

(1) BLAENAU GWENT COUNTY BOROUGH COUNCIL

Appendix 1

(2) CAERPHILLY COUNTY BOROUGH COUNCIL

(3) MONMOUTHSHIRE COUNTY COUNCIL

(4) NEWPORT CITY COUNCIL

(5) TORFAEN COUNTY BOROUGH COUNCIL

(6) SOUTH EAST WALES EDUCATION ACHIEVEMENT SERVICE

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South East Wales Education Achievement Service

Agreed Additional Governance Arrangements

Supplemental to the Collaboration and Members Agreement dated 23<sup>rd</sup> December 2013

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2016

**BETWEEN:**

- (1) BLAENAU GWENT COUNTY BOROUGH COUNCIL of Municipal Offices, Civic Centre, Ebbw Vales, NP23 6XB
- (2) CAERPHILLY COUNTY BOROUGH COUNCIL of Penallta House, Tredomen Park, Ystrad Mynach, CF82 7PG
- (3) MONMOUTHSHIRE COUNTY COUNCIL of PO Box 106 Caldicot NP26 9AN
- (4) NEWPORT CITY COUNCIL of Newport Civic Centre, Godfrey Road, Newport, 20 4UR
- (5) TORFAEN COUNTY BOROUGH COUNCIL of Civic Centre, Pontypool, NP4 6YB

each a “**Home Authority**”; and

- (6) SOUTH EAST WALES EDUCATION ACHIEVEMENT SERVICE a company registered in England and Wales with company number 8155408 and whose a registered office is at Tredomen House, Tredomen Park, Ystrad Mynach, CF 82 7WF (the “**Company**”);

and together the “**Parties**”.

**BACKGROUND:**

- (1) The Company is a company limited by guarantee established by the Home Authorities for the purpose of collaborating in order to improve the standard of education in the South East Wales region through the Company supplying certain services to the Home Authorities.
- (2) By an agreement made on 23<sup>rd</sup> December 2013 and called the South East Wales Education Achievement Service Collaboration and Members Agreement (the “**CAMA**”) the Parties agreed terms for governing the relationship between the Home Authorities and each other in respect of the collaboration between them and the governance of the Company.
- (3) By a deed of contribution (“**DOC**”) made on the same date, the Home Authorities agreed to certain arrangements relating to the Company as between themselves.

- (4) As a result of subsequent developments, and in particular (i) changes to the way in which the Welsh Ministers are funding the activities carried out by the Company and (ii) a review by the Company and the Home Authorities of the governance arrangements for the Company and its activities, the Parties have agreed to enter into this agreement (the “**Agreement**”) for the purpose of recording certain further matters which they have agreed to put in place.

## **OPERATIVE PROVISIONS**

### **1. INTERPRETATION AND RELATIONSHIP TO CAMA**

- 1.1 Except as otherwise indicated in this Agreement, capitalised words and phrases used in this Agreement shall have the same meaning as in the CAMA.
- 1.2 Clauses 1.2 to 1.7 and 23 to 33 of the CAMA shall form part of this agreement, as if separately set out herein *mutatis mutandis*.
- 1.3 The following words and phrases shall have the following meanings in this Supplemental Agreement and (unless otherwise specified in this Supplemental Agreement) in the CAMA as amended by this Supplemental Agreement:

**Additional Services:** is as defined in the Commissioning Agreement

**Articles:** means the Company’s Articles of Association, and reference to an **Article** shall be to one of the Articles

**Banker Authority:** means the Home Authority providing support provider services to the Company pursuant to a separate contract.

**Bespoke Services:** is as defined in the Commissioning Agreement

**Core Services:** is as defined in the Commissioning Agreement

**Grant Funded Services:** means the services as specified in the relevant education grant funding conditions to be delivered by the Company to all or any of the Home Authorities as agreed and authorised in accordance with Clause 8.9 .

- 1.4 This Agreement is supplemental to the CAMA, which remains fully in force except to the extent that it is expressly amended by this Agreement.
- 1.5 If anything in this Agreement is inconsistent with or conflicts with the Articles, then Articles shall prevail.
- 1.6 The DOC shall remain in full force and effect notwithstanding the contents or operation of this Supplemental Agreement

## **2. GOVERNANCE**

- 2.1 Each Home Authority agrees that the individual nominated by it under Article 11.1 of the CAMA to be a member of the EAS Board shall be a senior Cabinet member.
- 2.2 The Home Authorities and the Company agree that the following persons shall be entitled to attend at and participate in meetings of the EAS Board to advise the EAS Board:
  - (a) a lead Chief Executive and Lead Director of education each nominated by the Joint Executive Group];
  - (b) four expert external advisers appointed by the Company and the Home Authorities jointly, following a fair and open public advertisement

Such persons shall have no rights to vote and shall not be directors of the Company.

- 2.3 The Home Authorities agree that they will take steps to amend the Articles so that the quorum for a meeting of the EAS Board shall be three people and that the tenure of the Chair of the Board shall be 24 months. Pending such amendments to the Articles, the Home Authorities agree that the Company may operate on that basis, and no Home Authority shall question or impugn any decision or proceedings of the Board made on that basis and hereby confirm the validity of any such decision or proceedings made on that basis to date.
- 2.4 The Parties further agree that the following amendments be made to the CAMA to reflect changes to the governance of the Joint Executive Group:
  - 2.4.1 Clause 5.5. shall be amended by replacing "12 months" in the second line of the clause with "24 months".

2.4.2 Clause 5.9 shall be amended by replacing "four (4) Cabinet Members" with "three (3) Cabinet Members".

2.4.3 Clause 5.12 shall be amended by replacing "at least four" in the second line of the clause with "at least three".

### **3. FUNDING AND BUSINESS PLAN**

With effect from [insert date ], the following provisions shall apply:

3.1 Schedule 2 of the CAMA is replaced by the wording set out in Schedule 1 of this Agreement

3.2 Clause 8.3 shall be amended as follows:

3.2 In the last line of the clause, delete '*Co-operative Bank*' and insert '*Lloyds Bank*'.

3.3 Insert at the end of the clause the following '*, or, if different, the base rate of the Company's current banker*'

3.3 Clause 8.5 shall be amended by:

3.3.1 deleting Clause 8.5, paragraph (a); and

3.3.2 deleting Clause 8.5, paragraph (b); and

3.3.3 inserting after Clause 8.5 paragraph (f) a new paragraph and the words '*unless otherwise agreed in writing by the Parties*'.

3.4 A new Clause 8.5A shall be added to the CAMA, reading as follows:

*The Business Plan for each Financial Year shall describe the Core Services to be delivered by the Company in that Financial Year and shall have appended to it 5 appendices, one in respect of each Home Authority, which shall set out the Bespoke Services delivered to each Home Authority that will be resourced by the Company.*

3.4 Clause 8.7 of the CAMA is replaced by:

*The Business Plan for each Financial Year from and including [ ] shall be dealt with as follows:*

*(a) the Business Plan will be prepared by the Managing Director and referred to the Joint Executive Group for comment at least 45 Calendar Days before the end of the preceding Financial Year.*

*(b) The Joint Executive Group shall within 15 Calendar Days present its comments on the Business Plan in writing to the Managing Director. If the Joint Executive Group has not done so within that time, then the Joint Executive Group shall be deemed not to have any comments to make on the Business Plan.*

*(c) within 15 Calendar Days, the Business Plan together with the comments (if any) of the Joint Executive Group shall be presented to the EAS Board and adopted (as amended by the EAS Board), taking account of such comments (if any).*

*(d) once adopted by the EAS Board, the Business Plan will be submitted to each Home Authority for consideration and approval by that Home Authority. Each Home Authority shall notify its approval or disapproval within 15 Calendar Days, failing which such Home Authority shall be deemed to have approved the Business Plan. No Home Authority shall unreasonably withhold or refuse its approval.*

3.5 A new clause shall be added to the CAMA as Clause 8.8 to the CAMA, reading as follows:

8.8 *If any Home Authority wishes to procure Additional Services*

*such Home Authority and the Company may agree the terms on which such Additional Services shall be delivered in accordance with the procedure set out in Clause 5 of the Commissioning Agreement. Such agreement shall not impact on the delivery of the Core Services or the Bespoke Services. Such agreement shall not require the approval of the Joint Executive Group or of any other Home Authority, but shall be communicated to the Joint Executive Group where the cumulative value of the services rendered to any one Home Authority in any Financial Year exceeds £10,000 (ten thousand pounds).*

3.6 A new clause shall be added to the CAMA as Clause 8.9, reading as follows:

8.9 *Any education grant funding made available to the region to provide Grant Funded Services requires each Home Authority's Chief Education Officer to formally approve the commissioning of such work in accordance with the following procedure:*

8.9.1 *On receipt of a regional grant offer for education purposes, the Company in line with internal planning processes will evaluate the grant offer to ensure it is compliant with current priorities and offers added benefits to outcomes for learners without adversely affecting the Company's ability to deliver Commissioned Services.*

8.9.2 *If 8.9.1 is approved, a plan for the use of such grant funding shall be prepared by the Managing Director and communicated electronically to:*

8.9.2.1 *each Home Authority's Chief Education Officers for approval; and*

8.9.2.2 *the nominated SEWC Finance Officer for each Home Authority.*

8.9.3 *Each Home Authority's Chief Education Officer following the approval request will confirm their decision having followed their internal constitutional requirements.*

8.9.4 *If after 10 working days there has been no response from any or all of the Home Authorities' Chief Education Officers then the grant plan shall be deemed to have been approved. In exceptional cases, and only with prior agreement from the Lead Chief Education Officer (appointed pursuant to the Articles), the working days for responding will be reduced to meet the requirements imposed by the grant conditions and delivery timeframe.*

8.9.5 *Any dispute over grant expenditure will be considered and determined by the Joint Executive Group.*

8.9.6 *To support a fully auditable trail and compliance with grant term and conditions the Home Authorities' Chief Education*

*Officers at the next available meeting are required to formally minute the approval with any comments or non-approval and the reasons minuted. In addition each grant will require the signature of each chief education officer or person with the nominated delegated powers through their constitutional agreement within their local authority.*

8.9.7 *Following agreement to proceed pursuant to Clause 8.9.3 or 8.9.4, details of the grant along with delivery and expected outcome will be presented for information at the next available meeting of the Joint Education Group.*

8.9.8 *To support and enable the work of the Banker Authority a full audit trail of the approved delivery, expected outcomes, minutes of the Home Authorities' Chief Education Officers meeting and the signature of each officer or member with delegated powers will be passed to the Banker Authority.*

8.9.9 *On receipt of this information the Banker Authority will respond to the grant provider with 5 working days with all required signatures to enable the grant to proceed.*

8.9.10 *If approval by the Home Authorities' Chief Education Officers of a grant is made with any comment for further information or clarification around the spending plan, the Managing Director will communicate this required information or alterations to the spending plan by email. If after 5 working days the Home Authorities' Chief Education Officers have not respond then the Chief Education Officers shall be deemed to have approved the grant plan and signatures through delegated powers to the approval sought.*

8.9.11 *There will be instances where approved use of grant plans will need to be amended to facilitate and achieve the desired outcomes. To enable the Company to react to the situation, the Managing Director or Company Secretary has the authority to approve individual virements up to –*

8.9.11.1 *£50,000 if the changes have no impact on the agreed delivery outcomes.*



8.9.112      £15,000 if the changes have an impact on the delivery outcomes

*Amounts in excess of the figures will follow the procedures set out in Clause 8.9.2 to Clause 8.9.4 with the response amended to 5 working days. Electronic responses will be forwarded to the Banker Authority and held on the grant file to support grant audit requirements.*

3.7      A new clause shall be added to the CAMA as Clause 11A, reading as follows:

*11A External Services*

*11A.1      The Company may from time to time be approached by other organisations to provide education services. Subject to Clause 11A.3, in the event of such a request the Company must:*

*11A.1.1    refer the matter to the Joint Executive Group outlining:*

*11A.1.1.1    the extent of the services requested, including the duration and time and effort required by the Company to deliver the requested services;*

*11A.1.1.2    the effect the provision of such services will have on the Company's ability to deliver Core Services, Bespoke Services and any Additional Services to the Homes Authorities;*

*11A.1.1.3    the reasons why the Company wishes to provide such services including any financial benefit the Company may incur and how the Homes Authorities will benefit from this;*

*11A.1.1.4    the risks involved in agreeing to provide such services; and*

*11A.1.1.5    any other information required by the Joint Executive Group.*

*11A.2      Where a matter has been referred to the Joint Executive Group pursuant to Clause 11A.1, the Company may only proceed with*

*such a request if approved by the Joint Executive Group in accordance with Clause 5.12.*

11A.3 *The Homes Authorities hereby agree that where a request to provide education services to organisations other than the Homes Authorities and such request equates to a contract worth:*

11A.3.1 *£50,000 and it will have no impact on agreed delivery outcomes; or*

11A.3.2 *£15,000 and will have an impact on agreed delivery outcomes;*

*the Company may proceed with such a request provided it notifies the Joint Executive Group at the next meeting and provides the information listed in 11A.1.1.1-11A.1.15.*

#### **4 OTHER CHANGES TO THE CAMA**

4.1 Clause 5.1.2 shall be amended by:

4.1.1 deleting the word '*approving*'; and

4.1.2 inserting the word '*challenging*'.

4.2 Clause 5.1.6 shall be amended by:

4.2.1 deleting '*Academic Year*' at the end of the clause; and

4.2.2 inserting '*Financial Year*' at the end of the clause.

4.3 A new clause shall be added to the CAMA as Clause 5.3A, reading as follows:

5.3A *The Home Authorities agree that up to one (1) expert Diocese from the South East region shall also be entitled to attend at and participate in meetings of the Joint Executive Group. Such person shall have no rights to vote at the Joint Executive Group.*

## **5 AUDIT COMMITTEE**

- 5.1 The Home Authorities and the Company agree that there shall be a committee of the EAS Board which shall be known as the Audit Committee
- 5.2 The composition and terms of reference of the Audit Committee shall be as decided by the EAS Board from time to time, with the approval of the Joint Executive Group.
- 5.3 Nothing in this Agreement or in the terms of reference of the Audit Committee shall be construed as empowering the EAS Board to delegate anything to the Audit Committee in contravention of Article 13.4.

## **SCHEDULE 1**

### **Schedule 2 Funding**

#### **1. Funding of the Company**

1.1 Funding for the Company will be provided to the Company by each of the Home Authorities as follows.

#### **1.2 Core Local Authority Funding (excluding Governors Support)**

1.2 The Business Plan for each Financial Year shall describe the Core Services to be delivered by the Company.

1.2 Each year, the company secretary will identify, in collective consultation with Home Authorities Directors' of Education, the estimated cost of the Core Services required from each of the Home Authorities to fund the Business Plan by 31<sup>st</sup> January in the preceding Financial Year.

1.2.1 The Core Service funding (excluding the Governor Support element) required from each Home Authority will be based on the national agreement as referenced in the Welsh Government "National Model for Regional Working" (most up to date version).

1.2.2 The Company will issue a VAT invoice to each Home Authority for the estimated Core Services funding required by each Home Authority for the quarter, in advance on the first calendar day of each quarter or the next available working day 1<sup>st</sup> April, 1<sup>st</sup> July, 1<sup>st</sup> October and 1<sup>st</sup> January.

1.2.3 Each Home Authority will pay their invoice within 30 days of the invoice date.

1.2.4 At the end of each Financial Year and before the 15<sup>th</sup> May, the Company will calculate the total actual charge for delivering the Core Services to the Home Authorities for the preceding Financial Year.

1.2.4.1 In the event of the total actual cost of the Core Services for the preceding Financial Year being (i) less than the total estimated cost of Core Services and (ii) up to 5% less than the total estimated Core Services funding required for that year, then the Company will retain in order to reinvest into future service delivery. These monies will be set aside within the Company and any usage thereof must be approved by the EAS Board.

1.2.4.2 In the event of the total actual cost of Core Services for the preceding Financial Year being (i) less than the total estimated cost of Core Services and (ii) above 5% of the total estimated Core Service funding required for that year, then the Company will issue a credit note to each Home Authority, for the amount in excess of 5%, calculated in the same proportion as the estimated costs of Core Services for each Home Authority. A refund will be issued to each Home Authority with 30 days of the date of the credit note.

1.2.4.3 In the event that (i) the total actual costs of Core Services exceed the total estimated costs of Core Services and (ii) this overspend has been approved by the appropriate delegated powers within each Home Authority, the Company will issue an invoice to each Home Authority for

their share plus VAT (calculated in the same proportion as the estimated costs of Core Services for each Home Authority). Each Home Authority will pay their invoice within 30 days of the date of the invoice.

1.2.4.4 In the event that (i) the total actual cost of the Core Services exceeds the estimated cost of the Core Service and (ii) this overspend has not been approved by the appropriate delegated powers within each Home Authority, then the Company will notify the appropriate delegated powers within each Home Authority and issue a VAT invoice to each Home Authority for their share (calculated in the same proportion as the estimated charge per Home Authority). The Company will then issue credit notes to each Home Authority over an agreed period for the same amount, in order to reduce the Core Service charge for an agreed period to repay the loan.

### **1.3 Core Local Authority Funding (Governors Support)**

1.3.1 Additionally, the Company Secretary will agree with each Home Authority the annual charge required for the governors support element of the Core Service as contained within the approved Business Plan by 31<sup>st</sup> January. The Company will issue a VAT invoice on 1<sup>st</sup> April for 50% of the costs and the remaining on 1<sup>st</sup> October to each Home Authority. Each Home Authority will pay their invoice within 30 days of receipt.

### **1.4 Grant Funding**

1.4.1 To the extent that grant income is provided to the Home Authorities to provide Grant Funded Services , the Company will issue a VAT invoice to the Banker Authority for the region for the services provided monthly in arrears. The Banker Authority will pay the invoice within 30 days from the regional grant budget.

1.4.2 To the extent that any other grant income is provided to the Home Authorities as an individual grant and used to fund services provided by the Company, the Company will issue a VAT invoice to the relevant Home Authority for the services provided monthly in arrears. The Home Authority will pay the invoice within 30 days from the regional grant budget.



SIGNED BY the duly Authorised Representatives of the Parties on the date stated at the beginning of this Agreement

THE COMMON SEAL of

BLAENAU GWENT COUNTY BOROUGH COUNCIL

was hereunto affixed in the )

presence of: )

.....

Authorised Officer

THE COMMON SEAL of

CAERPHILLY COUNTY BOROUGH COUNCIL

was hereunto affixed in the )

presence of: )

.....

Authorised Officer

THE COMMON SEAL of

MONMOUTHSHIRE COUNTY COUNCIL

was hereunto affixed in the )

presence of: )

.....

Authorised Officer



THE COMMON SEAL of  
NEWPORT CITY COUNCIL

was hereunto affixed in the )

presence of: )

.....

Authorised Officer

THE COMMON SEAL of  
TORFAEN COUNTY BOROUGH COUNCIL

was hereunto affixed in the )

presence of: )

.....

Authorised Officer

Signed for and on behalf of ) .....

SOUTH EAST WALES )

EDUCATION ACHIEVEMENT )

Signature

SERVICE )

by a duly authorised ) .....

representative )

Name

.....

Position