

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Environment and Highways Cabinet Board

5 January 2017

Report of the Head of Engineering & Transport

D. W. Griffiths

Matter for Decision

Wards Affected: All

Bus Services Support Grant Agreement

Purpose of Report

- 1 To seek Members' approval to enter into a joint legal agreement with the three South West Wales Authorities for the administration of the Bus Services Support Grant (BSSG).

Executive Summary

- 2 The Bus Services Support Grant (BSSG) aims to support the delivery of the Welsh Governments transport objectives as set out in the Wales Transport Strategy and the National Transport Finance Plan 2015.
- 3 At a local level, part of the grant is used by Local Authorities to directly fund socially necessary local bus services and community transport schemes.
- 4 The remainder of the grant is paid by Local Authorities to local bus operators and community transport providers to offset some of their operational costs through Live Kilometre Support Grant (LKSG), which in Wales is the successor to the Bus Service operators Grant (BSOG) scheme. However, in Wales the grant is paid per live kilometre operated rather than partly offsetting fuel costs.

Background

- 5 Since 2014/2015 the City and County of Swansea ("Swansea") has acted as the Lead Authority for BSSG, in terms of receiving the grant from the Welsh Government and distributing it to the other Local Authorities.
- 6 Neath Port Talbot, Swansea, Carmarthenshire County Council and Pembrokeshire County Council have worked collaboratively in delivering LKSG, with Carmarthenshire taking the lead on administering the scheme.

- 7 LKSG has also been the mechanism for distributing the Welsh Government's Welsh Young Persons Discount Travel Scheme (WYPDTS) since 2015/2016.
- 8 For 2016/2017, the Welsh Government is providing the four South West Wales Local Authorities funding of £5,223,940 for BSSG (including LKSG) and £2,031,217 for WYPDTS.
- 9 In spring 2017, the Welsh Government intends to audit Swansea for BSSG, the audit will be for the years 2014/2015 and 2015/2016.
- 10 Section 5(iii) of the BSSG 2016/2017 award letter requires the Local Authorities to have in place a collaboration agreement, to which all parties have signed up. Swansea has agreed to this in accepting the award of funding.
- 11 A draft agreement was drawn up by City and County of Swansea's legal team in 2014 and has been considered by the respective legal sections of the other three Local Authorities. However, it remains in draft format. Therefore, the Agreement needs to be agreed and in place prior to the audit. The Agreement is provided at appendix A for Members' information.

Financial Implications

- 12 There is no financial impact on the Council.

Equality Impact Assessment

- 13 A Screening Assessment has been undertaken to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010. After completing the assessment it has been determined that this proposal does not require an Equalities Impact Assessment.

Workforce Impact

- 14 There is no impact of the workforce

Legal Impact

- 15 The Council will be required to enter into a Collaboration Agreement with the City and County of Swansea, Carmarthenshire County Council and Pembrokeshire County Council for the administration of the BSSG. The Collaboration Agreement sets out the Council's responsibilities in respect of the administration of the BSSG.

Risk Management

16 The Collaboration Agreement sets out the Council's responsibilities in respect of the administration of the BSSG and covers the defaulting obligations that the Council must be aware of and the necessary risks involved in the event of the Collaboration Agreement terminating.

Consultation Outcome

17 There is no requirement under the Constitution for external consultation on this item.

Recommendation

18 It is recommended that:-

- (a) The Director of Environment and the Head of Engineering and Transport be granted delegated authority to negotiate and agree the final terms of the Collaboration Agreement in respect of the Bus Services Support Grant.
- (b) The Director of Environment and the Head of Engineering and Transport be granted delegated authority to carry out on behalf of the Neath Port Talbot County Borough Council for the purposes of the Collaboration Agreement in respect of the Bus Services Support Grant and be granted all the delegated powers of such a representative, and further delegates to the Head of Engineering and Transport be appointed the power to appoint an alternate or deputy for the purposes of the Collaboration Agreement.
- (c) The Director Head of Engineering and Transport be granted delegated authority to sign the Collaboration Agreement for the Bus Services Support Grant on the part of Neath Port Talbot County Borough Council.

Reason for Proposed Decision

19 To ensure continued BSSG payments to local bus operators.

Implementation of Decision

20 The decision is proposed for implementation after the three day call in period.

Appendices

21 Appendix A - Agreement

List of Background Papers

22 N/A

Officer Contact

23 Peter Jackson, Integrated Transport Manager
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Appendix A

DATED 201...

AGREEMENT

BUS SERVICES SUPPORT GRANT

LEAD OFFICER RESPONSIBLE FOR CITY AND COUNTY OF SWANSEA COUNCIL

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LEAD OFFICER RESPONSIBLE FOR NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

NAME: Peter Jackson
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LEAD OFFICER RESPONSIBLE FOR CARMARTHENSHIRE COUNTY COUNCIL

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LEAD OFFICER RESPONSIBLE FOR PEMBROKESHIRE COUNTY COUNCIL

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BETWEEN

- (1) **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL** of The Quays, Brunel Way, Baglan Energy Park, Neath, SA11 2GG ("Neath Port Talbot")
- (2) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall Carmarthen SA31 1JP ("Carmarthenshire") and
- (3) **PEMBROKESHIRE COUNTY COUNCIL** of County Hall Haverfordwest SA61 1TP ("Pembrokeshire")

(hereinafter referred to as "the Joint Authorities" and which includes any statutory successors)

and **CITY AND COUNTY OF SWANSEA COUNCIL** of Civic Centre, Oystermouth Road Swansea SA1 3SN ("Swansea Council") (hereinafter referred as "the Lead Authority" for Legal and Financial elements and includes any statutory successor)

WHEREAS

- (i) The Welsh Government (WG) has approved Funding in the form of a Bus Services Support Grant in respect of services to be undertaken in the whole or part of the Lead and Joint Authority areas.
- (ii) Welsh Government will provide the Funding.
- (iii) The application was made, by offer letters dated 28 March 2014, 24 April 2015 and 17 May 2016 (together hereinafter referred to as the Grant Offer Letter), included in Schedule 3, and the Lead Authority is required to accept the terms and Conditions of the Grant Offer Letter, on behalf of itself and the Joint Authorities and will be liable to WG if the terms and conditions are not complied with or breached.
- (iv) The grant aims to support the commitments in the One Wales Programme and the priorities in the National Transport Finance Plan 2015 that recognise the importance of local bus and community transport services in achieving Ministers' objectives for a better, more sustainable transport network.

OPERATIVE PROVISIONS

CONTRACT CONDITIONS

1. This Agreement comprises the entire agreement between the Parties and supersedes all other understandings or agreements in respect of the provision of services within the Grant. The initial headline purposes set by WG and agreed by the Parties are as contained in Schedule I of the Grant Offer Letter:
2. **INTERPRETATION**
 - 2.1 In this Agreement:
 - 2.1.1 "Agreement" means this Agreement including all Schedules and Appendices listed below;
 - 2.1.2 "Agreed Claim Date" means the date that the payment claims must be submitted to the Lead Authority as set by the Passenger Transport Working Group
 - 2.1.3 "Authorities" means the Lead Authority and Joint Authority or where the context requires the Lead Authority and the Joint Authorities and "Authority" shall be construed accordingly
 - 2.1.4 "Commencement Date" means 1 April 2014

- 2.1.5 "Completion Date" is 31 March 2017 (with an option to extend for a further 12 month period and PTWG and any or all of the Authorities can agree each year to extend for an additional year thereafter (up to a maximum of an additional 1 time) on the terms stated in clause 11.3)
- 2.1.6 "Conditions" means the terms, conditions and obligations contained in this Agreement
- 2.1.7 "Costs" means the reasonable administrative, professional and any other costs incurred by the Lead Authority in acting for all the Joint Authorities
- 2.1.8 "Default Notice" means a default notice served by the Lead Authority in accordance with Clause 7
- 2.1.9 "Defaulting Party" means a Joint Authority who has been served with a Default Notice by the Lead Authority under the terms of clause 7
- 2.1.10 "Direct Loss" means all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses
- 2.1.11 "Financial Conditions" means the Financial Conditions in respect of payment of the WG funding to all the Authorities set out in Schedule 2
- 2.1.12 "Funds" means monies paid out by the Lead Authority to the Joint Authorities and Transport Providers in respect of the Scheme
- 2.1.13 "General Conditions" mean the General Conditions set out in Schedule 1
- 2.1.14 "Grant" means the funding payable in respect of the Scheme in accordance with the Grant Offer Letter
- 2.1.15 "Grant Offer Letter" means the letters dated 28 March 2014, 24 April 2015 and 17 May 2016, a copy of both is included in Schedule 3, offering the Grant funding, and containing the terms and conditions of the Grant.
- 2.1.16 "Indirect Loss" means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature
- 2.1.17 "Notification Event" means the events listed in Schedule 2 of the Grant Offer Letter dated 28 March 2014 and 24 April 2015 and Schedule 3 of the Grant Offer Letter dated 17 May 2016
- 2.1.18 "Parties" means the Lead Authority and Joint Authority or where the context requires the Joint Authorities and the Lead Authority and "Party" shall be construed accordingly
- 2.1.19 "Passenger Transport Working Group" or "PTWG" means the management team established by the Authorities to undertake the overall strategic management of the Scheme and to act as the link with WG.
- 2.1.20 "Scheme" means the Bus Services Support Scheme which will be the subject of the Grant.
- 2.1.21 "Regulations" means European Council Regulations:
1303/2013
1304/2013
1301/2013
and European Commission Regulations
480/2014
288/2014
184/2014
215/2014
1011/2014
821/2014

240/2014

520/2014

and any other such relevant Regulations that may be issued from time to time.

- 2.1.22 "Welsh Ministers" means the Welsh Ministers appointed under Section 48 and the First Minister appointed under Section 46 of the Government of Wales Act 2006
- 2.1.22 "WG" means the Welsh Government (including any of their committees or any Welsh Government other body)
- 2.2 Clause headings in this Agreement are for convenience only and shall have no contractual effect
- 2.3 Any reference to a clause is a reference to a clause of this Agreement
- 2.4 Words importing one gender shall include the other gender and words importing the singular include the plural and vice-versa
- 2.5 Reference to "individual" or "person" shall include bodies corporate unincorporated associations and partnerships
- 2.6 Any reference to any enactment or statutory instrument shall be deemed to include reference to such enactment or statutory instrument as re-enacted amended or extended
- 2.7 An obligation not to do or omit to do something shall be deemed to include an obligation not to permit or (so far as is reasonably practicable) suffer that thing to be done or omitted to be done
- 2.8 An obligation to do something shall include an obligation to seek to procure that it is done

3. CO-OPERATION AND DISCUSSION

This Agreement is entered into on the basis that the Lead Authority, and Joint Authorities will work on a basis of co-operation and good faith and will arrange to discuss with each other as soon as possible any problems or disputes which arise and will attempt to resolve any difficulties through negotiation at an early stage and will ensure appropriate officers are available upon reasonable notice to discuss the issues under dispute.

4 AGREEMENT

- 4.1 The Joint Authorities and Lead Authority shall agree the offer of Grant funding set out in the Grant Offer Letter and upon such agreement the Lead Authority shall accept the offer of Grant funding on behalf of all the Authorities
- 4.2 The Authorities undertake to and covenant with each other that they will adhere to the terms of this Agreement and will observe, perform and comply in all material respects with the Conditions. In particular the Joint Authorities agree to act in accordance with and be subject to declarations or decisions made under the Regulations (or any re-enactment or amendment thereof) and provisions in the Grant Offer Letter respect of eligibility, monitoring, audit, record retention, match funding and clawback
- 4.3 Each Authority warrants to each other that it will observe and perform the Conditions and upon receipt of reasonable notice, permit rights of access to the Lead Authority and the other bodies specified in this Agreement and the Grant Offer Letter for audit and compliance and any other purposes set out therein and undertake to provide in a timely manner information requested by the Lead Authority to enable claim deadlines to be met
- 4.4 During the term of this Agreement or following its termination the individual Authorities shall remain liable for any of the Conditions they have not complied with and in respect of any liability arising from the non-compliance and/or breach of the Conditions by any

individual Authority that Authority shall be liable for any Direct Loss suffered by any or all other Authorities

- 4.5 Without prejudice to the generality of Clause 4.1 to 4.4 if any of the Authorities receives notification of any financial clawback, financial imposition, or deduction of Grant imposed by the European Commission or the Welsh Ministers as a result of any non-compliant procurement process or the occurrence of any Notification Event then the non-compliant Authorities (which shall include the Lead Authority for the avoidance of doubt) will be solely responsible for reporting the notification to the other Authorities as soon as possible and such payment to the European Commission or Welsh Ministers, indemnifying the other parties in respect thereof.

OPERATIONAL MATTERS

- 5.1 The Lead Authority has appointed the individual named on the front page as the lead officer who shall accept operational responsibility for the implementation of the approved Bus Service Support Scheme, to act as a first point of contact with the Lead Authority, to offer advice and guidance as is appropriate and to ensure the satisfactory monitoring and evaluation of this Agreement on behalf of the Lead Authority.
- 5.2 The Lead Authority will identify to the Joint Authorities the names and roles of any individual officers employed by the Lead Authority who are recognised as having a role in the management of the Grant.
- 5.3 The Lead Authority will start and implement the Scheme according to the descriptions of individual components within the approved grant
- 5.4 The Passenger Transport Working Group will present progress reports to the Welsh Government in accordance with the requirements of the Grant.
- 5.5 The Joint Authorities have each appointed a Lead Officer (as named on the front page of this Agreement) for the parts of the Scheme for which it is responsible and give the Lead Officer the authority to represent the Joint Authority in the operation of the Scheme. These Officers (or their agreed substitutes) shall form the Passenger Transport Working Group.
- 5.6 The Passenger Transport Working Group will receive monitoring information and meet regularly to manage the Grant.
- 5.7 Joint Authorities will notify the Lead Sponsor and the PTWG immediately of any event that could lead to a temporary or final discontinuation or any other deviation of the Scheme

6 FINANCIAL REPORTING

- 6.1 Each of the Joint Authorities will be responsible for submitting regular claims to the Lead Authority. The Lead Authority will notify the joint Authorities when funding has been received from WG to enable claims to be submitted.
- 6.2 The Lead Authority will request and receive payments from WG and will transfer portions of it to the Joint Authorities promptly on receipt of correct invoices submitted to the Lead Authority.
- 6.3 PTWG will manage and verify appropriate spending of the Funds awarded for the Scheme and the Lead Authority will undertake the Scheme's overall accounting.
- 6.4 The Lead Authority will communicate with WG and other funding bodies and notify the Joint Authorities immediately of any event that could lead to a temporary or final discontinuation or any other deviation of the Scheme.

7 DEFAULT

Without prejudice to any other right or remedy if any of the Joint Authorities do not carry out the Scheme in accordance with the Purposes of the Grant Offer Letter or at the time specified in the Agreement the Lead Authority may: Serve a Default Notice on that Joint Authority setting out the nature of the default committed and requiring that Joint Authority to remedy the default within such time as the PTWG may specify by providing or providing again (as the case may be) without further charge to the PTWG those services/elements of the Scheme or such part of the services/elements of the Scheme in accordance with the Purposes in the Grant Offer Letter.

8 TERMINATION

- 8.1 Any Authority (which shall for the avoidance of doubt include the Lead Authority) may terminate this Agreement by giving six months' prior written notice to the other Authorities or at any time by mutual consent and the terminating Authority shall immediately make payment to the Lead Authority of all outstanding monies.
- 8.2 If any or all of the Joint Authorities are in breach of any obligation on it under the Agreement, and, in the case of a breach capable of remedy, the breach shall not have been remedied by the Defaulting Party within 30 days of a written notice specifying the breach and requiring it to be remedied, then the Lead Authority may forthwith terminate this Agreement by notice in writing to the Defaulting Party without prejudice on the accrued rights of either party.
- 8.3 If any or all of the Joint Authorities commits a default, which is a fundamental breach of the Agreement, the Lead Authority shall be entitled to terminate the Agreement, or its application to any particular service, with immediate effect, by giving notice in writing to the Defaulting Party.
- 8.4 The Lead Authority shall be entitled to terminate this Agreement forthwith by notice in writing to any of the Joint Authorities in the event that:
- 8.4.1 It has reasonable grounds for anticipating that any action taken by, taken against or imposed on the Joint Authority shall have a material effect on that Joint Authority's ability to perform its obligations under the Agreement.
- 8.4.2 Any Authority ceases to exist in its current form due to reorganisation or other restructure (unless the replacement local authority agrees to continue with the Agreement).
- 8.4.3 A Notification Event occurs and WG take any or all of the following actions:
- 8.4.3.1 Withdraw the award of funding; and/or
 - 8.4.3.2 Require repayment of all or part of the funding immediately; and/or
 - 8.4.3.3 Suspend or cease all further payments of funding; and/or
 - 8.4.3.4 Make all further payments of funding subject to such conditions as they may specify and these conditions are not met; and/or
 - 8.4.3.5 Deduct all amounts owed to them under these Conditions from any other funding that WG have awarded; and/or
 - 8.4.3.6 Exercise any other rights against the Lead Authority which WG may have in respect of the funding in accordance with 9(vi) of the Grant Offer Letter
- 8.4 Termination of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or which may thereafter accrue to any of the Authorities.

9 CONSEQUENCES OF TERMINATION

- 9.1 Where the Lead Authority (working with the PTWG) terminates the Agreement under clauses 7 to 8 (inclusive) and then makes other arrangements for the provision of the services, the Lead Authority shall:
- 9.1.1 be entitled to recover from the Joint Authorities with whom the Agreement has been terminated the cost of making those other arrangements and any additional expenditure reasonably incurred by the Lead Authority throughout the remainder of the Term; and
- 9.1.2 not be obliged to make further payment to that Authority or those Authorities (referred to in 9.1.1) until the Lead Authority has established the final cost of making those other arrangements.

10 DISPUTE RESOLUTION

- 10.1 If there is a dispute between the Joint Authorities or Lead Authority or concerning the interpretation or operation of this Agreement then any party may notify the others in writing that it wishes the dispute to be referred to a meeting of the PTWG to resolve on the basis of good faith.
- 10.2 If after 28 days (or such longer period as the parties may agree) of the date of notice referred to above the dispute has not been resolved, any party may notify the others that it wishes the dispute to be referred to the Lead and Joint Authorities respective Heads of Paid Service for resolution.
- 10.3 If the Chief Officers are unable to resolve the dispute within the time period agreed by the parties it shall be referred to an independent arbitrator by any of the parties to this Agreement. The independent arbitrator shall be agreed by the parties but if not then shall be nominated by the Welsh Government.
- 10.4 If an independent arbitrator is appointed the parties shall pay the arbitrator's fees in equal shares, and agree that they will be bound by the decision of the arbitrator.
- 10.5 The dispute resolution procedure set out in this clause shall not delay or take precedence over the provisions for termination set out in clauses 7 (Default) and 8 (Termination) of this Agreement.

11 COMMENCEMENT AND DURATION

- 11.1 This Agreement shall come into force on the Commencement Date.
- 11.2 Subject to clause 11.3, the duration of this Agreement shall be from the Commencement Date until the Completion Date unless terminated earlier in accordance with clauses 7 and 8.
- 11.3 The PTWG and any or all of the Authorities can agree in writing prior to the Completion Date to extend the duration of this Agreement for a further 12 month period and can agree each year to extend for an additional year thereafter (up to a maximum of an additional 1 time). The total combined duration of the extensions shall not exceed 2 years in total.

12. WAIVER

Failure by the Lead Authority (working with the PTWG) at any time to enforce the provisions of this Agreement or to require performance by any of the Authorities of any of the provisions of this Agreement shall not be construed as a waiver of any provision and shall not affect the validity of the Agreement or any part thereof or any right of the Lead Authority to enforce any provision in accordance with its terms.

13. COMMUNICATION IN WRITING

Any communication required to be in writing under the terms of this Agreement shall be sent to each to the addresses indicated at the beginning of this Agreement and marked for the attention of the relevant person identified in relation to the each Authority. Each party shall use reasonable endeavours to communicate in accordance with the Agreement.

14. THIRD PARTY RIGHTS

To the extent that any provision of this Agreement is capable of being legally enforced the parties to this Agreement confirm and agree that they do not intend any provision of it to be enforceable by any other person pursuant to the Contract (Rights of Third Parties) Act 1999.

15. NO PARTNERSHIP

The Authorities are independent from each other and nothing contained in this Agreement shall be construed as implying that there is any relationship between the Authorities of partnership or of principal/agent or of employer/employee

16 WELSH LANGUAGE

The Authorities shall each comply with the requirements of the Welsh Language Act 1993 or any replacement protocol that the Authorities are required to implement as a result of the Welsh Language (Wales) Measure 2011 and Welsh Language Standards (Welsh Ministers, County and County Borough Council and National Park Authorities) Regulations 2015 and with their own Welsh Language Policy and any updates to them.

17 CONFIDENTIALITY AND DATA PROTECTION

17.1 Each Authority shall ensure that its Representatives comply in all respects with the provisions of the Data Protection Act 1998 (DPA) and all Parties shall duly observe their obligations under the DPA which arise under the Agreement

17.2 Each Authority shall allow authorised Officers of the Lead Authority to access files held by that Authority or any subcontractor relating to each user of services within the Scheme (excluding medical records) provided reasonable notice and a valid reason for the request is given and in accordance with the Data Protection Act 1998

17.3 Neither the Lead Authority nor the Joint Authorities shall disclose any Personal Data (as defined in the DPA) which they have received from each other to any third party without the prior written consent of the other or subject to statutory provision including the Data Protection Act 1998.

18 FREEDOM OF INFORMATION

18.1 The Authorities acknowledge that they are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 together referred to as (FOIA) and all information held by the Authorities is subject to this legislation

18.2 The Authorities shall provide all necessary assistance as reasonably requested by each other to respond to a request made under FOIA in accordance with the legislation

18.3 Each Authority shall be responsible for determining at its absolute discretion whether information held by it is exempt from disclosure in accordance with the provisions of FOIA and whether the information is to be disclosed in respect of any request made to it

19 INSURANCE

- 19.1 The Authorities will have in place and will maintain in force valid, adequate and appropriate insurance in respect of all its property assets and undertakings against all such insurable risks (including professional negligence, public and employers' liability cover) in such amounts as may be reasonably required, from time to time.
- 19.2 For the purpose of this clause a "Claim" means:
- 19.2.1 any claim brought by any Authority arising from negligence;
 - 19.2.2 a contractual claim brought by any Authority;
 - 19.2.3 any other claim brought by a Authority whatsoever arising from or in connection with this Agreement.
- 19.3 Each Authority ("Indemnifying Authority") shall indemnify and keep indemnified the other Authorities ("Indemnified Authorities") against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud, of the Indemnifying Authority's employees, or its representatives or subcontractors, except to the extent that the loss or claim is directly caused by or directly arises from negligence, breach of this Agreement or applicable law by the Indemnified Authority or its representatives.
- 19.4 Authorities shall not be liable to each other for any claims arising from any acts or omissions of the other Authorities in connection with the Scheme before the Commencement Date.
- 19.5 To the extent that there is any doubt, uncertainty or disagreement regarding the respective liabilities of each Authority in accordance with the provisions of this clause 19, the Authorities will cooperate to resolve the Claim in the most cost-effective and timely manner possible and shall seek to apportion liability with all reasonable consideration of the circumstances surrounding the Claim. Any disagreement regarding the appropriate apportionment of liability in accordance with this clause 19 shall be dealt with in accordance with the provisions of clause 10 of this Agreement. The liability of each Authority to indemnify the other is reduced to the extent that events which are the other Authority's responsibility contributed to the losses, claims, proceedings, compensation and costs
- 19.6 Each Authority shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Authority is entitled to bring a claim against the other Authority pursuant to the Agreement.
- 19.7 Notwithstanding any other provision of the Agreement neither Authority limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) loss of or damage to property; or
 - (c) death or personal injury caused by its negligence.
- 19.8 Each Joint Authority shall produce to the Lead Authority such evidence as the Lead Authority may require that the insurance referred to above has been taken out, provides adequate cover, and is in force at all times.

20 PUBLICITY

- 20.1 Each Authority agrees to acknowledge the financial contribution made to its activities by the Welsh Government. This will include recognition in such documentation as

programmes, events flyers, letterheads and annual reports in a manner, which will be agreed in advance with the PTWG.

20.2 No Authority shall make any announcements or publicise the Agreement or its contents in any way without the prior written consent of the PTWG, which shall not be unreasonably withheld or delayed.

21 FINANCIAL MANAGEMENT AND FUNDING ARRANGEMENTS

21.1 The Authorities will each ensure their compliance with the financial management and governance arrangements of their Council, as follows:-

21.1.1 The Constitutional requirements of their Council relating to executive approvals and delegated authority, including pooled budget arrangements are effected.

21.1.2 Each Authority will comply with their standing orders relating to contracts, in relation to their procurement of any secondary contracts.

21.1.3 EU procurement directives etc. will be adhered to.

21.1.4 Each Authority will ensure compliance with statutory requirements:

- ◆ Accounting/financial reporting requirements

- ◆ Audit & Inspection of Accounts

21.1.5 Each Authority will follow the financial regulations of their Council including:

- ◆ Authorisation for spend

- ◆ Charging policy

- ◆ Budgetary control and reporting – commitments and corrective action

- ◆ Insurance & Indemnity

- ◆ Asset Management – custody, maintenance and disposal

- ◆ Preparation of Accounts & record retention

21.1.6 Each Authority will ensure all grant conditions pertaining to the scheme in question are followed, including:

- ◆ Procurement requirements

- ◆ Performance requirements

- ◆ Grant repayment

- ◆ Audit requirements

- ◆ Record retention

- ◆ Termination arrangements – assets & liabilities arrangements

21.2 The PTWG will administer the funding awarded by WG for the provision of the Scheme.

21.3 The Lead Authority (working with the PTWG) will not fund the provision of any Scheme element or service other than the provision required to be performed under this Agreement and on the assurance that the Scheme element or service is satisfactorily meeting the terms and conditions of the Agreement, the South West Wales Bus Services Support Grant Guidance and the Purposes in Schedule 1 of the Grant Offer Letter and the notes for Guidance.

21.4 The Lead Authority (working with the PTWG) will ensure that payments are made by instalments at times agreed with the PTWG upon receipt of an invoice.

21.5 Each Authority will properly manage the money provided by the Lead Authority.

21.6 Each Authority will avoid incurring any financial obligations that it is unable to meet whilst delivering the services.

21.7 Each Authority will notify the Lead Authority if for any reason the Scheme or any elements of it for which it is responsible cannot be provided, and will return such part of any funding as the Lead sponsor (working with the PTWG) may determine but having

regard to that Authorities' ongoing financial commitments during such a period of reduced delivery.

21.8 Each Authority will check whether the Scheme or elements of it is considered to be a taxable supply for Value Added Tax purposes and to notify the Lead Authority if necessary.

21.9 Each Authority will notify the Lead Authority immediately of any circumstance that may adversely affect the continued financial viability of or which places services and/or participants in jeopardy through the possible failure of the delivery of the Scheme.

21.10 In the event of termination of the Agreement, the Lead Authority (working with the PTWG) will reclaim monies from the Joint Authority or Joint Authorities who caused the breach and if there is more than one Joint Authority in breach, then this amount is to be split between them

22 MONITORING AND EVALUATION

The Parties shall together operate the monitoring and evaluation arrangements of this Agreement as set out in Schedule 1.

23 JOINT RESPONSIBILITIES OF JOINT AUTHORITIES AND LEAD AUTHORITY

23.1 All of the Authorities will notify each other of any changes to the named officers who make up the PTWG and who are managing this Agreement.

23.2 Both Parties will ensure that there is appropriate dialogue and exchange of information to meet the objectives of the provision of the services.

23.3 Both Parties will ensure that there is regular and appropriate communication and liaison to deal with matters relevant to the operation of this Agreement.

23.4 This Agreement shall not limit any Authority from pursuing any other lawful activity within their powers, provided it does not prejudice their respective obligations under this Agreement.

24 APPLICABLE LAWS

The Agreement shall be governed by and construed in accordance with the law of England and Wales.

25 CURRENT LEGISLATION

During the performance of this Agreement, all Parties will abide by all relevant current legislation and regulations.

26 VARIATION

The terms of this Agreement may be varied with the mutual agreement of all Parties. Such variation will be recorded in writing.

27 SEVERANCE

If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

28 COUNTERPART

This Agreement may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same Agreement.

SURVIVAL OF TERMINATION

Clauses 2,4.2-4.5, 9,10,13,17-19,21.10,21.1.2,21.1.3,24,Schedule 1 Paragraphs 6,7,10-13, 15-19, 21 and Schedule 2 Paragraphs 8-9 shall continue in full force and effect after the termination of this Agreement

IN WITNESS WHEREOF the parties here have hereunder either signed or affixed their Common Seals the day and year first before written.

The Common Seal of

City and County of Swansea Council

was hereunto affixed

in the presence of :

AUTHORISED OFFICER

The Common Seal of

Neath Port Talbot County Borough Council

was hereunto affixed

in the presence of :

AUTHORISED OFFICER

The Common Seal of

Carmarthenshire County Council

was hereunto affixed

in the presence of :

AUTHORISED OFFICER

The Common Seal of

Pembrokeshire County Council

was hereunto affixed

in the presence of :

AUTHORISED OFFICER

SCHEDULE 1

(General Conditions)

APPRAISAL AND MONITORING

- 1 The Authorities acknowledge that it is fundamentally important to them all, and the Welsh Ministers that the Scheme shall be properly monitored to ensure value for money and a satisfactory standard of delivery and will assist the each other and Welsh Ministers to demonstrate these objectives have been achieved.
- 2 Delivery of the Scheme must be consistent with the details specified in the Purposes set out in Schedule 1 of the Grant Offer Letter. The PTWG will monitor progress and performance of the Scheme against those outputs and any Grant funding conditions and regular review meetings will be held to assess progress against physical and financial targets.
3. The WG Grant Conditions require the Lead Authority to:
 - 3.1 Provide the WG with such documents, information and reports which they may reasonably require from time to time in order to monitor compliance with the Conditions
 - 3.2 Meet with WG Officials and such other representatives as they may from time to time reasonably require
 - 3.3 Ensure that the Lead Officer (or such other person as they may agree) attends all meetings with the WG OfficialThe PTWG will work collectively to support the Lead Authority in meeting these Grant Conditions
- 4 All Authorities will use their reasonable endeavours to work to a management system, which enables the Scheme delivery and finances to be effectively monitored and controlled. The PTWG will work to ensure systems are adequate and capable of providing relevant information and best practice policies are implemented to ensure standard systems across all Authorities.
- 5 The Authorities' will provide the PTWG as frequently as reasonably required such monitoring reports, in a format agreed by the PTWG showing progress against targets together with the related financial expenditure.
- 6 The Authorities shall maintain full and proper accounts, invoices and records concerning all aspects of its involvement in the Scheme until such time as it is no longer required by the Welsh Government that enable them to demonstrate:
 - 6.1 Amounts received from the Scheme funding.
 - 6.2 Whether the original targets have been met and reasons for any variances.
 - 6.3 That amounts spent and received by all Authorities have been used wholly and exclusively for the purpose of the Scheme.
- 7 All accounts and records shall be maintained in a manner that clearly identifies it as accounts for the Scheme and no other purpose and all accounts and records kept by the Authorities shall be retained for the period specified by the Grant Offer Letter.
- 8 An Authority must contact the PTWG as soon as reasonably practicable if it becomes aware that, for whatever reason, the approved targets are not going to be materially met.

- 9 If in its reasonable opinion the PTWG considers the standards of any one or more of the periodic monitoring reports is inadequate the PTWG may require the Authority:
- 9.1 To supply reports to the PTWG more frequently until such time as the standard of reports improves:
- 9.2 To take such reasonable remedial action at the Authority's cost as the PTWG may reasonably require to improve the standard of the reports.

RIGHT OF ACCESS (see also Schedule 2 Paragraphs 5-9)

- 10 The Joint Authorities will allow authorised employees of the Lead Authority, upon receipt of reasonable written notice, access to all financial and monitoring records relating to the Scheme.
- 11 Such access shall include the right to audit, review and take copies of all such documentation and where necessary in the reasonable Opinion of the Lead Authority, take custody of the original accounts and records, but in the case of the Lead Authority taking custody of any original accounts or records, the Lead Authority will immediately provide to the Joint Authorities certified copies and fully indemnify the Joint Authorities if such accounts or records are lost or destroyed.
- 12 The Lead Authority will reclaim any Grant funding from Authorities, in the event of a clawback of Grant by WG here, after receipt of reasonable written notice, the Authority is unable to provide original supporting documentation .
- 13 The persons having by virtue of this Agreement a right of access to such accounts and records are
- 13.1 Lead Authority
- 13.2 WG or their agents
- 13.3 European Commission
- 13.4 Wales Audit Office
- 13.5 Any Government Agency who has a right to review expenditure by the Council or the Welsh ministers
- 13.6 Any other auditor whose functions include the audit of expenditure by the Authorities

ASSISTANCE TO THE LEAD SPONSOR

- 14 If at any time the Lead Authority is required by its own auditors, WG or any other Government Body, to provide any information to such bodies concerning the Scheme the PTWG shall use all best endeavours to assist the Lead Authority to comply with any such requirement and such assistance shall include, but is not limited to, the provision of copies of all documentation held by the Joint Authorities that is relevant to the Scheme.

RIGHT TO WITHHOLD PAYMENT

- 15 The WG Grant Conditions (Sections 5 & 9) set out the terms under which payment may be withheld. This includes the requirement for the Lead Authority to confirm that a Collaboration Agreement is in place between all parties in the area. It also includes the failure to notify WG of a Notification Event which cannot be remedied, or where appropriate action is not taken. Where such a situation arises and WG withholds part of whole of the

funding, the Lead Authority (working with the PTWG) shall be entitled to withhold, suspend or recover payment of all or part of the Grant funding if:

- 15.1 A Joint Authority fails to materially comply with any requirement which any of the Conditions states must be met before the Lead Authority is obliged to make a payment or
- 15.2 In the Lead Authority's reasonable opinion, which must be based on evidence, it considers that because of any act or omission on the part of any Joint Authority part of the Grant funding has been applied other than wholly and exclusively for the purpose of the Scheme
- 15.3 In the Lead Authority's reasonable opinion there is unsatisfactory progress towards meeting agreed targets of the project as established by the PTWG.
- 15.4 The Lead Authority or Joint Authorities become entitled to terminate this Agreement.
- 15.5 The Lead Authority has lawfully served upon a Joint Authority either a notice of default or termination under clauses 7 and 8 of this Agreement and the Joint Authority has not materially complied with such notice.

RIGHT TO RECOVER PAYMENT

- 16 The Lead Authority shall be entitled to require that a Joint Authority repays to the Lead Authority in full or part the Grant funding paid by the Lead Authority (as the Lead Authority working with the PTWG deems fit and as so required by the WG) in an event that: -
 - 16.1 All or part of Grant funding is applied otherwise than wholly and exclusively for the purposes of the Scheme
 - 16.2 There has been an overpayment of the Grant funding by reason of an error made by either party or
 - 16.3 Any part of the Grant funding is held by WG or any other relevant Government body to constitute unlawful State Aid
- 17 If any Joint Authority becomes aware of any circumstances, which may cause the Lead Authority to exercise any of its rights under paragraph 16 of this Schedule 1 it shall inform the Lead Authority immediately in writing
- 18 A Joint Authority on demand shall repay any sum that becomes repayable by reason of paragraph 16 of this Schedule 1 to the Lead Authority within 28 days of the date of any demand made by the WG in order to allow the Lead Authority to comply with the Grant Conditions.
- 19 Wherever under this Agreement any sum of money is recoverable from or payable by a Joint Authority, that sum may be deducted from any such sum due to the Joint Authority under this Agreement

INSUFFICIENT TAKE UP OF GRANT FUNDING

- 21 Should there be insufficient take up of Grant funding by any Joint Sponsor, the Joint Sponsor shall indemnify the Lead Sponsor against any reasonable fees, costs or expenses not recoverable from WG as a consequence of insufficient take up.

SCHEDULE 2

(Financial Conditions)

Payment of funding to Joint Authorities

1. The parties assume no VAT is payable in respect of the Grant funding. If that assumption is incorrect the amounts of the reimbursement of WG funding shall be deemed to be inclusive of VAT.
2. The Authorities are responsible for their own VAT accounting and all claims should be exclusive of VAT (unless otherwise agreed beforehand in writing by the PTWG).
3. Payments shall become due and be payable upon each and every one of the following conditions being met:
 - 3.1 Authorities have complied in all material respects with their obligations under this Agreement.
 - 3.2 The Joint Authorities have submitted a claim to the Lead Authority by no later than 28 working days after the Agreed Claim Date in respect of the payment claims and all claims comply in all material respects with the requirements of this Schedule.
 - 3.3 Each claim shall be in the format agreed by PTWG and clearly identify amounts claimed in relation to the project. Each claim shall be accompanied by such supporting evidence that in the reasonable opinion of the PTWG indicates that the amount claimed has actually and properly been defrayed by the Authority in respect of delivering the Scheme.
 - 3.4 The PTWG has reviewed the claim and agreed that expenditure is eligible for the purpose of the Scheme.
4. The Lead Authority will reimburse the Joint Authorities within 14 working days of receipt by the Lead Authority of the claim form from the Joint Authorities.

Audit

5. The Grant Offer Letter outlines the rights of Auditors and Government bodies in regards to audit requirements
6. All Authorities must maintain an accounting system, which will uniquely identify project expenditure from all other activities of the Authorities eg unique cost centres. The system should be capable of identifying eligible and ineligible costs.
7. The Lead Authority will submit a Statement of Expenditure as required by Schedule 3 of the Grant Conditions, an annual and final audit certificate for the Scheme to WG.
8. All expenditure must be defrayed by the end of the audited period and supported by appropriate documentation as set out in any WG Project Monitoring, Management & Control Systems Guidance documents. Joint Authorities' annual claims must be submitted to the Lead Authority within 28 days of the end of the audited period.
9. Failure to submit annual claims in time will result in suspension of WG funding payments.

Appendix B

Grant Offer Letter

See attached letter from Welsh Government dated 28 March 2014, 24 April 2015, and 17 May 2016