To The Councils"** – being a matter which will have to be referred to each Council for decision and, for the avoidance of doubt, any such matter will not be dealt with by the Joint Committee (as the case may be) until the matter has been determined by all of the Councils. If the Councils fail to reach the same decision in respect of such matter then the matter shall be referred under Clause 32 (Dispute Resolution) as a dispute for resolution, and such matters are identified in Schedule 2.

## 8. Joint Committee

8.1 The Councils have formed the joint committee ("**Joint Committee**") called the **REGIONAL SCHOOL EFFECTIVENESS AND IMPROVEMENT SERVICE JOINT COMMITTEE / CYD BWYLLGOR GWASANAETH GWELLA YSGOLION RHANBARTHOL** Pursuant to the Partnership Agreement to carry out the functions set out in Schedule 1.

8.2 The Joint Committee is a joint committee constituted by the Councils under section 101(5) and 102(1) of the Local Government Act 1972 and section 20 of the Local Government Act 2000. Meetings of the Joint Committee are subject to the provisions of the Local Government Act 1972 including the provisions on access to information and meetings held in public.

8.3 The Membership of the Joint Committee shall be as follows:-

<b>Voting Members</b>		<b>Officer Members –Non Voting</b>
6x Education Portfolio Members <i>one from each NW LA</i>		6x Statutory Chief Education Officers <i>one from each NW LA</i>
<b>Co-opted Members</b>	<b>Non-voting</b>	<b>Officers in Attendance</b>

1x Diocese Representative <i>nominated from across the Wrexham, St Asaph and Bangor Diocese, on a rotating two year term</i>	1x Legal Representative 1x S151 Representative Other specialists as requested
1x Primary Schools Representative	
1x Secondary Schools Representative	
1x Special Schools Representative	
1x Governor Representative	

(It is expected that all Members of the Joint Committee, including Deputies shall be appropriately authorised to participate in its business.)

- 8.4 Diocesan representatives of the Committee shall be jointly nominated in writing by the dioceses of Wrexham, St Asaph and Bangor on a rotation per diocese commencing on the Commencement Date. Representatives of individual Dioceses shall serve for a maximum term of 2 years per rotation.
- 8.5 The Primary, Secondary and Governor Members of the Joint Committee shall be nominated by the User Group from amongst the relevant sectoral representatives serving on the User Group.
- 8.6 Representatives nominated to the Joint Committee may only serve on the Joint Committee whilst concurrently remaining members of the User Group and subject thereto will be appointed for two years terms (for the avoidance of doubt nothing in this clause will prevent the a member of the User Group being nominated for a further two year period).

- 8.7 In nominating members to serve on the Joint Committee the User Group shall, as far as reasonably practicable have regard to the principle that their nominees as a whole provide a geographical spread of representation from across the North Wales region.
- 8.8 For the avoidance of doubt the Service Section 151 Officer and Service Legal Officer and/or their duly authorised representatives shall be entitled to attend all Joint Committee meetings.
- 8.9 Each Council may, at their discretion, replace their representatives appointed to the Joint Committee, provided that at all times, they have representatives appointed to the Joint Committee in accordance with the roles identified in 8.3 above; and
- 8.10 A body may nominate a Deputy to attend the Joint Committee on behalf of a member in the following circumstances:-
- (i) to take the place of a member of the Joint Committee;
  - (ii) where the member is unable to attend the whole meeting; and
  - (iii) if the member has notified the Chairman in advance of the relevant meeting.

A Deputy shall only have the right to speak and where relevant vote at that meeting- of the Committee or Sub Committee and no other function or appointment including appointments to Working Groups will be applicable to them when acting as a Deputy.

- 8.11 The Chair of the Joint Committee shall be an elected Executive member of a Council appointed by the Joint Committee pursuant to Clause 8.13.
- 8.12 The Vice-Chair of the Joint Committee shall be an elected Executive member of a Council appointed by the Joint Committee pursuant to



Clause 8.13 In the absence of the Chair for any reason, the responsibilities of the Chair can be discharged by the Vice-Chair.

- 8.13 The Chair and the Vice-Chair of the Joint Committee shall be elected at the annual general meeting and appointments shall take effect until the next annual general meeting.
- 8.14 The Joint Committee shall meet as and when required to suit the needs of the Service in accordance with the Service timetable provided that there shall be a minimum of three meetings per year, one of which shall be specified as the annual general meeting. The venue for the meetings shall be agreed by the Joint Committee.
- 8.15 A printed copy of the agenda and reports for each meeting and the minutes of the previous meeting shall be despatched at least five (5) Business Days before such meetings to each representative appointed to the Joint Committee. The Chief Executive of the Host Council shall ensure that the agenda and all relevant papers meet this deadline. All Agendas, reports and minutes in relation to the Joint Committee shall be in both Welsh and English and simultaneous translation of proceedings will be available throughout all meetings of the Joint Committee.
- 8.16 Save as is inconsistent with the terms of this Agreement the Council Procedure Rules and Contract Procedure Rules of the Host Council shall apply.
- 8.17 The quorum necessary for a Joint Committee meeting shall be five (5) voting members of the Joint Committee.
- 8.18 At meetings of the Joint Committee each voting member shall have one (1) vote. Decisions at meetings of the Joint Committee will be taken by a simple majority vote.
- 8.19 The Joint Committee shall not have power to approve any Matter Reserved To the Councils pursuant to Clause 7.1.2 (Decision Making).

- 8.20 The Chair may summon a special meeting of the Joint Committee at any time by written notice to the Host Council specifying the business to be considered at the special meeting.
- 8.21 A special meeting shall be summoned on the requisition in writing of any Joint Committee Member acting on behalf of his/her Council, which requisition shall specify the business to be considered at the special meeting.
- 8.22 Arrangements for holding a special meeting will be in accordance with the timetable set out in Clause 8.15.
- 8.23 In the event that a special meeting is called the Host Council shall notify all Councils in writing as a matter of urgency.
- 8.24 If, at a meeting of the Joint Committee, a matter is not determined by a majority vote pursuant to Clause that matter ("**JC Unresolved Matter**") shall be deferred for consideration at the next Joint Committee Meeting which shall be convened within ten (10) Business Days of that meeting. If at the reconvened Joint Committee meeting the JC Unresolved Matter is not determined the matter shall be determined in accordance with Clause 32–**Dispute Resolution**.
- 8.25 Each Council shall provide all information reasonably required upon request by the Joint Committee and shall comply with any decisions of the Joint Committee to request such information.
- 8.26 Each Council shall consult with the other Councils to ensure the diligent progress of the day to day matters relating to the Service.

## 9. User Group

- 9.1 The Councils will establish the User Group to provide support and challenge to the Joint Committee.
- 9.2 The User Group shall have the following membership appointed in the manner indicated:-

Membership	Representation
6 Secondary representatives (1 Representative per Council)	The Chair of each respective Council Secondary Schools Headmasters Federation or Group
6 Primary representatives (1 Representative per Council)	Chair of each respective Council Primary Schools Headmasters Federation or Group
1. Special School representatives	One representative drawn from the North Wales Special Schools Federation.
School Governors – 1 Representative per Council	The Chief Education Officer for each respective Council will agree one representative drawn from the Governors elected onto their Overview and Scrutiny Committees pursuant to Parent Governor Representative and Church Representatives ( Wales ) Regulations 2001.

- 9.3 The User Group shall meet as and when required to suit the needs of the Service in accordance with the Service timetable provided that there shall be a minimum of three meetings per year, The venue for the meetings

shall be agreed by the User Group. All Agendas, reports and minutes in relation to the User Group shall be in both Welsh and English and simultaneous translation of proceedings will be available throughout all meetings of the User Group.

- 9.4 A written Agenda shall be sent to all members of the User Group no later than 5 working days prior to the date of the meeting. The Agenda shall include copies of all reports submitted to the Joint Committee at its previous meetings save and except for matters which were Exempt Items pursuant to Part VA of the Local Government Act 1972.
- 9.5 The User Group shall be entitled to report and make recommendations to the Joint Committee with regard to any matter falling within the scope of the functions of the Service.

## **10. Commitment of the Councils and Contributions**

- 10.1 The Councils agree and undertake to commit to the Service in accordance with the terms of this Agreement and not to commission any service that seeks or would procure the delivery of all or any part of the Services outside the terms of this Agreement save where the Service has been offered the opportunity to provide the service in question and has for reasons of capacity or technical ability agreed that it cannot provide the requested Service in accordance with the stated requirements of the particular Council or school, in which case the Service will assist them in the commissioning of the Services outside this agreement.
- 10.2 The Councils agree to pay the Partnership Contributions which shall be calculated by reference to the formulae in Schedule 3.
- 10.3 The Councils agree to pay the Partnership Contributions to the Host Authority in advance within 28 days of invoice by the Host Authority on to be submitted to the Councils on a six monthly basis by 31 May and 30 November in any given year.
- 10.4 The Host Authority shall prepare annual final accounts in relation to each Financial Year for the Service in accordance with the Host Council's

accounting policies by no later than 31 of May in the following Financial Year.

- 10.5 In the event that the annual expenditure of the Service exceeds the Service Budget the Service Chief Officer will by no later than 31 May in the succeeding Financial Year present a written report to the Joint Committee and serve on the Chief Education Officers and Respective Heads of Finance of the Councils detailing the extent of the over-spend, the cause and the recommended strategy to resolve the matter.
- 10.6 In the event that the Service generates a surplus in any Financial Year equal to or exceeding 5% of the Service budget for that year the Chief Officer will by no later than 31 May in the succeeding Financial Year present a written report to the Joint Committee and serve a copy on the Chief Education Officers and Respective Heads of Finance of the Councils detailing the extent of the surplus, the cause and the recommended strategy with regard to the under spend.
- 10.7 The baseline Service Budget may be jointly reviewed and revised commensurately by all Councils on the third anniversary of the Implementation Date and thereafter by three yearly intervals by reference to the following mechanism:
  1. A Council may upon prior written notice served on the Host Authority and the Chief Officer of the Service no later than 31 October in the year preceding the third anniversary request a review and revision of the Annual Service Budget.
  2. Such notice shall, having regard to the Principles, continuity of the provision of the Services and achievement of the Outcomes set out the proposed revision and the justification for such revision.
  3. On receipt of such a request the Chief Officer of the Service shall within 35 days prepare and serve on each Council a report ratified by



the Joint Committee in response setting out the anticipated effect of the proposed revision on the Service and its ability to deliver the Services and the Outcomes.

4. The response to the report shall be a Matter reserved to Councils and any variation will require agreement of all the Councils any variation will be commensurate for all Councils and require agreement of all Councils.

## **11. Performance Review**

11.1 The Service Chief Officer shall report annually to the Joint Committee and to the Councils individually on the performance of the Service in delivering the Service Functions and Key Aims. The report shall, in particular report on the performance of the Service in delivering the Full Business Case and without prejudice to the generality of the above delivering the Outcomes:

- O1 Improved standards in literacy (Welsh/English) and numeracy (maths) that compare well with the best in other countries,
- O2 A single coherent service for the monitoring, supporting, challenging and intervention within schools across the region,
- O3 Deployment of System Leaders with a consistent approach and recent proven record of school improvement,
- O4 All schools able to access a much broader range of specialist support than that available in individual LA's currently,
- O5 No Local Authorities, schools or learning settings in any Estyn Inspection category of needing significant improvement or special measures.

11.2 The Chief Officers report shall be provided to each Council by no later than 31 October in any given year.

## **12. Accommodation**

12.1 A Council may provide the Host Authority with accommodation and facilities for the Service in the Councils premises on a licence on terms to be agreed in writing between the Council and the Host Authority

12.2 Where premises are provided in a Council's Premises they should be provided with the following facilities

- a) Administration of visitors, trades people, post and deliveries during office hours;
- b) All management of central areas;
- c) Informal message-taking by central reception;
- d) Utilities
- e) Cleaning
- f) Provision of hygiene facilities and consumables;
- g) Maintenance of common parts to include boilers, light fittings; lifts, switchboard, cabling and communication facilities, fire and security systems;
- h) Maintenance of the grounds and window cleaning;
- i) Waste disposal;
- j) Building insurance and also including the common parts;
- k) Management of Health and Safety including fire and asbestos management arrangements
- l) Information Technology Infrastructure/
- m) Adequate car parking for Service staff and visitors

12.3 The fee for provision of accommodation by the Host Authority or the individual Councils shall be on a cost only basis and include a fair allocation of the cost of providing such facilities as are set out in 12,1 above or such other facilities as may be agreed from time to time.

## **13. Warranties**

13.1 The Councils jointly and severally:-

- 13.1.1 warrant to the Host Council in the terms of the Warranties and acknowledges that Host Council is entering into this Agreement in reliance on each of the Warranties and the Warranties will be deemed to be repeated on the Implementation Date with reference to the facts then subsisting PROVIDED that the

Warranties shall be deemed to have been repeated subject to disclosure of information arising at the date of this Agreement if and to the extent that this Agreement provides a mechanism for such disclosure;

- 13.1.2 will indemnify Host Council in full against any Liabilities which the Host Council may suffer or incur, directly or indirectly, as a result of any breach of the Warranties;
- 13.1.3 agree to disclose as soon as reasonably possible to the Host Council anything which comes to their notice which is or may be a breach of any of the Warranties;
- 13.1.4 Unless otherwise specified, where any Warranty refers to the knowledge, information, belief or awareness of a Council other than the Host Council (or similar expression), the Council will be deemed to have such knowledge, information, belief or awareness as Council would have obtained had they made reasonable enquiries into the subject matter of that Warranty;
- 13.1.5 A Council will not be liable in respect of any claim relating to a breach by it of the Warranties if and to the extent that the loss occasioning it has been recovered by the Host Council pursuant to any other claim.

#### **14. Liabilities**

- 14.1 Nothing in this Agreement will make the Host Council liable in respect of anything done or omitted to be done by a Council or any Relevant Council Employer up to the Implementation Date or in relation to the carrying on of the Service Functions generally up to the Implementation Date other than as may have been specifically assumed by Host Council under this Agreement.
- 14.2 The Councils will indemnify the Host Council in full against any Losses which the Host Council may suffer or incur, directly or indirectly, as a

result of anything so done or omitted to be done by a Council or any Relevant Council Employer including any act, default or transaction of a Council or any Relevant Council Employer or any circumstance occurring in respect of the carrying on of Service Functions up to the Implementation Date and so that where there are any claims by any third parties in respect of services rendered up to the Implementation Date the claims will be met in full by the relevant Council.

- 14.3 All income received in relation to work undertaken by Councils in respect to Service Functions up to the Implementation Date will be retained by the relevant Council which will remain liable for all costs relating to work undertaken, services received and good received up to the Implementation Date. Any payments in respect of such income paid to the Host Council shall be paid to the Relevant Council as soon as reasonably practicable but in any event within 28 Business Days of receipt.

## **15. The Tupe Regulations And Tupe Employees**

- 15.1 It is acknowledged that for the purposes of the TUPE Regulations and the Directive (whether the same apply as a matter of law or not) the transactions contemplated by this Agreement will be treated as a transfer of the undertakings of the Council's on the Implementation Date and that accordingly with effect from and on the Implementation Date the contracts of employment of each of the Transferring Employees will not be terminated by the transactions provided for in this Agreement but will continue to have effect from and on the Implementation Date as if originally made between each of such Transferring Employees and Host Council except to the extent provided by the Transfer Regulations and/or the Directive but subject to Clause 18 below.
- 15.2 the Councils agree that after the date of this Agreement it will not do any of the following without the consent of Host Council:

- 15.2.1 engage or employ any person who is not currently a Transferring Employee, who would or might as a consequence of such engagement or employment become a Transferring Employee; or
  - 15.2.2 make material changes to the terms and conditions of employment of any Transferring Employee or Employee.
- 15.3 The Councils will discharge all of their obligations in relation to the Transferring Employees, including, without limitation, all costs and expenses, salaries and other emoluments including without limitation accrued holiday pay, up to the Implementation Date. The Councils shall indemnify the Host Councils against all Losses arising from its failure to so discharge and the Host Council shall indemnify the Councils against all Losses arising from Host Council's failure to comply with its obligations under this clause.
- 15.4 At least 14 days prior to the Implementation Date the Councils will provide the Host Council with a Schedule of Transferring Employees in the format set out in Schedule 5 and with the Employee Information referred to in Schedule 6. The Councils will inform the Host Council as soon as is reasonably practicable of them becoming formally aware of any Transferring Employee giving notice to cease to be employed or ceasing to be employed prior to the Implementation Date.
- 15.5 The Councils shall provide Host Council with any other information in relation to the Transferring Employees that they may agree with the Host Council to provide from time to time.

## **16. Pensions**

- 16.1 The Councils are scheduled employers in the LGPS. The Employees employed in the Service will remain eligible to be active members of the LGPS from and including the Implementation Date by virtue of the LGPS Regulations. The Employees' LGPS membership with the Councils or



Cynnal Cyfyngedig a Relevant Employer will be aggregated with their membership with the Fund.

- 16.2 The Host Authority in its capacity as administering authority of the Fund shall treat the Service as a separate entity within the Fund. The Service will be the subject of specific actuarial reporting in accordance with the Host Authority's Policies by the Funds Actuaries and shall be liable for a discrete employers contribution rate (Employer's Contribution).
- 16.3 The Funds Actuary shall make a valuation to establish the relevant assets and liabilities attributable to the employees employed in the Service calculated as at the Implementation Date in accordance with the actuarial basis used in the Fund's ongoing valuation using the financial assumptions and market conditions existing as at the Implementation Date in order to calculate the required Employers Contribution.
- 16.4 The valuation referred to in clause 16.3 shall be reviewed triennially in accordance with the LGPS Regulations and the Employer's Contribution adjusted accordingly.
- 16.5 The Employer's Contribution established and reviewed in accordance with this clause 16 shall be incorporated in the annual Service Budget and form part of the Council's Commitments (clause 10).
- 16.6 In the event of Termination or Withdrawal by any or all Councils the Host Councils actuary shall make a valuation to establish the relevant assets and liabilities attributable to the employees employed in the Service as calculated at the Termination or Withdrawal Date in accordance with the actuarial basis used in the Fund's ongoing valuation in pursuant to clause 16.4 but using the financial assumptions and market conditions existing as at the Termination and Withdrawal Date. Notwithstanding the provisions of Clause 2, 21 or 22 the leaving Council shall pay to the Host Council within 28 days of demand a share of those liabilities (pension deficit) equivalent to its proportion of its share of the Service Budget for

the last full financial year immediately preceding the Termination or Withdrawal Date.

## **17. Consultation With Unions And Employee Representatives**

- 17.1 In good time in advance of the Implementation Date and in any event no later than is required by the TUPE Regulations, the Councils will provide information to and will consult with the Relevant Representatives in accordance with regulation 13 of the TUPE Regulations (“**the Consultations**”).
- 17.2 The Councils will keep the Host Council informed about the progress of the Consultations and will consent, if so requested by Host Council, to permit a representative of Host Council to attend any meeting between the Councils and the Relevant Representatives in respect of the Consultations, which consent shall not be unreasonably withheld or delayed.
- 17.3 The Councils will indemnify the Host Council and keep the Host Council fully indemnified from and against all Losses arising in connection with or as a result of any claim arising (directly or indirectly) from or connected with any failure by a Council to comply with any obligation to inform or consult under the TUPE Regulations or the Directive and whether or not such claim is brought before or after the Implementation Date except to the extent that such claim arises by virtue of the failure of Host Council to comply with its obligations under regulation 13 of the TUPE Regulations.
- 17.4 The Councils warrant that the employee liability information that they provide under regulation 11 of the TUPE Regulations shall be accurate, complete and provided within the time period required under regulation 11 of the TUPE Regulations.

## **18. Tupe Indemnities**

- 18.1 The Councils shall indemnify the Host Council and keep it indemnified against all Losses arising directly or indirectly in connection with:-

- 18.1.1 the employment or termination of employment by a Council of any of the Transferring Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires) up to and including the Implementation Date;
  - 18.1.2 any act, omission or default of a Council up to and including the Implementation Date in respect of the employment by a Council of the Transferring Employees provided that this indemnity will not apply to the extent that Host Council recovers under a Relevant EL Policy;
  - 18.1.3 any claim or allegation by any former or existing employee of a Council (other than a Transferring Employee) in respect of which the Host Council incurs or is alleged by the employee or their representative to incur responsibility or liability as a result of the operation of the TUPE Regulations and/or the Directive;
  - 18.1.4 a Council's failure to provide the employee liability information under regulation 11 of the Regulations.
- 18.2 If, after the Implementation Date, Host Council becomes aware of any employee of a Council or Relevant Council Employer whose particulars do not appear in Schedule 5 but whose contract of employment takes effect after the Implementation Date (as if originally made between Host Council and that employee) or is alleged to do so pursuant to the Transfer Regulations and/or the Directive:-
- 18.2.1 within 14 days of becoming aware of that effect or allegation, the Host Council may terminate such person's contract of employment;
  - 18.2.2 the Council will keep the Host Council indemnified in full against all Losses arising (directly or indirectly) in connection with such termination and against any sums payable to or in relation to such person in respect of such person's employment

with the Council and from the Implementation Date to the date of such termination; and

18.2.3 For the avoidance of doubt, in relation to the indemnities set out in this Agreement in favour of Host Council any Losses incurred by Host Council which arise from claims made by or on behalf of a Transferring Employee shall be recoverable from a Council by Host Council notwithstanding that the Transferring Employee has been transferred to a Relevant Employer and regardless of whether the claim is made by a Transferring Employee against Host Council or the Relevant Employer.

18.3 In the event that a party has the benefit of an indemnity in relation to a claim, it shall not settle that claim or make any admission of liability without first obtaining the prior written consent of the party providing the indemnity (not to be unreasonably withheld or delayed).

18.4 It is agreed that Host Council will have the benefit of any right to indemnity which a Council has under or pursuant to a Relevant E L Policy. Each Council hereby assigns unconditionally and absolutely to the Host Council the benefit of and all its right, title and interest under or pursuant to any Relevant E L Policy insofar as the same gives a right to indemnity in respect of any Employees. The parties will give joint notice to the insurers of such assignment or the Host Council will be entitled to give such notice to insurers (on behalf of the when necessary). The parties will use their respective best endeavours to arrange to have the name of the Host Council endorsed upon any Relevant E L Policy as a named insured (either in addition to or in substitution for the name of the Seller as appropriate) in respect of claims brought by any Employee in respect of facts or circumstances arising on or before the Implementation Date.

## **19. Intellectual Property**

19.1 Each Council will retain all Intellectual Property in its Material.



- 19.2 Each Council will grant all of the other Councils a non exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the purpose of the Service and any other purpose resulting from the Service whether or not the party granting the licence remains a party to this Agreement or the Service.
- 19.3 Without prejudice to Clause 18.1, if more than one Council owns or has a legal or beneficial right or interest in any aspect of the IP Material for any reason (including without limitation that no one Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one or more of the other Councils), each of the Councils who contributed to the relevant IP Material will grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such IP Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.
- 19.4 For the avoidance of doubt, any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement will have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.
- 19.5 Each Council warrants that it has or will have the necessary rights to grant the licences set out in Clauses 19.2 and 19.3 in respect of the IP Material to be licensed.
- 19.6 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Council (and at the expense of the Council(s) making the request) to give full effect to the terms of this Agreement concerning management and control of Intellectual Property<sup>1</sup>.

## **20. Liability Of The Councils**

- 20.1 Save where specifically provided for in clauses 13– 18 above:-



20.1.1 The Host Council shall indemnify and keep indemnified each of the other Councils to this Agreement against any losses, claims, expenses, actions, demands, costs and liability suffered by that Council to the extent arising from any breach by the Host Council of its obligations under this Agreement or any negligent act or omission in relation to such obligations and the Host Council shall make payment to the other Councils sums for which it becomes liable under this Clause within twenty (20) Business Days of the date of another Council's written demand;

20.1.2 No claim shall be made against the Host Council to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by the Host Council of its obligations under this Agreement unless and to the extent such loss or damage arises from any breach by the Host Council under Clause 20.1;

20.1.3 Each of the other Councils (acting severally) shall indemnify and keep indemnified the Host Council against all losses, claims, expenses, actions, demands, costs and liabilities which the Host Council may incur by reason of or arising out of the carrying out by the Host Council of its obligations under this Agreement for that Council or arising from any breach by a Council of its obligations under this Agreement or any negligent act or omission in relation to such obligations unless and to the extent that the same result from any breach by the Host Council of any such obligations or any negligent act or omission by the Host Council and each Council shall make payment to the Host Council sums for which it becomes liable under this Clause within twenty (20) Business Days of the date of the Host Council's written demand.

20.2 The Councils agree and acknowledge that the amount to be paid to the Host Council by any of the other Councils under this Clause shall be borne by each of the Councils to the extent of its responsibility, however in

the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided equally between the Councils.

- 20.3 In the event of a claim under this Clause in which it is not reasonably practicable to determine the extent of responsibility as between the Councils (including the Host Council), then the amount shall be divided equally between the Councils (including the Host Council).
- 20.4 A Council (including the Host Council) who receives a claim for losses, expenses, actions, demands, costs and liabilities shall notify and provide details of such claim as soon as is reasonably practicable to the other Councils.
- 20.5 No Council shall be indemnified in accordance with this Clause unless it has given notice in accordance with this Clause to the other Council against whom it will be enforcing its right to an indemnity under this Agreement.
- 20.6 Each Council ("Indemnifier") shall not be responsible or be obliged to indemnify the other Councils (including the Host Council) ("Beneficiary") to the extent that any insurances maintained by the Beneficiary at the relevant time provide an indemnity against the loss giving rise to such claim and to the extent that the Beneficiary recovers under such policy of insurance (save that the Indemnifier shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance).
- 20.7 In relation to all indemnities set out in this Agreement the party with the benefit shall take all reasonable steps to mitigate any Losses or other loss or liability suffered by it in consequence of any events or circumstances which give rise to a claim.

## 21. Withdrawal

- 21.1 Subject to Clause 2 if for any reason any Council (including the Host Council) determines to withdraw from this Agreement Clauses this clause shall apply. In determining or responding to any decision or proposal to Withdrawal from the Agreement in accordance with this clause the Councils, shall have regard to the Partnership Principles and the instigation of the Dispute Resolution Procedure (Clause 31) with a view to identifying a solution which maintains the Partnership.
- 21.2 If any Council wishes to withdraw from the Service it shall provide written notice specifying its intention to withdraw from the Service. Such notice shall be served on all Councils and shall provide a minimum of 12 months prior notice to expire on the 31<sup>st</sup> day of August. ("**Withdrawal Notice**"). The Host Council (or such other Council as nominated by the Joint Committee in the event that the Host Council issues the Withdrawal Notice) shall within twenty eight (28) days of receipt of the Withdrawal Notice provide to all the Councils a Liability Report in the form set out in Schedule setting out the anticipated consequential costs of such withdrawal for the remaining Councils which shall be discussed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than twenty eight (28) days after the issue of the Liability Report. Those Councils who do not wish to withdraw from the Service shall have a duty, acting reasonably, to mitigate any losses which they suffer due to the financial and resource implications set out in the Liability Report.
- 21.3 Within 28 days of Service of the Liability Report the withdrawing Council shall indicate in writing either:-
- 21.3.1 that it withdraws from the Service and this Agreement; or
  - 21.3.2 that it wishes to continue with the Service and this Agreement.
- 21.4 Where a Council does not indicate its intentions as required by Clause 21.2.2 then it shall at the expiry of the Decision Period be taken to

have indicated that it wishes to continue with the Service and this Agreement.

21.5 Where a Council indicates that it wishes to withdraw from the Service in accordance with Clause 22.1 then the Council who shall have indicated its wish to withdraw shall pay all amounts due to be paid by it in accordance with the Liability Report within twenty (20) Business Days of the date of its notification under Clause 21.2 and comply with its obligation to contribute to the Service up to the date of its withdrawal;

21.6 For the avoidance of doubt, the Council who shall have indicated its wish to withdraw from the Service shall remove its representatives from the Joint Committee with effect from the date of its confirmation under Clause 21.3

## **22. Service Underperformance**

22.1 If, for any reason any Council (including the Host Council) considers that the Service is failing or is materially contributing to a failure to achieve the Outcomes it may serve a notice (**Default Notice**) on the Chief Officer in accordance with 21.2 below. A copy of the Default Notice and supporting information shall be served on each Council at the same time.

22.2 The Default Notice shall specify by reference to this agreement and the Full Business Case;

- the matters by reference to which the Default Notice has been served
- the evidence or information which the Council considers supports the Default Notice, to include supporting documentation data or other material.
- the specific steps which the Council considers are necessary to remedy or otherwise rectify the failure.



22.3 The Chief Officer shall within twenty eight (28) days of receipt of the Default Notice provide to all the Councils a response to the Default Notice which where appropriate shall include proposed actions and timetable (Rectification Timetable) to rectify any default identified which together with the Default Notice shall be discussed by the Joint Committee at its next meeting or a specially convened meeting if the next meeting falls more than twenty eight (28) days after the issue of the Chief Officers response .

22.4 The Joint Committee may resolve:

22.4.1 That the Default Notice requires no further action

22.4.2 That the proposed action plan be adopted in response

22.4.3 That a varied action plan may be adopted in response

22.5 If, at the expiration of the Rectification Period the Joint Committee determines that matters which gave rise to the Default Notice have not been rectified to a material extent the Council serving the Default Notice may serve a Withdrawal Notice in accordance with Clause 21 (Withdrawal) but shall not be subject to the Liability Report process. The Withdrawal Notice must be served on the Host Authority within twenty eight ( 28) days of the date of the Joint Committees resolution.

22.6 All the Councils and the Service shall, when initiating action or responding under this clause shall have regard at all times to the Partnership Principles and the instigation of the Dispute Resolution Procedure ( Clause 31 ) with a view to identifying a solution which maintains the Partnership.

### **23. Confidentiality And Announcements**

23.1 Each Council shall, both during the currency of this Agreement and at all times following its termination or expiry, keep private and confidential and shall not use or disclose (whether for its own benefit or that of any third party) any Confidential Information about the business of and/or belonging



to any other Council which has come to its attention as a result of or in connection with this Agreement.

23.2 The obligation set out in this Clause shall not relate to information which:-

23.2.1 comes into the public domain or is subsequently disclosed to the public (other than through default on the part of the Covenanter or any other person to whom the Covenanter is permitted to disclose such information under this Agreement); or

23.2.2 is required to be disclosed by law; or

23.2.3 was already in the possession of the Council (without restrictions as to its use) on the date of receipt; or

23.2.4 is required or recommended by the rules of any governmental or regulatory body including any guidance from time to time as to openness and disclosure of information by public bodies; or

23.2.5 is necessary to be disclosed to provide relevant information to any insurer or insurance broker in connection with obtaining any insurance required by this Agreement.

23.3 Where disclosure is permitted under Clauses 23.2, 23.2.4, 23.2.5 the recipient of the information shall be subject to a similar obligation of confidentiality as that contained in this Clause 22.1 and the disclosing Council shall make this known to the recipient of the information.

23.4 No Council shall make any public statement or issue any press release or publish any other public document relating, connected with or arising out of this Agreement without consultation with the Host Authority.

#### **24. Contracts (Third Party Rights)**

The Councils as parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

## **25. Notices**

25.1 Any notice or demand in connection with this Agreement shall be in writing and may be delivered by hand, prepaid first class post, special delivery post, facsimile or email, addressed to the recipient at the address or facsimile number as the case may be set out in Schedule 8 (Addresses of the Councils) or such other recipient address or facsimile number as may be notified in writing from time to time by any of the parties to this Agreement to all the other Councils to this Agreement.

25.2 The notice or demand shall be deemed to have been duly served:-

25.2.1 if delivered by hand, when left at the proper address for service;

25.2.2 if given or made by prepaid first class post or special delivery post, forty-eight (48) hours after being posted (excluding days other than Business Days);

25.2.3 if given or made by facsimile, at the time of transmission;

25.2.4 if given or made by email, at the time of transmission,

provided that, where in the case of delivery by hand or transmission by facsimile or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

25.3 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings.

## **26. Governing Law**

This Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales. Subject to Clause 31 (Dispute Resolution), the English and Welsh Courts shall have exclusive

jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

**27. Assignments**

27.1 The rights and obligations of the Councils under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any legislation or any scheme pursuant to any legislation or otherwise) to any person.

**28. Waiver**

28.1 No failure or delay by any Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.

28.2 Each Council shall pay their own costs incurred in connection with the preparation, execution, completion and implementation of this Agreement.

**29. Entire Agreement**

This Agreement contains all the terms which the parties have agreed in relation to the subject of this Agreement and supersedes any prior written or oral agreements, representations or understandings between the Councils relating to such subject matter. No Council has been induced to enter into this Agreement or any of these documents by statement or promise which they do not contain, save that this Clause shall not exclude any liability which one Council would otherwise have to the other in respect of any statements made fraudulently by that Council.

**30. Counterparts**

This Agreement may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

### **31. Relationship Of Councils**

Each Council is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Councils of Partnership or (except as expressly provided in this Agreement) of principal/agent or of employer/employee. No Council shall have the right to act on behalf of another nor to bind the other by contract or otherwise except to the extent expressly permitted by the terms of this Agreement. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall be taken to establish any partnership as defined by The Partnership Act 1890.

### **32. Dispute Resolution**

- 32.1 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this Clause . The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this Partnership and its aims) to identify a solution with a view to avoiding the need to instigate formal Dispute Resolution or legal proceedings and maintains a strong working relationship between the Councils.
- 32.2 In the event of any dispute or difference between the Councils relating to this Agreement or the Service (whether this may be a matter of contractual interpretation or otherwise) then save in relation to disputes or disagreements relating to a Matter Reserved To The Councils, the matter shall be dealt with as follows by referral in the first instance to the Regional Partnership Board who shall meet within ten (10) Business Days of notification of the occurrence of such dispute and attempt to resolve the disputed matter in good faith.
- 32.3 In relation to a dispute or disagreement relating to a Matter Reserved To The Councils, or if the Regional Partnership Board fails to resolve a dispute or disagreement within five (5) Business Days of meeting pursuant

to Clause 31.2, or fails to meet in accordance with the timescales set out in Clause 31.3, then the Councils in dispute (as the case may be) may refer the matter to:

32.3.1 a mediation facilitated by the Welsh Local Government Association or such other party as the Councils may agree for resolution by them; or

32.3.2 the exclusive jurisdiction of the Courts of England or Wales otherwise.

32.4 Any dispute and/or disagreement to be determined by the Regional Partnership Board (as appropriate), or the Courts of England and Wales or such other body as agreed by the Councils (as the case may be) under this Agreement shall be promptly referred for determination to them.

32.5 The Councils shall on request promptly supply to the Regional Partnership Board (as the case may be) all such assistance, documents and information as may be required for the purpose of determination and the Councils shall use all reasonable endeavours to procure the prompt determination of such reference.

32.6 The costs of the resolution of any dispute and/or disagreement between the Councils under this Agreement shall be borne equally by the Councils to the dispute in question save as may be otherwise directed by the Chief Executive(s) or the Courts of England or Wales (as the case may be).

### **33. Data Protection And Information Sharing**

33.1 In relation to all Personal Data, each Council shall at all times comply with the DPA, (as a data controller if necessary) which includes (but is not limited to) maintaining a valid and up to date registration or notification under the DPA covering the data processing activities to be performed in connection with the Service.

33.2 The Councils agree that they shall provide to the Service such information, data, statistics or records as are reasonably required by the Service to



provide the Services or such other services as are commissioned from time to time by the Councils. The Councils shall adhere to any Information Sharing Protocols that are developed within the SLA's in accordance with the WASPI framework when sharing personal data under this Agreement.

33.3 Notwithstanding the general obligation in clause 32.2, where any *Council including the Host Authority in that capacity on behalf of the Service or the Service* is processing personal data (as defined by the DPA) as a data processor *it* shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- (a) provide any other Council with such information as that Council may reasonably require to satisfy itself that the Council is complying with its obligations under the DPA;
- (b) promptly notify any Council of any breach of security measures required to be put in place pursuant to clause 23.3; and

33.4 Ensure it does not knowingly or negligently do or omit to do anything which places any Partner in breach of its obligations under the DPA.

33.5 The Councils shall each take reasonable precautions (having regard to the nature of their respective obligations under this Agreement) to preserve the integrity of any Personal Data.

#### **34. Freedom Of Information And Environment Information**

34.1 Each Council acknowledges that the other Councils are subject to the requirements of the Freedom of Information Act 2000 ("**FoIA**") and the Environmental Information Regulations 2004 ("**EIR**") and each Council shall where reasonable assist and co-operate with the other Councils (at

their own expense) to enable the other Councils to comply with these information disclosure obligations.

34.2 Where a Council receives a request for information under either the FoIA or the EIR in relation to information which it is holding on behalf of any of the other Councils in relation to the Service, it shall:-

34.2.1 transfer the request for information to the other Councils as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;

34.2.2 provide the other Councils with a copy of all information in its possession or power in the form that the Councils reasonably require within ten (10) Business Days (or such longer period as the Councils may specify) of the Council requesting that information; and

34.2.3 provide all necessary assistance as reasonably requested by the other Councils to enable the Council to respond to a request for information within the time for compliance set out in the FoIA or the EIR.

34.3 Where a Council receives a request for information under the FoIA or the EIR which relates to this Agreement or the Service, it shall inform the other Councils of the request for information as soon as practicable after receipt and in any event at least two (2) Business Days before disclosure and shall use all reasonable endeavours to consult with the other Councils prior to disclosure and shall consider all representations made by the other Councils in relation to the decision whether or not to disclose the information requested.

34.4 The Councils shall be responsible for determining in their absolute discretion whether any information requested under the FoIA or the EIR:-

34.4.1 is exempt from disclosure under the FoIA or the EIR;

34.4.2 is to be disclosed in response to a request for information.

34.5 Each Council acknowledges that the other Councils may be obliged under the FoIA or the EIR to disclose information:-

34.5.1 without consulting with the other Councils where it has not been practicable to achieve such consultation; or

34.5.2 following consultation with the other Councils and having taken their views into account.

### **35. Mitigation**

Each Council shall at all time take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against the other Council(s) pursuant to this Agreement.

### **36. Statutory Responsibilities**

Notwithstanding anything apparently to the contrary in this Agreement, in carrying out their statutory duties, the discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement.

### **37 Variations**

No amendment to this Agreement shall be binding unless it is in writing and signed by the duly authorised representatives of each of the Councils and expressed to be for the purpose of such amendment.

**IN WITNESS** whereof the parties hereto have caused their respective Common Seals to be affixed to this agreement as a Deed the day and year first above written:

## SCHEDULE 1

### SCHEDULE 1A

#### SERVICES

1. Pursuant to clause 4 the Service shall have the following functions.
  - 1.1 **Supporting LAs to undertake their statutory functions in relation to school effectiveness by:**
    - Monitoring the work and performance of schools on the basis of a range of evidence and reporting on this.
    - Challenging schools on the basis of whole school performance and provision, and in relation to individual learning programmes and pupil support arrangements so as to drive improvement in pupil outcomes.
    - Intervening in the provision made by a school when necessary, and supporting schools in difficulty and those with serious weaknesses.
    - Facilitating the use and interpretation of data to ensure intelligent accountability.
  - 1.2 **Provide Support for both LAs and Schools (jointly and separately as the case may be) in School Improvement activity by:**
    - Supporting schools to address issues of school effectiveness/improvement and pupil outcomes.
    - Providing advice and support for pedagogy (learning, teaching), leadership and management, and in intelligent accountability and professional development. (Self evaluation, assessment and monitoring).
    - Developing and deploying, on an associate basis, system leaders and progressing proactively the system leadership agenda.
    - Facilitating and supporting where required networking and networks of professional practice.

- Addressing issues of concern in schools and LAs and supporting schools needing significant improvement.
- Provide expertise on IT (Curriculum & Pedagogy) and Virtual Learning Environment

**1.3 Specifically undertaking responsibility for the Implementation of SEF\* and for CIF\* accountability by:**

- Providing and developing staff expertise and organisational knowledge in pedagogy and learning.
- Supporting school self evaluation.
- Supporting the LAs and schools in exercising their responsibilities in relation to SEF – including improvement in pupil outcomes and their wellbeing.
- Ensuring that all the activities of a regional service are undertaken in the context of SEF.
- Facilitating the development and work of Professional Learning Communities.
- Providing Support for, and addressing the needs of, Schools Causing Concern.
- Contributing to preparations for Estyn inspection of individual schools and other surveys.
- Making arrangements for continuous professional development through courses, brokerage, collecting and disseminating good practice, and developing a regional Portal.

\* references to SEF and CIF shall be presumed to include any amendments or superseding policies or frameworks in so far as and to the extent that they encompass the Service Functions.



**1.4 Making provision for the development, maintenance, and review of regional frameworks on a commissioned basis, to include:**

- Protocols.
- Operational guidance and documentation.
- Documentation and bulletins.

2. The mechanisms for delivery of the Service shall include:

- 2.1 The deployment, management, recruitment and CPD of School Improvement Professionals (now to be called Systems Leaders).
- 2.2 Routine Visits (now to be three per year per School) to Schools to undertake monitoring of a School's Performance.
- 2.3 Undertaking and managing interventions in Schools Causing Concern.
- 2.4 Thematic Interventions, e.g. concerned with specific, normally Under Achieving, groups of learners (e.g. whose first language is not Welsh or English, ALN, Looked After Children, etc.)
- 2.5 Collection, interpretation and dissemination of Schools and Pupil Performance Data to Schools, within the LA, to Elected Members, et al.
- 2.6 Provision of reports concerning School Standards and Performance to Elected Members, ESTYN, the Welsh Government and the general public.
- 2.7 Commentary upon and approval of a School's Post Inspection Action Plan. (These duties are more demanding in the case of a School which has been placed in a formal category by ESTYN).
- 2.8 Attendance at appointments of Headteacher, and routine attendance at appointments other than Headteachers

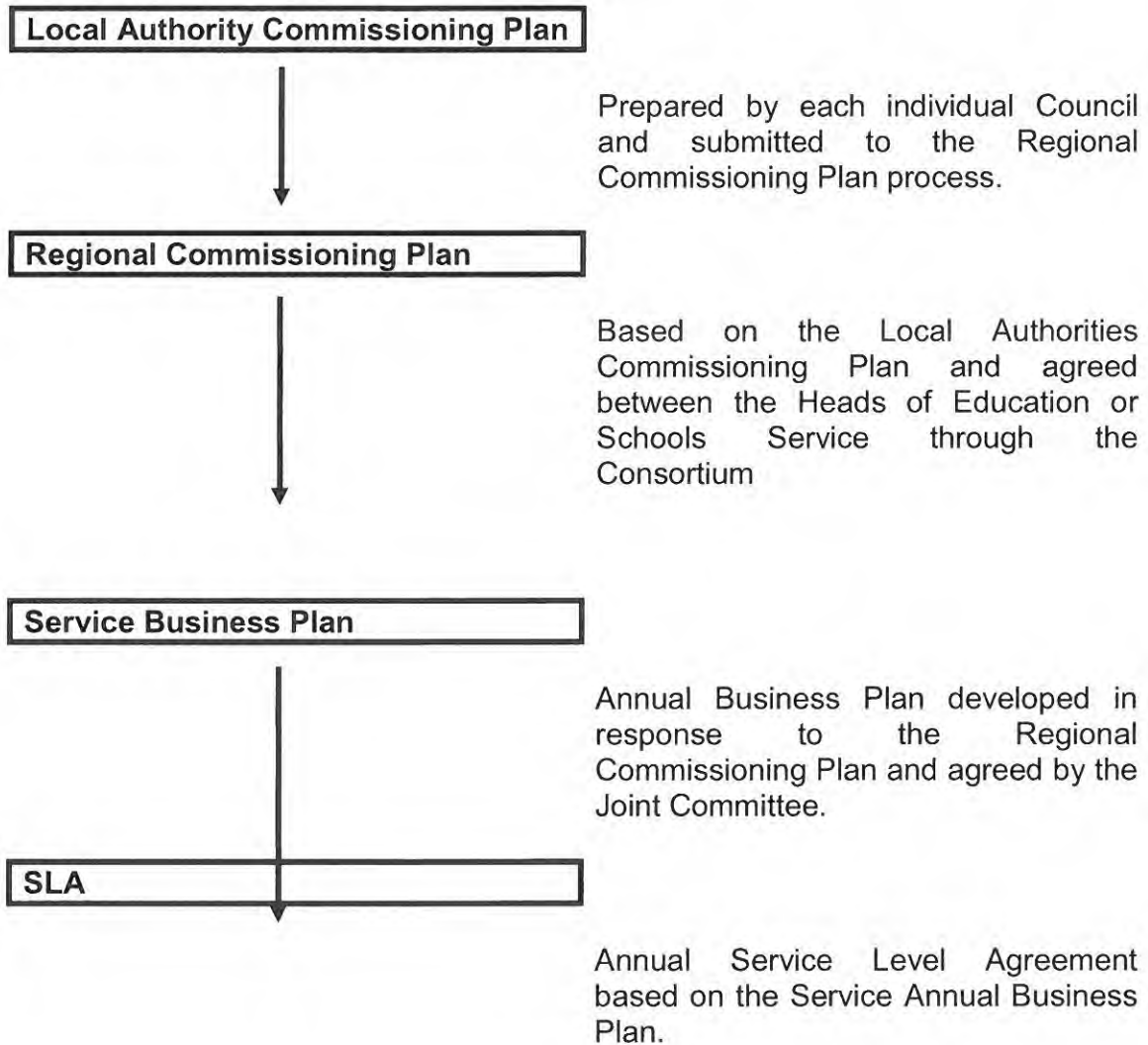
- 2.9 Management of Literacy and Numeracy Strategy and deployment of literacy and numeracy experts and literacy and numeracy CPD programmes.
- 2.10 Challenge to Schools only via Systems Leaders on: Leadership, Teaching, Learning, Under Achieving Groups, Attendance, Behaviour, Financial Management, use of Performance and Assessment data, Looked After Children, PLCs and use of resources to support improvement.
- 2.11 Support and guidance for NQTs.
- 2.12 Leading the development of School to School working.
- 2.13 Curriculum support, including subject advice, phase and aspect-specific advice.
- 2.14 Delivery of local initiatives.
- 2.15 Undertaking the performance management scheme functions and responsibilities.
- 2.16 ICT advice and support.
- 2.17 Convening and managing theme or phase-specific groups.
- 2.18 Professional Development Centres.
- 2.19 Undertaking research.
- 2.20 Notwithstanding the generality of the above the following minimum levels of service shall be provided to each Council.

School Visits	No of visits per annum per School ( based	Total Number
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	on 466 inc Nursery, Primary, Secondary and Special)	of Days
<b>Regular Visit</b>	<b>3 days</b>	
<b>Planning and Preparation (including performance management</b>	<b>3 days</b>	
		<b>2769</b>

## SCHEDULE 1B

### Commissioning Model



## SCHEDULE 2

### JOINT COMMITTEE TERMS OF REFERENCE

1.1 The terms of reference of the Joint Committee are:

- 1) to promote joint working in the delivery of the Service through:
  - facilitating constructive partnership working;
  - engaging with key interested bodies and stakeholders when appropriate; and
  - carrying out such other activities calculated to facilitate, or which are conducive to the successful delivery of the Service; and
- 2) to oversee the management of the Service and ensure that the Service is provided and performs in accordance with the expectations of the Councils as reflected in the Full Business Case, Inter Authority Agreement and agreed Annual Business and Commissioning Plans;
- 3) to approve the budget for the Service on an annual basis’;
- 4) to approve the business plan for the Service on an annual basis;
- 5) to monitor and manage the risks associated with the Service;
- 6) to ratify requests from the Service for additional budget funding from individual Councils;
- 7) to approve the staff structure of the Service;
- 8) to appoint the Chief Officer of the Service;
- 9) to decide on disciplinary action against the Chief Officer; and where required, to determine or arrange for the determination of appeals in relation to Human Resources matters.



The following matters are specifically reserved for individual Cabinet decision:

- 1) approval of inter-Council partnership governance arrangements;
- 2) increase of budget over agreed Council contributions;
- 3) procuring the necessary audit and assurance checks; and
- 4) termination of the Partnership