

Dated

2021

- (1) NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**
- (2) THE COUNCIL OF THE CITY AND COUNTY OF SWANSEA**
- (3) SWANSEA BAY UNIVERSITY HEALTH BOARD**
- (4) MID AND WEST WALES FIRE AND RESCUE SERVICE**
- (5) THE CHIEF CONSTABLE OF SOUTH WALES POLICE**
- (6) WALES PROBATION**

FINANCIAL GOVERNANCE AND RISK SHARING AGREEMENT

SUBSTANCE MISUSE AREA PARTNERSHIP BOARD

(6) This Agreement will govern the financial arrangements between the Parties and provide a framework for risk sharing pursuant to the Welsh Government Guidance.

NOW IT IS HEREBY AGREED as follows:-

1. Definitions and Interpretation

1.1 For the purpose of this Agreement the following definitions apply:

“Agreement” means this agreement as agreed between the Parties

“**Area Planning Board**” means the Swansea Bay Substance Misuse Area Planning Board

“**Award Letter**” means the letter from Welsh Government to Neath Port Talbot setting out the Grant Funding for Financial Year 2021/2022 which is appended at Schedule 2 together with any subsequent Welsh Government award letters in relation to the Grant Funding for the same Financial Year and letters from Welsh Government in relation to the Grant Funding for subsequent Financial Years

“**Conditions**” means the conditions set out in the Award Letter

“**Governance Framework**” shall mean the governance framework in relation to the Area Planning Board appended at Schedule 1

“**Commencement Date**” shall mean the date of this Agreement

“**Confidential Information**” shall mean any information which has been designated as confidential by a Party or Parties or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which related to the business, affairs, assets, goods or services or operations of the Parties.

“**Data Protection Legislation**” shall mean (i) the General Data Protection Regulation (Regulation (EU) 2016/679), as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including any further amendment or modification by the laws of the United Kingdom or part of the United Kingdom from time to time), (ii) the Data Protection Act 2018; (iii) any laws that implement such laws; any laws which replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of this Agreement)

“First Financial Year” shall mean the Financial Year commencing 1st April 2021

“Financial Year” shall mean the period of twelve months beginning on 1st April in each year

“Grant Funding” shall mean the SMAF

“Guidance” shall mean the Welsh Government “Working Together to Reduce Harm” Revised Guidance for Substance Misuse Area Planning Boards 2017

“Health Board” shall mean the Swansea Bay University Health Board

“the Local Authorities” shall mean those local authorities constituted as Principal Councils under Section 21 of the Local Government Act 1972 who are Parties to this Agreement and any reference to a Local Authority shall mean reference to one of the Councils who are Parties to this Agreement

“the Region” shall mean the sum of the areas administered by the Local Authorities

“the Service” shall mean the provision of services in relation to alcohol or other substance abuse or misuse in the Region in accordance with the Welsh Government’s National Core Standards for Substance Misuse, the Guidance, and as specified by the Area Planning Board

“Substance Misuse Action Fund/SMAF” shall mean the revenue and funds received from the Welsh Government

1.2 In this Agreement:

1.2.1 any references to a specific statute include any statutory extension or modification amendment or re-enactment of such statute and any regulations or orders made under such statute

1.2.2 references to any clause, sub-clause, schedule or paragraph without further designation shall be construed as a reference to the clause, sub-clause schedule or paragraph to this Agreement so numbered

- 1.2.3 the clause, paragraph and schedule headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation
- 1.2.4 person shall mean corporation, partnership, firm, unincorporated association and natural person
- 1.2.5 the singular includes the plural and vice versa
- 1.2.6 the Schedules form part of the Agreement and have the same force and effect as if expressly set out in the body of the Agreement and any reference to this Agreement shall include the Schedules

2. Relevant statutory powers

This Agreement is made under the powers conferred by Sections 101, 102 and 113 of the Local Government Act 1972; Sections 2 and 20 of the Local Government Act 2000; the Crime and Disorder Act 1998; the National Health Service (Wales) Act 2006; the Well-being of Future Generations (Wales) Act 2015; and the Local Government and Elections (Wales) Act 2021.

3. Grant recipient

- 3.1 It is agreed that Neath Port Talbot will act as the grant recipient for the Grant Funding issued by the Welsh Government to the Swansea Bay Area Planning Board (the APB).
- 3.2 The Responsible Authorities agree that Neath Port Talbot shall accept the offer of Grant Funding set out in the Award Letter, on behalf of the Responsible Authorities.
- 3.3 The Responsible 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 respect with the Conditions and will not act in a manner which places Neath Port Talbot in breach of its obligations under the Conditions.

4. Administration of the Grant Funding

- 4.1 In its administration of the Grant Funding Neath Port Talbot shall comply with the Conditions.
- 4.2 Neath Port Talbot shall receive and make payments out of the Grant Funding and shall hold the same in accordance with its financial procedure rules, financial regulations and contract procedure rules.
- 4.3 Neath Port Talbot shall enter into and use its reasonable endeavours to procure and secure the performance of all contracts approved by the APB subject to its corporate procurement rules and procedures.
- 4.4 The Responsible Authorities shall cooperate together to ensure that the Conditions are complied with and that the objectives of any Grant Funding are met and any performance indicators or Service standards are met.
- 4.5 The Responsible Authorities shall record and preserve for such period as Neath Port Talbot shall require any information or evidence required to claim any Grant Funding and any audit relating to Grant Funding or the services generally and shall provide it to Neath Port Talbot on request.
- 4.6 The Responsible Authorities shall fully cooperate with any examination of the Services or other audit in relation to the Grant Funding as required by Neath Port Talbot or the Welsh Government.
- 4.7 If any requirement to repay the Grant Funding arises out of a failure by any Responsible Authority to comply with the terms of this Agreement or any terms and conditions under which the Grant Funding is provided then that Responsible Authority shall reimburse the other Responsible Authorities for the cost of that repayment and if there has been a failure to comply by more than one Responsible Authorities then the cost of reimbursement shall be shared between those Responsible Authorities who have failed to comply in the proportion agreed by the APB and in the absence of agreement the matter shall be referred to the Dispute Resolution Procedure in paragraph 12 of the Schedule 3 to this Agreement.

5. Additional Financial Contributions

- 5.1 It is agreed that Neath Port Talbot, Swansea and the Health Board shall make financial contributions for the Services in addition to the Grant Funding (the “Additional Contributions”). The Additional Contributions for Financial Year 2021/22 are set out in Schedule 4.
- 5.2 The Additional Financial Contributions to the Service for future Financial Years shall be agreed by the APB at least four weeks before the start of the Financial Year
- 5.3 The APB shall agree and determine the Additional Contributions for each Financial Year. Any disagreement shall be resolved in accordance with the Dispute Resolution Procedure in paragraph 12 of the Schedule 3 to this Agreement.
- 5.4 It is agreed that the Additional Contributions are non-pooled funds (the Health Board funds and the Authorities’ funds are not pooled together).

6. Indemnities

- 6.1 The Responsible Authorities shall jointly indemnify and keep indemnified Neath Port Talbot against all liabilities, losses, actions, claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever and howsoever arising whether in respect of contract, tort or otherwise, directly, out of or in consequence of or in connection with its role pursuant to this Agreement except where the liability arises from any fraud, dishonesty, negligence, unlawful expenditure, libel or slander on the part of Neath Port Talbot and/or where Neath Port Talbot has acted outside the scope of its authority.
- 6.2 Neath Port Talbot shall indemnify and keep indemnified the other Responsible Authorities against all liabilities, losses, actions, claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever and howsoever arising whether in respect of contract, tort or otherwise, directly, out of or in consequence of or in connection with Neath Port Talbot’s fraud, dishonesty, negligence, unlawful expenditure, libel or slander in connection with its role pursuant to this Agreement and/or where Neath Port Talbot has acted outside the scope of its authority.

7. Period of Agreement and Termination

- 7.1 The Agreement shall commence on the Commencement Date and shall remain in force until the dissolution of the Area Planning Board or termination of the Governance Agreement or termination of this Agreement in accordance with Clause 7.2 or Paragraph 7 Schedule 3, whichever is earlier.
- 7.2 After the first Financial Year of the Agreement if any Party wishes to terminate the Agreement it shall give to the Grant Recipient not less than twelve months notice in writing in advance to expire on the 31st March of the applicable Financial Year.

8. Enforceability of provisions following Termination

The following provisions shall remain enforceable between the Parties following termination of this Agreement:-

Clause 4 – Administration of Grant Funding
Clause 6 - Indemnities
Clause 7 - Termination
Schedule 3 Paragraph 1 – Confidentiality
Schedule 3 Paragraph 2- Data Protection
Schedule 3 Paragraph 3 – FOI
Schedule 3 Paragraph 11 – Litigation
Schedule 3 Paragraph 12 – Dispute Resolution

9 Supplemental Provisions

The provisions of the Third Schedule shall apply to this Agreement

10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales as they apply in Wales

11 Entire Agreement

11.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement

11.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty or understanding whether negligently or innocently made of any person whether Party to this Agreement or not other than as expressly set out in this Agreement

12 Counterparts

12.1 This Agreement may be entered into in the form of any number of counterparts, each executed by one or more of the Parties, all of which taken together shall constitute one and the same instrument. Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each Party shall on request provide the other with the "wet ink" hard copy original of their counterpart

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS DEED:

THE COMMON SEAL of)
NEATH PORT TALBOT)
COUNTY BOROUGH COUNCIL)
was hereunto affixed in the)
presence of:)

Proper Officer

THE COMMON SEAL of)
THE COUNCIL OF THE CITY)
AND COUNTY OF SWANSEA)
was hereunto affixed in the)
presence of:)

Authorised Officer

THE COMMON SEAL of)
SWANSEA BAY)
UNIVERSITY HEALTH)
BOARD was hereunto affixed in the)
presence of:)

THE COMMON SEAL of)
MID AND WEST WALES)
FIRE AND RESCUE)
SERVICE was hereunto affixed in the))
presence of:)

THE COMMON SEAL of)
CHIEF CONSTABLE OF)
SOUTH WALES)
POLICE)
was hereunto affixed in the)
presence of:)

THE COMMON SEAL of)

THE WALES PROBATION)
SERVICE)
was hereunto affixed in the)
presence of:)

**FIRST SCHEDULE
SWANSEA BAY AREA PLANNING BOARD GOVERNANCE
FRAMEWORK**



Western Bay APB -
Governance Framewo

SECOND SCHEDULE AWARD LETTER



SMAF Revenue
Award of Funding Sw:

THIRD SCHEDULE
SUPPLEMENTARY PROVISIONS

1. Confidentiality

1.1 The Parties shall:

1.1.1 treat all Confidential Information as confidential and safeguard it accordingly and

1.1.2 not disclose any Confidential Information of any other Party without the prior written consent of that Party, except to such person and to such extent as may be necessary for the performance of the Service

1.2 Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from other Parties under or in connection with the Service:-

1.2.1 is given only to such of the staff or contractors engaged in connection with the performance of the Service as is strictly necessary for the performance of the Service and only to the extent necessary for performance of the Service;

1.2.2 is treated as confidential and not disclosed (without prior approval) or used by any person otherwise than for the purposes of the Service.

1.3 Each Party shall ensure that its staff are aware of the confidentiality obligations under this Agreement

1.4 Each Party shall not use any Confidential Information it received from another Party otherwise than for the purposes of the Service

2. Data Protection

- 2.1 In this paragraph 2, the terms Personal Data, Personal Data Breach, Process, Controller and Processor have the meanings given in the Data Protection Legislation.
- 2.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Parties are each independent Controllers. Where a Party considers that, in order to comply with the instruction of another Party to Process Personal Data under this Agreement, the Party would be acting as a Processor the Party shall notify the other Party and the Parties shall enter into a data processing agreement prior to such Processing taking place.
- 2.3 The Parties shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 2.3.1 comply at all times with its obligations under the Data Protection Legislation; and
 - 2.3.2 maintain in place appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing, accidental loss, damage or destruction taking into account the nature of the Personal Data and the harm that may result from any Personal Data Breach.
- 2.4 Each Party shall fully co-operate with and promptly and properly respond to all enquiries from the Grant Recipient relating to its processing of Personal Data in relation to this Agreement.

3. Freedom of Information Act 2000 and the Environmental Information Regulations 2004

- 3.1 The Parties 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 Parties is subject to this Legislation
- 3.2 The Parties shall provide all necessary assistance as reasonably requested by each other to respond to a request made under FOIA in accordance with the legislation
- 3.3 Each Party 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

3.4 The Parties shall provide all the necessary information to the Grant Recipient to answer any complaints under the its complaints procedures or enquiries from any statutory body

4. **Force Majeure**

4.1 Notwithstanding anything else contained in this Agreement no Party shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not by way of limitation national emergency, war, flood, earthquake, strike or lockout other than a strike or lockout induced by the Authority so incapacitated, imposition of governmental regulations or law which renders performance of the Agreement impossible

4.2 The Parties agree to give written notice forthwith to the other upon becoming aware of the reasons likely to result in a delay and of the likely duration of the delay and subject to the giving of each notice, the performance of such notifying Party's obligations shall be suspended during the period such circumstances persist and such notifying Party obligations shall be granted an extension of time for performance equal to the period of the delay.

4.3 Any costs arising from such delay shall be borne by the Authority incurring the same

5. **Variation**

If all Parties agree to changes to this Agreement a memorandum of variation shall be prepared by the Grant Recipient for execution on behalf of the Parties and appended to this Agreement

6. **No Partnership**

6.1 Nothing in this Agreement shall be construed as establishing or implying any legal partnership between the Parties and except as stated in this Agreement nothing in this Agreement shall be deemed to constitute any Party as the agent of any other Party or authorise any Party

6.1.1 to incur any expenses on behalf of the other Party

6.1.2 to enter into any engagement to make any representation or warranty on behalf of the other Party

6.1.3 to pledge the credit of or otherwise bind or oblige the other Party or

6.1.4 to commit the other Party in any way whatsoever without in each case obtaining that other Party's prior written consent

7. Statutory change to status of Parties

This Agreement shall terminate on the coming into effect of any statutory change under which any of the Parties shall cease to exist or cease to have powers or duties for the provision of the Services

8. Severability

8.1 If any of the provisions of this Agreement is found by a Court or other competent authority to be void or unenforceable such provisions shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect

8.2 Notwithstanding the foregoing the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable

9. The Contracts (Rights of Third Parties) Act 1999

The Parties agree that the provisions of the said Act are hereby excluded

10. Co-operation

The Parties agree at their own cost to co-operate fully with each other and provide such information and assistance as the other may reasonably require in connection with any actual or potential legal proceedings

arbitration hearings inquiries ombudsman enquiries inspections internal investigations and disciplinary hearing arising out of or in connection with the provision of this Agreement provided that such obligation shall not extend to any such proceedings between the Parties

11. Litigation

11.1 The Parties agree to promptly notify the others by written notice upon becoming aware of or in receipt of any process or other notice of the commencement of proceedings in which any Party is named in connection with this Agreement

11.2 No litigation will be commenced in connection with anything arising out of this Agreement without the prior written consent of all the Parties

11.3 The Parties shall fully and effectively co-operate with each other in the prosecution defence settlement negotiations in relation to proceedings

11.4 No settlement of any claim made against any Party in connection with or arising from this Agreement, will be made without that Party's consent

12. Dispute Resolution

12.1 Prior to any dispute difference or disagreement being referred to mediation pursuant to the remaining provisions of this paragraph 12 the Parties shall seek to resolve the matter as follows:

12.1.1 in the first instance the issue shall be considered by chief officers with delegated responsibility for the Service

12.1.2 if the aforementioned chief officers are unable to resolve the matter within 30 working days then the issue shall be referred to the Head of Paid Service of the Local Authorities and the Chief Executive officer of the other Parties

12.1.3 if the Heads of Paid Service/Chief Executive officer are not able to resolve the matter within a further thirty (30) working days the provisions of paragraph(s) 12.2 and 12.3 shall take effect

12.2 In the event of the Heads of Paid Service/Chief Executive officer not being able to resolve the matter shall be dealt with by the following mediation procedure:

- 12.2.1 for the purpose of this paragraph 12.2 a dispute shall be deemed to arise when one Party serves on the other a notice in writing stating the nature of the dispute
 - 12.2.2 every dispute notified under this paragraph 12.2 shall first be referred to mediation in accordance with the mediation procedures of the Alternative Dispute Resolution Group London
 - 12.2.3 the mediator shall be agreed upon by the Parties and failing such agreement within fifteen (15) working days of one Party requesting the appointment of a mediator and proposing a name then the mediator shall be appointed by the head of the division of the Welsh Government for the time being with responsibilities for the oversight of the Services
 - 12.2.4 unless agreed otherwise the Parties shall share equally the costs of mediation
 - 12.2.5 the use of mediation will not be construed under the doctrines of laches waiver or estoppel to affect adversely the rights of any Party and in particular any Party may seek a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary to avoid irreparable damage
- 12.3 In the event of the Parties failing to reach agreement following mediation the following procedure s shall be followed:
- 12.3.1 in the event of the Parties failing to reach agreement on their dispute or difference following mediation pursuant to paragraph 12.2 one Party may serve on any other a notice in writing stating the nature of the matters still in dispute
 - 12.3.2 the dispute or difference shall then be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the Arbitration Act 1996 (“the Arbitration Act”)
 - 12.3.3 in the event of failure of the Parties to make the appointment pursuant to Section 16(3) of the Arbitration Act the appointment shall be by the President (or if the President be unwilling, unable or unavailable) the Vice President for the time being of the Law Society

12.3.4 the arbitration will be regarded as commenced for the purposes set out in Section 14(1) of the Arbitration Act when one Party sends to the other written notice in accordance with the Arbitration Act

12.3.5 the arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrator(s)/The Rules of the London Court of International Arbitration for the Chartered Institute of Arbitrators or any amendment or modification thereof being in force at the date of commencement of the arbitration

13. Notices

13.1 Any demand notice or other communication given or made under or in connection with this Agreement will be in writing and sent to the Head of Paid Service of any Local Authority Parties and the Chief Executive Officer of any other Parties

13.2 Any such demand notice or other communication will if given or made in accordance with this clause be deemed to have been duly given or made as follows:

13.2.1 if sent by prepaid first class post on the Third working day after the date of posting or

13.2.2 if delivered by hand upon delivery at the address provided for in this Agreement or

13.2.3 if sent by email to the address as notified in writing by the Parties as being the email address for service on receipt of confirmation of receipt from the recipient or

13.2.4 if sent by facsimile on the day of transmission provided that a confirmatory copy is sent by pre-paid first class post on the same working day that the facsimile is transmitted

provided however that if it is delivered by hand or sent by facsimile or email on a day which is not a working day or after 4.00pm on a working

day it will instead be deemed to have been given or made on the next working day

- 13.3 Any such demand notice or other communication will in the case of the service by post or delivery by hand be addressed to the recipient's address stated in this Agreement or at such other address as may from time to time be notified in writing by the Parties as being the address for service
- 13.4 Any such demand notice or other communication will in the case of service by facsimile be sent to the recipient using the facsimile number then used by the recipient at an address which in accordance with this clause could have been used for service by post

SCHEDULE 4
ADDITIONAL FINANCIAL CONTRIBUTIONS

	£
NPTCBC	43,797.00
City & County of Swansea (006368)	116,279.00
SBUHB Swansea (040554)	3,000.00
SBUHB NPT (040554)	3,000.00
	<hr/>
	166,076.00