

DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL CABINET

DATE OF DECISION 2 December 2021

DATE DECISION PUBLISHED 8 December 2021

(The Decision Notice is presented as an urgent decision in accordance with section 14.15.(c) of the Constitution so as to be exempt from the call-in procedure in order to ensure that the Council is able to complete the agreement within a designated timescale. Agreement from the Chair of the Education and Economy Scrutiny Committee has been received in that the decision is an urgent matter and that the proposed decision is reasonable under the circumstances.)

CABINET MEMBER NAME AND TITLE

Cabinet Member: Councillor Cemlyn Williams
Cabinet Member for Education

SUBJECT – Support in principle the signing a Deed of Adherence between Gwynedd Council, Welsh Government, WEPCO, and others.

DECISION

Support in principle the signing a Deed of Adherence between Gwynedd Council, Welsh Government, WEPCO, and others so that the Council's options for developing Schools are not constrained for the next 15 years.

REASON WHY THE DECISION IS NEEDED

Please see attached Officer Report.

DECLARATIONS OF PERSONAL INTEREST AND ANY RELEVANT DISPENSATIONS APPROVED BY THE COUNCIL'S STANDARDS COMMITTEE


None

ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION

Consultation with
Gwynedd Council Statutory Officers

The results of the consultations are reported upon in the attached report.

DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL CABINET – OFFICER REPORT

Name and title of Cabinet Member/s:	Cemlyn Williams, Education
Name and title of Report Author :	Geraint Owen, Housing and Property Development Manager
Date of Decision :	2/12/21
Signature of Cabinet Member/s :	

Subject : Support in principle the signing a Deed of Adherence between Gwynedd Council, Welsh Government, WEPCO, and others.

Recommendation for the Decision :

Support in principle the signing a Deed of Adherence between Gwynedd Council, Welsh Government, WEPCO, and others so that the Council's options for developing Schools are not constrained for the next 15 years.

Reason why Decision is needed :

By entering into the Deed of Adherence the Council is able to access the Welsh Education Partnership – Strategig Partnering Delivery Model, and have a representative on the Strategic Partnering Board. This allows the Council to be fully informed of its options should it wish to deliver a project using the MIM model under the 21st Century School Programme in the future.

Reason and justification behind the Decision :

As part of the financial investment in the 21st Century School Programme, the Finance available for development is split into two sources, capital and revenue, with the revenue being administered through a Mutual Investment Model – MIM.

The Mutual Investment Model, or MIM, has been introduced to Finance major capital projects due to the scarcity of capital funding, and it is based on traditional Public-Private Partnerships, such as PFI.

The Welsh Government has procured Meridiam Investments as its private sector partner to deliver education facilities in Wales, under the MIM 21st Century Schools

Programme. It will be the only way of delivering revenue funded Band B projects. Meridiam Investments and a subsidiary of the Development Bank of Wales have now formed WEPCO Limited, which will deliver infrastructure services to projects under the scheme in Wales.

It should be noted that signing the Deed of Adherence does not commit the Council to use this financing route on any future projects. Any decision to fund a project under this scheme would be the subject of further report to Cabinet when appropriate.

At the present time there is no intention within the Council of following this financing route, however, circumstances may change in the future, and by opting in now, all options will be available.

Declarations of personal interest by any Cabinet Member consulted with and any relevant dispensations approved by the Standards Committee

None.

Any consultations undertaken prior to making the decision :

Chief Finance Officer –

I have received confirmation from the relevant officers that signing the Deed of Adherence does not commit the Council to follow this financing route in the future, however, it does keep our options open for consideration should an opportunity arise in the future.

Monitoring Officer –

The report and attachments summarise the proposed agreement and the reasoning for entering into the framework. On this basis I am content with the propriety of the recommendation.

Local Member/s –

Not a local matter.

WELSH EDUCATION PROGRAMME - STRATEGIC PARTNERING AGREEMENT

DEED OF ADHERENCE - SUMMARY

1. BACKGROUND

- 1.1 The WEP Strategic Partnering Agreement (**SPA**) was entered into on 30 September 2020 by 24 Welsh Local Authorities and Further Education Institutions (**Participants**) and WEPCo (being the joint venture company established between the Private Sector Delivery Partner (**PSDP**) and a subsidiary of the Development Bank of Wales).
- 1.2 Since completion, a further five Local Authorities and Further Education Institutions have expressed a wish to enter into the SPA to be able to draw down services from WEPCo.

2. WHAT DOES THE DEED OF ADHERENCE DO?

- 2.1 The SPA provides for the ability for other Local Authorities and Further Education Institutions (**Joining Participants**) named in the OJEU Notice published 11th July 2019 to enter into the SPA on the same terms and conditions as the existing Participants (**Continuing Participants**). In order to access the SPA, the Joining and Continuing Participants are required to execute the Deed of Adherence, a template of which is attached to the SPA at Schedule 10.
- 2.2 The Deed of Adherence is short and simple document, where a Joining Participant agrees with the Continuing Participants and WEPCo that with effect from the date of its execution, it is bound by the existing terms of the SPA (please see separate summary paper on the Strategic Partnering Agreement).

3. WHAT INFORMATION DOES THE DEED OF ADHERENCE REQUIRE?

- 3.1 The Deed of Adherence sets out certain key details of the Joining Participants. The Continuing Participants have already provided the same key details on execution of the SPA. These are as follows:
 - i) Full name and position of the person appointed to be the Participant Representative (who in the first instance shall be the representative on the Strategic Partnering Board (please see separate guidance paper on the Strategic Partnering Board) (Clause 12.1 of the SPA);
 - ii) Where WEPCo has subcontracted the Partnering Services to a Partnering Subcontractor, full name and address of the person to whom non-payment of invoices of the Partnering Subcontractor should be directed (Clause 28.5.2 of the SPA);
 - iii) Full name, position and email address for service of notice (Clause 40.1.2 of the SPA);
 - iv) Full postal address for service of notice (Clause 40.1.2 of the SPA); and
 - v) Position of person to whom dispute resolution escalation points should be referred (if dispute cannot be resolved through consultation in good faith) e.g. the Chief Executive (Section 3.2, Schedule 22 of the SPA).
- 3.2 The Deed of Adherence will be executed as a deed, and will therefore require execution under seal in accordance with each Participant's internal governance arrangements. There is no requirement to re-execute the SPA for Continuing Participants.

4. WHAT DOES COMPLETION OF THE DEED OF ADHERENCE MEAN FOR PARTICIPANTS?

- 4.1 Completion of the Deed of Adherence **will not change the terms and conditions of the SPA in any way, save for adding more named parties to the list of Participants.**
- 4.2 Joining Participants will enjoy the same benefits from being party to the SPA as the Continuing Participants (please see separate summary paper on the Strategic Partnering Agreement).

WEP STRATEGIC PARTNERING DELIVERY MODEL
SUMMARY OF STRATEGIC PARTNERING AGREEMENT

1 INTRODUCTION¹

- 1.1 The WEP Strategic Partnering Agreement (**SPA**) is the agreement entered into between the Local Authorities and Further Education Institutions (**Participants**)² and WEPCo (being the joint venture company established between the Private Sector Delivery Partner (**PSDP**) and a subsidiary of the Development Bank of Wales).
- 1.2 The SPA provides for how the parties act together over the long term in a collaborative partnering, non-adversarial and open manner to support the effective planning, procurement and delivery of education and community facilities in Wales and the delivery of infrastructure services.
- 1.3 The SPA sets out the high level principles that underpin the delivery of the parties' obligations; the behaviours, vision and values of WEPCo; the establishment of a framework that promotes excellence and value for money; and the monitoring and management of WEPCo's performance.
- 1.4 Under the SPA, WEPCo will be required to provide **partnering services** to the Participants. These services include (i) project development and delivery; (ii) supply chain assembly and management and (iii) other professional services necessary to fund and deliver education and community facilities.
- 1.5 The initial term of the SPA is 10 years. This may be extended by 5 years by any one or more Participants. Certain protections in the SPA continue in force beyond the term of the SPA until the end of the last associated Project Agreement entered into by the Participant(s) for the delivery of individual education facilities.
- 1.6 WEPCo will have the sole and exclusive right for the term of the SPA to nominate a subsidiary of the PSDP (which will be a special purpose vehicle that holds the majority of voting rights, or a wholly owned subsidiary of such a company) (**Project Co**) to deliver MIM Projects, provided that the relevant criteria in the SPA are met. Approved MIM Projects will be developed by WEPCo, but delivered by Project Co which will enter into a Project Agreement with the relevant Participant to deliver the relevant MIM Project.
- 1.7 Participants will be able to request that WEPCo, or a nominated wholly owned subsidiary of WEPCo, provides other **project services** such as the delivery of design and build capital projects for education or community facilities under the SPA, provided that the relevant criteria in the SPA are met. WEPCo and/or its subsidiaries shall enter into all required agreements for the delivery of capital projects and/or FM services directly with the relevant Participant, which in the case of education sector capital projects shall be substantially in the form of the Template Education Design and Build Development Agreement appended to the SPA.

2 NEW PROJECTS

- 2.1 WEPCo shall, if requested to do so by one or more Participants, develop proposals for the implementation and delivery of new projects by a Project Service Provider. For MIM Projects, the Project Service Provider will be the Project Co that will be created for such purpose and for other approved projects shall be WEPCo or a Subsidiary of WEPCo. The role of WEPCo will include the raising of finance, project development, project management and supply chain assembly and management of a new project up to contractual/financial close, during the construction period and operational period.

¹ Capitalised terms have the meaning provided for in the Strategic Partnering Agreement unless otherwise stated.
² Note those named as a "Contracting Authority" in the OJEU notice will be entitled to sign and enter into the SPA.

- 2.2 The obligations on WEPCo and the relevant Participant in relation to the identification, approval and delivery of a new project are set out in Schedule 5 (*Approval Process for New Projects*).
- 2.3 For an overview of Schedule 5 and a flow chart outlining the Approval Process for New Projects, please see **separate guidance**.
- 2.4 WEPCo is obliged to assist Participants in developing local delivery plans, which will form the basis of an annual Strategic Delivery Plan (**SDP**) developed between the Participants and WEPCo. The Participants' requirements for new projects will in most cases be initiated through the inclusion of such projects in the latest edition of the SDP.
- 2.5 WEPCo will assist Participants in developing proposals for the delivery of new projects, the preparation of an outline business case and the obtaining of all necessary approvals to progress any new project request by a Participant.
- 2.6 With each approved new project, WEPCo will (or will procure a Project Service Provider will) enter into a Project Agreement, a template form of which is appended to the SPA at Schedule 7 (*Template Project Agreements*). For an overview of the Template Project Agreement, please see **separate guidance**. For every MIM Project, the Project Service Provider will enter into a Shareholders' Agreement to establish the relevant Project Co.³
- 2.7 WEPCo must evidence value for money both at the beginning and continuously throughout the development and delivery of new projects in accordance with Schedules 3 (*Partnering Services*), 5 (*Approval Process for New Projects*) and 6 (*New Project Pricing Report*).
- 2.8 The Participants will develop with WEPCo the approach to supply chain assembly for the delivery of a new project, the market testing of design and construction, hard facilities management services and the funding of the new project to ensure value for money. WEPCo and the relevant Participant(s) will work together to ensure that the pricing of a new project provides the relevant Participant(s) with robust, transparent and auditable information as to the costs, fees and prices included within WEPCo's proposals.
- 2.9 WEPCo shall, for all projects, monitor and update (where applicable) the predicted capital, whole life cost and any increase or reduction in estimated costs, the final cost of design and construction and the actual cost of maintaining and repairing each project. WEPCo will be expected to demonstrate to Participants through a WEPCo Performance Report and Annual Review, lower costs and/or greater value for money over the term of the SPA.
- 2.10 Planning permission for approved projects to be delivered by WEPCo must be obtained by WEPCo prior to signing the relevant Project Agreement.

3 PARTNERING SERVICES

- 3.1 WEPCo may provide a range of Partnering Services to Participants.
- 3.2 These fall into three categories:
 - 3.2.1 Ongoing Partnering Services;
 - 3.2.2 Project Development Partnering Services; and
 - 3.2.3 Strategic Support Services.

³ This will be substantially in the form of the Template Project Co Shareholders' Agreement appended to the SPA.

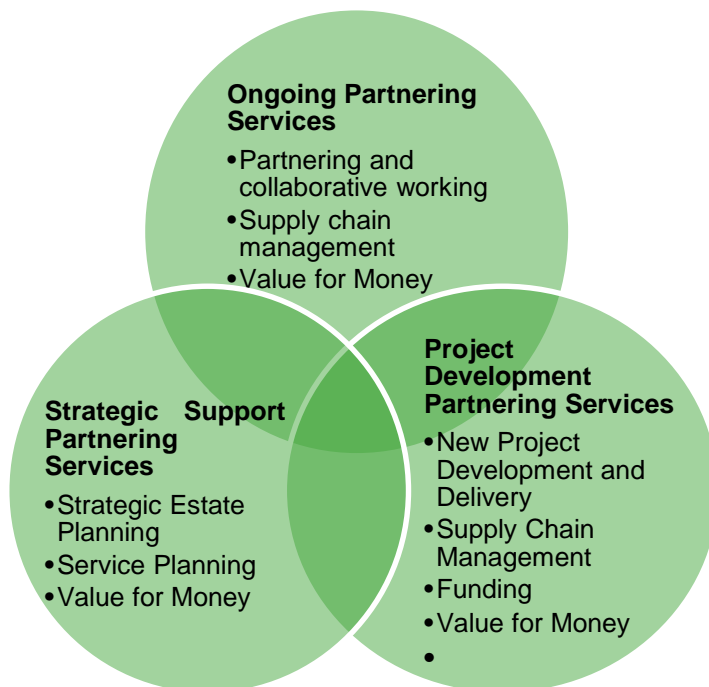


Figure 1 WEPCo Partnering Services

- 3.3 WEPCo shall provide **Ongoing Partnering Services** to the Participants that relate to the day to day operation of WEPCo, the fostering of partnering and collaborative working between the parties, supply chain management and the delivery of value for money.
- 3.4 WEPCo shall provide **Project Development Partnering Services** to implement and deliver projects identified in the SPA and all other 21st Century schools and colleges (Band B) MIM Programme Projects (**Qualifying Projects**) in accordance with the specification, KPIs (including community benefits) and rates set out in Schedule 3 (*Partnering Services*). The role of WEPCo is to develop proposals for a Qualifying Project to meet the Participant's Requirements including affordability and other agreed approval criteria (services, operational, financial and value for money). The scope and specification of the services to be provided by WEPCo will be agreed between WEPCo and the relevant Participant on a project by project basis, together with the approval criteria.
- 3.5 The relevant Participant will remain as "sponsor" for business case approval purposes. The role of WEPCo will be to support the relevant Participant in preparing agreed outputs at each business case approval stage for the delivery of a Qualifying Project.
- 3.6 WEPCo shall also, where requested, provide **Strategic Support Partnering Services**, to support Participants in strategic estate planning and strategic services planning to plan education sector services and where requested, community services. These are discrete, consultancy support services that may be required by Participants. The Participants and WEPCo will jointly develop a Strategic Delivery Plan for the delivery of new accommodation requirements.
- 3.7 WEPCo must monitor the performance of each of the Partnering Services and Project Services at its own cost and expense, meet value for money requirements and demonstrate continuous improvement wherever practicable achieved through agreed KPIs, as developed in accordance with the SPA throughout the term.
- 3.8 For all Partnering Services, WEPCo must provide the Partnering Services in compliance of the WEP Objectives and all objectives set out in the SDP agreed between the Participants and WEPCo. All Partnering Services must meet the requirements for Value of Money set out in clause 13 and seek to obtain continuous improvement in providing the services.

Payment for Partnering Services

- 3.9 Clause 10 of the SPA governs what WEPCo is entitled to charge a Participant for the provision of Partnering Services.
- 3.10 WEPCo recovers Partnering Services Costs relating to Ongoing Partnering Services and Project Development Partnering Services in accordance with Schedule 4 (*Partnering Services Costs*) of the SPA. Partnering Services Costs are recovered either from the Participant on a “pay as delivered” basis, or as a lump sum at financial close of the relevant approved Project, or such costs are rolled into the financial model for the relevant approved Project and are repaid over the term of the relevant Project Agreement.
- 3.11 WEPCo recovers the costs incurred for the delivery of Strategic Support Partnering Services on a “pay as delivered” basis or as otherwise agreed with the relevant Participant procuring such services from WEPCo. The quantum of such costs will be calculated by reference to the rate card which will be included at Schedule 4 (*Partnering Services Costs*).

Subcontracting of Partnering Services

- 3.12 WEPCo is able to subcontract its obligations in respect of the whole or part provision of the Partnering Services to a Partnering Subcontractor but will remain responsible to the relevant Participants for the provision of the contracted out services.
- 3.13 WEPCo is responsible for ensuring the performance by the Supply Chain Members of their obligations under the relevant Supply Chain Agreements.
- 3.14 On the expiry or earlier termination of the SPA, the handover provisions set out in Schedule 20 (*Handover on Expiry or Termination*) will apply. Any staff engaged in the delivery of Partnering Services will transfer under TUPE regulations to the relevant Participant or third party successor provider of services.
- 3.15 For further detail on the scope of Partnering Services in Schedule 3 (*Partnering Services*) and Schedule 4 (*Partnering Services Costs*), please see **separate guidance**.

4 PROJECT SERVICES

- 4.1 WEPCo is responsible for providing **Project Services** to Participants. These are services required under a Project Agreement in relation to the design, construction, testing, commissioning and completion of premises (including any temporary works) and the installation of equipment, together with the provision of facilities maintenance (FM) services.
- 4.2 The SPA acknowledges that Participants may have existing providers in place to provide their accommodation requirements and associated services. WEPCo agrees to work with Participants to ensure the existing providers are treated fairly and that the individuals providing the existing services are, where possible, employed by the Project Service Provider.

5 EXCLUSIVITY

- 5.1 The Participants grant WEPCo the sole and exclusive right for the 10 year term of the SPA to provide:
 - 5.1.1 Ongoing Partnering Services
 - 5.1.2 Project Development Partnering Services in respect of projects identified in the SPA and 21st Century Schools and Colleges (Band B) MIM projects (**Qualifying Projects**)
 - 5.1.3 Project Services in respect of Qualifying Projects that become Approved Projects (as developed through Schedule 5 (*Approval Process for New Projects*)).

After 10 years exclusivity will not apply.

5.2 Participants may request WEPCo to deliver other services:

- 5.2.1 Project Services relating to Major Capital Projects in the education sector, save for MIM projects for a specified period;
- 5.2.2 Project Services relating to capital projects required for the provision of education sector services or community services;
- 5.2.3 Project Services in relation to the provision of FM Services required for the provision of education sector services or community services (not provided as part of any Qualifying Project);
- 5.2.4 Strategic Support Partnering Services;
- 5.2.5 Ongoing Partnering Services and/or Project Development Partnering Services after 10 years (where the term of the SPA has been extended);
- 5.2.6 Project Development Partnering Services in respect of potential New Projects which are not Qualifying Projects.

The above services are not subject to exclusivity.

5.3 The benefits of exclusivity include:

- 5.3.1 Participants will not have to embark on another regulated procurement for the delivery of Partnering Services or Project Services for the lifetime of the SPA.
- 5.3.2 Participants can be assured of the appropriate level of commitment from WEPCo to foster the development of a successful partnership and outcomes over the long term.
- 5.3.3 Participants can be assured regarding value for money and continuous improvement for the delivery of a pipeline of new projects.
- 5.3.4 Delivery of economies of scale over time through the growth of the WEPCo estate.

5.4 Exclusivity can be suspended if WEPCo fails the “Track Record Test” and will not apply until WEPCo passes a subsequent Track Record Test. This is an assessment of whether in the most recent WEPCo Performance Report shared with Participants on an annual basis, WEPCo has met specified KPIs (including those that relate to community benefits) as evidenced.

6 REPRESENTATIVES AND STRATEGIC PARTNERING BOARD (SPB)

- 6.1 Each Participant will appoint a representative to act on its behalf in relation to the SPA. The identity of the Participant’s Representative may change at any time following written notice to WEPCo and all other Participants. Each Participant Representative may also at any time, by written notice to WEPCo, authorise others to exercise the functions and powers of that Participant.
- 6.2 The SPB governs the relationship between WEPCo and the Participants. It will comprise of representatives of each Participant, WEPCo, Welsh Government and other stakeholder representatives as agreed by the Participants.
- 6.3 The SPB will meet at least every three months to review financial and operating issues and provide strategic input into the partnering arrangements including the exchange of ideas in relation to the Participants’ accommodation and service delivery requirements.

- 6.4 A quorum of the SPB is proposed to be five Participant's Representatives (one of whom must be a representative of the Welsh Government) and the WEPCo Representative. For any adjourned meeting, the quorum shall be one Participant's Representative (who must be a representative of the Welsh Government) and the WEPCo Representative. WEPCo and stakeholder representatives will not have a vote at SPB meetings. Decisions will be taken by majority vote. A decision that affects a Participant will only bind it if that Participant's representative has voted in favour of it.
- 6.5 The SPB will approve the annual Strategic Delivery Plan, ensure New Project proposals are consistent with the SDP, manage WEPCo's performance against agreed KPIs, approve any extension to the SPA term and approve any proposed disposal of interest in share capital resulting in a loss of control by WEPCo (or subsidiary).
- 6.6 WEPCo will be obliged to report on its KPIs which will be reviewed by the SPB annually. The SPB will assess whether the Track Record Test has been passed and if any significant performance failure has occurred. Any dispute shall be resolved under Schedule 21 (*Dispute Resolution Procedure*).

7 DEFAULT

Participant Default

- 7.1 Participant Event of Default includes:
 - 7.1.1 one or more Participants being in breach of clauses 9.1, 9.2 and 9.6 (exclusivity clause);
 - 7.1.2 one or more Participants failing to attend SPB meetings which has a material adverse effect on WEPCo or any Project Service Provider;
 - 7.1.3 one or more Participants being in breach of the SPA which delays the execution of any Project Agreement relating to an Approved Project by more than 40 Business Days;
 - 7.1.4 an expropriation, sequestration, nationalisation or requisition of any Facilities or assets and/or shares of WEPCo or its Holding Company or Project Service Provider by a Participant or any other Relevant Authority (where this occurs due to a Relevant Authority, all Participants will be deemed responsible for the Event of Default); and
 - 7.1.5 any non-payment by a Participant under the SPA exceeding £100,000 60 Business Days after demand.
- 7.2 Where a Participant Event of Default occurs, WEPCo may either:
 - 7.2.1 suspend their performance of the SPA in relation to the Participant in default until that Participant can demonstrate to WEPCo's reasonable satisfaction it is capable of performing their obligations; or
 - 7.2.2 notify the Participant of the Event of Default.

If the Participant Event of Default is capable of remedy and has not been remedied within 30 Business Days or is not capable of remedy with immediate effect, WEPCo may either serve notice on each Participant in default terminating the SPA in relation to them with immediate effect or simply notify the Participants in default of the effect their default has had. Any Participants in default will be liable to pay compensation to WEPCo in accordance with section 1 of Schedule 14 (*Compensation on Participant Event of Default and Termination*). If the SPA is terminated in its entirety by the default, compensation under section 2 of Schedule 14 (*Compensation on Participant Event of Default and Termination*) will be payable.

- 7.3 If a Participant is served a Participant Default Notice more than once in any 12 months, it will not receive Project Development Partnering Services or any Strategic Support Partnering Services unless paid monthly in arrears.

- 7.4 The Participants have several liability, other than where two or more Participants have suffered an Event of Default leading to a termination of the SPA, in which case, the loss of WEPCo will be split between the defaulting Participants.

WEPCo Default

- 7.5 The SPA provides for a long list of circumstances which constitute a WEPCo Default including amongst others, WEPCo breaching the SPA, WEPCo failing to provide the Partnering Services, WEPCo breaching health and safety laws; WEPCo failing to pay Participants under the SPA which exceeds £10,000 for 60 Business Days on demand; WEPCo or a Project Service Provider suffering an Insolvency Event; and WEPCo (or WEPCo Party) committing a Prohibited Act.
- 7.6 On a WEPCo Event of Default, each Participant can (acting through the Welsh Government) suspend the exclusivity granted to WEPCo which will include any New Projects that have not yet reached Stage 2 approval. The Participants can lift that suspension at any time and the suspension of exclusivity will be lifted on remedy of the default and where the PSDP shares in WEPCo are sold.
- 7.7 The SPA provides for an escalation of remedies following a WEPCo Event of Default, proportionate to the severity of the default, which may be exercised by the Participants (acting through Welsh Government). These include: suspension of exclusivity; requiring a remediation programme to be implemented; an improvement programme to satisfy Participants that the events will not recur; termination of a non-performing supply chain member; and ultimately termination of the SPA.
- 7.8 WEPCo will reimburse each Participant for all reasonable costs incurred by each Participant as a result of WEPCo's breach of the SPA.

8 WEPCO INDEMNITIES

- 8.1 As would be expected under a long term partnering agreement, the SPA includes provisions under which WEPCo indemnifies the Participants, and the Participants indemnify WEPCo, for certain losses. These are limited to Direct Losses, and exclude Indirect Losses (such as loss of profit and loss of business opportunity), and further Participants partially exclude their liability for their negligence (see below) and claims in tort.
- 8.2 The scope of the indemnity provided by WEPCo is slightly wider than the Participants' indemnities to WEPCo, as the Participants' indemnities are limited to Direct Losses sustained by WEPCo as a consequence of any negligent act or omission by that Participant (or a Participant Party relating to that Participant) relating to the performance or non-performance of the Participant's obligations under the SPA, or a breach of an express provision of the SPA by that Participant. The indemnities provided by WEPCo relate to any act or omission of WEPCo (not just its negligence or breach of an express obligation).
- 8.3 The indemnities cover death and/or personal injury, damage to assets of the other party and third parties. In each case (and subject to the overriding limitation on the scope of the Participants' indemnities described in above), each party is liable for Direct Losses sustained in consequence of any claim for death and/or personal injury of their own employees or persons engaged by them, notwithstanding any act or omission of the other party.
- 8.4 In respect of death or personal injury to third parties, and damage to property, each party indemnifies the other for Direct Losses they cause (save to the extent caused or contributed to by the Participant's own negligence (where WEPCo is indemnifying the Participant) or WEPCo's own acts or omissions (where the Participant is indemnifying WEPCo). Physical damage to property is typically an insured risk, and the indemnity given by the Participants to WEPCo excludes insured losses. Where damage to property has been caused (or contributed to) by the Participant's own negligence, and they are claiming under the WEPCo indemnity, the Participant is responsible for the deductibles under any policy of insurance, and any sums over the maximum amount required to be insured under the SPA insurance policies.

9 DISPUTE RESOLUTION

- 9.1 Disputes are dealt with in accordance with the resolution procedure set out in Schedule 22 (*Dispute Resolution Procedure*). If a Dispute occurs, the parties must consult in good faith. If that is unsuccessful, the Dispute must be escalated to senior personnel. If that is unsuccessful, the Dispute will be escalated to mediation and failing that to arbitration. The exception to this is where a party requires an order restraining another party from doing any act or compelling another to do any act or a judgement for a liquidated sum where there is no arguable defence.

10 INSURANCE

- 10.1 The insurances listed in Schedule 9 (*Insurances*) and any others required by law must be taken out by WEPCo, subject to insurance being available in the market to cover WEPCo in its role during the lifetime of the SPA. The insurance will cover any indemnity claims against WEPCo in relation to any death or bodily injury or third party property damage arising out of or in connection with the Partnering Services.
- 10.2 If a Project Service Provider notices a risk becoming an Uninsurable Risk under the relevant Project Agreement, the Participants and WEPCo will hold a SPB meeting within 7 Business Days and will use their reasonable endeavours to agree a position with regards to the risk within 20 Business Days of notice.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 WEPCo grants a free, irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under the SPA or following termination of the SPA) licence to each Participant to use the Intellectual Property Rights which are vested in WEPCo and where possible, where vested in third parties. WEPCo will indemnify Participants where they receive a claim as a result of the Participant infringing third party Intellectual Property Rights (other than as a result of the Participant acting outside of the terms of the SPA).

12 ASSIGNMENT AND SUBCONTRACTING

- 12.1 WEPCo cannot assign or dispose of the SPA without the prior written consent of the Participants, other than where granting security rights in a form approved by the Participants prior to grant.
- 12.2 A Participant cannot assign or dispose of the SPA other than to a limited set of organisations set out in clauses 28.4.1 to 28.4.4, including the Welsh Ministers, an agency of the Welsh Ministers, Government or Local Authority, any other Further Education Corporation or Designated Institution or any person with the legal capacity or sufficient financial resources to perform the obligations of the Participant. Depending on the transferee, the obligations may need to be guaranteed by the Participant.

Bevan Brittan LLP

11 May 2020

DEED OF ADHERENCE

THIS AGREEMENT IS MADE ON [] 2021

AMONG:

- (1) **WEPCO LIMITED**, a company registered in England and Wales (Company Registration Number 12815179) whose registered office is at One Central Square, Cardiff, Wales, CF10 1FS ("WEPCo");
- (2) **ISLE OF ANGLESEY COUNTY COUNCIL** of Isle of Anglesey County Council, Council Offices, Llangefni, Anglesey, LL77 7TW;
- (3) **BRIDGEND COUNTY BOROUGH COUNCIL** of Bridgend County Borough Council, Civic Offices, Angel Street, Bridgend CF31 4WB;
- (4) **CAERPHILLY COUNTY BOROUGH COUNCIL** of Ty Penallta, Tredomen, Ystrad Mynach CF82 7PG;
- (5) **THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF** of Cardiff County Hall, Atlantic Wharf, Cardiff CF10 4UW;
- (6) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall, Carmarthen, Carmarthenshire, SA31 1JP;
- (7) **CEREDIGION COUNTY COUNCIL** of Penmorfa, Aberaeron, Ceredigion SA46 0PA
- (8) **CONWY COUNTY BOROUGH COUNCIL** of PO Box 1, Conwy LL30 9GN
- (9) **DENBIGHSHIRE COUNTY COUNCIL** of PO Box 62, Ruthin, LL15 9AZ
- (10) **FLINTSHIRE COUNTY COUNCIL** of County Hall, Raikes Lane, Mold, Flintshire CH7 6ND
- (11) **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, The Rhadyr, Usk, Monmouthshire NP15 1GA
- (12) **PEMBROKESHIRE COUNTY COUNCIL** of County Hall, Freeman's Way, Haverfordwest, Pembrokeshire, SA61 1TP
- (13) **POWYS COUNTY COUNCIL** of County Hall, Llandrindod Wells, Powys LD1 5LG
- (14) **RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL** of The Pavilions, Cambrian Park, Clydach Vale, Tonypany CF40 2XX
- (15) **THE COUNCIL OF THE CITY AND COUNTY OF SWANSEA** of Civic Centre, Oystermouth Road, Swansea SA1 3SN
- (16) **VALE OF GLAMORGAN COUNCIL** of Civic Offices, Holton Road, Barry CF63 4RU
- (17) **WREXHAM COUNTY BOROUGH COUNCIL** of The Guildhall, Wrexham LL11 1AY
- (18) **CARDIFF AND VALE COLLEGE** of One Canal Parade, Dumballs Road, Cardiff CF10 5BF
- (19) **COLEG CEREDIGION** of Park Place, Cardigan, Ceredigion, SA43 1AB
- (20) **COLEG GWENT** of The Rhadyr, Usk NP15 1JX
- (21) **COLEG SIR GAR** of Sandy Road, Pwll, Llanelli, Carmarthenshire SA15 4DN

Bridgend College	
Blaenau Gwent County Borough Council	
Gwynedd Council	
Newport City Council	
Coleg Cambria	

6. For the purpose of Clause 28.5.2 (*Assignment and Sub-Contracting*) of the WEP Strategic Partnering Agreement, the respective Joining Participants' representatives shall be:

Participant	Joining Participant's representative (name, position and address)
Bridgend College	
Blaenau Gwent County Borough Council	
Gwynedd Council	
Newport City Council	
Coleg Cambria	

7. For the purpose of Section 3.2 of Schedule 22 (*Dispute Resolution*) of the WEP Strategic Partnering Agreement, the respective Joining Participants' contact points for escalation shall be:

Participant	Position of Joining Participant's Escalation Contact
Bridgend College	
Blaenau Gwent County Borough Council	
Gwynedd Council	
Newport City Council	
Coleg Cambria	

This Agreement is subject to and shall be construed in accordance with the law of England and Wales.

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

EXECUTED as a Deed but not delivered until)
the first date specified on page 1, by **WEPCO**)
LIMITED acting by its duly authorized)
signatory:)

.....
Director

In the presence of:

Witness Signature:

Name:

Address

EXECUTED as a **DEED**, but not)
delivered until the first date)
specified on page 1, by applying)
the seal of **THE WELSH**)
MINISTERS:)

SEAL

The application of the seal of The
Welsh Ministers is
AUTHENTICATED by:

Signature -----
Name (block
capitals) -----

who is duly authorised for that
purpose by authority of The Welsh
Ministers under section 90(2) of the
Government of Wales Act 2006

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of ISLE OF ANGLESEY COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of BRIDGEND COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of CAERPHILLY COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of FLINTSHIRE COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COLEG GWENT in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COLEG Y CYMOEDD in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of GRŴP LLANDRILLO MENAI in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

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Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of NPTC GROUP OF COLLEGES in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of VALE OF GLAMORGAN COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of THE COUNCIL OF THE CITY AND COUNTY OF SWANSEA in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

.....
Authorised Signatory

.....
Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of CARMARTHENSHIRE COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of CEREDIGION COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of CONWY COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of MONMOUTHSHIRE COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of PEMBROKESHIRE COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of POWYS COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of CARDIFF AND VALE COLLEGE in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of DENBIGHSHIRE COUNTY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COLEG SIR GAR in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COLEG CEREDIGION in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of WREXHAM COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

.....
Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of GOWER COLLEGE SWANSEA in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

.....
Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of BRIDGEND COLLEGE in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of NEWPORT CITY COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of COLEG CAMBRIA in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of BLAENAU GWENT COUNTY BOROUGH COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

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Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

.....
Position

DRAFT

Executed as a DEED, but not delivered until the first date specified on page 1, by affixing the common seal of GWYNEDD COUNCIL in the presence of:

COMMON SEAL

.....
Authorised Signatory

.....
Name in CAPITALS

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Position

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Authorised Signatory

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Name in CAPITALS

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Position

DRAFT