



## City and County of Swansea

### Notice of Meeting

You are invited to attend a Meeting of the

## Special Scrutiny Programme Committee

**At:** Remotely via Microsoft Teams

**On:** Friday, 24 April 2020

**Time:** 2.00 pm

**Chair:** Councillor Mary Jones

#### Membership:

Councillors: C Anderson, M Durke, E W Fitzgerald, L S Gibbard, J A Hale, D W Helliwell, T J Hennegan, P K Jones, E T Kirchner, W G Lewis, G J Tanner and W G Thomas

Councillor Co-opted Members: P M Black, C A Holley, P R Hood-Williams, L R Jones and J W Jones

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**Note:** It is not practicable for the meeting to be broadcast live. A recording will be made available as soon as possible after the meeting is completed.

### Agenda

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- 1 Apologies for Absence.**
- 2 Disclosures of Personal & Prejudicial Interest.**  
[www.swansea.gov.uk/disclosuresofinterests](http://www.swansea.gov.uk/disclosuresofinterests)
- 3 Prohibition of Whipped Votes and Declaration of Party Whips.**
- 4 Public Question Time.**  
Questions must be submitted in writing by 10 am on the day of the meeting and must relate to items on the agenda. Questions will be dealt with in a 10 minute period.
- 5 Urgent Item:**  
The Chair states that pursuant to paragraph 100B (4) (b) of the Local Government Act 1972, s/he considers that the report "Financial Procedure Rule 19.1c and FPR7 - Authorisation for Alteration and Conversion of Bay Studios, Fabian Way, Swansea into an 1000 Bed Surge Hospital on Behalf of the Swansea Bay University Health Board" should be considered at this meeting as a matter of urgency.

#### Reason for Urgency

Covid-19 emergency build of hospital for handover to Swansea Bay

University Health Board week commencing 27 April 2020.

- 6 Pre-decision Scrutiny: Financial Procedure Rule 19.1c and FPR7. 1 - 19**  
**Authorisation for Alteration and Conversion of Bay Studios, Fabian Way, Swansea into an 1000 Bed Surge Hospital on Behalf of the Swansea Bay University Health Board.**
- a) Role of the Committee
  - b) Consideration of Cabinet Report and Questions
  - c) Committee's View for Cabinet

**Next Meeting:** Monday, 11 May 2020 at 4.30 pm



**Huw Evans**  
**Head of Democratic Services**  
**Thursday, 23 April 2020**

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**Contact: Democratic Services - Tel (01792) 636923**

# Agenda Item 6



## Report of the Chair

Special Scrutiny Programme Committee – 24 April 2020

### Pre-decision Scrutiny – Role of the Committee

<b>Purpose</b>	This report provides guidance on pre-decision scrutiny ahead of consideration of the Cabinet report on: a) Financial Procedure Rule 19.1c and FPR7. Authorisation for Alteration and Conversion of Bay Studios, Fabian Way, Swansea into an 1000 Bed Surge Hospital on Behalf of the Swansea Bay University Health Board.
<b>Content</b>	This covering report explains the role of the Committee in undertaking pre-decision scrutiny.  The actual Cabinet report which is to be considered by Cabinet on 27 April is appended.
<b>Councillors are being asked to</b>	<ul style="list-style-type: none"><li>• note the pre-decision scrutiny process and role of the Committee</li><li>• consider the Cabinet report and proposals</li><li>• agree any views on the proposed decision(s) that are to be raised with Cabinet</li></ul>
<b>Lead Councillor</b>	Councillor Mary Jones, Chair of Scrutiny Programme Committee
<b>Report Author</b>	Brij Madahar, Scrutiny Team Leader Telephone: 01792 637257 <a href="mailto:brij.madahar@swansea.gov.uk">brij.madahar@swansea.gov.uk</a>
<b>Legal Officer</b>	Debbie Smith
<b>Finance Officer</b>	Paul Cridland

#### 1. Introduction

1.1 The Scrutiny Programme Committee will carry out pre-decision scrutiny or delegate to relevant Scrutiny Panels, in respect of proposed cabinet reports as requested.

1.2 A report on the Covid-19 emergency build of 1000 bed surge hospital is scheduled for decision by Cabinet on 27 April. The report of the Leader and Cabinet Member for Economy & Strategy is **attached** for pre-decision scrutiny.

The cabinet report recommends that

- 1) The project led by the Council on behalf of Swansea Bay University Health Board to convert the Elba Building, Bay Studios into a surge hospital together with the associated financial implications is approved and added to the capital programme (to comply with FPR7 – addition to capital programme);
- 2) Authority is delegated to the Director of Place in conjunction with the Leader, Chief Finance Officer and Chief Legal Officer to approve the final project cost and to enter into any agreements necessary (based on the draft collaboration agreement included in Appendix A) to ensure the delivery of the project and to protect the Council's interests; and
- 3) The Director of Place and Chief Finance Officer are authorised to recover all expenditure associated with the delivery of the project from Swansea Bay University Health Board in the first instance and if necessary from Welsh Government.

## **2. Role of the Committee**

### **2.1 The purpose of pre-decision scrutiny:**

- It entitles scrutiny to discuss proposed Cabinet reports, where a clear recommendation(s) exists, before decisions are taken by the Executive.
- Acting as a 'critical friend', it enables scrutiny to ask questions about a report to develop understanding and inform and influence decision-making, for example asking about:
  - the rationale for the report
  - robustness of the proposed decision and decision-making process
  - potential impact and implications (including policy/budget issues, social, economic and environmental impact) and risks
  - how different options have been considered
  - the extent of consultation undertaken
  - implementation and measures of success etc.
- It enables scrutiny to provide a perspective and report its views and any issues to Cabinet. The chair, on behalf of the Committee, can attend the Cabinet meeting to share the views of scrutiny on the report prior to Cabinet decision. This may include giving support, providing other suggestions on the way forward, or flagging up any concerns.
- The views of scrutiny are required to be formally considered by Cabinet before it makes the decision and feedback should be given including explanation for any rejection of views expressed.

2.2 The Cabinet Member has been invited to attend the meeting to present the report and respond to questions, along with relevant officer(s) involved in the development of the report who can assist the Committee and provide appropriate advice. The Director of Place, Martin Nicholls, and the Chief Financial Officer, Ben Smith, will attend.

2.3 The Committee (through the chair) will write to the Cabinet Member with its views following pre-decision scrutiny. The Chair will have the opportunity to attend the cabinet meeting on 27 April to verbally feedback the Committee's views, conclusions and recommendations about the report.

### **3. Cabinet Response**

3.1 Cabinet must formally consider scrutiny views at its meeting. It may decide that any issues raised by scrutiny can be dealt with at the meeting and decision taken. It may decide that more time is needed to consider the views of scrutiny and defer decision to the next (or a special) meeting of Cabinet.

3.2 The relevant Cabinet Member is expected to write back to the Committee with feedback from Cabinet, and should include explanation of any rejection of scrutiny views.

### **4. Legal Implications**

4.1 In accordance with the Council's Constitution "pre-decision scrutiny gives scrutiny the opportunity to influence Cabinet decision making as a critical friend". "The views of the scrutiny committee are formally presented (either in a written report or verbally by the scrutiny Chair) to the Cabinet meeting for the Cabinet to consider and inform its decision making".

### **5. Financial Implications**

5.1 There are no specific financial implications raised by this report. Financial implications of the actual cabinet report(s) are contained within those reports.

**Background Papers:** None

#### **Appendices:**

Appendix 1: Cabinet Report – Financial Procedure Rule 19.1c and FPR7. Authorisation for Alteration and Conversion of Bay Studios, Fabian Way, Swansea into an 1000 Bed Surge Hospital on Behalf of the Swansea Bay University Health Board.



## Report of the Leader and Cabinet Member for Economy and Strategy

Special Cabinet - 27 April 2020

### **Financial Procedure Rule 19.1c and FPR7. Authorisation for Alteration and Conversion of Bay Studios, Fabian Way, Swansea into an 1000 Bed Surge Hospital on Behalf of the Swansea Bay University Health Board**

<b>Reason for Urgency:</b>	Covid-19 emergency build of hospital for handover to Swansea Bay University Health Board week commencing 27 April 2020.
<b>Purpose:</b>	To enable the delivery on behalf of the Swansea Bay University Health Board of the conversion of Elba Building, Bay Studios, Fabian Way, Swansea into an 1000 bed surge hospital and to approve the project in line with FPR7 and FPR 19.1c.
<b>Policy Framework:</b>	Council Constitution:- Financial Procedure Rules FPR19.1c (emergency – danger to life) and FPR 7 Capital Programme
<b>Recommendation(s):</b>	It is recommended that: <ol style="list-style-type: none"> <li>1) The project led by the Council on behalf of Swansea Bay University Health Board to convert the Elba Building, Bay Studios into a surge hospital together with the associated financial implications is approved and added to the capital programme (to comply with FPR7 – addition to capital programme);</li> <li>2) Authority is delegated to the Director of Place in conjunction with the Leader, Chief Finance Officer and Chief Legal Officer to approve the final project cost and to enter into any agreements necessary (based on the draft collaboration agreement included in Appendix A) to ensure the delivery of the project and to protect the Council's interests:</li> <li>3) The Director of Place and Chief Finance Officer are authorised to recover all expenditure associated with the delivery of the project from Swansea Bay University Health Board in the first instance and if necessary from Welsh Government.</li> </ol>

<b>Report Author:</b>	Martin Nicholls
<b>Finance Officer:</b>	Ben Smith
<b>Legal Officer:</b>	Debbie Smith

## **1. Introduction**

- 1.1 Due to the unprecedented impact of Covid 19 on the population it is essential that additional hospital beds are provided in the event that hospitals within Swansea and Neath Port Talbot are unable to deal with any surge in admissions. Similar steps are being undertaken by other Local Authorities in the UK with Welsh Government identifying a shortage of 10,000 and Swansea Bay University Health Board identifying a requirement of a minimum of 1300 addition beds. The actual occupation as a field hospital will be dealt with by Swansea Bay University Health Board and the Council will have no liability in this regard.
- 1.2 As such the Council has been requested by The Swansea Bay University Health Board to urgently undertake on its behalf alterations and conversion works to the Bay Studios, Fabian Way, Swansea to provide a 1000+ bed surge hospital. The works have commenced on an emergency basis and will last approximately eight weeks.
- 1.3 As the project is being undertaken and managed by the Council on behalf of the Health Board, it has been agreed that the Council's Building Services Department will be appointed as Principal Contractor under a cost reimbursable NEC3 Option E contract to deliver and manage the works. The specification for and the design of the works has been undertaken by the Health Board who will be the ultimate occupiers and operators of the site.
- 1.4 Due to time constraints arising from the urgent requirement of this facility it was not possible for the Council to undertake a tendering exercise to appoint suitably experienced contractors to undertake the works and so two contractors from the South West Wales Regional Contractor's Framework 2020 (SWWRCF 2020) were approached to confirm capacity to carry out the works. These awards will be dealt with separately.

## **2. Site Identification Process**

- 2.1 Swansea Bay University Health board (SBUHB) undertook a review of the buildings within its boundaries to identify those which were suitable for conversion into a temporary hospital. This included commercial units, leisure centres, sporting facilities and industrial buildings. It is understood they applied a number factors including size and location in narrowing down their preferences and the council were advised that the selected sites were Bay Studios and Llandarcy Academy.

- 2.2 The two sites were then reviewed and approved by the Military Assessment team who have reviewed all surge Hospitals in the UK and determined as suitable for the purpose intended.
- 2.3 Whilst both these sites are located in the Neath Port Talbot area, an agreement was reached that Swansea Council would facilitate the delivery of Bay Studios and NPT would facilitate the LLandarcy site. This report therefore only deals with the former.
- 2.4 Council representatives attended the site at the request of Health Board colleagues on the 30<sup>th</sup> March and at that meeting SBUHB confirmed they wished to proceed with the conversion and fit out of The Elba Block at Bay Studio's. This was subsequently confirmed in writing to SBUHB and recorded in the formal Council Health Board strategic meetings. The building chosen has been unused for a considerable period of time since operating as a former industrial unit and has had limited investment over this time. SBUHB however confirmed it was of a scale that fitted their proposed operating model for Surge Hospitals. This would however have an impact on the overall cost of the project
- 2.5 To enable speed of delivery the Council has taken on the role of principal contractor and two contractors from the South West Wales Regional Contractor's Framework 2020 (SWWRCF 2020) were approached to confirm capacity to carry out the works. This award is dealt with under separate cover. Works commenced on site on the 3<sup>rd</sup> April 2020. Completion is due within eight weeks which will require a period of 24/7 working including over the bank holidays which would further impact on costs.
- 2.6 The works involved include arranging new incoming electrical and water supplies, improved drainage infrastructure, roof repairs and external works. Internally the Hospital is being created by constructing a "waterproof" box within the existing structure allowing up to 1000 bed spaces to be adequately lit and heated. Electrical and mechanical heating and cooling systems are also being installed along with new flooring and structural false ceilings.
- 2.7 Due to the limited time available it has not been possible to confirm build costs but based on similar facilities elsewhere this is estimated to be between £10m and £15m. **SBUHB are aware of the likely cost of up to £15m which will be recovered from SBUHB as this work has been undertaken on their behalf.** The agreement will be documented via a Collaboration Agreement a draft of which is included in appendix A.
- 2.8 The Council was originally proceeding on the basis of the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2020 which came into force on 30/3/20 which stipulated that the Council could undertake permitted development with the aim of reducing controlling or mitigating the effects of an emergency on land it owns, leases, occupies or maintains and officers were negotiating with all the parties (the Health Board, Roy Thomas, Welsh Government and UWSTD) to achieve the required legal position. This changed on 10/4/20 with the introduction of the Town and Country Planning (General Permitted Development)(Amendment) (No.2) (Wales) Order



2020 which authorises permitted development by or on behalf of a NHS body and does require the Council to have any interest in the land. This has resulted in a delay in negotiating the final agreement between the parties as each party has had to agree and adopt different roles and responsibilities.

- 2.9 An early start on site was required and this was undertaken by the contractors operating on Letters of Intent containing provisions to protect the Council until such time as the specification from the Health Board was clarified and captured in formal contracts.

### **3. Finance Implications**

- 3.1 Due to the nature of the project a fixed cost has not been possible but given the scale of the project and condition of the existing asset the estimated cost is between £10m and £15m. Full costs of construction and any future maintenance requirements will be expected to be fully recovered from the SBUHB.
- 3.2 There is no current provision for this item within the capital programme. It will be added to the programme as an emergency triggered by the Covid 19 response and will be financed temporarily in-year by releasing sums from the capital equalisation reserve to enable a revenue contribution to capital. It is intended that once the repayment is made by SBUHB this would be reversed and substituted during the 20/21 financial year. This addresses the requirement to identify an immediate funding source under FPR7 - capital programme - and enables emergency provision – FPR19 emergency - for the aversion and mitigation of the imminent risk to loss of life.
- 3.3 All efforts will be made to secure full reimbursement directly from SBUHB and secondarily from Welsh Government through its existing £30m Covid 19 grant scheme, the £40m social care hardship fund, under the Emergency Financial Assistance Scheme which Swansea has already triggered via the s151 Officer, or any other subsequent offers of help from Welsh Government including an anticipated share of the now £95m Barnett consequential for Welsh local government. Ultimately if these commitments are not met by SBUHB or Welsh Government as they are not wholly guaranteed at point of decision and whilst highly improbable if the Council fails to recover the whole sums then any residual amount may have to be met instead by additional unsupported borrowing which would fall on local taxpayers for the duration of any loan. That would be a very much last resort option but provides a guaranteed technical funding solution in utter extremis to provide full resource cover to enable Cabinet to make the decision in this report.

### **4. Legal Implications**

- 4.1 The site is owned by Welsh Government and leased to Roy Thomas with the University of Wales Trinity St David's also having an interest in part the land. All parties are agreeable to its temporary use as a surge hospital. A 12 month lease is being agreed between Roy Thomas, Welsh Government and SBUHB (the parties) with a licence to be granted to Swansea Council for the duration of the works only. The lease will also include the requirement to reinstate the building

back to its former use although the cost of this is not included within this report as this will be a matter for the parties once the lease expires.

- 4.2 This report is recommending that delegated powers are given to the Director of Place in conjunction with the Leader, the Chief Finance Officer and the Chief Legal Officer to finalise the appropriate terms of the transactions with any agreement documented accordingly.
- 4.3 The alteration and conversion of Bay Studios to accommodate a surge hospital is classed as Permitted Development pursuant to the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (Wales) Order 2020. This allows development for the purpose of preventing, controlling or mitigating the effects of, or taking other action in connection with a public health emergency in the UK consisting of a change in the use of a building or land to a use falling within Class C2 or D1 and the provision on land of buildings, moveable structures, works, plant or machinery. The development must be taken by or on behalf of an NHS body. Where the developer is not the local planning authority the developer must notify the local planning authority of the development. The Director of Place formally notified Neath Port Talbot County Borough Council, as the relevant planning authority on the 31<sup>st</sup> March and this was acknowledged on the 1<sup>st</sup> April. The permitted development is permitted for a period of 12 months and the buildings or land must then be restored to its previous condition or to such other state as may be agreed in writing between the developer and the local planning authority.
- 4.4 As far as the insurance position is concerned the contractors on site will maintain their usual sub-contractor insurances and it is proposed that the Council as principal contractor will procure principal contractors all risks and third party insurance along with Welsh Government and Roy Thomas as joint policy holders for the duration of the contracted works to build the hospital. At practical completion, insurance responsibilities shall revert to The Welsh Government, Roy Thomas and The Health Board as below:
- The existing buildings insurance of Welsh Government and Roy Thomas will resume buildings insurance cover, having notified their insurers of additions to the building.
  - The Health Board provides appropriate insurances in respect of contents, public liability/third party, employer's liability etc. as occupier and operator of the hospital. Roy Thomas will maintain appropriate insurance cover for the wider estate outside of the boundaries of the site for the proposed hospital.
- 4.5 As referred to in the report the Council has commissioned contactors to assist in the delivery of the scheme and these will be appointed using the NEC3 Engineering and Construction Contract Option E: cost reimbursable contract, under which the works will be carried out. The contractual liabilities/obligations will be covered by the contract documentation and the award report dealt with separately.

## **5. Equalities Implications**

- 5.1 The Council must ensure that it complies with its Public Sector Equality Duty. Due to the urgent nature of the works involved no Equality Impact Assessment has been carried out. However Welsh Government has specifically introduced emergency powers to allow Councils to carry out temporary building and make changes of use of existing buildings for public health emergency purposes.

**Background papers: None**

**Appendices:** Appendix A - Draft Collaboration Agreement

DATED

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## **COLLABORATION AGREEMENT**

**RELATING TO THE PROVISION OF A FIELD/SURGE HOSPITAL AT THE ELBA  
BUILDING, BAY STUDIOS, FABIAN WAY, SWANSEA**

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**Between**

**Swansea Bay University Health Board**

**And**

**The Council of the City and County of Swansea**

THIS AGREEMENT is made on the

2020 (“Commencement Date”)

## PARTIES

- (1) The SWANSEA BAY UNIVERSITY HEALTH BOARD of 1 Talbot Gateway, Baglan Energy Park, Baglan, Port Talbot SA12 7BR (“**SBUHB**”) and
- (2) THE COUNCIL OF THE CITY AND THE COUNTY OF SWANSEA of Civic Centre, Oystermouth Road, Swansea, SA1 3SN (“**CCS**”)

Hereinafter, in addition to the defined names detailed above, may be referred to as the **Parties** as appropriate.

## BACKGROUND

- (A) The Parties have agreed to collaborate to deliver the development of a field/surge hospital at the Elba Building, Bay Studios, Fabian Way in the geographical area covered by SBUHB (“**the Project**”).
- (B) This Agreement sets out the roles and responsibilities of each Party in delivering the Project.

## IT IS AGREED

### 1. WARRANTY

- 1.1 Each Party warrants and represents to the other that, at the Commencement Date it has the necessary power, authority and respective organisation’s approval to enter into this Agreement and the signatories are authorised to execute this Agreement on that Party’s behalf.

### 2. ROLE AND RESPONSIBILITIES OF SBUHB

- 2.1 To be responsible for the selection of suitable sites for the development of temporary hospitals and in particular the site at the Elba Building, Bay Studios, Fabian Way, to include obtaining all necessary approvals from UK or Welsh Government, HM Armed Forces or other military body and all other relevant consents and approvals.

- 2.2 To be responsible for devising the design and specification of the temporary hospital at Bay Studios and for any amendments to the design and specification. The works include arranging new incoming electrical and water supplies, improved drainage infrastructure, roof repairs and external works. Internally the Hospital is constructed with a “waterproof” box within the existing structure allowing up to 1100 bed spaces to be adequately lit and heated. Electrical and mechanical heating and cooling systems are also being installed along with new flooring and structural false ceilings.
- 2.3 To provide adequate and timely instructions to CCS and its contractors to enable them to deliver the Project to the required design and specification.
- 2.4 To be responsible for the cost of the Project. This is currently estimated as up to £15m but SBUHB will assume responsibility for the final cost irrespective of the value of any current or previous estimates. The costs of the Project will include all costs incurred by CCS in delivering the Project for and on behalf of SBUHB.
- 2.5 On completion of the works to be responsible for arranging appropriate insurances to be in place for the site to include contents, public liability/third party and employer’s liability as occupier and operator of the hospital.

### **3. ROLE AND RESPONSIBILITIES OF CCS**

- 3.1 To secure the delivery of the alteration and conversion of the Elba Building, Bay Studios site into a field/surge hospital on behalf of SBUHB in line with the designs provided by SBUHB and set out in clause 2.2.
- 3.2 To liaise with Neath Port Talbot County Borough Council as the local planning authority as required by relevant legislation.
- 3.3 To undertake the role of Principal Contractor for the works and to comply with the Construction (Design & Management) Regulations 2015 as appropriate.
- 3.4 To manage the works and procure the appointment of such subcontractors with the requisite skills and experience to complete the works in accordance with the agreed design and specification.
- 3.5 Together with its subcontractors to use all reasonable endeavours to ensure the completion of the works in phases or sections as appropriate in accordance with the instructions and timelines provided by SBUHB.
- 3.6 To take out appropriate insurance for the duration of the works and recover the costs from SBUHB in accordance with clause 2.4.

### **4. PROJECT GOVERNANCE**

#### **The Project Board**

- 4.1 The Project Board is responsible for overseeing the delivery of the Project. The Project Board will comprise of such officers and members as the Parties shall agree and shall meet at a frequency to be determined by the Parties.

## **5. INDEMNITIES AND LIMITATION OF LIABILITY**

- 5.1 SBUHB shall indemnify CCS in respect of all actions, proceedings, costs, claims, demands, liabilities, losses and expenses howsoever arising whether in tort, default or breach of contract or breach of law arising directly or indirectly out of or in connection with or in any way related to

- i) the acts or omissions of SBUHB in fulfilling its obligations under this Agreement.
- ii) the role of CCS or its subcontractors in delivering the Project on behalf of SBUHB.

- 5.2 The indemnity given in clause 5.1 shall not apply where the liability arises from any fraud, dishonesty, unlawful expenditure, libel or slander on the part of the CCS and/or where CCS has acted outside the scope of its authority or in contravention of procurement legislation or where such action has not been agreed by SBUHB.

## **6. CONFIDENTIALITY**

- 6.1 The Parties shall keep confidential all matters relating to the Agreement and shall use all reasonable endeavours to prevent their employees from making any disclosure to any person of any matter relating to the Agreement.

- 6.2 Clause 6.1 shall not apply to:

- (a) any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under the Agreement;
- (b) any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause 6;
- (c) any disclosure which is required by law (including any order of a Court of competent jurisdiction).
- (d) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party; or

- (e) any disclosure by any Party of any document related to the procurement of any subcontractors or suppliers related to the Project where the Parties have agreed that the document contains no commercially sensitive information.

6.3 Where disclosure is permitted the recipient of the information shall be made aware of the confidential nature of the information and shall be subject to appropriate obligations of confidentiality.

## 7. DATA PROTECTION AND FREEDOM OF INFORMATION

**For the purposes of this clause 7 the following definitions apply:**

**Data Protection Legislation :** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Loss Event :** any event that results, or may result, in unauthorised access to Personal Data held by a Party under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach (as defined in the GDPR).

**DPA 2018 :** Data Protection Act 2018

**GDPR :** the General Data Protection Regulation (Regulation (EU) 2016/679)

**LED :** Law Enforcement Directive (Directive (EU) 2016/680)

**Personal Data :** takes the meaning given in the GDPR

### **Data Protection**

7.1 Both Parties shall comply with the notification requirements under the Data Protection Legislation (DPL).

Both Parties shall duly observe their obligations under the DPL which arise in connection with this Agreement and each Party will ensure that Personal Data is processed only in accordance with its own policies on data protection, information security and retention of Personal Data to comply with its obligations under the Data Protection Legislation.



- 7.2 Neither Party shall perform its obligations under this Agreement in such a way as to cause the other Party to breach any of its applicable obligations under the Data Protection Legislation. Each Party shall notify the other without undue delay in the event of a Data Loss Event.
- 7.3 The Parties shall collaborate to ensure compliance with their statutory obligations under the DPL, in particular, by providing five working days' notice to the other if it Party receives a request from a Data Subject to have access to that person's Personal Data; or a complaint or request relating to the other Party's obligations under the Data Protection Legislation;
- 7.4 Each Party will provide full co-operation and assistance in relation to any complaint or request made, including by providing the other Party with full details of the complaint or request; providing any Personal Data it holds in relation to a Data Subject (within the timescales required); and providing any information requested.

#### **Freedom of Information**

- 7.5 Each Party acknowledges that they are subject to the requirements of the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**") and, should the request relate to the Project, shall assist and co-operate with each other to enable the Party, by whom the request has been received, to comply with disclosure requirements under the FOIA.

### **8. TERM AND TERMINATION**

- 8.1 This Agreement shall take effect on the Commencement Date and shall continue until terminated by the Parties by mutual agreement.

### **9. VARIATION**

- 9.1 This Agreement may only be varied by written agreement of each Party.

### **10. GOVERNING LAW AND JURISDICTION**

- 10.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales as they apply in Wales and the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

## **11. FAIR DEALINGS**

- 11.1 The Parties recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use their reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

## **12. COUNTERPARTS**

- 12.1 This Agreement may be executed in two or more counterparts each one of which shall constitute an original but which, when taken together, shall constitute one instrument.

## **13. FORCE MAJEURE**

- 13.1 In this Agreement "force majeure" shall mean any cause preventing a Party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including without limitation act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order rule regulation or direction, accident, epidemic or pandemic, fire, flood or storm.
- 13.2 If either Party is prevented or delayed in the performance of any or all of its obligations under this Agreement by force majeure, that Party shall forthwith serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to force majeure and shall, subject to service of such notice, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events.
- 13.3 The Party affected by force majeure shall use all reasonable endeavors to bring the force majeure event to a close or to find a solution by which the Agreement may be performed, despite the continuance of the force majeure event.

## **14. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 14.1 The Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

**15. SEVERABILITY**

15.1 If at any time any part of this Agreement (including any one or more of the clauses of this Agreement or any sub-clause or paragraph or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

**16. WAIVER**

16.1 The rights and remedies of any Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by such Party to the other nor by failure of, or delay by the said Party in ascertaining or exercising of any such rights or remedies. The waiver by any Party of any breach of this Agreement shall not prevent the subsequent enforcement of any subsequent breach of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**17. NOTICES**

17.1 All notices under this Agreement shall only be validly given, if given in writing, addressed to the Chief Executive of each Party at the address set out at the beginning of this Agreement.

17.2 Any notices required to be given under this Agreement must be in writing and may be served by personal delivery, post (special or recorded delivery or first class post) or email at the address set out at the beginning of this Agreement or at such other address as each Party may give to the other for the purpose of service of notices under this Agreement.

17.3 Notices shall be deemed to be served at the time when the notice is handed to or left at the address of the Party to be served (in the case of personal delivery) or the day (not being a Saturday, Sunday or public holiday) next following the day of posting (in the case of notices served by post) or at 10 a.m. on the next day (not being a Saturday, Sunday or public holiday) following delivery if sent by email.

17.4 To prove service of any notice, it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand and in the

case of a notice served by post that the same was duly addressed prepaid and posted special or recorded delivery or by first class post. In the case of a notice sent by email, it shall be sufficient to show that it was addressed to the correct email address without any error message on the delivery receipt.

**18. EXCLUSION OF PARTNERSHIP AND AGENCY**

18.1 The Parties expressly agree that nothing in this Agreement in any way creates a legal partnership between them.

18.2 No Party or any of its employees or agents will in any circumstances hold itself out to be the servant or agent of the other Party, except where expressly permitted by this Agreement.

**19 ASSIGNMENT AND SUB AGREEMENTS**

19.1 Neither Party shall assign or transfer the whole or any part of this Agreement, without the prior written consent of the other Party except where expressly permitted by the Agreement.

DRAFT

This Agreement has been entered into as a Deed on the date stated at the beginning of it.

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

**Authorised Signatory:**

**[add execution clause of the Swansea Bay University Health Board]**

**Authorised Officer:**