

DATED DAY OF 2011

**CONSTITUTION
OF THE
WELSH PURCHASING CONSORTIUM**

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THIS AGREEMENT is made the day of 2011

BETWEEN: Blaenau Gwent County Borough Council (1),of

Bridgend County Borough Council (2), of

Caerphilly County Borough Council (3),of

Carmarthenshire County Council (4),of

Ceredigion County Council (5), of

City and County of Cardiff Council (6), of

Merthyr Tydfil County Borough Council (7), of

Monmouthshire County Council (8), of

Neath Port Talbot County Borough Council (9), of

Newport City Council (10), of

Pembrokeshire County Council (11), of

Powys County Council (12), of

Rhondda Cynon Taff County Borough Council (13), of

City and County of Swansea Council (14), of

Torfaen County Borough Council (15), of

Vale of Glamorgan Council (16), of

(hereafter called “the Members”)

WHEREAS:-

- (1) The Members have agreed that a Joint Committee to be known as the Welsh Purchasing Consortium (the “Consortium”) shall be restructured to support the Members in delivering joint, collaborative contracts and framework agreements for the procurement of goods and services.

- (2) The Consortium comprises the Members.
- (3) The Members have agreed that Cardiff Council shall be the host Authority for the purposes of the Consortium.
- (4) The Members have agreed that the overall aims of the Consortium shall be as specified in Schedule 1 of this Agreement.
- (5) The Members have agreed to enter into this Agreement in order to provide the structure and resources to achieve the strategic business objectives of the Consortium.

NOW IT IS AGREED as follows:

1. Definitions and Interpretation

In this Agreement unless the context otherwise requires:

“Allocation of Contracts”	Means the allocation of Contracts between the Members as specified in Clause 13.
“Associate Members”	Means such public bodies in Wales as agreed by the Consortium who may utilize such Contracts upon such terms as agreed by the Consortium.
“Central Management Team”	Means the staff employed by the Host Authority on behalf the Consortium either by way of direct recruitment or seconded to the Host Authority, who will support procurement projects to deliver Contracts and Framework Agreements and will work exclusively for the Consortium.
“Chief Executives”	Means the Heads of Paid Service of each of the Members.

“Consortium”	Means the Joint Committee established in accordance with Clause 3.
“Consortium Contributions”	Means the sum payable by each Member to the Host Authority calculated in accordance with Clause 12.
“Contract”	Means Framework Agreements and contracts for goods services and works based on firm volumes and specifications supported by staff of the Central Management Team and let by a lead authority for the project team working on the contract.
“Efficiency Savings”	Means benefits identified from collaborative procurement activity within the Consortium in accordance with relevant Welsh Assembly Government Guidance.
“Financial Year”	Means 1 April to 31 March.
“Forward Contract Plan”	Means a timetabled plan for the establishment of Contracts.
“Framework Agreement”	Means a framework agreement as defined in Regulation 2 of the Public Contracts Regulations 2006 (2006 No. 5).
“Host Authority”	Means the City and County of Cardiff Council or such other Members as may succeed Cardiff and where the context permits shall also include the Host Authority being a “Member”.
“Initial Period”	Means 1 st April 2008 to 31 st March 2013.
“Lead Authority”	Means the Member Authority having the roles and responsibilities in respect of Contracts as set out in Schedule 2.

“Member Authority”	Means a local authority that is for the time being a Member of the Consortium but does not include Associate Members.
“Members”	Means the local authorities who are for the time being members of the Consortium but does not include Associate Members.
“Nominated Officer/Elected Member”	Means the senior officer or Elected Member nominated by each Member to sit on the Consortium.
“Participating Authorities”	Means the Members having the roles and responsibilities of a Participating Authority as set out in Schedule 2.
“Non Participating Authorities”	Means the Members having the roles and responsibilities of a Non Participating Authority as set out in Schedule 2.
“Quarters”	For the purpose of reporting shall be: 1 st April – 30 th June 1 st July – 30 th September 1 st October – 31 st December 1 st January – 31 st March
“Secondment Agreement”	Means an agreement for the secondment of the WLGA Staff to the Central Management Team.
“Secretary”	Means an officer from the Member Authority providing the secretariat service.
“Service(s)”	Means the services provided in accordance with Clause 4 by the staff of the Central Management Team to procurement project teams of Consortium Members.

“Strategic Objectives”	Means the objectives of the Welsh Purchasing Consortium as set out in Schedule 1.
“the 1972 Act”	Means the Local Government Act 1972.
“the 2000 Act”	Means the Local Government Act 2000.
Unauthorised Act	Means an action which is contrary to or outside the scope of the powers, duties and obligations given or created pursuant to this Agreement and which is not reasonably incidental, ancillary or conducive to the carrying out of those powers, duties and obligations.
“WLGA” means	The Welsh Local Government Association.
“WLGA Staff”	Means WLGA employees seconded to the Consortium pursuant to the Secondment Agreement.
“Working Day”	Means Monday to Friday 9.00 a.m. – 4.00 p.m. save Bank and Public Holidays.
“WPC”	Means the Welsh Purchasing Consortium
“WPC Procurement Officers’ Group” or “Group”	Means a group of senior procurement officers or nominated by each Member whose role and functions are set out in Clause 5.

2. Strategic Objectives of the Consortium

- 2.1 The Strategic Objectives of the Consortium are as set out in Schedule 1.
- 2.2 This Agreement is made pursuant to the powers contained in Section 101 of the 1972 Act and Section 20 of the 2000 Act and any Regulations made thereunder and all other powers enabling.

3. Consortium

3.1 The Consortium shall be responsible for undertaking the following activities:

3.1.1 advise and direct the Central Management Team on how to address strategic, financial and operational issues.

3.1.2 develop and publish criteria for the selection of joint, collaborative procurement projects which include efficiency and benefits for all Members as part of the work programme process.

3.1.3 construct and agree the Work Programme for the central management team which delivers benefits to all Members.

3.1.4 set targets, priorities and policies for the work of the Central Management Team.

3.1.5 receive regular, quarterly reports on performance and finance.

3.1.6 approve the annual budget for the Consortium.

3.1.7 in consultation with the Host Authority approve the job descriptions and person specifications of Central Management Team staff.

3.1.8 enable the Members and the Host Authority to raise any issues of common concern relating to the operation, financing and performance of the Consortium.

3.1.9 review the operation of the Consortium and plan how to maintain or improve the benefits of the Consortium.

- 3.1.10 be responsible for developing a performance framework for the Service provided.
 - 3.1.11 communicate the purpose of the Consortium to the potential customers of the Service and undertake marketing of the service.
 - 3.1.12 liaise with professions and potential users of the Service.
 - 3.1.13 provide assistance and advice to the Host Authority where requested, for example, serve on recruitment panels for the Central Management Team, represent or present the Consortium to national or other regional bodies and potential new Members and customers.
 - 3.1.14 report as and when required to the South East, South West and Mid Wales Regional Partnership Boards and the Members on the activities and performance of the Consortium.
- 3.2. Each Member shall on the date of this Agreement appoint a suitably qualified and experienced Nominated Officer/Elected Member to the Consortium to represent the Member in the Consortium. For the avoidance of doubt the Nominated Officer/Elected Member may not be employed in the Central Management Team. Each Nominated Member may nominate a deputy to attend in the absence of the Nominated Officer/Elected Member in accordance with Clause 3.7.
- 3.3 Each Member shall ensure that any Nominated Officer/Elected Member or deputy to the Consortium shall have sufficient delegated powers to vote on any decision within the powers of the Consortium as set out in this Agreement and if necessary seek authorisation from their Member

Authority to bind his or her Member Authority to such decision and warrant that any Nominated Officer/Elected Member appointed as Nominated Officer/Elected Member or Deputy shall hold those delegated powers.

3.4 The Consortium shall initially comprise of 16 Nominated Officer/Elected Members, one from each of the Members.

3.5 The Consortium may invite persons to Meetings of the Consortium to provide advice and assistance as required.

3.6 A Member may change its Nominated Officer/Elected Member by giving written notice to the Secretary of its intention, such notice to be given no later than 14 days prior to the date of the next scheduled ordinary Consortium meeting.

3.7 Notwithstanding 3.4 above a Member may appoint a deputy to attend at meetings of the Consortium in the event that its Nominated Officer/Elected Member is unable to attend any particular meeting. In such event it shall give prior written notice identifying the proposed deputy as soon as reasonably practicable and in any event no later than 17:00 on the day preceding the date for the affected meeting. For the avoidance of doubt the deputy may not be employed in the Central Management Team.

3.8 The chairperson of the Consortium shall be elected at the first meeting to hold office until the 2012 Local Government Elections and thereafter as decided by the Consortium. The Consortium shall also elect a deputy to act in the absence of the Chairman.

- 3.9 The Quorum of the Consortium shall be a quarter of the voting Nominated Officers/Elected Members or their duly appointed deputies.
- 3.10 Save where expressly stated in this Agreement all decisions to be taken at the Consortium shall be by majority vote.
- 3.11 Each Member represented on the Consortium shall have one vote on the Consortium with the Chairperson having the second or casting vote where necessary.
- 3.12 A Member Authority shall provide the secretariat service for the Consortium which initially shall be provided by Rhondda Cynon Taff.
- 3.13 A calendar of the dates and times for ordinary meetings of the Consortium for the forthcoming Financial Year shall be prepared annually and provided to each Member no later than the 31st of May in each year.
- 3.14 The Consortium must initially meet at least once in every three months for the first year and thereafter as determined by the Consortium
- 3.15 Any Member may by serving a written notice on the Secretary call an extraordinary meeting of the Consortium. A written notice for an extraordinary meeting of the Consortium must include a written statement of the reasons for calling an extraordinary meeting and the decision sought or recommended.
- 3.16 On receipt of such notice the Secretary shall cause an extraordinary meeting of the Consortium to be convened within 10 Working Days of the date of service of the notice to consider the matters set out in the request for the extraordinary meeting.

3.17 The Secretary shall cause a written notice of the time, date and location of any meeting of the Consortium together with the agenda, minutes of the preceding ordinary and any extraordinary meeting together with supporting reports and documents to be served on each Member no later than 5 Working Days prior to the date and time fixed for the meeting.

3.18 Any Member may request that a matter be placed on the Agenda for discussion at an ordinary meeting of the Consortium subject to providing written notice of the matter to be considered to the Secretary no later than 10 Working Days prior to the date scheduled for the meeting.

4. Central Management Team

4.1 The Consortium will implement this Agreement through directing the work of the Central Management Team employed on its behalf by the Host Authority.

4.2 The Central Management Team shall comprise of such officers as shall be agreed by the Consortium who will act as a support team for the Consortium and shall be responsible for the effective co-ordination of all arrangements on behalf of the Consortium.

4.3 Subject to resources and staff capacity the function of the Central Management Team shall be to:

4.3.1 ensure that a consistent and co-ordinated approach is taken to procurement on behalf of the Consortium.

4.3.2 effectively manage the engagement of all Consortium Members.

- 4.3.3 assist in developing the Strategic Objectives..
- 4.3.4 develop and maintain the Forward Contract Plan.
- 4.3.5 ensure that the Consortium continues to deliver benefits to Members.
- 4.3.6 provide strategic and operational support as required by Members.
- 4.3.7 engage in specific projects as required on behalf of Members.
- 4.3.8 prepare regular progress reports and other specific reports as required for consideration by the WPC Procurement Officers' Group and Consortium as required/appropriate.

5. WPC Procurement Officers' Group

- 5.1 The WPC Procurement Officers' Group shall consist of a procurement officer nominated by each Member and shall have following functions:
 - 5.1.2 To periodically review the roles and responsibilities of Members as set out in Schedule 2.
 - 5.1.3 To consider commodity extension and variation reports.
 - 5.1.4 The WPC Procurement Officers' Group will advise the Consortium and the manager of the Central Management Team with regard to the purchasing priorities of the Members and assist the Central Management Team manager in developing proposals for the Consortium.

- 5.1.5 The WPC Procurement Officers' Group will agree and review the Forward Contract Plan.
- 5.2 The WPC Procurement Officers' Group may submit regular and special reports to the Consortium on any matter affecting the Consortium.
- 5.3 Members of the WPC Procurement Officers' Group may join user groups and project groups where it is judged by the WPC Procurement Officers' Group that the project or user group will benefit from the input of senior procurement officers.
- 5.4 The WPC Procurement Officers' Group shall meet on a quarterly basis and at such other times as required.
- 5.5 The WPC Procurement Officers' Group shall annually elect a Chairman and Deputy.
- 5.6 The Quorum of the WPC Procurement Officers Group shall be a quarter of the Group Membership
- 5.7 Decisions of the Group shall be by majority vote.
- 6. The Forward contract Plan**
- 6.1 The Forward Contract Plan shall specify the Contracts which the Consortium intends to undertake and conclude.
- 6.2 The Forward Contract Plan must include the following:
- 6.2.1 identified WPC Contracts and other procurement related projects to be undertaken.
- 6.2.2 anticipated Contract start dates for each contract/project.

6.2.3 Lead Authority. .

6.2.4 Points allocation under the agreed reciprocal arrangement.

6.3 The Forward Contract Plan must be prepared by reference to the Strategic Objectives of the Consortium and the need to make the most efficient and effective use of Consortium resources and in so far as practicable ensure that each Member obtains tangible and demonstrable benefits from membership of the Consortium.

7. Host Authority

7.1 The Members agree that the Host Authority will employ or use seconded staff and provide other arrangements as appropriate to support the work of the Central Management Team.

7.2 The Host Authority will not delegate or assign its obligations and responsibilities without the consent of the Members by a majority vote of the Consortium save that it may resign as Host Authority by giving twelve months notice to the Secretary on or before the preceding 1st April to expire no sooner than the subsequent 31st March.

7.3 For the avoidance of doubt nothing in this agreement shall require or operate so as to require the Host Authority to enter into any agreement or contract with any third party for the procurement of goods, services or works on behalf of the Consortium other than where such agreement is directly incidental and supportive of its functions as Host Authority.

7.4 Subsequent to the Agreement of the Consortium the Host Authority shall subject to resources and recruitment:

- 7.4.1 recruit, and employ the Central Management Team in accordance with its employment policies and terms and conditions including salary structures.
- 7.4.2 monitor the performance of the Central Management Team as directed by the Procurement Officers' Group.
- 7.4.3 consult the Consortium with regard to the numbers, structure and roles of staff and shall not expand the staffing complement without the agreement of the Consortium.
- 7.4.4 ensure that the Central Management Team has a manager.
- 7.4.5 provide management supervision, office accommodation, IT equipment, office and specialist e-procurement software, office equipment, telephony equipment and services, support services (including accountancy, HR advice and IT desktop support), payments and disbursements necessary to enable the Consortium's staff to perform their functions.
- 7.4.6 inform the Members of complaints made against the Services of the Central Management Team.
- 7.4.7 prepare an annual budget for the approval of the Consortium and quarterly monitoring reports.
- 7.4.8 account separately for the Central Management Team and maintain financial records and report to the Members with regard to operating costs and income receivable on an open book basis.
- 7.4.9 own any assets on behalf of the Consortium.

- 7.4.10 invoice each Member Authority annually in advance for the Consortium Contribution.
- 7.4.11 ensure that the personal performance and development review of the Central Management Team staff is conducted in accordance with the Host Authorities policy and that they are trained appropriately in the use of relevant office and procurement software, customer service and procurement good practice.
- 7.4.12 ensure that the Service is provided and the Service is managed in conformity with all legislation relating to Health and Safety, Equal Opportunities, Data Protection and Freedom of Information and all other relevant legislation.
- 7.4.13 save where expressly varied by this Agreement the Host Authority shall comply with its own Standing Orders and Procedure Rules when undertaking its duties under this Agreement.

8. Obligations of the Members

8.1 The Members shall:

- 8.1.1 pay the Consortium Contributions to the Host Authority within 28 days of invoice by the Host Authority.
- 8.1.2 appoint Nominated Officers/ Elected Members to serve on the Consortium.
- 8.1.3 identify opportunities for joint; collaborative procurement projects and encourage professional groups within their organisation to consider collaborative procurement projects.

- 8.1.4 promote the use of WPC and other collaborative contracts within their organisation where they represent best value and support the sourcing strategy for their organisation.
 - 8.1.5 collect data on the use of collaborative contracts within their organisation and provide the Central Management Team with data on usage and performance of Contracts.
 - 8.1.6 promote the use of collaborative agreements by undertaking communications and other change management activity such as training and workshops within their organisations.
- 8.2. Where a potential redundancy or redundancies arises which would give rise to a liability to redundancy costs and any associated pension costs within the Consortium's Central Management Team, the Members undertake in so far as it is consistent with their requirements to give prior consideration to the affected staff under the terms of each Members' redeployment scheme.

9. Commencement and Term

- 9.1 This agreement shall be for the Initial Period and thereafter from year to year unless terminated earlier in accordance with Clause 17 (Withdrawal) or 20 (Disputes) or by agreement of the Members.
- 9.2 Following termination of this Agreement whether pursuant to Clause 17 or 20 or otherwise.

The provisions of clauses 1 (Interpretation) and 10 (Liability) shall bind the parties and remain in full force and effect.

9.3 Any rights or obligations to which any of the parties may be entitled or be subject before such termination shall remain in full force and effect; and

9.4 Termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event which gave rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of termination.

10. Liability and Indemnity

10.1 The Members shall jointly be liable with the Host Authority, unless caused by the negligence of the Host Authority, against each and every cost, claim, liability, expense or demand in relation to any contract of employment or collective agreement concerning the Central Management Team employed by the Host Authority in compliance with its obligations under this Agreement including but without limitation on any such matter relating to or arising out of:

10.1.1 Claims of wrongful or unfair dismissal, provided the Host Authority has regard to all employment law legislation, Regulations and Guidance, and its own internal policies regarding employment of staff.

10.1.2 Claims for redundancy payment, and any associated pension costs (provided always that where the level of redundancy payment in any particular instance is established or calculated by reference to a period of continuous employment of that particular employee by any of the Members immediately preceding his or her employment or transfer to the Central Management Team that Member shall indemnify the remaining Members pro rata by

reference to the proportion of the redundancy payment which is attributable to the period of employment with the Host Authority).

10.1.3 Calculation of pension costs. Members will jointly be liable with the Host Authority should it incur any additional pension liabilities as a result of the employment or transfer of the Central Management Team.

10.2 The Members will be liable with (and in this regard they shall be jointly and severally liable) the Host Authority for all losses that it suffers, in relation to all actions, proceedings, costs, claims, demands, liabilities, losses and expenses howsoever arising, whether in tort (but not including negligence), default or breach of contract or breach of law arising out of or in connection with any act or omission by the Host Authority in carrying out all or any of the duties and responsibilities of the Host Authority and/or implementing the decisions of the Consortium save where all losses incurred are caused by an Unauthorised Act by the Host Authority.

10.3 The liabilities and risks attaching to any Contract shall be the liability of all the Members taking advantage of the Contract in question in equal proportions except where the liability arises as a result of the act or default of the Member whereupon that Member shall be solely liable for such liability.

10.4 The provisions of this clause shall survive the termination of this Agreement.

11. Budget, Financial Records and Open Book Accounting

11.1 The Host Authority shall prepare an annual forecast budget for the agreement of the Members on an open book basis by the last Working Day of October each year.

The budget will detail estimated:

staffing costs;

office and establishment costs;

support service costs;

one off costs and proposed investments/improvements;

the forecast amount of any revenue or grants to offset the costs of the Consortium;

the amount due from each Member on an annual basis shall be agreed by the Consortium .

11.2 The finances of the Consortium will be managed through the Host Authority's financial systems and processes including the application of the Host Authority's Financial Regulations and Standing Orders.

11.3 The Host Authority will submit a financial report to each ordinary Consortium meeting detailing the status of the budget as at the final day of the preceding Quarter. The reports shall be completed and sent to the Nominated Officers/Elected Members within four weeks of the end of each Quarter.

- 11.4 The Host Authority will provide an internal audit of the internal control arrangements of the Consortium in accordance with proper internal audit practices and provide a certificate to that effect in an agreed form to each Member for internal audit purposes and if required, the Host Authority will also enable full access to financial and activity records of the Consortium by any of the Member's auditors, internal or external.
- 11.5 The Consortium will agree the Consortium's budget and estimates for the forthcoming Financial Year prior to 31st March in the preceding year.
- 11.6 The Consortium shall only operate within its agreed budget unless otherwise agreed by the Consortium.
- 11.7 Budgeted operating costs for each Member will be paid by the Members in advance to the Host Authority annually on the first of April conditional on the Host Authority invoicing the Members for operating costs.
- 11.8 The Host Authority is responsible for ensuring that accounting practices applied for the Consortium comply with recognised accounting standards (SORPS) and government accounting regulations.

12. Allocation of Costs, Assets, Liabilities, Surpluses and Deficits

- 12.1 The Consortium Contributions shall comprise the following identified in the Consortium's forecast annual budget:
- 12.1.1 estimated staffing costs;
 - 12.1.2 office and establishment costs;
 - 12.1.3 support service costs;

12.1.4 such other items as are and approved by the Consortium.

For the avoidance of doubt and notwithstanding the failure of the Consortium to approve an annual budget items 12.1.1 to 12.1.3 shall be deemed to have been approved on the 31st March immediately preceding the relevant Financial Year and the Members may be invoiced for those items as if they constituted the Consortium Contribution.

12.2 The Consortium Contributions will be allocated as subscriptions to each Member Authority on an equal basis. For the Initial Period the first three Consortium Contributions for each Member shall be £14,892 payable on 1st September 2008, 1 April 2009 and 1 April 2010 and the next two Consortium Contributions payable on 1st April 2011 and 1st April 2012 shall not exceed £14,892 each.

12.3 Surplus amounts shall be identified by the Host Authority and reported to the Members through the Consortium.

12.4 The Members through the Consortium may resolve to use all or part of the surplus to invest in improvements to the Service delivered by the Consortium.

12.4.1 Improvements may include:

ICT upgrades (software, hardware, server space, inter-connectivity, networks, new systems);

interfaces with other systems to be specified by the Host Authority and the Members;

purchase of new equipment for the Consortium (new PCs, printers, scanners, desks, phones etc.);

investment in additional services contingent on the recruitment of additional staff.

- 12.5 The Consortium shall determine whether surpluses either in whole or part, after application of monies for service improvements, will be distributed equally to each of the Members in the year where the surplus has occurred.
- 12.6 A holding account for surpluses will be managed by the Host Authority which will enable any balance agreed for retention by the Consortium to roll forward to subsequent years.
- 12.7 The assets and liabilities of Members arising from the Consortium will be shared equally.
- 12.8 Any variation of operating costs must be agreed by the Host Authority and all Members through the Consortium.
- 12.9 Any proposed increase in resources submitted to the Consortium will detail the impact on each Member in the revised budget.
- 12.10 The proposed increase in resources will be set in the context of increased services or the admission of new Members to the Consortium agreement.
- 12.11 In the event of the Host Authority identifying that there is a permanent reduction in workload for the Central Management Team, the Host Authority shall report the matter to the Consortium who may authorise a reduction in the staffing levels. In approving such a reduction in staffing

levels and subject to the application of the Host Authority's employment policies and requirements, the Consortium shall agree the procedure for implementing the staffing reduction and the level of indemnity to be provided to the Host Authority to meet the consequential costs claims and demands.

12.12 The Members and the Host Authority shall not withdraw or otherwise adjust budgeted levels of finance until staffing changes are implemented and an adjustment agreed by the Consortium.

12.13 The Members and the Host Authority will share the costs of restructuring on the basis described in Clause 12 (allocation of costs, assets, liabilities, surpluses and deficits) where incurred to reduce long-term operating costs.

12.14 The Services will be invoiced and paid inclusive of Value Added Tax.

12.15 Each Member will be responsible for recording and reclaiming value added tax paid for the Services.

12.16 Budgets and financial reports will be prepared ex-VAT.

13. Operation and Review of Allocation of Contracts

13.1 Contracts will be allocated points by the WPC Procurement Officers Group on the basis of the complexity of the contract and risk involved. Each member will act as a Lead Authority in respect of Contracts having a points value of one sixteenth (or such other fraction representing the total membership of the consortium) of whole points allocated.

14. Roles and Responsibilities

The roles and responsibilities of Members in respect of Contracts when acting as Lead Authority Participating Authorities and Non Participating Authorities and the Central Management Team are set out in Schedule 2.

15. Customer Care

15.1 The Host Authority's Customer Care Policy will apply to the Central Management Team's activities.

16. Variations in Services

16.1 The Members and the Host Authority may agree minor variations in Service for each Member in writing to meet local needs and circumstances subject to the approval of the Consortium.

17. Withdrawal

17.1 Any one or more of the Members may withdraw from this Agreement after the Initial Period by serving written notice on the Secretary of their intention to withdraw from the Consortium on or before the preceding 1st April to expire no sooner than the subsequent 31st of March.

17.2 Without prejudice to the rights and remedies of the remaining Members the withdrawing party shall on expiry of the notice cease to be a Member of the Consortium.

17.3 **PROVIDED THAT** in the event of withdrawal:

17.3.1 Any rights or obligations to which any of the Members may be entitled or be subject before such termination shall remain in full force and effect; and

17.3.2 Withdrawal shall not affect or prejudice any right to damages or other remedy which any party to this Agreement may have which existed at or before the date of termination or which occurred as a result of any act or omission prior to termination.

17.3.3 The withdrawing party agrees that all capital expenditure and assets (including any monetary surplus) contributed to the Consortium shall, irrespective of the withdrawal of the withdrawing party, remain as part of the Consortium and can be used by the remaining Members, for the purposes of the Consortium until the Consortium terminates.

17.3.4 Where a Member withdraws from the Consortium after the Initial Period the withdrawing Member shall indemnify the remaining Members against additional costs incurred by the remaining Members in respect of its period of Membership. The remaining Members shall use reasonable endeavours to mitigate their losses.

18. Introduction of New Members

18.1 Members and Associate Members may be introduced by resolution of the Consortium.

18.2 Members will be required to be parties to this Agreement before joining the Consortium and will comply with its terms and conditions.

19. Confidentiality

19.1 The Members shall keep confidential all matters relating to the Consortium and shall use all reasonable endeavours to prevent

disclosure to any person of any matter relating to the Consortium.

19.2 Clause 19.1, shall not apply to:

19.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement.

19.2.2 any matter which a Member can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 19.

19.2.3 any disclosure which is required by law .

19.2.4 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing Member.

19.2.5 any disclosure by any Member of any document related to the Consortium to which it is a party and which the other Members (acting reasonably) have agreed with the disclosing Member contains no commercially sensitive information; or

19.2.6 any examination pursuant to the Public Audit (Wales) Act 2004 and any subsequent re-enactment thereof of the economy, efficiency and effectiveness with which the Consortium has used its resources.

19.3 Where disclosure is permitted under clause 19.2.3 or 19.2.6 the recipient of the information shall be made aware of the confidential nature of the information and shall be subject to appropriate obligations of confidentiality.

- 19.4 Members shall not make use of the Agreement or any information issued or provided by or on behalf of the Consortium in connection with the Agreement otherwise than for the purpose of the Consortium, except with the prior written consent of the Consortium.
- 19.5 The Members acknowledge that the Wales Audit Office has the right to publish details of the Agreement (including commercially sensitive information) in its relevant reports to the National Assembly for Wales and Parliament.
- 19.6 Notwithstanding clause 19.1 above each Member acknowledges that all Members to the Agreement are subject to obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall in all respects and at no additional cost to the Members co-operate with any Member's requests to assist it in complying with each Member's disclosure obligations under the Information Laws.
- 19.7 Upon termination of the Consortium the Members shall continue to co-operate with and assist the other Parties to meet the obligations set out above that continue to exist beyond the termination of the Collaboration Agreement.

20. Dispute Resolution

- 20.1 Any dispute between the Members which cannot be resolved through the medium of the Consortium shall be referred to the Members' Chief Executives.

20.2 A dispute which cannot be resolved by the Members' Chief Executives will be referred to a mediator appointed by agreement by the Members in dispute.

21. Notice

21.1 A notice under this Agreement:

Shall be in writing;

Shall be sent for the attention of the person, and to the address, or fax number, given in this clause (or such other address, fax number or person as the Member may notify to the other Members, such notice to take effect five days from the notice being received); and

Shall be:

Delivered personally or;

Sent by fax; or

Sent by pre-paid first-class or recorded delivery.

The address for service of notice are:

The office of the Central Management Team or the Secretary and thereafter the Central Management Team or Secretary shall send the notice to the appropriate Member Authorities

A notice is deemed to have been received:

If delivered personally, at the time of delivery;

In the case of fax, at the time of transmission;

In the case of pre-paid first class post or recorded delivery, 2 Working Days from the date of posting.

21.2 To prove service it is sufficient to provide that the notice was transmitted by fax to the fax number of the Central Management Team or, Secretary or, in the case of post, that the envelope containing the notice was properly addressed and posted.

23. General

23.1 The Services provided by the Consortium are ancillary to the powers of each Member to let contracts for the supply of goods and services.

23.2 The Consortium will support, advise and assist the Members in the exercise of their contracting functions but it is expressly acknowledged that it does not constitute a separate legal person with capacity and is expressly forbidden from entering into bank account, loan or overdraft arrangements.

23.3 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

23.4 Reference to statutory provisions shall be construed as references to those provisions as respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the making of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modifications).

- 23.5 References to “this Agreement” or to any other agreement or document referred to in this agreement mean this agreement or such other agreement or document as amended, varied, supplemented, modified or notated from time to time, and included as schedules and appendices to this agreement.
- 23.6 Headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 23.7 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 23.8 References to “parties” are references to the parties to this agreement and references to “persons” or “parties” shall include bodies corporate, unincorporated associations and Partnerships.
- 23.9 Any covenant by a party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person.
- 23.10 This Agreement and any documents referred to in it or executed contemporaneously with it, constitute the whole agreement between the Members and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.

24. No Partnership

- 24.1 Nothing in this Agreement shall be deemed to constitute a partnership in law between the Members nor constitute any Member the agent of any other Member.

25. Good Faith

- 25.1 All transactions entered into between the Members shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in the Agreement as may be agreed by the Members.
- 25.2 Each Member shall at all times act in good faith towards the other Members and shall use all reasonable endeavours to ensure that the Agreement is observed.
- 25.3 Each Member shall do all things necessary and desirable to give effect to the spirit and intention of the Agreement.

EXECUTED AS A DEED the day and year first before written

The **COMMON SEAL** of **BLAENAU GWENT COUNTY BOROUGH COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **BRIDGEND COUNTY BOROUGH COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **CAERPHILLY COUNTY
BOROUGH COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **CARMARTHENSHIRE
COUNTY COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **CEREDIGION
COUNTY COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **CITY AND COUNTY OF
CARDIFF COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **MERTHYR TYDFIL COUNTY
BOROUGH COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **MONMOUTHSHIRE
COUNTY COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **NEATH PORT TALBOT COUNTY
BOROUGH COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **NEWPORT CITY
COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **PEMBROKESHIRE
COUNTY COUNCIL** was affixed in the presence of:

The **COMMON SEAL** of **POWYS**
COUNTY COUNCIL was affixed in the presence of:

The **COMMON SEAL** of **RHONDDA CYNON TAFF COUNTY**
BOROUGH COUNCIL was affixed in the presence of:

The **COMMON SEAL** of **CITY AND COUNTY OF**
SWANSEA COUNCIL was affixed in the presence of:

The **COMMON SEAL** of **TORFAEN COUNTY BOROUGH**
COUNCIL was affixed in the presence of:

The **COMMON SEAL** of **VALE OF GLAMORGAN**
COUNCIL was affixed in the presence of:

SCHEDULE 1

The WPC Strategic Objectives set out below are intrinsically linked to enabling the successful delivery of Local Authority Services through collaboration and will always be aligned to the resource priorities of its constituent members.

Objective 1

To obtain best value for money at all times and maximise efficiency savings for Members through the use of joint, collaborative contracts and framework agreements that enable access to :-

- Improved quality of goods, services and works at optimal cost
- Greater volume discounts through aggregating purchase volumes across the Consortium
- Process savings by reducing the number of procurement exercises and implementing appropriate e procurement solutions and processes

Objective 2

To ensure that a consistent and co-ordinated approach is taken to procurement and that areas for collaborative opportunity are identified and prioritised using all relevant sources of information

Objective 3

To ensure that procurement activity continuously reflects best practice, the requirements of public accountability, WPC sustainability priorities and Corporate Social Responsibility and Regeneration policies.

Objective 4

To promote a Supplier Development Policy which supports the National, Regional and Local economies within Wales as appropriate, encourages the SME Sector and supports an increase in the level of business activity with the Third Sector.

Objective 5

To facilitate the management of change to ensure that WPC achieves it's business objectives and delivers benefits to it's Members.

SCHEDULE 2

Roles & Responsibilities of Welsh Purchasing Consortium Members

This Schedule sets out the roles and responsibilities of the Members to Welsh Purchasing Consortium Contracts.

It adopts the view that disagreements can often be avoided by improving understanding particularly with regard to what the WPC is there to do, and what members can expect of each other. The following notes therefore describe, without being exhaustive, the expectations which consortium members might reasonably have of one another.

Lead Authority	Participating Authorities	Non Participating Authorities	Central Management Team (CMT)
Provide a centre of procurement expertise for the product or service category e.g. information on prices, markets, alternative solutions	Facilitate the further development of expertise by communicating operational intelligence and anticipating future changes in business need	Contribute to the further development of expertise by communicating operational intelligence, benchmarking, and sharing acquired knowledge.	Support the development of expertise by using the agreed reciprocal arrangement to enable specialisation. Support the Lead Authority where expertise is not immediately available with best practice information and other assistance as required.
Ensure that all relevant responsible purchasing considerations are embedded throughout the process	Support the Lead Authority by participating in the purchasing process in a professional and timely manner.	Acknowledge the legitimacy of purchasing activity outside your own organisation and help maintain healthy, competitive supplier relationships.	Provide Standard Operating Practice support and schedule such practice in accordance with the WPC Forward Contract Plan

<p>Determine the appropriate procurement strategy, in consultation with the Project Teams, Category Group, Officers Group and CMT as required.</p>	<p>Assure procurement strategy in consultation with Lead Authority and CMT</p>	<p>Be clear that you are not participating, or formally reserve the right to participate.</p>	<p>Assist Lead Authority in determining the appropriate procurement strategy (Business Case) . Assist where necessary in market research and the facilitation of workshops or meetings for the development of specifications and tenders.</p>
<p>Ensure that any specialists have been approached for advice and input as required (e.g. Technical, Finance, Legal).</p>	<p>Ensure the Lead Authority is aware of any specialist requirements and/or resource you may have.</p>	<p>Be prepared to share knowledge and expertise, if appropriate.</p>	<p>Set up meetings with technical specialists as required. Set up and participate as required in User/ Stakeholder Groups for high profile /risk procurements and take the lead in ensuring proper communication.</p>
<p>Manage the production of the specification to ensure that it will attract effective competition, to challenge elements where appropriate to ensure that it reflects actual need, and that it is consistent with corporate standards.</p>	<p>Contribute to the production of the specification to ensure that it will attract effective competition, to challenge elements where appropriate to ensure that it reflects actual need, and that it is consistent with corporate standards.</p>	<p>Consider whether contribution to the specification will enable participation. Be prepared to share knowledge and expertise, if appropriate.</p>	<p>Support and if necessary drive the process needed to ensure that an appropriate technical specification is in place to ensure a tender will attract effective competition, to challenge elements where appropriate to ensure that it reflects actual need, and that it is consistent with corporate standards.</p>

<p>Lead all aspects of the procurement process, including all communications with suppliers, ensuring that the correct procurement processes are followed</p>	<p>Support Lead Authority by participating in the purchasing process in a professional and timely manner.</p>	<p>Be prepared to share knowledge and expertise, if appropriate.</p>	<p>Provide Operational Communications support and schedule communications in accordance with the WPC Forward Contract Plan. Support the Lead Authority as required and monitor progress and deadlines for the achievement of efficiencies.</p>
<p>Organise and conduct any bid clarification required and undertake any appropriate post tender negotiations</p>	<p>Support the Lead Authority as necessary in any bid clarification required and any appropriate post tender negotiations.</p>	<p>Be clear that you are not participating.</p>	<p>Schedule activities in accordance with the WPC Forward Contract Plan.</p>
<p>Award the contract in accordance with the provisions of the WPC Constitution in order to ensure compliance and meet the requirements of public accountability. Arrange to report Contract Award to the appropriate WPC Forum.</p>	<p>Ensure that a decision to fully endorse and support the award decision.</p>	<p>Be clear that you are not participating.</p>	<p>Schedule activities in accordance with the WPC Contract Programme.</p>
<p>When the contract award recommendation has been approved implement the Mandatory Standstill Period where appropriate and then make the final commitment with the selected supplier(s)</p>	<p>Respect the Mandatory Standstill Period</p>	<p>Be clear that you are not participating.</p>	<p>Schedule standstill in accordance with the WPC Forward Contract Plan.</p>

Finalise the contract, which must be in writing	Co-sign the contract if required and make formal commitment	Be clear that you are not participating.	Schedule in accordance with the WPC Forward Plan.
Ensure there is a clear audit trail in order to meet the requirements of public accountability.	Ensure there is a clear audit trail in order to meet the requirements of public accountability.	Be prepared to share knowledge and expertise, if appropriate.	Ensure there is a clear audit trail in order to meet the requirements of public accountability.
De-brief suppliers on request and within agreed timescales	Assist with supplier de-brief in conjunction with lead authority if appropriate	Respect the supplier de-brief process and adopt lessons learned, if appropriate	Schedule in accordance with the WPC Forward Contract Plan
Undertake a procurement project review where appropriate Ensure efficiencies derived from WPC Arrangements are projected, monitored and recorded in accordance with adopted WPC procedures	Contribute to procurement project review if required Accept the WPC process for projecting, monitoring and recording efficiencies derived from WPC Arrangements	Adopt lessons learned, if appropriate Accept WPC process for projecting, monitoring and recording efficiencies derived from WPC Arrangements	Support procurement project reviews Maintain register of efficiencies achieved and communicate them to the appropriate WPC Forum(s) as required in accordance with WPC procedure.
Define and implement the agreed contract management protocol	Support the Lead Authority's implemented contract management protocol	Accept the Lead Authority's implemented contract management protocol	Support the Lead Authority in implementing the agreed contract management protocol

<p>Undertake all strategic post award contract related work on behalf of WPC members.</p>	<p>Work with and support the Lead Authority as required.</p>	<p>Note any notifications from the Lead Authority as appropriate.</p>	<p>Support the Lead Authority in all strategic post award contract related work</p>
<p>Lead negotiations with suppliers on general framework issues and monitor general contractual performance behalf of a participating Authority. Support participating Authorities as required in resolving specific contractual issues.</p>	<p>Advise the lead Authority as early as possible of any contractual matters specific to the participating Authority which will require to be resolved and where the support of the Lead Authority would be helpful.</p>	<p>Note the outcome(s) regarding the resolution of contractual disputes etc. for future reference.</p>	<p>Assist the Participating Authority in determining an appropriate strategy for dealing with and resolving contractual matters with suppliers as appropriate. Advise and assist the Lead Authority in negotiations with suppliers as required.</p>
<p>Following the award of the Contract/Framework and throughout the contract period update the WPC System and provide any xchangewales related information\detail as agreed by the WPC Officers Group.</p>	<p>Support the Lead Authority where necessary\appropriate</p>	<p>Accept and support where necessary</p>	<p>Support and assist the Lead Authority in ensuring that system updates are carried out in a timely manner</p>