

Draft 14.2.12 (following suggested revisions from Powys & Ceredigion)

***North and Mid Wales Trunk Road
Agency***

Partnership Agreement

2012

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THIS AGREEMENT is made the
B E T W E E N

- **CEREDIGION COUNTY COUNCIL (1)**
 - **CONWY COUNTY BOROUGH COUNCIL (2)**
 - **DENBIGHSHIRE COUNTY COUNCIL (3)**
 - **FLINTSHIRE COUNTY COUNCIL (4)**
 - **GWYNEDD COUNCIL (5)**
 - **ISLE OF ANGLESEY COUNTY COUNCIL (6)**
 - **POWYS COUNTY COUNCIL (7) and**
 - **WREXHAM COUNTY BOROUGH COUNCIL (8)**
- ("the Authorities" and "Authority" means any one of them)

WHEREAS:-

- (1) Gwynedd Council as Lead Authority has entered into an Agency Agreement with the Welsh Government for the management, maintenance and improvement of trunk roads within the area of the Authorities
- (2) This Agreement is entered into to establish the relationship rights and liabilities between the Authorities in order to implement the Agency Agreement

NOW IT IS AGREED as follows:-

1 Definitions and interpretation

1.1 In this agreement unless the context otherwise requires:

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| <p>"the 1972 Act"</p> <p>"the 1980 Act"</p> <p>"the 1994 Act"</p> <p>"the 2000 Act"</p> <p>"Agency Accounts"</p> <p>"Agency Agreement"</p> <p>"Agency Area"</p> <p>"Agency Manager"</p> <p>"the Agency Service" or
"the Service"</p> <p>"Agent"</p> <p>"Assembly"</p> <p>"Authority" or
"Partner Authority"</p> <p>"Corporate Director"</p> <p>"Chief Officers"</p> <p>"Financial Year"</p> <p>"Further Agency Agreements"</p> <p>"Joint Committee"</p> <p>"Lead Authority"</p> <p>"Partnership"</p> | <p>means the Local Government Act 1972</p> <p>means the Highways Act 1980</p> <p>means the Local Government (Wales) Act 1994</p> <p>means the Local Government Act 2000</p> <p>means the accounts to be kept pursuant to paragraph 2 of the schedule to this Agreement</p> <p>means the North and Mid Wales Trunk Road Managing Agency Agreement relating to the maintenance and improvement of trunk roads made between the Assembly and the Lead Authority on behalf of the Authorities</p> <p>means the trunk roads within the area defined by the Agency Agreement</p> <p>means the person appointed by the Lead Authority to the post of managing the implementation of the Agency Agreement and also defined by the Agency Agreement</p> <p>means the service provided to the Assembly under the terms of the Agency Agreement</p> <p>means Gwynedd Council acting in its role as Lead Authority of the Partnership and as signatory to the Agency Agreement</p> <p>means the National Assembly for Wales,</p> <p>means any one of the Authorities</p> <p>means the Corporate Director at the Lead Authority with responsibility for leading on the Agency Agreement;</p> <p>means the chief officers of each of the Authorities with responsibility for delivering the Partnership Commitments of the Authority or their delegated officers</p> <p>Means a period of 12 months commencing on 1 April in any year and ending on 31 March in the following year</p> <p>means any further or additional agreement relating to trunk roads within the area of the Authorities</p> <p>means the "North and Mid Wales Trunk Road Agency Joint Committee" to be established under clause 9 of this Agreement</p> <p>means Gwynedd Council</p> <p>means the joint working arrangements established by the Authorities for the implementation and administration of the Agency Agreement.</p> |
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“Service Provider Schedule	means the document defining the service delivery requirements between the Lead Authority and each Authority.
“Service Provider Unit”	means an in-house team, unit, section or department of an Authority which provides or carries out, or offers to provide or carry out, any direct service, contract service, professional service or support service pursuant to a Service Provider Schedule for the provision of Agency Services
“Termination”	means the termination of this Agreement pursuant to clause 12
“TRMU”	means the Trunk Road Management Unit.

- 1.2 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)
- 1.3 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 novated from time to time, and include any schedules and appendices
- 1.4 Headings are inserted for convenience only and shall not affect the construction of this agreement
- 1.5 Words importing one gender include all other genders and words importing the singular include the plural and vice versa
- 1.6 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
- 1.7 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
- 1.8 References to “includes” “including” or “in particular” are to be construed as being by way of illustration and shall not limit or prejudice the generality of the foregoing words

2 Preliminary

- 2.1 This Agreement is made pursuant to the powers contained in the 1972 Act, Section 25 of the 1994 Act and section 20 of the 2000 Act as being conducive to the discharge of the functions of the Authorities as local highway authorities for the purposes of the 1980 Act
- 2.2 It is agreed between the Authorities that a joint committee shall be established pursuant to sections 101 and 102 of the 1972 Act section 25 of the 1994 Act and section 20 of the 2000 Act for the purpose set out in clause 9.2 and which shall be known as “The North and Mid Wales Trunk Road Agency Joint Committee”

3 The Partnership

- 3.1 The Partnership shall operate in accordance with the terms of this Agreement and the Authorities agree that the terms of the Agency Agreement are incorporated in this Agreement and each of them shall abide by those terms when delivering services pursuant to the Agency Agreement and terms of the Agency Agreement take precedence over the terms of this Agreement where there is any inconsistency
- 3.2 The Partnership shall come into effect upon the commencement date of the Agency Agreement and shall continue until Termination

4 Responsibilities of the Lead Authority

- 4.1 The Lead Authority shall, with the assistance of the remaining Authorities, be responsible for implementing the Agency Agreement and ensuring compliance with its requirements; allocating services to the Service Provider Units for the provision of the Agency Service; managing the TRMU; servicing and supporting the Joint Committee; operating and managing the Agency Accounts; establishing Standing Orders, Financial Regulations, Human Resource Strategies and Procurement Strategies; appointing staff or agreeing secondment of staff as required to implement the Agency Agreement and this Agreement; providing legal, financial and administrative support services to the TRMU, the Joint Committee and generally to support the Agency Agreement and monitoring and auditing all aspects of the TRMU’s operations
- 4.2 Any right or responsibility of the Lead Authority as Agent shall be exercised in accordance with this Agreement

5 Commencement and Term

- 5.1 This Agreement shall come into force on the date hereof
- 5.2 Termination shall be in accordance with clause 12
- 5.3 Following Termination of this Agreement whether pursuant to clause 12 or otherwise
 - 5.3.1 The provisions of clauses 1 (Interpretation) 11 (Liability) shall bind the parties and remain in full force and effect notwithstanding Termination;
 - 5.3.2 Any rights or obligations to which any of the parties may be entitled or be subject before Termination shall remain in full force and effect; and
 - 5.3.3 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

6 Staffing and Operational matters

- 6.1 The staff structure for the TRMU shall be the responsibility of the Lead Authority. The staff of the TRMU shall be the employees of the Lead Authority.
- 6.2 Provision of services within the Agency Area shall be by Service Provider Units in accordance with Service Provider Agreements or external contractors in accordance with the Lead Authority's Financial Regulations and Contract Procedure Rules for the letting of contracts
- 6.3 Service Provider Units may, if required by the Lead Authority, operate within any part of the Agency Area in accordance with section 25 of the 1994 Act and in accordance with the Agency work allocation protocol contained within the Service Provider Agreement.

7 Service Provider Units

- 7.1 The staff structure and appointment of staff for any Service Provider Unit engaged in the provision of the Agency Service shall be the responsibility of the relevant Authority and each of the Authorities shall appoint sufficient and suitable staff to ensure that Service Provider Units meet their obligations under this Agreement.
- 7.2 Each Service Provider Unit shall be responsible for executing its part of its obligations under this Agreement not only in accordance with the Service Provider Schedule agreed with that authority but also in a proper workmanlike and substantial manner in accordance with generally accepted practice and with due regard to all relevant health and safety requirements either by law or which it is best practice to provide and shall be responsible for the safety, proper functioning, fitness for purpose and compliance with all legal requirements of all plant tools and equipment it brings into the Service

8 Service Delivery

- 8.1 In general, the Agency protocol for service delivery is that all suitable and relevant trunk road work shall be allocated by the TRMU to each Authority in respect of its own area on a subject to capability and capacity basis.
- 8.2 The details of service delivery arrangements for each Authority shall be set out in the Service Provider Schedule agreed between the Lead Authority and each Authority.
- 8.3 Each Authority shall ensure that it has sufficient and capable resources to deliver the service requirements set out in the Service Provider Schedule.
- 8.4 The Authorities undertake to use their best endeavours to provide the services set out in the Service Provider Schedule efficiently and demonstrably at value for money and in accordance with the requirements of the Agency Agreement.
- 8.5 The Lead Authority shall be responsible for all aspects of the TRMU's performance and compliance with the Agency Agreement and Welsh Government requirements. The TRMU shall be responsible for co-ordinating all necessary services and works in pursuance of the procedures as outlined above and as set out in individual Service Provider Schedules.
- 8.6 For ease of administration, authority to change an individual Service Provider Schedule shall, under this Agreement, be delegated for - agreement between the Agency Manager and a Chief Officer. Any disputes shall be dealt with as outlined in the procedure at paragraph 9.6 of this Agreement.

9 The Joint Committee

- 9.1 The Authorities shall form a joint committee (The North and Mid Wales Trunk Road Agency Joint Committee) for the purpose set out in clause 9.2
- 9.2 The Joint Committee shall be responsible for supporting the Lead Authority and Service Provider Units in meeting the requirements of the Agency Agreement and its terms of reference shall be:-

- 9.2.1 to monitor work allocation to Service Provider Units
- 9.2.2 to ensure that the TRMU satisfies Welsh Government requirements with regard to the Agency Agreement
- 9.2.3 to monitor performance of Service Provider Units
- 9.2.4 to receive reports on the management of the Partnership arrangements, and to take any necessary action to ensure that the operation of the Partnership is satisfactory
- 9.2.5 to monitor arrangements and proposals to enable continuous improvement of the service provided to the Welsh Government under the agency agreement
- 9.2.6 to consider issues referred to the Joint Committee under clause 9.6.

9.3 Meetings of the Joint Committee

- 9.3.1 The Inaugural Meeting shall take place as soon as practicable following the signing of this Agreement. The Joint Committee shall thereafter meet at intervals agreed by the Joint Committee but at least once in every Financial Year and
- 9.3.2 the first meeting of the Joint Committee in any Financial Year shall take place before 30th September in that year
- 9.3.3 the time and venue for meetings of the Joint Committee shall be determined by the Chairman.
- 9.3.4 the provisions of paragraph 3 of Part 1 of Schedule 12 to the 1972 Act (calling of extraordinary meetings) shall apply to this Agreement subject to the variation that references to “five members” in that paragraph shall be construed as references to “Four Authorities”

9.4 Constitution of the Joint Committee

- 9.4.1 The Joint Committee shall consist of eight (8) councillors one (1) from each of the Authorities.
- 9.4.2 Each Authority shall have one vote. Unless otherwise stated decisions shall be made by simple majority of votes. The quorum shall be at least one member from each of five Authorities.
- 9.4.3 Save as varied by this Agreement the Standing Orders of the Lead Authority shall apply to the proceedings of the Joint Committee and that Authority shall be responsible for the administrative arrangements in connection with the convening of meetings of the Joint Committee.
- 9.4.4 The proper officer of the Joint Committee for the purposes of the 1972 Act shall be the Chief Executive of the Lead Authority and the Scheme of Delegation of the Lead Authority shall apply so far as it is relevant.

9.5 Chairman and Vice-Chairman

- 9.5.1 The Chairman and Vice-Chairman of the Joint Committee in any year shall not be from the same Authority.
- 9.5.2 The Chairman and Vice-Chairman may be consulted on amendments or variations to the Agency Agreement and on the entering into of further Agency Agreements

9.6 Role of Officers

- 9.6.1 The Chief Officers shall ensure service delivery in accordance with this Agreement and any other agreements between the Lead Authority and Service Provider Units, and in accordance with the Agency Agreement
- 9.6.2 The Agency Manager shall act as reporting officer to the Joint Committee assisted as necessary by the Chief Officers
- 9.6.3 If any Chief Officer has reason to consider that the TRMU is procuring services in a way which is inconsistent with this Agreement he shall be required in the first place to raise the matter with the Agency Manager in order to resolve the issue;
- 9.6.4 If the Agency Manager considers that a Service Provider Unit is not fulfilling the requirements of this Agreement he shall raise the matter in the first place with the Chief Officer responsible for the Service Provider Unit in order to resolve the matter
- 9.6.5 If the issues raised in sections 9.6.3 or 9.6.4 remain unresolved, then the Chief Officer for the Service Provider Unit and the Corporate Director of the Lead Authority will consider the issue and seek to resolve the matter.
- 9.6.6 If, having considered the matter the issue remains unresolved the Chief Officer or the Corporate Director may refer the matter to the Joint Committee for determination.

- 10.1 Each Service Provider Unit shall provide and shall repair and maintain all plant tools and equipment required to perform any Agency Service
- 10.2 If any plant tools or equipment are lent or hired by any Authority to another, the borrower shall take all reasonable measures required to preserve them in good condition, including all day-to-day maintenance, and shall promptly deliver them up to the lender on request as soon as they are no longer required

11 Liability

- 11.1 In the event of:
 - 11.1.1 a successful claim being brought against any or more than one of the Authorities arising in respect of negligence, nuisance, breach of statutory duty or any other tort or in respect of any other legal right or remedy, howsoever arising out of the performance of the works under the Agency Agreement, including, for the avoidance of doubt breach of the conditions or requirements of the Agency Agreement or
 - 11.1.2 any occurrence affecting or abating the valuation of any work or materials supplied pursuant to the Agency Agreement resulting from a breach thereof by any Authority, or
 - 11.1.3 a successful prosecution against any Authority or their employees in respect of any failure to comply with any legal requirement to be complied with during the course of the works under the Agency,

then as between the Authorities all liabilities, costs, claims, demands, expenses, fines and other penalties (including legal fees and expenses) arising therefrom or in any way relating thereto shall be borne by any Authority to the extent of its responsibility therefor, determined in accordance with the Schedule and the provisions of this Agreement generally, and each of the Authorities shall indemnify and keep indemnified and account to the other Authorities accordingly.
- 11.2 The provisions of this clause shall survive the termination of this Agreement.

12 Termination

12.1 Termination of the Agency Agreement

- 12.1.1 In the event of the termination of the Agency Agreement:-
 - 12.2.1.1 This Agreement shall automatically terminate on the same date as the effective termination of the Agency Agreement
 - 12.2.1.2 the Joint Committee shall cease to exist on the same date as 12.1.1.1 above and
 - 12.2.1.3 each Partner Authority shall bear its own costs, if any, which are not met by the Assembly

12.2 Termination of this Agreement

- 12.2.1 THIS Agreement may be terminated on the 1st April in any year by:-
 - 12.2.1.1 any one or more of the Partner Authorities serving on the Chief Executives of each of the other Authorities before the preceding 1st April Notice of Termination (“the Notice of Termination”) whereupon the remaining Authorities may conclude a revised partnership between themselves by not later than the 1st October following the Notice of Termination
 - 12.2.1.2 the Joint Committee passing a resolution supported by three fourths of its members before the preceding 1st April terminating this Agreement
- 12.2.2 In the event that no revised partnership is set up as provided in clause 12.2.1.1 or in the event of Termination under clause 12.2.1.2 the Lead Authority may make such arrangements as are necessary to provide the Agency Service either to the continuing satisfaction of the Assembly or until such time as a new Agency Agreement is entered into by the Assembly
- 12.2.3 IN the event of the Termination in the circumstances set out in clause 12.2.1.1 any costs of the Authorities reasonably incurred jointly and severally as a direct result of the Termination of this Agreement and the Agency Agreement, and which are not chargeable to the Agency account shall be reimbursed by the Authority or Authorities responsible for the Termination
- 12.2.4 In the event of the Termination in the circumstances set out in clause 12.2.1.2, each Authority shall bear its own costs

PROVIDED THAT in any event of Termination of this Agreement

- 12.2.5 any rights or obligations to which any of the Authorities may be entitled or be subject before Termination shall remain in full force and effect; and
- 12.2.6 Termination 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

13 Financial Arrangements

THE financial arrangements for the administration of the Partnership shall be as set out in the Schedule to this Agreement.

AS WITNESS the hands of the parties hereto acting through their respective Chief Executives/Heads of Legal Service

SIGNED on behalf of

- CEREDIGION COUNTY COUNCIL**
- CONWY COUNTY BOROUGH COUNCIL**
- DENBIGHSHIRE COUNTY COUNCIL**
- FLINTSHIRE COUNTY COUNCIL**
- GWYNEDD COUNCIL**
- ISLE OF ANGLESEY COUNTY COUNCIL**
- POWYS COUNTY COUNCIL**
- WREXHAM COUNTY BOROUGH COUNCIL**

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THE SCHEDULE**Financial Arrangements****1 Definitions**

In this Schedule all reference to the Head of Finance is deemed to be a reference to the “responsible financial officer” who, by virtue of section 151 of the Local Government Act 1972, is responsible for the administration of the financial affairs of the Lead Authority, and where this Annex refers to “the Head of Finance”, this shall mean “the Head of Finance or other Finance officer nominated as the Head of Finance’s representative”. All other terms shall have the meanings identified or defined for them in this Agreement or in the absence of definition as defined in the Agency Agreement.

2 Agency Accounts

- 2.1 The Head of Finance shall establish a separate account for any finances connected to the operation of the Agency Agreement within the Lead Authority’s financial systems. All payments from the Assembly in connection with the Agency Agreement will be paid into this account, and all payments to Authorities and other parties in respect of the Agency Service or the implementation of the Agency Agreement will be made from this account.
- 2.2 Operation of the Agency Accounts shall be in accordance with the Lead Authority’s Financial Regulations.

3 Requisitions to the Assembly for Payment

The Agency Manager shall be responsible for making requisitions and other applications for payments to the Assembly in accordance with the Agency Agreement. The Agency Manager will be accountable to the Head of Finance for ensuring that all payments due from the Assembly are fully claimed at the appropriate time.

4 Contracts for Trunk Road Works

- 4.1 All contracts with external contractors or providers which are administered directly by the Trunk Road Management Unit for the provision of the Agency Service will be made between the Lead Authority and the contractor. The Lead Authority will make all necessary payments to contractors and other suppliers and will recover the costs from the Assembly in accordance with the Agency Agreement.
- 4.2 Where a Service Provider Unit of an Authority procures works or services from an external contractor or provider for the provision of the Agency Service, the contract will be made between that Authority and the contractor. That Authority shall be responsible for making all payments and administering all aspects of the contract and shall then be reimbursed by the Lead Authority in accordance with the Agency Agreement, this Agreement and any agreement between the Lead Authority and the Service Provider Unit.
- 4.3 If the Assembly elects to let a contract directly, the Assembly will make all payments to contractors or other suppliers. If a Service Provider Unit is employed to prepare, supervise or administer any such contract, payment for such functions will be arranged through the TRMU in accordance with the relevant Agreements.
- 4.4 All contracts shall be let in accordance with the relevant Authority’s Contract Procedure Rules and the general law relating to public procurement.

5 Works and Services Provided by Service Provider Units

- 5.1 Allocation of works, professional or other services, or supply of goods relevant to the Agency Service to Partners shall be in accordance with the Service Provider Agreements
- 5.2 Any arrangements between two or more Service Provider Units in order to carry out works, or to provide a service or to supply goods relevant to the Agency Service shall comply with the provisions of this Agreement.
- 5.3 In the event of default by any Service Provider Unit to fulfil its obligations under an Agreement referred to paragraph 5.1, or a Joint Arrangement under paragraph 5.2, the Agency Manager shall take appropriate action to ensure adequate performance of the Agency Agreement. If such action results in additional cost to any Authority or the Assembly, these shall be recoverable from the relevant Authority within which the Service Provider Unit(s) is/are located.
- 5.4 Each Authority accepts liability for the operation of its own Service Provider Unit(s), including any financial losses which may arise in undertaking the Agency Service, and agrees to indemnify the other Authorities in respect of the same.
- 5.5 It will be a matter for each of the authorities to make appropriate provision for any costs or other risks associated with maintaining a Service Provider Unit or similar which provides an Agency Service;
- 5.6 The prices, rates and payments agreed between any authority (in respect of a service provider unit or otherwise) and the Agency manager will include all other direct and indirect costs and all allowances for overheads, contingencies, insurances and other risks associated with the service provided, works undertaken or function performed.

6 Payments to Partner Authorities

- 6.1 The Agency Manager shall agree payments to be made to a Service Provider Unit for work carried out, service provided or performance of other agreed functions and shall certify the sums due on vouchers submitted to the Head of Finance.
- 6.2 Payments from the Lead Authority to each Authority shall be made monthly in arrears on receipt of monthly invoices in line with Welsh Government requirements and paid by the Agency Manager within 10 working days of receipt, subject to the deduction of disputed amounts.

7 Payments to Contractors etc

- 7.1 The Head of Finance shall arrange payment of any sums due to external contractors, consultants or suppliers as certified by the Agency Manager. The Agency Manager and the Head of Finance shall ensure that such payments are made within any time limits included in the relevant contracts or agreements.
- 7.2 Where an Authority enters into a contract as set out in paragraph 4.2, the Authority is responsible for ensuring all payments to Contractors are made in accordance with the contract and for accounting to the Agency Manager and Head of Finance for all reimbursement claimed.

8 Agency Budget

- 8.1 The Head of Finance will prepare an annual budget for all income and expenditure involved in the implementation of the Agency Agreement in consultation with the Agency Manager. The Budget will include all expected expenditure by the Lead Authority and all expected income from the Assembly or elsewhere.
- 8.2 The Budget will separately identify the estimated cost of management and administration including the proposed provision for items such as training, staffing the TRMU and costs of accommodation together with an indication of how those costs are covered by the income.

9 External Audit Arrangements

Authorities shall supply all necessary information to enable the Lead Authority to comply with the auditing requirements of the Assembly and the Wales Audit Office.

10 General

All expenditure and reimbursable expenses incurred are as defined in the Agency Agreement.