

**Report of the Cabinet Member for
Environment and Transportation**

Cabinet – 20 January 2015

SWWITCH DEED OF TERMINATION

Purpose:	To seek Cabinet approval for the formal termination of the legal agreement between the Local Authorities in the SWWITCH Consortium.
Policy Framework:	Transport (Wales) Act 2006. This Plan will be a new policy, replacing the Regional Transport Plan 2010 – 2015.
Reason for Decision:	The Welsh Government has instructed that Local Authorities are to dissolve Consortia working arrangements.
Consultation:	None required.
Recommendation(s):	It is recommended that: - 1) The Director of Place be given delegated authority to agree the terms of the Deed of Termination to dissolve the SWWITCH Consortium.
Report Author:	Ben George
Finance Officer:	Paul Roach
Legal Officer:	Chris Allingham
Access to Services Officer:	Phil Couch

1.0 Background

- 1.1 The South West Wales Integrated Transport Consortium (SWWITCH), comprising Carmarthenshire County Council, City & County of Swansea, Neath Port Talbot County Borough Council and Pembrokeshire County Council, was formally constituted by legal agreement in 2005. SWWITCH has formerly provided a regional resource for transport policy, planning and programme management.
- 1.2 The decision by Edwina Hart, Minister for Economy, Science and Transport, in January 2014, to direct funding back to Local Councils has made the existing SWWITCH agreement (Appendix 1) superfluous to requirements.

- 1.3 Consequently, Members at the final SWWITCH Joint Committee on 28th March 2014 determined that the Consortium should be formally dissolved.
- 1.4 The final draft of the 'Deed of Termination' to be signed by each of the four Councils involved is attached in Appendix 2.
- 1.5 It is anticipated that the role of regional transport planning will be assumed by the Swansea Bay City Region Board, although the pathway and framework for this is yet to emerge.

2.0 Equality and Engagement Implications

- 2.1 There are no implications to equality and engagement.

3.0 Financial Implications

- 3.1 There are no financial implications.

4.0 Legal Implications

- 4.1 There are no legal implications.

Background Papers: None.

Appendices: Appendix 1 – SWWITCH Agreement.
Appendix 2 – Deed of Termination.

Appendix 1 – SWWITCH Agreement

THIS AGREEMENT is made the 10th day of October 2005

BETWEEN:

- (1) THE CITY AND COUNTY OF SWANSEA
- (2) NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
- (3) CARMARTHENSHIRE COUNTY COUNCIL
- (4) PEMBROKESHIRE COUNTY COUNCIL

AGREEMENT

DATED

10th October

2005

BETWEEN:

PARTIES:

- (1) **THE CITY AND COUNTY OF SWANSEA** of County Hall Oystermouth Road Swansea SA1 3SN ("Swansea")
- (2) **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL** of Civic Centre Port Talbot SA13 1PJ ("Neath Port Talbot")
- (3) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall Carmarthen SA31 1JP ("Carmarthenshire") and
- (4) **PEMBROKESHIRE COUNTY COUNCIL** of County Hall Haverfordwest SA61 1TP ("Pembrokeshire")

(together described as the "Authorities")

WHEREAS

- (1) Currently the Authorities have in place an informal arrangement between them in respect of the co-ordination of their respective transportation functions
- (2) The Authorities have resolved to replace that informal arrangement with this Agreement
- (3) The Authorities have agreed to establish a joint committee for the purpose of carrying out duties and responsibilities more particularly described in this Agreement with the following core aims and objectives;

- (i) To achieve a better co-ordinated and more effective transport system in the Region
- (ii) To work in partnership with the people and with organisations with a stake in transport in the Region
- (iii) To co-ordinate the delivery of an integrated transport strategy for the Region, seeking to influence the development and use of more sustainable forms of accessible public modes of transportation through an appropriate mix of transport projects and supporting policies in the transport and related fields
- (iv) To promote the essential role of transport in economic and land use planning, and to influence land development to make the necessary provision for transport and in particular public transport in the Region
- (v) To ensure that full account is taken of safety, sustainability and social inclusion in transport plans and schemes in the Region.
- (vi) To seek to increase the resources for transport for Wales and to maximise the share available for the Region.
- (vii) To pursue appropriate standards for transport across the Region based on best practice; to seek cost-effective use of resources; and to identify and monitor targets to judge the success of its Strategy
- (viii) To drive the policy debate as a champion for transport, and in particular public transport; and to raise awareness of the role of local government in transport in the Region.

NOW IT IS HEREBY AGREED as follows:-

1. Definitions and Interpretation

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

"The Authorities" shall mean the Councils who from time to time are parties to this Agreement and any reference to Authority shall mean reference to one of the Councils who are from time to time parties to this Agreement;

"Approved Strategies" shall mean such plans including policies within the remit of this Agreement as approved in accordance with Clause 3.2.

"Budget" shall mean an itemised summary of intended revenue and capital expenditure for the Financial Year as approved in accordance with Clause 3.2.

"Chair" shall mean a Member acting as chair of meetings of the Committee in accordance with this Agreement

"Committee" shall mean such joint committee as is established in accordance with this Agreement

"Constitution" shall mean a document produced, approved and maintained by an Authority setting out that Authority's arrangements including any procedural rules relating to contracts, finance and land and such other information as required by Section 37 of the Local Government Act 2000

"Funding" means funding provided to the Committee otherwise than from the Authorities

"Financial Year" shall mean a year beginning on 1st April

"Host Authority" shall mean Swansea or such other Authority appointed pursuant to this Agreement

"Member" shall mean a person elected to hold the office of member of an Authority in accordance with Section 79 of the Local Government Act 1972

"The Region" shall mean the areas of South West Wales for which the Authorities shall have responsibility

"Treasurer" shall mean such officer who shall have responsibility for maintaining the financial accounts of the Committee in relation to this Agreement

"Vice Chair" shall mean such Member serving in the place of the Chair in accordance with this Agreement

1.2. In this Agreement:-

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

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

1.2.3. the clause, paragraph and schedule headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation

1.2.4. person shall mean corporation, partnership, firm, unincorporated association and natural person

1.2.5. the singular includes the plural and vice versa

- 1.2.6. the Schedules form part of the Agreement and have the same force and effect as if expressly set out in the body of the Agreement and any reference to this Agreement shall include the Schedules

2. Authority for Agreement

This Agreement is made under the powers conferred by Sections 101, 102 and 113 of the Local Government Act 1972 and Sections 2 and 20 of the Local Government Act 2000

3. The Committee

- 3.1. The Authorities agree to establish a Committee in accordance with the provisions of the First Schedule presently to be called SWWITCH (the South West Wales Integrated Transport Consortium) to undertake the duties and responsibilities set out in Clause 4 of this Agreement
- 3.2. Subject to Clause 4 the Committee shall recommend such matters relating to the Budget and Approved Strategies within the ambit of this Agreement to the Authorities for consideration and decision in accordance with each Authority's Constitution

4. The Duties and Responsibilities of the Committee

The Committee shall:

- 4.1. prepare regional strategies including transportation policies, proposals and programmes
- 4.2. approve bids for Funding in pursuit of Approved Strategies and refer such to the Host Authority to apply for funding in accordance with Clause 5.1.3.

- 4.3. to the extent only that a project is the subject of Funding facilitate the implementation of Approved Strategies
- 4.4. obtain appropriate advice assistance and services together with the approval of the staffing structure and procurement of consultants and advisers
- 4.5. respond to consultations which have regional transportation implications
- 4.6. provide advice to the Authorities on strategic regional and local policy and operational transportation issues in the Region
- 4.7. approve such contractual arrangements as are proposed to be entered into on behalf of all the Authorities by the Host Authority and for avoidance of doubt this shall exclude contracts entered into by individual Authorities
- 4.8. do such other things in accordance with the terms of this Agreement as may be agreed from time to time by the Authorities

5. Host Authority

5.1. The Host Authority shall mean Swansea or such other Authority as may be agreed by all the Authorities and the Host Authority shall carry out the administrative functions of the Committee which shall include the following:

5.1.1. Subject to Clause 4 employ sufficient people to enable the Committee to operate in an effective manner within the approved Budget

5.1.2. enter into and use its reasonable endeavours to perform all contracts approved by the Committee

5.1.3. apply for Funding as directed by the Committee

5.1.4. receive and make payments out of all monies dedicated to the Committee (and the other parties expressly agree that Funding shall be paid to the Host Authority who shall hold the same in accordance with its financial regulations)

5.1.5. act as clerk and host the general committee support services and other requisite support services

5.1.6. comply with the provisions of this Agreement and do all such things as authorised from time to time by the Committee

5.2. The Host Authority shall also:

5.2.1. subject to the statutory role of each Authority's monitoring officer in accordance with Section 5(A)(1) of the Local Government and Housing Act 1989 and the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (Wales) Order 2002 SL 2002 2002/808 in relation to their Authority, provide for the purposes of the Committee the services of its monitoring officer; and

5.2.2. subject to the statutory role of each Authority's Chief Financial Officer in accordance with section 151 of the Local Government Act 1972 in relation to their Authority, provide the services of its Chief Financial Officer as Treasurer to the Committee

5.2.3. from time to time the Host Authority shall be entitled to recover from the Budget dedicated to the Committee an amount equal to the costs and outgoings which it has properly incurred in undertaking the responsibilities allocated to it under this Agreement

5.2.4 make available for inspection the accounts of the Committee at all reasonable times free of charge by any Member of the Authorities or

any officer of any of the Authorities duly authorised for the purpose and such accounts shall be subject to audit as accounts to which Section 2 of the Audit Commission Act 1998 applies

5.2.5. as soon as may be after the conclusion of every Financial Year send to each of the Authorities a copy of the final accounts of the Committee for such Financial Year this provision being in addition to and not in substitution for any obligation to furnish to each of the Authorities copies of the auditor's report on such accounts and of the financial statement thereof

6. Financial Records

6.1. At the first meeting of the Committee after the date of this Agreement, the Committee shall take over the existing Budget which has already been adopted by the Authorities under the previous informal arrangements

6.2. Thereafter the Host Authority will prepare a Budget each year which Budget shall include the cost of the provision of services by the Host Authority in accordance with this Agreement for the approval of the Committee and the Authorities where appropriate

6.3. Subject to Clause 6.2. the Committee shall be informed of the Budget at the first of its meetings to take place in each Financial Year

6.4. In respect of Funding, the Host Authority shall notify the Authorities in writing of the sums which have been granted to the Host Authority as and when the Host Authority becomes aware of such grants

6.5. The Committee shall only operate within its Budget as supplemented by any additional Funding unless otherwise agreed by all of the Authorities

6.6. Each of the Authorities shall contribute an equal amount of the net costs of operating the Committee in accordance with this Agreement such contribution shall be made in such manner and at such times as may be from time to time directed by the Host Authority

6.7. If any of the Authorities fail to pay their share of the net costs within 31 working days of the delivery of an invoice in respect of the same then the Host Authority shall be entitled to interest on the outstanding amount until payment is made. Interest shall be calculated at the rate of one per centum per annum in excess of the base lending rate of the Bank of England applicable for the relevant period

7. Ownership of Assets

7.1. The Host Authority shall hold all the assets belonging to the Committee on trust for the four Authorities in equal shares

7.2. Upon termination of this Agreement the Host Authority shall distribute any assets belonging to the Committee as directed by the Authorities and in the event of dispute shall comply with the provisions of paragraph 12 of the Second Schedule of this Agreement relating to dispute resolution

8. Indemnities

8.1. Each of the other Authorities shall indemnify and keep indemnified the Host Authority against a due proportion of all liabilities, actions, claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever and howsoever arising in respect of or in any way arising whether in contract, tort or otherwise, directly or indirectly, out of or in consequence of or in connection with its role as Host Authority pursuant to this Agreement except where the liability arises from any fraud, dishonesty, negligence, unlawful expenditure, libel or

slander on the part of the Host Authority and/or where the Host Authority has acted outside the scope of its authority

- 8.2. The Host Authority shall indemnify and keep indemnified the other Authorities against all liabilities, actions, claims, demands, proceedings, damages, costs, charges, losses and expenses whatsoever and howsoever arising in respect of or in any way arising whether in contract, tort or otherwise, directly or indirectly, out of or in consequence of or in connection with the Host Authority's fraud, dishonesty, negligence, unlawful expenditure, libel or slander and/or where the Host Authority has acted outside the scope of its authority
- 8.3. If an Authority other than the Host Authority undertakes a specific role as directed by the Committee e.g. managing a particular project it shall indemnify the other Authorities in accordance with clause 8.2. and be indemnified by the other Authority in accordance with clause 8.1. on the same basis as the Host Authority

9. Termination

- 9.1. Any of the Authorities may terminate its involvement in this Agreement by giving to the other Authorities notice in writing to expire 12 months from the end of the Financial Year in which the notice is given and that notice shall have the effect of terminating the entire Agreement unless the other Authorities resolve otherwise within 6 months of the end of the Financial Year in which the notice is given
- 9.2. In the event that this Agreement is terminated in accordance with Clause 9.1. the Authorities shall remain equally liable for the following costs:-
- 9.2.1. the operational costs referred to in Clause 6 calculated to the date of termination

9.2.2. costs arising as a consequence of the indemnities referred to in Clause

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9.2.3. the cost of any redundancies consequent upon the termination

9.2.4. any other costs properly incurred in connection with this Agreement or its termination

9.3. In the event that this Agreement continues notwithstanding the withdrawal of one of the Authorities the Authority so withdrawing shall remain liable for its share of the costs referred to in Clause 9.2. calculated to the date upon which its notice expires provided that it specifically shall remain liable for the costs of any redundancy as follows:-

<i>a redundancy in respect of which notice has been given within</i>	<i>% of equal share</i>
1st year after withdrawal	100
2nd year after withdrawal	80
3rd year after withdrawal	60
4th year after withdrawal	40
5th year after withdrawal	20

9.4. In the event that the Agreement continues notwithstanding the withdrawal of one of the Authorities subject to the liability of the withdrawing Authority with regard to the costs as provided in Sub Clause 9.3. the remaining Authorities shall be liable for the balance of costs of any redundancy in equal shares after deducting the costs of the withdrawing Authority

10. **Supplemental Provisions**

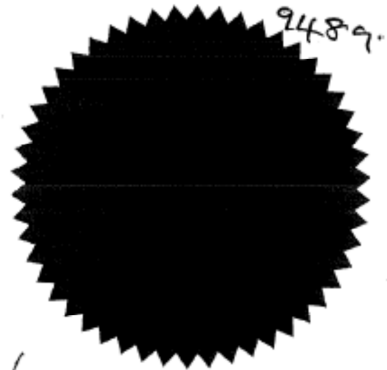
The provisions of the Second Schedule shall apply to this Agreement

11. **Governing Law**

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

IN WITNESS whereof the Commons Seals of the respective Authorities were hereunto affixed the day and year first before written

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



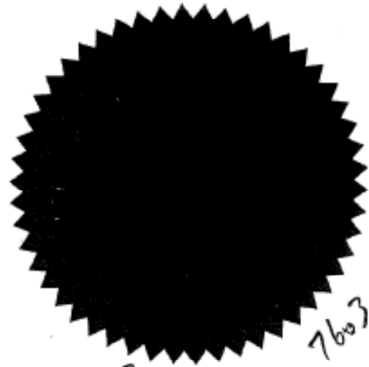

HEAD OF LEGAL SERVICES
A duly authorised officer

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




Proper Officer

THE COMMON SEAL of)
CARMARTHENSHIRE)
COUNTY COUNCIL was)
affixed in the presence of:)



A. J. Thomas
A duly authorised officer

THE COMMON SEAL of)
PEMBROKESHIRE)
COUNTY COUNCIL)
Was affixed in the)
presence of:



Phil Davies
A duly authorised officer

FIRST SCHEDULE

CONSTITUTION AND OPERATION OF THE COMMITTEE

1. Establishment and Constitution

- (a) There shall be constituted a Committee:-
- (i) consisting of one voting member and up to two non-voting members to be appointed by each of the Authorities
 - (ii) having the functions, powers and duties described in this Agreement and
 - (iii) upon and subject to the terms and conditions described in this Agreement
- (b) The Committee may adopt or authorise the use of a brand name, logo or similar method to describe itself or its activities

2. Nomination of Deputy to attend Meetings

Each Authority shall from time to time evidenced in writing by their chief executive officer or other authorised officer as the case may be nominate a deputy for any Member appointed by them to attend and, subject to paragraph 11(a), to vote at any meeting of the Committee or of a sub-committee in place of the Member so appointed who for any reason is unable to attend that meeting

3. Appointment of Representative Members and Period of Office

Each of the Authorities shall appoint Members as mentioned in paragraph 1 and a Member so appointed shall hold office until

- (a) the Member dies;

- (b) the Member resigns;
- (c) the Member becomes disqualified in accordance with Section 80 of the Local Government Act 1972;
- (d) the Member ceases to be a Member of the Authority he represents
- (e) the Authority which the Member represents has decided that another Member should act in his place, or;
- (f) the Member is suspended

4. Failure to Attend Meetings/Filling of Casual Vacancies

- (a) The Host Authority shall notify an Authority if one of their Members fails to attend three consecutive meetings of the Committee
- (b) If for any reason there shall be a vacancy in the representation of any of the Authorities on the Committee allowed under the terms of this Agreement for the time being the Authority in whose representation the vacancy occurs may forthwith fill such vacancy by appointment evidenced in writing by their chief executive officer or other authorised officer as the case may be

5. Election of Chairperson and Vice-Chairperson

- (a) The first Chair of the Committee after signing this Agreement shall be a Member representing Pembrokeshire who shall hold office until the first meeting of the Committee after 1st May 2005 or as otherwise agreed between the Authorities
- (b) Subsequently at the first meeting held after 1st May in each year a new Chair shall be appointed to hold office for the following year
- (c) Following the appointment of the first Chair of the Committee the right to appoint the Chair shall rotate annually as follows:-

Carmarthenshire
Swansea
Neath Port Talbot
Pembrokeshire

- (d) The first Vice Chair of the Committee after signing this Agreement shall be a Member representing Carmarthenshire who shall hold office until the first meeting of the Committee after 1st May 2005 or as otherwise agreed between the Authorities
- (e) Subsequently at the first meeting held after 1st May in each year a new Vice Chair shall be appointed from amongst the voting Members to hold office for the following year
- (f) Following the appointment of the first Vice Chair, the Vice Chair of the Committee shall rotate annually as follows:

Swansea
Neath Port Talbot
Pembrokeshire
Carmarthenshire

- (g) In the absence of the Chair at a meeting, the Vice Chair shall take the Chair and in the absence of the Chair and the Vice Chair, a Chair for that meeting shall be appointed by the Committee from amongst the voting Members
- (h) The Chair at any meeting shall not have a casting vote

6. Co-opted persons

- (a) The Committee may appoint to the Committee or any of its sub-committees such number of co-opted persons as it shall determine;

- (b) Such persons may be individuals or representatives of such organisations as the Committee shall determine;
- (c) Such co-opted persons may not vote at meetings of the Committee or its sub-committees

7. Meetings of the Committee

The Committee may hold such meetings at such intervals as they shall find necessary or convenient

8. Sub-Committees

The Committee shall have the power to appoint sub-committees for any purpose which in their opinion could better be managed or considered by means of a sub-committee. The constitution and the terms of the reference of the sub-committee(s) shall be determined by the Committee

9. Convening of Meetings

The meetings of the Committee and any sub-committees shall be convened by the Host Authority or by the Chair and every meeting shall be convened by notice in writing by the Host Authority and delivered to each Member of the Committee and co-opted person or sent by post to or delivered to the Member's or co-opted person's residence or place of business at least three clear working days before the day of the meeting.

10. Quorum of Meetings

To constitute a meeting of the Committee not less than four voting Members shall be present

11. Voting

- (a) Whilst the Committee shall endeavour to work by consensus, each Authority shall be entitled to one vote at meetings of the Committee. Prior to any formal vote taking place each Authority shall indicate to the Chair which of their Members will exercise that Authority's vote at that meeting;
- (b) If the Committee reaches a decision where fewer than four of the Authorities voted in support of the decision, the Committee shall not implement the decision.

12. Minutes of Meetings

- (a) The minutes of the proceedings of every meeting of the Committee or sub – committee thereof shall be made by the Host Authority.
- (b) Copies of the draft minutes of the proceedings of every meeting of the Committee shall after each meeting be sent by the Host Authority to the chief executive officers of the Authorities for circulation to the Members and co-opted persons.

13. Special Meetings

The Chair of the Committee shall call a special meeting of the Committee within ten working days of the receipt of a requisition signed on behalf of two or more Authorities. That requisition must set out in detail the matter to be discussed at such meeting and that requisition must be sent to all the Authorities with the notice summoning that special meeting and that meeting shall be convened in accordance with paragraph 9 of this First Schedule

14. Standing Orders etc

For the avoidance of doubt the Committee shall, where relevant and subject to the provisions of this Agreement, operate in accordance with the Host Authority's Constitution including without limitation, contract procedure rules and financial procedure rules

**SECOND SCHEDULE
SUPPLEMENTARY PROVISIONS**

1. Confidentiality/Transparency

- 1.1. The provisions of Sections 100 100A - 100I and 100K of the Local Government Act 1972 shall apply to proceedings of the Committee
- 1.2. Without limiting the generality of the above paragraph 1.1. the Authorities shall comply with the Data Protection Act 1998 and Freedom of Information Act 2000 as applicable and appropriate
- 1.3. With the exception of the matters referred to in paragraph 1.2. above the Authorities shall jointly agree a protocol for the disclosure of information relating to this Agreement
- 1.4. None of the Authorities shall make any communication otherwise than in accordance with a jointly agreed protocol for disclosure of information relating to this Agreement

2. Force Majeure

- 2.1. Notwithstanding anything else contained in this Agreement, no Authority hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not by way of limitation national emergency, war, flood, earthquake, strike, or lockout other than a strike or lockout induced by the Authority so incapacitated, imposition of governmental regulations or law which renders performance of the Agreement impossible.
- 2.2. Each of the Authorities hereto agrees to give written notice forthwith to the other upon becoming aware of the reasons likely to result in a delay and of the likely duration of the delay. Subject to the giving of such

notice, the performance of such notifying Authority's obligations shall be suspended during the period such circumstances persist and such notifying Authority's obligations shall be granted an extension of time for performance equal to the period of the delay. Any costs arising from such delay shall be borne by the Authority incurring the same.

- 2.3. The other Authorities may if the delay continues for more than 10 (ten) working days terminate the Agreement forthwith on giving written notice to the notifying Authority signed by all the other Authorities
- 2.4. The notifying Authority may if the delay continues for more than twenty (20) working days terminate its participation in the Agreement forthwith on giving written notice to the other Authorities

3. Variation

At any time the Committee or one or more of the Authorities may recommend changes to this Agreement by giving notice in writing to the Authorities or other Authorities as the case may be. The Authorities in receipt of the notice shall use all reasonable endeavours to consider within six weeks of such receipt whether to accept the recommendation. If all the Authorities agree to the recommended changes a memorandum of variation shall be prepared by the Host Authority for execution on behalf of all the Authorities and appended to this Agreement.

4. No Partnership

Nothing in this Agreement shall be construed as establishing or implying any partnership between the Authorities and except as stated in this Agreement nothing in this Agreement shall be deemed to constitute any of the Authorities hereto as the agent of the other Authorities or authorise any Authority (i) to incur any expenses on behalf of any other Authority (ii) to enter into any engagement or make

any representation or warranty on behalf of any other Authority (iii) to pledge the credit of or otherwise bind or oblige any other Authority or (iv) to commit any other Authority in any way whatsoever without in each case obtaining that other Authority's prior written consent

5. **Successors**

This Agreement shall be binding upon and enure to the benefit of the Authorities and their respective successors in title

6. **Notices**

6.1. Any demand notice or other communication given or made under or in connection with this Agreement will be in writing.

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

6.2.1. if sent by prepaid first class post on the second working day after the date of posting; or

6.2.2. if delivered by hand upon delivery at the address provided for in this Agreement; or

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

provided however that if it is delivered by hand or sent by facsimile on a day which is not a working day or after 4.00 p.m. on a working day it will instead be deemed to have been given or made on the next working day

6.3. Any such demand notice or other communication will in the case of the service by post or delivery by hand be addressed to the recipient's

address stated in this Agreement or at such other address as may from time to time be notified in writing by the Authorities as being the address for service

- 6.4. Any such demand notice or other communication will in the case of service by facsimile be sent to the recipient using a facsimile number then used by the recipient at an address which in accordance with this clause could have been used for service by post

7. Severability

If any of the provisions of this Agreement is found by a Court or other competent authority to be void or unenforceable such provisions shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect. Notwithstanding the foregoing the Authorities shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable

8. Entire Agreement

- 8.1. This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement
- 8.2. Each of the Authorities acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty or understanding whether negligently or innocently made of any person whether party to this Agreement or not other than as expressly set out in this Agreement

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

The parties to this Agreement agree that the provisions of the said Act are hereby excluded

10. **Co-operation**

The Authorities agree at their own cost to co-operate fully with each other and provide such information and assistance as the other may reasonably require in connection with any actual or potential legal proceedings arbitration hearings inquiries ombudsman enquiries inspections internal investigations and disciplinary hearing arising out of or in connection with the provisions of this Agreement provided that such obligation shall not extend to any such proceedings between the Authorities

11. **Litigation**

The Authorities agree to promptly notify the others by written notice upon becoming aware of or in receipt of any process or other notice of the commencement of proceedings in which any Authority is named in connection with this Agreement. No litigation will be commenced in connection with anything arising out of this Agreement without the other Authorities prior written consent such consent not to be unreasonably withheld or delayed. The Authorities shall fully and effectively co-operate with each other in the prosecution, defence and settlement negotiations of any proceeding. No settlement of any claim made against any Authority in connection with or arising from this Agreement, will be made by any Authority without the others consent not to be unreasonably withheld or delayed.

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BOARD

12. **Dispute Resolution**

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

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

12.1.2 if the aforementioned chief officers are unable to resolve the matter within 30 working days then the issue shall be referred to the chief executive officers of each of the Authorities

12.1.3 if the chief executive officers are not able to resolve the matter within a further thirty (30) working days the provisions of paragraph(s) 12.2 and 12.3 shall take effect

12.2

12.2.1 For the purpose of this paragraph 12.2. a dispute shall be deemed to arise when one Authority serves on the other a notice in writing stating the nature of the dispute

12.2.2 Every dispute notified under this paragraph 12.2. shall first be referred to mediation in accordance with the mediation procedures of the Alternative Dispute Resolution Group London

12.2.3 The mediator shall be agreed upon by the Authorities and failing such agreement within fifteen (15) working days of one Authority requesting the appointment of a mediator and providing their suggestion thereof then the mediator shall be appointed by the President or the Vice -President for the time being of the Law Society

12.2.4 Unless agreed otherwise the Authorities shall share equally the costs of mediation

12.2.5 The use of mediation will not be construed under the doctrines of laches waiver or estoppel to affect adversely the rights of any Authority and in particular any Authority may seek a preliminary injunction or other judicial relief at any time if in its judgment such action is necessary to avoid irreparable damage

12.3.

12.3.1 In the event of the Authorities failing to reach agreement on their dispute or difference following mediation pursuant to paragraph 12.2 one Authority may serve on the other a notice in writing stating the nature of the matters still in dispute

12.3.2 the dispute or difference shall then be referred to the arbitration of a sole arbitrator to be appointed in accordance with Section 16(3) of the Arbitration Act 1996 ("the Arbitration Act") the seat of such arbitration being hereby designated as Wales

12.3.3 In the event of failure of the Authorities to make the appointment pursuant to Section 16(3) of the Arbitration Act the appointment shall be made by the President or if the President be unwilling, unable or unavailable the Vice President for the time being of the Law Society

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

12.3.5 The arbitration shall be conducted in accordance with the Rules of the Chartered Institute of Arbitrators / The Rules of the London Court of International Arbitration for the Chartered

Institute of Arbitrators or any amendment or modification thereof
being in force at the date of commencement of the arbitration.

Appendix 2 – Deed of Termination

THIS DEED is dated

2014

PARTIES

THE COUNCIL OF THE CITY AND COUNTY OF SWANSEA of the Civic Centre Oystermouth Road Swansea SA1 3SN (**Swansea**).

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL of the Civic Centre Neath Port Talbot SA13 1PJ (**Neath Port Talbot**).

CARMARTHENSHIRE COUNTY COUNCIL of County Hall Carmarthen SA31 1JP (**Carmarthen**).

PEMBROKESHIRE COUNTY COUNCIL of County Hall Haverfordwest SA61 1TP (**Pembrokeshire**).

BACKGROUND

The parties entered into an agreement dated 10 October 2005 under which they agreed to establish a joint committee for the purpose of carrying out duties and responsibilities more particularly described in that Agreement (**Agreement**).

The parties agree to terminate the Agreement with effect from 1 April 2014 (**Termination Date**) on the terms set out in this Deed of Termination (**Deed**).

AGREED TERMS

DEFINITIONS

- 1.1 Agreement means the agreement dated 10 October 2005 under which the Authorities agreed to establish a joint committee for the purpose of carrying out duties and responsibilities more particularly described in that Agreement attached at Schedule 2

Deed means this Deed of Termination

Termination Date means 1 April 2014

- 1.2 In this Deed, expressions defined in the Agreement and used in this Deed shall have the meaning set out in the Agreement. The rules of interpretation set out in the Agreement apply to this Deed.
- 1.3 The Schedules form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

TERMINATION OF THE AGREEMENT

The Agreement is, subject to clause 2.2 of this Deed, terminated with effect from the Termination Date.

On termination of the Agreement, the following clauses from the Agreement shall continue in force between the parties:

7.2

8.1

8.2

8.3

Second Schedule Supplementary Provisions:

1.1-1.4 Confidentiality/ Transparency

10 Co-operation

11 Litigation

12 Dispute Resolution

Following termination of the Agreement in accordance with clause 2.1 of this Deed the Authorities shall remain equally liable for the following costs arising after termination and incurred in connection with the Agreement:

- (a) the operational costs referred to in clause 6 of the Agreement arising or remaining outstanding after the Date of Termination
- (b) costs arising as a consequence of the indemnities referred to in clause 8 of the Agreement
- (c) the cost of any redundancies consequent upon the termination
- (d) any other costs properly incurred in connection with the Agreement or its termination

GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

IN WITNESS whereof the parties have executed this agreement as a deed the day and year first before written

EXECUTED as a Deed (but not delivered until the date appearing at the head of this Agreement) by **SWANSEA** affixing its Common Seal in the presence of:

Head of Legal, Democratic Services & Procurement/Authorised Signatory
.....

EXECUTED as a Deed (but not delivered until the date appearing at the head of this Agreement) by **NEATH PORT TALBOT** affixing its Common Seal in the presence of:

Head of Legal, Democratic Services & Procurement/Authorised Signatory
.....

EXECUTED as a Deed (but not delivered until the date appearing at the head of this Agreement) by **CARMARTHENSHIRE** affixing its Common Seal in the presence of:

Head of Legal, Democratic Services & Procurement/Authorised Signatory
.....

EXECUTED as a Deed (but not delivered until the date appearing at the head of this Agreement) by **PEMBROKESHIRE** affixing its Common Seal in the presence of:

Head of Legal, Democratic Services & Procurement/Authorised Signatory
.....