

**DATED**

**2022**

**(1) CARMARTHENSHIRE COUNTY COUNCIL  
(2) NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

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**Agreement in relation to the distribution of funding from the Swansea Bay  
City Deal in respect of the programme – Homes as Power Stations**

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THIS AGREEMENT IS MADE ON

2022

**BETWEEN:**

- (1) Carmarthenshire County Council of County Hall, Carmarthen, Carmarthenshire SA31 1JP (“the Accountable Body”); and
- (2) Neath Port Talbot County Borough Council of Civic Centre, Port Talbot, SA13 1PJ (“the Project Authority Lead”)

**WHEREAS**

- A Carmarthenshire County Council is the Accountable Body for the distribution of funds from the Swansea Bay City Deal.
- B The projects listed at Schedule 1 to this Agreement have gone through the procedure set out in clause 12 of the Joint Committee Agreement and been approved for funding from the Swansea Bay City Deal.
- C The Accountable Body has received and accepted an award of Swansea Bay City Deal funding consisting of funding from the Welsh Government and the UK Government in a letter from the Welsh Government dated 24 October 2019 which imposed terms and conditions on the provision of Swansea Bay City Deal funding (“the Funding Award Letter”). The Funding Award Letter is attached at Schedule 3 to this Agreement. As and when any further funding award letters are issued by the UK or Welsh Government relevant to the Projects listed in Schedule 1 and following approval of the conditions by the Project Authority Lead they will be appended to Schedule 3 and be incorporated into this Agreement.
- D This Agreement sets out the terms on which funding will be paid by the Accountable Body to the Project Authority Lead for payment to a project.

**IT IS AGREED AS FOLLOWS**

**1. Definitions and Interpretation**

- 1.1 The following definitions and rules of interpretation apply in this Agreement:

**“Accountable Body”** means the body appointed under the Joint Committee Agreement as Accountable Body for the Swansea Bay City Deal;

**“this Agreement”** this agreement entered into by the Accountable Body and the Project Authority Lead for the payment of Project Funding to the Project Authority Lead and the Project Authority Lead’s role in utilising

	Project Funding and/or distributing Project Funding to the Projects;
<b>“Annual Funding Receipt”</b>	the amount of Government Funding allocated to the Swansea Bay City Region for the Swansea Bay City Deal for each year;
<b>“Annual Project Funding Allocation”</b>	the amount of Project Funding allocated to the Project for each year, calculated in accordance with clause 9.3;
<b>“Approved Grant Value”</b>	the total amount of Government Funding allocated to the Project as approved in the Heads of Terms issued by Welsh Government and dated March 2017 and as subsequently varied or amended by Welsh Government;
<b>“Budget”</b>	the budget for the Project set out in Schedule 4 to include the Project Funding and all other sources of funding revenue or income streams and a profile of the Project Expenditure;
<b>“Business Case”</b>	means the business case for the Project as approved by the Joint Committee and Welsh Government and as subsequently updated or amended in accordance with this Agreement extracts of which are set out in Schedule 4;
<b>“Commencement Date”</b>	the date of this Agreement;
<b>“Council”</b>	a local authority which is party to the Joint Committee Agreement;
<b>“DPA”</b>	the Data Protection Act 2018;
<b>“DP Regulator”</b>	any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws;

<b>“Data”</b>	any data, document, code, information or Personal Data in connection with this Agreement;
<b>“Data Protection Laws”</b>	any applicable laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of Personal Data relating to natural persons;
<b>“Data Subject”</b>	shall have the meanings set out in the GDPR and the DPA;
<b>“Expenditure”</b>	means all eligible expenditure incurred for agreed Project Purposes and within the expenditure limits approved by Welsh Government;
<b>“Funding Agreement”</b>	an agreement between the Project Authority Lead and a Recipient of Government Funding for a Project based on a template approved by the Joint Committee and to be amended as appropriate and applied to the Projects specified in the agreement;
<b>“Funding Award Letter”</b>	a letter from the Welsh Government dated 24 October 2019 together with any subsequent letters from the UK or Welsh Government which award funding from the Welsh Government and the UK Government relevant to the Projects set out in Schedule 1 and which impose terms and conditions on the provision of Government Funding for the Swansea Bay City Deal and which have been approved by the Project Authority Lead;
<b>“GDPR”</b>	the General Data Protection Regulation;
<b>“Government Authority”</b>	means: (a) any government (de jure or de facto) of the United Kingdom or any political sub-division of the United Kingdom or any local jurisdiction of the United Kingdom; and (b) any governmental authority or statutory legal fiscal monetary or administrative body which operates or has jurisdiction directly or indirectly in the United Kingdom; or

(c) any instrumentality commission court or agency of any of the above however constituted; or (d) any association organisation or institution of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant;

**“Government Funding”**

funding to be made available to the Projects from the UK Government and Welsh Government pursuant to the Swansea Bay City Deal Joint Committee Agreement;

**“Intellectual Property Rights”**

patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including Know-how and trade secrets), and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;

**“Joint Committee”**

the joint committee established by Carmarthenshire County Council, Neath Port Talbot County Borough Council, Pembrokeshire County Council and the Council of the City and County of Swansea for the Swansea Bay City Region under the provisions of section 101 of the Local Government Act 1972;

**“Joint Committee Agreement”**

an agreement entered into by Carmarthenshire County Council, Neath Port Talbot County Borough Council, Pembrokeshire County Council and the Council of the City and County of Swansea for the establishment of a joint committee for the Swansea Bay City Region dated 29<sup>th</sup> August 2018 and as

			varied by a Deed of Variation dated 11 <sup>th</sup> December 2019;
<b>“Know-How”</b>			information data know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research design development manufacture use or sale;
<b>“Legal Charge”</b>			a legal charge and/or restriction given by the Project Authority Lead if requested by the Accountable Body in a form to be agreed between the Parties and in accordance with clause 4.9
<b>“Maximum Project Funding Percentage”</b>			the maximum percentage of expenditure on the Project to be funded by way of Project Funding in accordance with the Financial Profile set out in Schedule 4;
<b>“Notice of Breach”</b>			a notice served by one Party on another Party in accordance with clause 7 requiring the other Party to take action in respect of a breach of this Agreement;
<b>“Notification Events”</b>			any of the events set out in Schedule 2 to this Agreement;
<b>“Party”</b>			means each of the Accountable Body and the Project Authority Lead as the context requires and “Parties” means both of them;
<b>“Portfolio Management Office”</b>			the portfolio management office established by the Councils to manage the Swansea Bay City Deal;
<b>“Practical Completion”</b>			when the Parties agree that the works necessary to deliver the Project have been completed or a defined stage in project delivery has been achieved;
<b>“Project”</b>			a project for which Project Funding has been awarded details of which are set out at Schedule 1 to this Agreement;



<b>“Project Agreed Outputs”</b>	the first level of direct immediate term results associated with a project. These outputs are defined within the Project Business Case and are the defined achievements as a direct result of investment into the Project and are set out in Schedule 6.
<b>“Project Authority Lead”</b>	the Neath Port Talbot CBC a local authority with responsibility for the Government Funding element of funding for the Projects;
<b>“Project Funding”</b>	the sum from the Government Funding to be paid by the Accountable Body to the Project Authority Lead for the Project;
<b>“Project Funding Payment”</b>	a payment of the Project Funding or any of it to the Project Authority Lead by the Accountable Body;
<b>“Project Impacts”</b>	the third level of project results and the long-term consequence of a project. Project Impacts are the macro economic benefits of successful project delivery to the Swansea Bay City Region. These are positive purposes that meet local and national aims and objectives as a result of project completion and are set out in Schedule 8.
<b>“Project Outcomes”</b>	The second level of results associated with a project and the medium-term consequences of the Project. Outcomes relate to the project goal or aim. These are consequential outcomes as a result of the achievement of the Project Agreed Outputs and are set out in Schedule 7.
<b>“Project Purposes”</b>	the purposes set out in the Funding Award Letter;

<b>“Recipient”</b>	a legal entity with which the Project Authority Lead may enter into a Funding Agreement;
<b>“Request for Change to the Project Agreed Outputs”</b>	a notice served by one Party on another Party in accordance with clause 6.3 to request a change to the Project Agreed Outputs;
<b>“State Aid Rules”</b>	the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109) secondary legislation including frameworks guidelines and block exemptions produced by the European Commission regarding the application of Articles 107 to 109 and any rules that come into force in the United Kingdom to replace the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union;
<b>“Swansea Bay City Deal”</b>	a programme supported by the UK Government and the Welsh Government to use technological innovation and commercialisation to deliver sustainable growth and reduce economic dependency for the Swansea Bay City Region;
<b>“Swansea Bay City Region”</b>	the administrative area covered by Carmarthenshire County Council, Neath Port Talbot County Borough Council, Pembrokeshire County Council and the Council of the City and County of Swansea for local authority services;
<b>“Targets”</b>	the targets imposed on the Accountable Body by the Welsh Government in the Funding Award Letter;
<b>“Total Programme Grant Award”</b>	the total amount of Government Funding allocated to the Swansea Bay City Region for the Swansea Bay City Deal as approved in the Heads of Terms issued by Welsh Government and dated March 2017 and as subsequently varied or amended by Welsh Government;

**“Welsh Government Officials”** Debra Carter Deputy Director Local Government Strategic Finance and Nick McNeill Head of City Deals or such other officials as the Welsh Government may notify the Accountable Body;

**“Working Day”** means a day which is not a Saturday Sunday or public holiday in England and Wales.

- 1.2 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.4 A reference in this Agreement to any clause, paragraph or schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or schedule to this Agreement.
- 1.5 Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties.
- 1.6 Words preceding “include”, “includes” “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as “eiusdem generis” shall not apply.
- 1.7 The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and references to this Agreement includes the Schedules. In the event of any conflict between provisions of this Agreement the clauses in the body of the Agreement shall have precedence over the Schedules.
- 1.8 A reference to a recital or clause or schedule or part of a schedule is unless the context otherwise requires a reference to a recital to or a clause of or a schedule or a part of a schedule to this agreement, and references to this agreement include its schedules, Annexes and recitals and references in a schedule to paragraphs are to paragraphs of that schedule.
- 1.9 References to “the Parties” shall be to the parties to this Agreement.
- 1.10 A “certified copy” of any document shall be construed as a reference to a photostatic copy of such document which has annexed to it or printed on its front page a certificate signed by an officer of the Project Authority Lead or the Accountable Body (as the case may be) confirming that such photostatic copy is a true and up-to-date copy of the original.
- 1.11 Any provision which provides that an action or thing may not be taken or done by one Party without the “consent” or “approval” of the other Party will be deemed to provide also that:

- (a) the Party seeking to take the action or do the thing in question will request the consent or approval of the other Party in writing and provide promptly and in sufficient time for the other Party to consider it, all information reasonably necessary for the other Party to make an informed decision as to whether or not consent or approval should be granted;
  - (b) the Party receiving the request for consent or approval will consider it in good faith; and
  - (c) the consent or approval must be given in writing and the relevant action or thing may not be done unless and until the consent or approval has been granted;
  - (d) a reference to “the Accountable Body” or “the Project Authority Lead” or “the Recipient” or any other person includes its (and any subsequent) successor(s) in title and permitted transferee(s) or permitted assignee(s).
- 1.12 Any reference to a “person” shall be construed as a reference to an individual, firm, company, corporation, government state or agency of a state or any association or partnership (whether or not having a separate legal entity) of two or more of the foregoing.
- 1.13 A reference to any document includes that document as amended, varied, novated or supplemented from time to time.
- 1.14 A reference to law includes without limitation any (1) statute, decree, constitution, regulation, order, judgment or directive of any Government Authority (2) treaty, pact or other agreement to which any Government Authority is a signatory or party and/or (3) judicial or administrative interpretation or application thereof and, in each such case, is a reference to the same as amended, substituted or re-enacted from time to time.

## **2. Statutory Authority**

- 2.1 The award of funding to the Projects under the Swansea Bay City Deal and the payment of Project Funding by the Accountable Body to the Project Authority Lead is made under the authority of the Cabinet Secretary for Finance and Local Government one of the Welsh Ministers acting pursuant to section 31 of the Local Government Act 2003.

## **3. Accountable Body**

- 3.1 The Accountable Body shall claim Government Funding for the Swansea Bay City Deal by any date specified by the Welsh Government or the UK Government.
- 3.2 The Accountable Body shall use the claim proforma provided by the Welsh Government to claim Government Funding for the Swansea Bay City Deal and shall confirm to the Welsh Government that the Accountable Body has in place appropriate financial risk and control systems.

- 3.3 The Accountable Body shall pay Project Funding from the Government Funding for the Swansea Bay City Deal to the Project Authority Lead to distribute to Projects.
- 3.4 The Accountable Body shall comply with the duties imposed on the Accountable Body by the Joint Committee Agreement so far as those duties are relevant to this Agreement. For the avoidance of doubt this shall include:
- (a) Acting diligently and in good faith in all its dealings with the other Councils.
  - (b) Acting with reasonable skill and care and in accordance with best practice.
  - (c) Acting in accordance with the principles and strategic aims of the Joint Committee Agreement and any applicable policies agreed by the Joint Committee for the Swansea Bay City Region.
  - (d) Co-operating with any reasonable requests of the Councils that host the scrutiny monitoring officer democratic services and audit functions.
- 3.5 The Accountable Body shall comply in a timely manner with the conditions imposed on the Accountable Body in the Funding Award Letter/s as set out in Schedule 3 to this Agreement.
- 3.6 The Accountable Body shall use reasonable endeavours to comply with any conditions imposed by the UK Government or the Welsh Government for Government Funding from the Swansea Bay City Deal in a timely manner.
- 3.7 The Accountable Body shall comply with the State Aid Rules.

#### **4. Project Authority Lead**

- 4.1 Neath Port Talbot County Borough Council shall be the Project Authority Lead in respect of the Projects and shall be responsible for utilising or distributing the Project Funding from the Swansea Bay City Deal.
- 4.2 The Project Authority Lead shall use reasonable endeavours to ensure that its actions do not place the Accountable Body in breach of the conditions in the Funding Award Letter.
- 4.3 The Project Authority Lead shall use or distribute the Project Funding in accordance with the Business Case and for the Project Purposes .
- 4.4 The Project Authority Lead shall not make nor allow any Recipient to make any change to the Project Agreed Outputs within the Business Case without the prior approval of the Accountable Body who may refer the change to the Joint Committee and/or Welsh Government. The process for seeking a change to the Project Agreed Outputs is outlined in clause 6.3.
- 4.5 The Project Authority Lead shall not make any material change to the Budget for the Project without the prior written agreement of the Accountable Body. The percentage deviation from the approved Budget which will constitute a material change is set out in Schedule 4.

- 4.6 The Project Authority Lead shall be responsible for delivering or procuring the delivery of the Project Agreed Outputs in Schedule 6 in accordance with the Budget as set out in Schedule 4. Any shortfall in the Budget is the responsibility of the Project Authority Lead. The Project Authority Lead agrees that it shall not apply for duplicate funding in respect of any part of the Project that the Project Funding is funding in full.
- 4.7 The Project Authority Lead shall use reasonable endeavours and/or shall procure that any Recipient shall use reasonable endeavours to deliver the Project Outcomes as set out in Schedule 7. Project Outcomes relate to the project goal or aim. These are consequential outcomes as a result of the achievement of the Project Agreed Outputs. The Project Lead Authority is required to report on Project Outcomes with sufficient and timely updates on progress and adjusted outcomes as required by the Accountable Body. Failure to deliver the Project Outcomes will not be a breach of this Agreement providing the Project Authority Lead is able to evidence a demonstrable commitment by itself and/or any Recipient to achieving the Project Outcomes in line with the expectation of Welsh Government as outlined in the written communication attached at Schedule 9.
- 4.8 The Project Authority Lead recognises the importance to the Swansea Bay City Region of the Project Impacts as set out in Schedule 8. These are the third level of project results and is the long-term consequence of a project. Project Impacts are the macro economic benefits of successful project delivery to the Swansea Bay City Region. These are positive purposes that meet local and national aims and objectives a result of project completion. The Project Lead Authority is required to report on Project Impacts as required by the Accountable Body but failure to achieve these Impacts will not constitute a breach of this Agreement.
- 4.9 If required by the terms of the Funding Award Letter or by the Accountable Body the Project Authority Lead shall provide a Legal Charge or restriction over any property involved in the delivery of the Project securing over the property such sum as may have been released out of the Project Funding by the Accountable Body to the Project Authority Lead.
- 4.10 The Project Authority Lead shall:
- (a) Ensure that the Project Funding is not used for party political purposes, the promotion of particular secular, religious or political views, gambling, pornography, offering sexual services, purchasing capital equipment other than as described in the Project Purposes unless agreed by the Accountable Body, legal fees incurred in relation to entering into this Agreement, any kind of illegal activities or any other kind of activity which in the opinion of the Accountable Body could bring the Accountable Body or the Welsh Government into disrepute.
  - (b) Safeguard as far as possible the Government Funding against fraud and, in particular, fraud on the part of its personnel and notify the Accountable Body immediately if the Project Authority Lead has reason to suspect that any fraud within the Project Authority Lead or any Project has occurred or is occurring or is likely to occur whether or not it relates to the Government Funding.

- (c) Participate in such fraud prevention initiatives as the Accountable Body may require.
- (d) Comply with all applicable domestic, EU or international laws or regulations or official directives.
- (e) Maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Projects.
- (f) Maintain appropriate financial risk and control systems before utilising any part of the Government Funding or before providing funding to a Recipient or procuring any goods or services from third parties.
- (g) Co-operate fully with any employee of the Accountable Body or any consultant appointed by the Accountable Body to monitor use of the Project Funding and the Project Authority Lead's compliance with the conditions imposed by this Agreement.
- (h) Inform the Accountable Body immediately if any declarations made to the Accountable Body are discovered to be materially incorrect at the time given.
- (i) Notify the Accountable Body if a Notification Event has occurred or is likely to occur.
- (j) Provide the Accountable Body with such documents information and reports which the Accountable Body may reasonably require from time to time in order for the Accountable Body to monitor the Project Authority Lead's compliance with the conditions imposed by this Agreement.
- (k) Subject to clause 4.4 maintain and update the business cases for the Projects to reflect key developments and keep the Accountable Body notified of such developments by submitting updates to the Portfolio Management Office
- (l) Notify the Accountable Body in writing if there is an anticipated or actual material change to the financial case or Budget for any Project.
- (m) Meet with any representatives of the Accountable Body as the Accountable Body may from time to time reasonably require.
- (n) Ensure that such person as the Accountable Body may require attends all meetings with the Accountable Body.
- (o) Maintain complete and accurate accounting records in accordance with proper accounting practices identifying all income and expenditure relating to the Projects.
- (p) Without charge permit any officer or officers of the Accountable Body the Welsh Government the UK Government, the Wales Audit Office or the Council undertaking the audit function for the Swansea Bay City Deal at any reasonable time and on reasonable notice to visit the Project Authority Lead's premises and to inspect any of the Project

Authority Lead's activities and/or to examine and take copies of the Project Authority Lead's books of account and such other documents or records however stored as in such officer's reasonable view may relate to the Project Authority Lead's use of the Project Funding.

- (q) Retain this Agreement and all original documents relating to the Project Funding for a period of fifteen (15) years until the Accountable Body informs the Project Authority Lead that it is safe to destroy them.
- (r) Subject to clause 11.2 indemnify the Accountable Body against any liabilities claims proceedings demands losses costs and expenses suffered or incurred by the Accountable Body directly or indirectly arising as a result of or in connection with any failure by the Project Authority Lead to perform fully or in part any obligation the Project Authority Lead may have to a third party unless such failure on the part of the Project Authority Lead has been caused by a breach by the Accountable Body of the terms of this Agreement.
- (s) Comply with any obligations imposed by the Welsh Government to acknowledge the Welsh Government's support for any of the Projects in a form approved by the Welsh Government and in compliance with the Welsh Government's branding guidelines.
- (t) Agree that from the date of this Agreement until five years from the date of the final payment of Project Funding to any of the Projects the Accountable Body may allow the Welsh Government to include details about the Project Authority Lead the Government Funding and the Projects in Welsh Government promotional materials and agree to cooperate with the Accountable Body's reasonable requests to achieve the production of such materials
- (u) Apply a policy of equal opportunities as employers as users of volunteers and as providers of services.
- (v) Where the Projects include or relate to the provision of services in Wales ensure that they are provided in Welsh and English unless it would be unreasonable or disproportionate to do so. Where services are provided in both Welsh and English they must be provided in such a way as to not treat the Welsh language less favourably than English in accordance with the Welsh Language (Wales) Measure 2011.
- (w) Contribute to the achievement of the Welsh Government's well-being objectives contained in the Welsh Government's Programme for Government through the use of the Project Funding.

4.11 The Project Authority Lead shall comply with the State Aid Rules.

## **5. Funding Agreement**

5.1 The Project Authority Lead may enter into a Funding Agreement with the Recipient for each of the Projects. A template form of Funding Agreement approved by the Joint Committee is available for the Project Authority Lead to use and amend should it wish to do so.



## **6. Project Agreed Outputs**

- 6.1 The Project Authority Lead shall be responsible for achieving the Project Agreed Outputs as set out in Schedules 6.
- 6.2 The Project Agreed Outputs for each Project are contained within the Project Business Case. The Accountable Body reserves the right to add to or amend the Project Agreed Outputs set out in Schedule 6 without following the process in clause 6.3 in the event that the UK or Welsh Government revise the same.
- 6.3 Any Party to this Agreement may propose a change to the Project Agreed Outputs by serving a Request for Change to the Project Agreed Outputs on the other Party. Such Request for Change to the Project Agreed Outputs on the other Party shall be in writing and shall identify the change proposed. The Accountable Body may submit any Request for Change to the Project Agreed Outputs to the Joint Committee and may request the Joint Committee to seek approval from the Welsh Government. A Request for Change to the Project Agreed Outputs shall not come into effect until it is approved by either the Accountable Body or the Welsh Government.
- 6.4 The Project Authority Lead may impose obligations on a Recipient or any other person relating to the achievement of the Project Agreed Outputs but the Project Authority Lead shall remain responsible for achievement of the Project Agreed Outputs.
- 6.5 The Project Authority Lead shall report on progress with achieving the Project Agreed Outputs when submitting a claim for Project Funding in accordance with clause 9 and in accordance with any monitoring requirements imposed by the Accountable Body.
- 6.6 Failure by the Project Authority Lead to achieve the Project Agreed Outputs shall be treated as a breach by the Project Authority Lead of its obligations under this Agreement and clause 7 shall apply.
- 6.7 The Accountable Body and the Project Authority Lead shall agree when the Project has achieved Practical Completion and the requirement to submit applications for payment in accordance with clause 9 cease. The Project Authority Lead will continue to be subject any monitoring requirements imposed by the Accountable Body until such time as the Project Agreed Outputs are achieved.

## **7. Breach of this Agreement**

- 7.1 Subject to clause 7.3 in the event of failure by the Project Authority Lead to achieve the Project Agreed Outputs or a breach by either Party of any other obligations under this Agreement the Parties shall attempt to resolve the failure by following the following procedure prior to dealing with the matter in accordance with the procedure set out in clause 8:
  - (a) The non-defaulting Party shall serve a Notice of Breach on the defaulting Party. Such Notice of Breach shall identify the breach and shall require the defaulting Party to take specified rectification action within twenty (20) Working Days of receipt of the Notice of Breach or such longer period as the non-defaulting Party considers reasonable.

- (b) If the defaulting Party fails to take the action specified within the Notice of Breach within twenty (20) Working Days or such other period as is specified the non-defaulting Party shall refer the matter to the Joint Committee to decide whether the breach by the defaulting Party shall be treated as a Notification Event.
  - (c) If the Joint Committee decides that the breach by the defaulting Party shall be treated as a Notification Event clause 8 shall apply.
- 7.2 If either Party reasonably considers that any action or omission by the other Party has caused a potential risk of a Notification Event occurring the Party who reasonably considers that the other Party has caused such potential risk shall have the right to regard the action or omission of the other Party as a breach of obligations under this Agreement and shall have the right to follow the procedure in clause 7.1 as the non-defaulting Party.
- 7.3 The Accountable Body reserves the right at its absolute discretion to treat breach by the Project Authority Lead as a Notification Event without first following the procedure in clause 7.1 and shall be obliged to do so if the Welsh Government exercises its right under the Funding Award Letter to treat the failure as a Notification Event.

## **8. Notification Events and Their Consequences**

- 8.1 The Parties acknowledge the statement made by Welsh Government in a letter dated 14 November 2019 addressed to the Accountable Body that no corrective action would be taken by Welsh Government in relation to a Notification Event without first engaging with the Councils with a view to agreeing a suitable course of action. The letter dated 14 November 2019 and further communication from Welsh Government dated 30 September 2020 and 16 October 2020 is attached at Schedule 9. This clause 8 is designed to ensure that efforts are made to resolve issues and avoid escalation wherever possible.
- 8.2 Each Party must notify the other immediately as soon as it becomes aware that a Notification Event has occurred or is likely to occur. The Parties shall follow the procedure in clause 7 if the Notification Event or potential Notification Event has been caused by a Party's breach of the Agreement, prior to utilising this clause 8.
- 8.3 In the event that the procedure in clause 7 fails to address the Notification Event or potential Notification Event the non defaulting Party or the Party providing notification pursuant to clause 8.2 must confirm whether it considers (i) the Notification Event is not capable of remedy or (ii) the Notification Event or potential Notification Event is capable of being remedied and seeks to discuss the Notification Event with the other Party with a view to agreeing a course of action to be taken to address the Notification Event.
- 8.4 The Accountable Body shall be entitled to take any of the actions set out at clause 8.5 if:
  - (a) Despite the Accountable Body's reasonable efforts the Accountable Body has been unable to discuss the Notification Event with the Project Authority Lead. Or

- (b) In respect of a Notification Event caused by the Project Authority Lead the Accountable Body notifies the Project Authority Lead that the Notification Event is not capable of remedy. Or
- (c) In respect of a Notification Event caused by the Project Authority Lead a course of action to address the Notification Event is not agreed between the Accountable Body and the Project Authority Lead. Or
- (d) A course of action to address the Notification Event is agreed between the Accountable Body and the Project Authority Lead but the Project Authority Lead fails to follow that course of action or any conditions attached to it are not met (including without limitation the timescale for such course of action). Or
- (e) The course of action fails to remedy the Notification Event to the satisfaction of the Accountable Body.

8.5 If any of the circumstances set out in clause 8.4 occur the Accountable Body may by notice to the Project Authority Lead:

- (a) Require the Project Authority Lead to repay all or part of the Project Funding to the Accountable Body.
- (b) Suspend or cease all further payments of Project Funding.
- (c) Make all further payments of Project Funding subject to such conditions as the Accountable Body may specify provided that such conditions do not amend the Project Agreed Outputs, Project Outcomes or Project Impacts.
- (d) Deduct all amounts owed to the Accountable Body under the terms of this Agreement from any other funding that the Accountable Body has awarded or may award to the Project Authority Lead. And/Or
- (e) Exercise any other rights against the Project Authority Lead which the Accountable Body may have in respect of the Project Funding.

8.6 In the event that payment of the Project Funding is ceased or to be repaid in accordance with clause 8.5, either party shall be entitled to terminate this Agreement immediately on notice subject to the approval of the Joint Committee, provided where repayment is required, that the Project Authority Lead has repaid in accordance with clause 22. Where payment of Project Funding is suspended, the parties shall agree in good faith whether (i) the circumstances leading to suspension can be resolved, and if so agree a timetable for resolution; or (ii) whether the circumstance leading to suspension cannot be resolved whereupon either party shall be entitled to terminate this Agreement immediately on notice subject to the approval of the Joint Committee.

## **9. Payment of Project Funding to the Project Authority Lead**

- 9.1 The Accountable Body shall pay Project Funding to the Project Authority Lead in accordance with the provisions of the Joint Committee Agreement subject to it being an equitable distribution of the Annual Funding Receipt and in accordance with any terms and conditions issued by the Welsh Government and the UK Government. The payment profile for the Project shall be calculated in accordance with clause 9.3 and as set out in Schedule 4. The process for the payment of Project Funding by the Accountable Body to the Project Authority Lead shall be as set out in this clause 9.
- 9.2 From the Commencement Date until the Parties have agreed in accordance with clause 6.7 that the Project has achieved Practical Completion the Project Authority Lead shall submit a claim for Project Funding to the Accountable Body at a frequency to be determined by the Accountable Body and as set out in Schedule 4 up to a maximum of the Annual Project Funding Allocation as set out in clause 9.3. The claim shall include a progress report on the Project. The progress report shall include an assessment of risks associated with the project and details of progress with achieving the Project Agreed Outputs. After the Parties have agreed in accordance with clause 6.7 that the Project has achieved Practical Completion the Project Authority Lead shall not be required to submit claims for Project Funding. Thereafter the Project Authority Lead shall complete annual monitoring returns in a form to be specified by the Accountable Body prior to the Accountable Body releasing any Project Funding to which the Project Authority Lead is entitled. The annual monitoring forms will include an obligation to report on the progress in achieving the Project Agreed Outputs. The Accountable Body reserves the right to impose additional monitoring requirements at a frequency and for such period as it considers reasonable in all the circumstances.
- 9.3 Subject to clause 9.6 the Accountable Body shall aim to pay the Annual Project Funding Allocation to the Project Authority Lead in accordance with the value of the funding received by the region, proportionate to the Approved Grant Value of the Project. This can be calculated as per the below equation:

$$PFA = \frac{A}{T} \times G$$

PFA = Annual Project Funding Allocation

A = Annual Funding Receipt (to the Swansea Bay City Region)

T = Total Programme Grant Award

G = Approved Grant Value (of the Project).

The above calculation is designed to support the Government Funding profile adopted by Welsh Government at the Commencement of this Agreement. There can be no amendment to the equation set out in this clause without the prior approval of the Joint Committee and in compliance with any terms and conditions issued by the Welsh or UK Governments.

- 9.4 In the event that there is an actual or anticipated material change to the financial case or Budget (as prescribed in Schedule 4) the Project Authority Lead shall immediately notify the Accountable Body who shall refer the matter to the Joint

Committee for consideration whether any adjustments to Project Funding or to the Maximum Project Funding Percentage are necessary.

- 9.5 The Accountable Body shall aim to pay Project Funding to the Project Authority Lead no later than 28 days after the Accountable Body receives the Government Funding from the Welsh Government.
- 9.6 The Accountable Body shall not be required to pay Project Funding to the Project Authority Lead if any of the following circumstances apply:
- (a) The Project Authority Lead has not submitted a claim and progress report to the Accountable Body.
  - (b) The Project Authority Lead has not submitted evidence that the claim relates to Expenditure that has been defrayed on the Projects.
  - (c) The Accountable Body does not receive Government Funding.
  - (d) The Projects have not completed the processes set out in clause 12 of the Joint Committee Agreement.
  - (e) The payment of Project Funding would cause the Accountable Body to breach any conditions imposed by the UK Government or the Welsh Government for the provision of funding for the Swansea Bay City Deal.
  - (f) The payment of Project Funding for Expenditure defrayed on any Project would cause the total amount of Project Funding paid to the Project Authority Lead in respect of that Project to exceed the total amount allocated to that Project when its business case was originally approved or as subsequently reapproved by the Welsh and UK governments.

## **10. Force Majeure**

- 10.1 In this clause, "**force majeure**" means an event beyond the control of the Project Authority Lead or the Accountable Body, which makes it impossible or illegal for a Party to perform its obligations under this agreement, including but not limited to:
- (a) Act of God;
  - (b) War, hostilities (whether declared or not), invasion, acts of foreign enemies, mobilisation, requisition or embargo;
  - (c) Rebellion, revolution, insurrection or military or usurped power, or civil war;
  - (d) Contamination by radio-activity from any nuclear fuel, or from any nuclear fuel or waste;
  - (e) Riot, commotion or disorder;
  - (f) Epidemic or pandemic.

- 10.2 Neither the Accountable Body nor the Project Authority Lead shall be considered in default or in breach of this Agreement to the extent that performance of their respective obligations under this Agreement is prevented by a force majeure event which arises after the execution of this Agreement.
- 10.3 Upon the occurrence of an event considered by a Party to constitute force majeure and which may affect performance of that Party's obligations, such Party shall promptly notify the other Party of that fact and the steps being taken by it to minimise or remove the circumstances giving rise to force majeure. Any Party affected by force majeure shall endeavour to continue to perform its obligations as far as is reasonably practicable.

## **11. Indemnity**

- 11.1 The Project Authority Lead shall on demand indemnify and keep indemnified the Accountable Body against all losses costs expenses actions charges claims damages proceedings and other liabilities sustained or incurred as a result of any breach by the Project Authority Lead of the terms of this Agreement.
- 11.2 The liability of the Project Authority Lead pursuant to clause 4.10(r) and clause 11.1 and for the avoidance of doubt any breach of clause 4.6 shall be limited to the total amount of Project Funding Payments received by the Project Authority Lead together with any direct losses occasioned by the Accountable Body.
- 11.3 The Accountable Body shall on demand indemnify and keep indemnified the Project Authority Lead against all losses costs expenses actions charges claims damages proceedings and other liabilities sustained or incurred as a result of any breach by the Accountable Body of the terms of this Agreement save where the Accountable Body is acting upon the instructions of the Joint Committee. The Project Authority Lead shall use all reasonable endeavours to mitigate and evidence any loss incurred.
- 11.4 The liability of the Accountable Body pursuant to clause 11.3 shall be limited to the total amount of Project Funding Payments paid to the Project Authority Lead. For the avoidance of doubt the liability of the Accountable Body shall not extend to any expectation the Project Authority Lead may have in relation to the award of future Project Funding.

## **12. Assignment**

- 12.1 This Agreement shall benefit and be binding on the Parties their respective successors and permitted assigns.
- 12.2 The Project Authority Lead may not without the prior written consent of the Accountable Body assign transfer sub-contract or in any other way make over to any third party the benefit and/or the burden of this Agreement or except as contemplated as part of the Project transfer or pay to any other person any part of the Project Funding.
- 12.3 If the Accountable Body is replaced as Accountable Body in accordance with clause 6 of the Joint Committee Agreement the Accountable Body shall assign the benefit and burden of this Agreement to the replacement Accountable Body

### **13. Variation**

- 13.1 Any variation to this Agreement must be in writing and executed by the Parties in the same manner as this Agreement.

### **14. Notices**

- 14.1 All notices under, or in connection with, this Agreement shall (unless otherwise stated) be given in writing by letter or e-mail and must prominently display the heading "Notice in relation to Swansea Bay City Region City Deal funding". Any such notice is deemed given as follows:

- (a) If given by letter such notice shall be deemed to be delivered on the second Working Day after being posted by first class prepaid post;
- (b) If delivered by hand upon delivery to the address or the next Working Day if after 4pm or on a weekend or public holiday;
- (c) If sent by e-mail attachment upon transmission or the next Working Day if after 4pm or on a weekend or public holiday;

provided that any notice given or delivered or deemed to have been given or delivered on a day which is not a Working Day or after 4 pm on a Working Day shall be deemed instead to have been given or delivered on the next following Working Day.

- 14.2 The address and e-mail address of the Accountable Body and the Project Authority Lead are as follows (or such other address or e-mail address notified to the relevant Party from time to time):

#### **Accountable Body**

Carmarthenshire County Council, County Hall, Carmarthen, SA31 1JP

Email Address (Section 151 Officer): [cmoore@carmarthenshire.gov.uk](mailto:cmoore@carmarthenshire.gov.uk)

#### **Project Authority Lead**

Neath Port Talbot CBC, Civic Centre, Port Talbot, SA13 1PJ

Email Address (Section 151 Officer): [h.jones@npt.gov.uk](mailto:h.jones@npt.gov.uk)

### **15. Confidentiality**

- 15.1 Subject to clause 16 (Freedom of Information), each Party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.

15.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

- (a) At the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
- (b) Is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence; or
- (c) Is at any time after the date of this Agreement acquired by the receiving Party from a third party having the right to disclose the same to the receiving Party without breach of the obligations owed by that party to the disclosing Party.

## **16. Freedom of Information**

16.1 The Parties acknowledge that the Accountable Body and the Project Authority Lead are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and each Party shall assist and co-operate with the other Party to enable the other Party to comply with these information disclosure requirements and shall provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in section 10 of the Freedom of Information Act 2000 or regulation 5 of the Environmental Information Regulations 2004.

## **17. Data Protection**

17.1 Each Party shall comply with the provisions and obligations imposed on it by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement.

17.2 Each Party shall maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Laws, and shall make such information available to any DP Regulator on request.

17.3 To the extent any Party processes any Personal Data on behalf of the other Party or another Council that Party shall:

- (a) Process such Personal Data only in accordance with the other Party's or the relevant Council's written instructions from time to time and only for the duration of this Agreement.
- (b) Not process such Personal Data for any purpose other than those set out in this Agreement or otherwise expressly authorised by the other Party or the relevant Council.
- (c) Take reasonable steps to ensure the reliability of all its personnel who have access to such Personal Data, limit such access to its personnel who require access, and remove, when no longer required, such access



to the Personal Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Personal Data.

- (d) Implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Personal Data, including protecting such Personal Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access.
- (e) Not transfer such Personal Data to a country where the General Data Protection Regulation does not apply without the prior written consent of the other Party or the relevant Council.
- (f) Inform the other Party or the relevant Council within twenty four (24) hours if any such Personal Data is (while within the processing Party's possession or control) subject to a personal data breach (as defined in Article 4 of GDPR) or within such other time period as required under other Data Protection Laws, or is lost or destroyed or becomes damaged, corrupted or unusable.
- (g) Only appoint a third party to process such Personal Data with the prior written consent of the other Party or the relevant Council.
- (h) Not use or disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Party or the relevant Council or as expressly provided for in this Agreement.
- (i) Return or irretrievably delete all Personal Data on termination or expiry of this Agreement and not make any further use of such Personal Data.
- (j) Provide to the other Party or the relevant Council and any DP Regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause and the Data Protection Laws.
- (k) Permit the other Party or the relevant Council or its representatives to access any relevant premises, personnel or records of the processing Party on reasonable notice to audit and otherwise verify compliance with this clause.
- (l) Take such steps as are reasonably required to assist the other Party's or the Relevant Council's compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR and other applicable Data Protection Laws.
- (m) Notify the other Party or the relevant Council within two (2) Working Days if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; and
- (n) Provide the other Party or the relevant Council with its full co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data.

- 17.4 If any Party receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by the other Party or to the other Party's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other Party and it shall provide the other Party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.
- 17.5 If any Party requires the other Party to make any disclosures or provide any information in respect of this Agreement in order to enable the Party who needs such disclosures to meet its obligations under the Data Protection Laws the other Party shall do so.
- 17.6 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

**18. State Aid**

- 18.1 If any part of the Project Funding made available under this Agreement is found to be unlawful State aid the Accountable Body shall be entitled to recover directly from the Project Authority Lead any part of that State aid which has been given to the Project Authority Lead together with interest.

**19. Duration**

- 19.1 This Agreement shall continue in force until all the Project Agreed Outputs have been achieved and all obligations of the Parties under this Agreement have been satisfied in full.
- 19.2 Clauses 11 16 17 18 and 22 shall continue in force after the expiry or termination of this Agreement.

**20. Suspension of Payments (where a Notification Event does not apply)**

- 20.1 The Accountable Body may suspend payments of Project Funding if the Welsh Government or the UK Government suspend payment of Government Funding to the Accountable Body and if the suspension is not permanent, the Parties shall agree reasonable amendments to the requirement to deliver the Project Agreed Outputs for the duration of the suspension. The Parties shall also be entitled to terminate the agreement by notice of one to the other if both Parties agree that the suspension is either permanent or is continuing or likely to continue for an unsustainable period of time and written consent for such termination has been given by the Welsh Government.

**21. Withdrawal of Project Funding (where a Notification Event does not apply)**

- 21.1 The Accountable Body may withdraw its agreement to pay the Project Funding to the Project Authority Lead if the Welsh Government or the UK Government withdraw the award of Government Funding and thereafter the Parties shall be entitled to terminate this Agreement by notice of one to the other if written consent for such termination has been given by the Welsh Government. Where the Project Funding is withdrawn in accordance with this clause 21, the obligations imposed on the Project Authority Lead under this Agreement shall be suspended until such time as Welsh Government has made a decision as to whether to give consent for the Agreement to be terminated.

## **22. Repayment of Project Funding**

- 22.1 Save where the Accountable Body has breached the terms of this Agreement and subject to the indemnity in clause 11.4 the Accountable Body may require the Project Authority Lead to repay all or part of the Project Funding to the Accountable Body if the Accountable Body is required to repay all or part of the Government Funding to the Welsh Government or the UK Government.
- 22.2 If a Notification Event occurs the Accountable Body may require the Project Authority Lead to repay Project Funding to the Accountable Body in accordance with clause 8.
- 22.3 The Accountable Body may deduct amounts owed to it as repayment from any other funding that the Accountable Body may have awarded or may award to the Project Authority Lead.
- 22.4 All repayments of Swansea Bay City Deal funding must be made to the Accountable Body within 28 days of the date of the Accountable Body's demand.
- 22.5 The Project Authority Lead shall unless the Accountable Body agrees otherwise, repay to the Accountable Body any Project Funding Payments made to it as a result of an administrative error whether such error is made by the Accountable Body, the Project Authority Lead or any other person.

## **23. Waiver**

- 23.1 No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of that or any other right or remedy.

## **24. Termination**

- 24.1 The Parties agree that this Agreement may be terminated upon terms agreed by the Parties.

## **25. Dispute Resolution**

- 25.1 The Parties to this Agreement undertake and agree to pursue a positive approach towards dispute resolution which seeks to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Parties.
- 25.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 25
- 25.3 All disputes, claims or differences between the Parties arising out of or in connection with this Agreement or its subject matter or formation, including any question regarding its existence, validity or termination, (a "Dispute") shall, at the written request of any Party be referred by each Party to its Head of Paid Service.

- 25.4 If the Heads of Paid Service of the Parties do not agree a resolution of the Dispute within ten Working Days of the date of service of any such request the matter shall be referred to the Joint Committee.
- 25.5 If the Joint Committee is unable to resolve the dispute either Party may require the other Party by notice in writing to attempt to settle the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. Within five Working Days of the date of service of such notice the Parties shall each propose a mediator and shall seek to agree as to the selection of a mediator.
- 25.6 If the Parties are unable to agree on a mediator within ten Working Days of date of service of the notice referred to in clause or the mediator agreed upon is unable or unwilling to act and the Parties cannot agree upon a substitute, any Party may apply to CEDR to appoint a mediator as soon as practicable.
- 25.7 The Parties shall within five Working Days of the appointment of the mediator (the "Mediator") meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 25.8 All negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future proceedings.
- 25.9 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by the Parties or their duly authorised representatives, shall be and remain binding upon the Parties.
- 25.10 The costs and expenses of the mediation shall be borne equally by the Parties. Each Party shall bear its own costs and expenses of its participation in the mediation.
- 25.11 If mediation fails to secure a resolution within ten Working Days of the Mediator being appointed, the Parties shall attempt to settle the Dispute by arbitration under the Rules of the London Court of International Arbitration (which Rules are deemed to be incorporated by reference into this clause) and otherwise in accordance with clause 25.12.
- 25.12 In the event that an arbitration is commenced pursuant to clause 25.11 the Parties agree that:
- (a) The tribunal shall consist of one arbitrator who is to be a chartered accountant who is a member of the Consultative Committee of Accountancy Bodies (CCAB) if the dispute relates to a financial matter or a solicitor of at least ten years standing as a qualified solicitor if the dispute relates to any other matter as the Parties may agree in writing;
  - (b) The place of the arbitration shall be Swansea;
  - (c) The decision of the arbitrator shall be final and binding on the Parties (save in the case of manifest error).

## **26. Interest**

- 26.1 If the Project Authority Lead fails to pay any sum due to the Accountable Body on the due date, such sum will bear interest both before and after judgment at the rate of 2% per annum above the Bank of England Bank Rate from time to time or such other rate as may be required by State Aid rules until paid in full. The Accountable Body may, but need not, set off sums payable to it to the Project Authority Lead against any unpaid sums.
- 26.2 If the Accountable Body fails to pay any sum due to the Project Authority Lead on the due date, such sum will bear interest both before and after judgment at the rate of 2% per annum above the Bank of England Bank Rate from time to time or such other rate as may be required by State Aid rules until paid in full. The Project Authority Lead may, but need not, set off sums payable to it to the Accountable Body against any unpaid sums.

## **27. Decisions of the Accountable Body and the Project Authority Lead**

- 27.1 Except where any agreement decision or determination to be made by the Accountable Body or the Project Authority Lead under or in connection with this Agreement is expressly qualified such agreement decision or determination by either of the Parties shall be made by the Party in its absolute discretion.

## **28. Contracts (Rights of Third Parties) Act 1999**

- 28.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **29. Entire Agreement**

- 29.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements promises assurances warranties representations and understandings between them whether written or oral relating to its subject matter. Nothing in this Agreement shall exclude liability for fraudulent misrepresentation or any other liability in consequence of any fraudulent act.
- 29.2 In the event of any conflict between provisions of this Agreement and provisions of the Joint Committee Agreement the provisions of this Agreement shall have precedence over the provisions of the Joint Committee Agreement.

## **30. Severability**

- 30.1 If at any time any provision of this Agreement is or becomes illegal invalid or unenforceable in any respect that shall not affect or impair the legality validity or enforceability of any other provision of this Agreement.

## **31. Execution**

- 31.1 This Agreement may be executed and delivered in any number of counterparts but will only be effective when both Parties have executed at least one counterpart. Each counterpart of this document shall constitute an original of this document but the counterparts together constitute one and the same

document and together shall have the same effect as if each Party had signed the same document.

**32. Governing Law**

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

32.2 The Accountable Body and the Project Authority Lead irrevocably agree that any legal action or proceedings arising out of or relating to this Agreement may be brought and enforced in the courts of England and Wales and irrevocably submit to such jurisdiction.

IN WITNESS whereof the Parties have executed this Agreement on the date set out at the start of this Agreement.

EXECUTED for and on behalf of  
Carmarthenshire County Council by affixing the common seal of Carmarthenshire  
County Council in the presence of

SIGNATURE .....

NAME

POSITION

EXECUTED for and on behalf of  
Neath Port Talbot County Borough Council

SIGNATURE .....

NAME

POSITION

## **Schedule 1 Projects**

- 1 The Project Authority Lead is responsible for the utilisation or distribution of funding from the Swansea Bay City Deal to the following projects:
  - 1.1 Homes as Power Stations



## **Schedule 2 Notification Events**

- 1 Repayment of any part of the Project Funding is required under European Law.
- 2 Repayment of any part of the Project Funding is required by HM Treasury or the Welsh Government.
- 3 The Accountable Body fails to comply with any conditions imposed on the Accountable Body by the UK Government or the Welsh Government in the Funding Award Letter.
- 4 The Project Authority Lead fails to comply with any obligations imposed on the Project Authority Lead by the Accountable Body in this Agreement.
- 5 The Project Funding in full or in part is not being used for the Purposes.
- 6 The Accountable Body fails to achieve the Targets.
- 7 The Project Authority Lead fails to achieve the Project Agreed Outputs.
- 8 There is unsatisfactory progress towards completing the Purposes.
- 9 The Accountable Body or the Project Authority Lead fails to provide information requested by the Welsh Government the European Commission or the European Court of Auditors or any of its auditors agents or representatives about the Purposes.
- 10 The Project Authority Lead fails to provide information requested by the Accountable Body or any of its auditors agents or representatives.
- 11 The Welsh Government has reason to believe that the Accountable Body or any of its employees or suppliers or any other person engaged by the Accountable Body in relation to the Purposes is or has been involved in fraudulent activity whilst the Purposes are or were being carried out.
- 12 The Accountable Body has reason to believe that the Project Authority Lead or any of its employees or suppliers or any other person engaged by the Project Authority Lead in relation to the Projects is or has been involved in fraudulent activity whilst the Projects are or were being carried out.
- 13 The Welsh Government has made an overpayment of Project Funding to the Accountable Body.
- 14 The Accountable Body has made an overpayment of Project Funding to the Project Authority Lead.
- 15 Any declaration made by the Accountable Body to the Welsh Government is discovered to be materially incorrect at the time it was given.
- 16 Any declaration made by the Project Authority Lead to the Accountable Body is discovered to be materially incorrect at the time it was given.
- 17 There has been a modification to the auditor's opinion on the financial statements of the Accountable Body or the Project Authority Lead.

- 18 Any event occurs or circumstances arise which in the opinion of the Welsh Government gives reasonable grounds for believing that the Accountable Body may not or may be unable to perform or comply with any of its obligations under conditions imposed by the UK Government or the Welsh Government in the Funding Award Letter.
- 19 Any event occurs or circumstances arise which in the opinion of the Accountable Body gives reasonable grounds for believing that the Project authority Lead may not or may be unable to perform or comply with any of its obligations under this Agreement.

### **Schedule 3 Terms and conditions of award of Swansea Bay City Deal funding**

- 1 The Accountable Body shall comply with all terms and conditions contained in the Funding Award Letter set out below.

Please see attached:

- Award of Funding Offer Cover Letter - Issued 24<sup>th</sup> October 2019
- Award of Funding Offer – Issued 24<sup>th</sup> October 2019
- Award of Funding Letter – Swansea Bay City Region Deal – Issued 16<sup>th</sup> December 2020



**Funding Award**  
Funding Award City I



**Funding Award**  
SBCRCD - Award of Fi



**Funding Award city**  
deal 2021.pdf



**Funding Award**  
SBCRCD - Award of Fi

## Schedule 4 Financial Profile for the Project

### Budget

Expenditure	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Total
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	
	(£m)	(£m)	(£m)	(£m)	(£m)	(£m)	(£m)	(£m)	(£m)
Capital	£ -	£ -	£ -	£ 31.44	£ 65.96	£ 99.70	£ 137.45	£ 170.95	£ 505.50
Revenue	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
<b>Total</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ 31.44</b>	<b>£ 65.96</b>	<b>£ 99.70</b>	<b>£ 137.45</b>	<b>£ 170.95</b>	<b>£ 505.50</b>
Funding									
Swansea Bay City Deal Grant	£ -	£ -	£ -	£ 1.95	£ 4.20	£ 4.45	£ 3.45	£ 0.95	£ 15.00
Public Sector	£ -	£ -	£ -	£ 6.42	£ 14.08	£ 22.20	£ 31.40	£ 40.50	£ 114.60
Private Sector	£ -	£ -	£ -	£ 23.07	£ 47.68	£ 73.05	£ 102.60	£ 129.50	£ 375.90
<b>Total</b>	<b>£ -</b>	<b>£ -</b>	<b>£ -</b>	<b>£ 31.44</b>	<b>£ 65.96</b>	<b>£ 99.70</b>	<b>£ 137.45</b>	<b>£ 170.95</b>	<b>£ 505.50</b>

Maximum Funding Percentage (City Deal Grant Award): 3% (£15.00/£505.50\*100)

Material change to the Budget = 10% of the total Budget

This formula is subject to change in the event that the Government Funding profile changes and has to be approved by the Joint Committee.

### Payment Profile

Project	Year 1 2018-19	Year 2 2019-20	Year 3 2020-21	Year 4 2021-22	Year 5 2022-23	Year 6 2023-24	Year 7 2024-25	Year 8 2025-26
Regional Homes as PowerStation's	1,120,332	1,120,332	1,120,332	1,462,952	1,462,952	1,462,952	1,462,952	1,462,952
Project	Year 9 2026-27	Year 10 2027-28	Year 11 2028-29	Year 12 2029-30	Year 13 2030-31	Year 14 2031-32	Year 15 2032-33	Total
Regional Homes as PowerStation's	1,462,952	1,462,952	329,461	267,220	267,220	267,220	267,219	15,000,000

This is an anticipated profile and subject to change by UK and Welsh Governments.

### Applications for Payment

The frequency of claims for payment to be made by the PAL up to the point when Practical Completion is agreed between the Parties. After the date of PC annual monitoring forms are to be submitted by the PAL to trigger the release of further funding due to the PAL.

Claim Period	Claim Deadline
Quarter 1	31 <sup>st</sup> July
Quarter 2	31 <sup>st</sup> October
Quarter 3	31 <sup>st</sup> January
Quarter 4	15 <sup>th</sup> April

**Schedule 5 – not used**

### Schedule 6 Project Agreed Outputs

Benefit No:	Benefit Description	Benefit Target	Targeted End Achievement Date	Year Time Value			Data Sources	Activities Required/Critical Dates	Responsible Officer/Who will deliver it	How will it be evidenced	Reporting
				5yrs	10 yrs	15yrs					
HAPS 1	Reduction in energy use as a result of the additional technologies funded by HAPS for new build and retrofit homes	New build = £564 per home Retrofit = £758 per home	2033			X	Independent monitoring via sensors	Procurement of monitoring & evaluation service / Q2 2021	SRO / Local Authority Partners / Independent monitoring & evaluation organisation	Independent monitoring & evaluation reports generated from the appointed monitoring & evaluation organisation - data obtained via sensors and surveys	Real time independent monitoring reports / Quarterly reports to HAPS Project Board
HAPS 2	Reduction in greenhouse gas (GHG) emissions as a result of reduction in energy use	New build = £71 per home Retrofit = £99 per home	2033			X	Independent monitoring via sensors	Procurement of monitoring & evaluation service / Q2 2021	SRO / Local Authority Partners / Independent monitoring & evaluation organisation	Independent monitoring & evaluation reports generated from the appointed monitoring & evaluation organisation - data obtained via sensors and surveys	Real time independent monitoring reports / Quarterly reports to HAPS Project Board

### Schedule 7 Project Outcomes

Benefit No:	Benefit Description	Benefit Target	Targeted End Achievement Date	Year Time Value			Data Sources	Activities Required/Critical Dates	Responsible Officer/Who will deliver it	How will it be evidenced	Reporting
				5yrs	10 yrs	15yrs					
HAPS 3	Jobs created (indirect)	1,804	2033			X	Project monitoring Industry monitoring	Supply Chain Fund to be established Business Engagement post appointed	SRO / Project Team / Industry / Fund recipients	Industry evidence / surveys / business engagement	Quarterly reporting to HAPS Project Board and City Deal governance
HAPS 3a	Jobs with salary uplift	167	2027	X			Industry evidence	Project completion	SRO / LA partners / Industry	Industry evidence	Quarterly reporting to HAPS Project Board
HAPS 4	Private Sector leverage	£375.9m	2027	X			Formal declarations from developers & fund recipients	Financial Incentives Fund to be established Supply Chain development fund to be established Knowledge sharing	SRO / RSLs / Private Sector Developers	Industry evidence	Quarterly reporting to HAPS Project Board and City Deal governance
HAPS 5	Public Sector leverage	£114.6m	2027	X			Formal declarations	Financial Incentives Fund to be established Supply Chain development fund to be established Knowledge sharing	SRO / RSLs / Private Sector Developers	Written declarations	Quarterly reporting to HAPS Project Board and City Deal governance
HAPS 6	GVA - net additional	£251m	2033			X	Industry evidence	Implementation of HAPS project activities	SRO / Local Authority Partners	Portfolio level economic evaluation	Portfolio level reporting

## Schedule 8 Project Impacts

Benefit No:	Benefit Description	Benefit Target	Targeted End Achievement Date	Year Time Value			Data Sources	Activities Required/Critical Dates	Responsible Officer/Who will deliver it	How will it be evidenced	Reporting
				5yrs	10 yrs	15yrs					
HAPS 9	Additional economic activity in region through supply chain development	Develop renewable industry in the region through creating demand for the supply chain	2027	X			Business engagement activity / ONS data / job creation evidence / uplift in salaries info	Establish regional supply chain development fund (Q3 2021) Appointment of Business Engagement post / Q2 2021 Stakeholder engagement incl. Industry Wales	SRO / LA Partners / Project Team / Industry	Business surveys	Quarterly reporting to HAPS Project Board
HAPS 10	Greater take up of investment in energy efficient technology		2027	X			Monitoring reports	Monitoring & dissemination programme	SRO / LA Partners / Project Team / M&E organisation	Monitoring reports on take up of technologies	Quarterly reporting to HAPS Project Board
HAPS 11	Shared learning and avoidance of abortive costs for future developments		2027	X			Monitoring reports	Open access knowledge sharing platform	SRO / Project Team / LA Partners / Industry	Feedback from industry and stakeholders	Quarterly reporting to HAPS Project Board
HAPS 12	Local security of energy supply through demand side response management		2033			X	Monitoring reports	Project implementation	SRO / Project Team / LA Partners / Industry	Evaluation reports from monitoring activity - independently evaluated	Quarterly reporting to HAPS Project Board
HAPS 13	Improved health and wellbeing - reduction in respiratory and cardiovascular conditions.		2033			X	Monitoring reports	Project implementation	SRO / LA Partners / Project Team / Health organisations	Evaluation reports from monitoring activity - independently evaluated / engagement with health organisations e.g. Public Health Wales	Quarterly reporting to HAPS Project Board
HAPS 14	Warmer homes		2033			X	Monitoring reports	Project implementation	SRO / LA Partners / Project Team / M&E organisation	Evaluation reports from monitoring activity - independently evaluated Surveys	Quarterly reporting to HAPS Project Board
HAPS 15	Improved air quality in homes via combined heating and mechanical ventilation - ensuring good air quality all year round.		2033			X	Monitoring reports	Project implementation	SRO / LA Partners / Project Team / M&E organisation	Evaluation reports from monitoring activity - independently evaluated Surveys	Quarterly reporting to HAPS Project Board
HAPS 16	Encourage behavioural change (residents and industry) leading to greater take up in energy efficient technologies		2033			X	Monitoring reports	Dissemination / education project	SRO / LA Partners / Project Team / M&E organisation	Stakeholder engagement surveys	Quarterly reporting to HAPS Project Board
HAPS 17	Mainstream energy positive homes.		2027	X			Monitoring reports	Project implementation	SRO / LA Partners / Project Team / Industry	Industry engagement / surveys / evidence	Quarterly reporting to HAPS Project Board
HAPS 18	Aggregation of demand - which results in reduced cost of technologies		2027	X			Monitoring reports	Project implementation	SRO / LA Partners / Project Team / Industry	Industry engagement / surveys / evidence	Quarterly reporting to HAPS Project Board
HAPS 19	diversification of the economy / centre of excellence of renewable technologies for housing		2033			X	Monitoring reports	Project implementation	SRO / LA Partners / Project Team / Industry	Industry engagement / surveys / evidence	Quarterly reporting to HAPS Project Board
HAPS 20	Overall improvement in domestic SAP/EPC ratings		2033			X	Monitoring reports	Project implementation	SRO / LA Partners / Project Team / Industry	Industry engagement / surveys / evidence	Quarterly reporting to HAPS Project Board
HAPS 21	Increased skills development		2033			X	Training and skills surveys	Project implementation	SRO / RLSP / Industry / FE & HE	Training and skills surveys	Quarterly reporting to HAPS Project Board



## **Schedule 9 Communication from Welsh Government**

**Email Author: Debra Carter, Deputy Director, Local Government Strategic Finance**

**Email Dated: 30<sup>th</sup> September 2020**

The conditions in the initial Award of Funding Letter (of 24 October 2019) reflect the fact that the Letter was issued in exceptional circumstances, based on the business cases for the Yr Egin and Swansea Waterfront projects rather than on the basis of an approved business case for the programme as a whole, as was the original intention.

The intention for the Deal (in common with other deals) was that the funding contribution from the UK Government and the Welsh Government would be allocated to the Region for the programme as a whole rather than to individual projects, with the Joint Committee managing the allocation of funds between projects, overseeing delivery and reporting to government on the progress for the programme as a whole. This is why the targets in the Letter included the establishment of programme management arrangements and the provision of programme documentation as recommended in the Independent Review – the aim being to restore the Deal to a programme based approach. In the absence of the programme management arrangements and documentation, the targets in the initial Letter needed to go into more detail about the requirements for the two approved projects than would otherwise have been the case.

Subject to the conditions in the initial Letter being met, the intention for future award of funding letters is to move them onto a programme based approach as originally planned, with the targets referring to programme level monitoring and deliverables rather than individual projects. These targets will draw on recommendations in the Accounting Officer Reviews where necessary. We would expect the programme level monitoring to include progress on the preparation, approval and delivery of project business cases but it is not our intention to include details of deliverables within projects, or the contributions of individual projects to the programme deliverables, in the targets within future award of funding letters. This assumes the programme arrangements being put in place continue to operate as planned.

We also discussed the approach to the assessment of delivery and the measurement of targets more generally. We have recognised in previous discussions that the programme and project business cases will be live documents which will need to be updated from time to time to reflect changing circumstances. Within the Welsh Government, we also recognise that some programme targets will be hard, measurable deliverables or benefits which can be attributed to specific actions and investments through the Deal (eg. the completion of physical assets), while others (such as growth in GVA or jobs created) will be more difficult to measure and to attribute specifically to the Deal actions. Some deliverables will also be more susceptible to external factors which are beyond the control of the Region over the lifetime of the Deal. Our focus for funding purposes would be on the delivery of the programme level outcomes and benefits rather than the individual contributions from the constituent projects, and we would expect to take a realistic approach to the need for changes, engaging in discussions with the Region about the need for targets to be updated where necessary.

**Email Author: Debra Carter, Deputy Director, Local Government Strategic Finance**

**Email Dated: 16<sup>th</sup> October 2020**

I think your proposed approach sets things out clearly and looks proportionate and practicable. I think the key thing, in addition to providing that clarity, is that it allows both the Project Authority and Accountable Body to agree variations if necessary.