

DATED

20[.].]

- (1) PROJECT AUTHORITY LEAD**
- (2) PROJECT FUNDING RECIPIENT**

**Agreement in relation to the application of funding from the Swansea Bay
City Deal for the [Title of project] Project**

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[GUIDANCE NOTE: REMOVE THIS BEFORE COMPLETING THE AGREEMENT: THIS IS A TEMPLATE FOR USE BY A PROJECT AUTHORITY LEAD WHERE A BUSINESS CASE HAS BEEN APPROVED AND THERE IS A NEED TO DISTRIBUTE SWANSEA BAY CITY DEAL FUNDING TO ANOTHER PARTY (PRIVATE OR PUBLIC SECTOR). THIS TEMPLATE CAN ALSO BE USED WITH APPROPRIATE MODIFICATIONS BY A DELIVERY LEAD FOR A PROJECT TO DISTRIBUTE GRANT FUNDING TO ANOTHER PARTY TO DELIVER SPECIFIED OUTPUTS FOR A PROJECT. THE PURPOSE OF THIS AGREEMENT IS TO PASS ON THE OBLIGATIONS CONTAINED WITHIN THE FUNDING CONDITIONS FROM THE PROJECT AUTHORITY LEAD TO THE RECIPIENT. THE RECIPIENT IS REQUIRED TO DELIVER THE PROJECT AGREED OUTPUTS IN ACCORDANCE WITH THE BUDGET (TO INCLUDE THE FUNDING, ANY CO-FUNDING, BORROWING AND ANY OTHER CAPITAL OR REVENUE CONTRIBUTIONS TOGETHER WITH DETAIL OF THE EXPENDITURE PROFILE). THE PROJECT FUNDING RECIPIENT WILL THEREFORE BEAR THE RISK OF THE CO-FUNDER FAILING TO PROVIDE THE EXPECTED FUNDING. IF THE PROJECT FUNDING RECIPIENT IS NOT WILLING TO BEAR THIS RISK, THIS TEMPLATE SHOULD NOT BE USED. IN THAT CIRCUMSTANCE AN AGREEMENT BETWEEN THE PROJECT AUTHORITY LEAD AND/OR THE FUNDING RECIPIENT AND THE CO-FUNDER WILL BE NEEDED.]

THIS AGREEMENT IS MADE ON 20[]

BETWEEN:

- (1) [Name of Project Authority Lead] of [Address of Project Authority Lead] (“the Project Authority Lead”); and
- (2) [Name of recipient of project funding] of [Address of recipient of project funding] (“the Recipient”)

WHEREAS

- A The Project Authority Lead has responsibility for distributing funds from the Swansea Bay City Deal in the [Insert name of area for which the Project Authority Lead is responsible] in accordance with an agreement between Carmarthenshire County Council as Accountable Body for the Swansea Bay City Deal and the Project Authority Lead.
- B A business case for the Project has been approved in accordance with clause 12 of the Joint Committee Agreement.
- C The Recipient has applied to the Project Authority Lead for the Project Funding to be paid to it for the purpose of assisting with the cost of the Project.
- D The Project Authority Lead has approved the Recipient’s application for the Project Funding and has agreed subject to the terms and conditions of this Agreement to pay the Project Funding to the Recipient.
- E This Agreement sets out the terms and conditions on which the Project Authority Lead pays Project Funding to the Recipient.

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 Project Authority Lead and the Recipient for the payment of Project Funding to the Recipient;
“Agreement between the Accountable Body and Project Authority Lead”	an agreement entered into by the Accountable Body and the Project Authority Lead setting out the obligations of the Accountable Body and the Project Authority Lead relating to the distribution of Government Funding for the Projects;
“Borrowing”	means any indebtedness in respect of (a) any obligation under any hire purchase credit or conditional sale agreement or under any loan debt or other financial agreement or (b) any guarantee indemnity or similar assurance against financial loss of any person in respect of any obligation described in (a) and as included within the Budget;
“Budget”	the budget for the Project set out at Schedule 2 as may be revised from time to time by agreement with the Project Authority Lead to include Project Funding, Co-Funding, Borrowing, Other Receipts and Expenditure profile;
“Business Case”	means the business case for the Project as approved by the Joint Committee and Welsh Government extracts of which are set out in Schedule 2 and as subsequently updated and amended in accordance with this Agreement;

“Co-funding”	means the funding identified as Co-funding at Schedule 2;
“Commencement Date”	the date of this Agreement;
“Completion”	has the meaning given to that term at Schedule 1;
“Council”	a local authority which is party to the Joint Committee Agreement;
“DPA”	the Data Protection Act 2018;
“DP Regulator”	any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws;
“Data”	any data, document, code, information Personal Data in connection with this Agreement;
“Data Protection Laws”	any applicable laws and regulations in any relevant jurisdiction relating to privacy or the use or processing of Personal Data relating to natural persons;
“Data Subject”	shall have the meanings set out in the GDPR and the DPA;
“Expenditure”	means all eligible expenditure incurred for agreed Project Purposes as set out in Schedule 2;
“Funding Agreement”	an agreement between the Recipient and another recipient of Government Funding for the Project;
“GDPR”	the General Data Protection Regulation;
“Government Authority”	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 Project 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 28th August 2018 and as

	varied by a Deed of Variation dated 11 th December 2019;
“Key Personnel”	means the persons identified as such in Schedule 1 together with such other persons notified by the Recipient to the Project Authority Lead;
“Know-How”	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;
“Legal Charge”	a legal charge and/or restriction given by the Recipient to the Project Authority Lead over a property in accordance with clause 4.11 and in the form specified in Schedule 5
“Maximum Amount of Project Funding”	means the aggregate of the sums to be paid to the Recipient by way of Project Funding Payments under the terms of this Agreement;
“Maximum Project Funding Percentage”	means the maximum percentage of expenditure on the Project to be funded by way of the Project Funding in accordance with the financial profile set out in Schedule 2
“Notice of Breach”	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;
“Notification Event”	any of the events or occurrences described in Schedule 3;
“Other Receipts”	means all income grants donations trading revenue Borrowings or other funding derived or expected to be derived by the Recipient from the Project or otherwise received or expected to be received by the Recipient in connection with the project other than the Project Funding the Co-Funding and any

		permitted Borrowings and as included in the Budget;
“Party”		means each of the Project Authority Lead and the Recipient as the context requires and “Parties” means both of them;
“Portfolio Management Office”		the portfolio management office established by the Councils to manage the Swansea Bay City Deal;
“Project”		the project for which Project Funding has been awarded details of which are set out at Schedule 1 to this Agreement;
“Project Agreed Outputs”		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;
“Project Authority Lead”		[Name of Project Authority Lead] a local authority with responsibility for the Government Funding element of funding for the Project;
“Project Authority Lead’s Advisers”		such persons firms or entities as the Project Authority Lead shall from time to time appoint to advise it in relation to the Project or to represent the Project Authority Lead for the purpose of this Agreement and as are notified to the Recipient by the Project Authority Lead from time to time;
“Project Details”		the plans drawings specifications calculations Project Agreed Outputs and other data relating to the Project specified in Schedule 1 or as agreed from time to time by the Parties in writing;
“Project Documents”		this Agreement and all of the documents listed in Schedule 1 and any other document which the Recipient has or is required to enter into in connection with the Project;

“Project Funding”	the sum to be paid by the Project Authority Lead to the Recipient in accordance with this Agreement;
“Project Funding Payment”	means a payment of the Project Funding or any of it to the Recipient by the Project Authority Lead in accordance with clause 12
“Project Impacts”	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;
“Project Outcomes”	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;
“Project Purpose”	the purpose of the project described at Schedule 1 including the Project Agreed Outputs for the Project;
“Projected Completion Date”	means the anticipated date for Completion specified in Schedule 1 or as agreed from time to time by the Parties in writing;
“Recipient”	[Name of recipient of Project Funding] the legal entity to receive the Project Funding under the terms of this Agreement;
“Request for Change to the Project Agreed Outputs”	a notice served by one Party on another Party in accordance with clause 6.3 to request a change to the Project Agreed Outputs;
“State Aid Rules	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;

“Successful Completion”

the time when the Project Agreed Outputs have been achieved and the Project meets the Project Purpose in full and has been completed;

“Swansea Bay City Deal”

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;

“Swansea Bay City Region”

the administrative area covered by Carmarthenshire County Council, Neath Port Talbot County Borough Council, Pembrokeshire County Council and City and County of Swansea Council for local authority services;

“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, 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 Recipient (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 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 Project under the Swansea Bay City Deal and the payment of Project Funding by the Project Authority Lead to the Recipient 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. Project Authority Lead

- 3.1 Subject to the requirements of clause 12 the Project Authority Lead shall pay Project Funding to the Recipient.
- 3.2 The Project Authority Lead shall comply with the conditions imposed on the Project Authority Lead by the Agreement between the Accountable Body and the Project Authority Lead.
- 3.3 The Project Authority Lead shall comply with the State Aid Rules.

4. The Recipient

- 4.1 The Recipient shall use the Project Funding for the Project Purposes set out in Schedule 1 to this Agreement.
- 4.2 The Recipient shall achieve the Project Agreed Outputs set out in Schedule 6 to this Agreement.
- 4.3 The Recipient shall use the Project Funding in accordance with the Business Case which was produced and approved as part of the process of approving the Project for funding in accordance with clause 12 of the Joint Committee Agreement and as subsequently amended and reapproved in accordance with the terms of this Agreement.
- 4.4 The Recipient shall not make any change to the Project Agreed Outputs within the Business Case without the 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 Recipient shall not make any material change to the Budget of the Project without the prior written agreement of the Project Authority Lead. The percentage deviation from the approved Budget which will constitute a material change is set out in Schedule 2.
- 4.6 The Recipient shall be responsible for delivering the Project Agreed Outputs in accordance with the agreed pre-determined Budget. The Recipient is responsible for ensuring that any Co-Funding, Borrowing or Other Receipts are made available for use in delivering the Project as set out in Schedule 2. Any shortfall in the Budget is the responsibility of the Recipient. Any actual or

anticipated material change to the Budget including any monies being made available to the Recipient in excess of the Budget must be notified to the Project Authority Lead in accordance with clauses 12.4 and 19.4.

- 4.7 The 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 Recipient is required to report on Project Outcomes with sufficient and timely updates on progress and adjusted outcomes as required by the Project Authority Lead. Failure to deliver the Project Outcomes will not be a breach of this Agreement providing the Recipient is able to evidence a demonstrable commitment 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 Recipient 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 Recipient is required to report on Project Impacts as required by the Project Authority Lead but failure to achieve these Impacts will not constitute a breach of this Agreement.
- 4.9 The Recipient shall comply with the State Aid Rules.
- 4.10 Where the Recipient intends to apply to a third party for other funding for the Project it shall notify the Project Authority Lead in advance of its intention to do so. Where such funding is obtained the Recipient shall provide the Project Authority Lead with details of the amount and purpose of that funding. The Recipient 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.
- 4.11 The Recipient shall provide the Project Authority Lead with a Legal Charge and/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 Project Authority Lead to the Recipient.
- 4.12 The Recipient shall use reasonable endeavours to ensure that its actions do not place the Project Authority Lead in breach of the Agreement between the Accountable Body and Project Authority Lead.
- 4.13 The Recipient 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 Project Authority Lead, 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 Project Authority Lead could bring the Project Authority Lead, the Accountable Body or the Welsh Government into disrepute.

- (b) Safeguard as far as possible the Project Funding against fraud and, in particular, fraud on the part of its personnel and notify the Project Authority Lead immediately if the Recipient has reason to suspect that any fraud within the Recipient or the Project has occurred or is occurring or is likely to occur whether or not it relates to the Project Funding.
- (c) Participate in such fraud prevention initiatives as the Project Authority Lead requires.
- (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 Project.
- (f) Maintain appropriate financial risk and control systems before utilising any part of the Project Funding or procuring any goods or services from third parties.
- (g) Co-operate fully with any employee of the Project Authority Lead or any consultant appointed by the Project Authority Lead to monitor use of the Project Funding and the Recipient's compliance with the conditions imposed by this Agreement.
- (h) Inform the Project Authority Lead immediately if any declarations made to the Project Authority Lead are discovered to be materially incorrect at the time they were given.
- (i) Notify the Project Authority Lead if a Notification Event has occurred or is likely to occur.
- (j) Provide the Project Authority Lead with such documents information and reports which the Project Authority Lead may reasonably require from time to time in order for the Project Authority Lead 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 case for the Project to reflect key developments and keep the Project Authority Lead and Accountable Body notified of such developments by submitting updates to the Portfolio Management Office.
- (l) Notify the Project Authority Lead in writing of any anticipated or actual material change to the financial case for the Project.
- (m) Meet with any representatives of the Project Authority Lead as the Project Authority Lead may from time to time reasonably require.
- (n) Ensure that such person as the Project Authority Lead may require attends all meetings with the Project Authority Lead.
- (o) Maintain complete and accurate accounting records identifying all income and expenditure relating to the Project.

- (p) Subject to clause 21.2 indemnify the Project Authority Lead against any liabilities claims proceedings demands losses costs and expenses suffered or incurred by the Project Authority Lead directly or indirectly arising as a result or in connection with any failure by the Recipient to perform fully or in part any obligation the Recipient may have to a third party.
 - (q) Comply with any obligations imposed by the Project Authority Lead to acknowledge the Welsh Government's support for the Project in a form approved by the Project Authority Lead and in compliance with the Welsh Government's branding guidelines.
 - (r) Agree that from the date of this Agreement until five years from the date of the final payment of Project Funding to the Project the Project Authority Lead may allow the Welsh Government to include details about the Recipient the Project Funding and the Project in Welsh Government promotional materials and agree to cooperate with the Project Authority Lead's reasonable requests to achieve the production of such materials
 - (s) Comply with the Equality Act 2010 and apply a policy of equal opportunities as employers as users of volunteers and as providers of services.
 - (t) Where the Project includes or relates 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.
 - (u) 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.
- 4.14 The Recipient shall comply with any other obligations imposed on the Recipient in accordance with Schedule 5.

5. Funding Agreement

- 5.1 The Recipient may enter into a Funding Agreement to facilitate the distribution of Government Funding to another recipient in order to deliver the Project.

6. Project Agreed Outputs

- 6.1 The Recipient shall be responsible for achieving the Project Agreed Outputs.
- 6.2 The Project Agreed Outputs are contained within the Project Business Case as set out at Schedule 6. The Project Authority Lead reserves the right to add to or amend the Project Agreed Outputs without following the process set out 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 Project Authority Lead shall submit any Request for Change to the Project Agreed Outputs to the Accountable Body who 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 Recipient may impose obligations on another person relating to the achievement of the Project Agreed Outputs but the Recipient shall remain responsible for achievement of the Project Agreed Outputs.
- 6.5 The Recipient shall report on progress with achieving the Project Agreed Outputs in accordance with clause 10.
- 6.6 Failure by the Recipient to achieve the Project Agreed Outputs shall be treated as a breach by the Recipient of its obligations under this Agreement and clause 7 shall apply.

7. Breach of this Agreement

- 7.1 Subject to clause 7.3 in the event of failure by the Recipient 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 Project Authority Lead reserves the right at its absolute discretion to treat breach by the Recipient 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 any 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 are attached at Schedule 9. This clause **Error! Reference source not found.** 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 seek 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 Project Authority Lead shall be entitled to take any of the actions set out at clause 8.5 if:
- (a) Despite the Project Authority Lead's reasonable efforts the Project Authority Lead has been unable to discuss the Notification Event with the Recipient. Or
 - (b) In respect of a Notification Event that has been caused by the Recipient the Project Authority Lead notifies the Recipient that the Notification Event is not capable of remedy. Or
 - (c) In respect of a Notification Event that has been caused by the Recipient a course of action to address the Notification Event is not agreed between the Project Authority Lead and the Recipient. Or
 - (d) A course of action to address the Notification Event is agreed between the Project Authority Lead and the Recipient but the Recipient 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 Project Authority Lead.
- 8.5 If any of the circumstances set out in clause 8.4 occur the Project Authority Lead may by notice to the Recipient:

- (a) Require the Recipient to repay all or part of the Project Funding to the Project Authority Lead.
- (b) Suspend or cease all further payments of Project Funding.
- (c) Make all further payments of Project Funding subject to such conditions as the Project Authority Lead 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 Project Authority Lead under the terms of this Agreement from any other funding that the Project Authority Lead has awarded or may award to the Recipient. And/Or
- (e) Exercise any other rights against the Recipient which the Project Authority Lead 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 Recipient has repaid in accordance with clause 19. 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 circumstances 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.

8.7 The Project Authority Lead shall keep the Recipient fully informed of developments and discussions with the Accountable Body, the Joint Committee and/or Welsh Government in relation to any Project Authority Lead breach of this Agreement which could result in suspension, cessation or repayment of any Government Funding and/or termination of the Agreement between the Accountable Body and the Project Authority Lead.

9. Representations

9.1 The Recipient hereby represents and warrants to the Project Authority Lead that each of the representations and warranties set out below are true and accurate: [Note: (a) to (g) should be included in all Agreements between the Project Authority Lead and a Recipient. (h) to (j) should be included in Agreements with private sector Recipients. (k) to (n) should be included in Agreements with public sector Recipients.

- (a) This Agreement, the other Project Documents and any document required to be entered into by the Recipient hereunder or thereunder constitute, or when entered into will constitute, its legal, valid and binding obligations;
- (b) To the best of the Recipient's knowledge, information and belief, no matter exists which the Recipient reasonably considers is likely to give rise to a civil, criminal, arbitration, administrative or other proceeding in any jurisdiction involving it which is likely to have a material adverse

effect on its performance of its obligations arising under this Agreement and there is no outstanding judgment, order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency in any jurisdiction against it which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

- (c) Neither the execution, delivery nor performance by the Recipient of this Agreement, the Project Documents nor any other document required to be entered into by the Recipient hereunder or thereunder nor the consummation of any of the transactions contemplated hereby and thereby, require the consent or approval or the giving of notice to, the registration with, or the taking of any other action in respect of any governmental authority or agency, except as have been obtained and are now in full force and effect;
- (d) The Recipient is not aware, after due enquiry, of anything which materially threatens the Successful Completion of the Project and which has not previously been notified in writing to the Project Authority Lead;
- (e) The Recipient has agreed the Project Agreed Outputs set out at Schedule 6 to this Agreement.
- (f) The Recipient has disclosed to the Project Authority Lead all material facts or circumstances which need to be disclosed to enable the Project Authority Lead to obtain a true and correct view of the Recipient's business and affairs or which ought to be provided to any person who is considering providing funding to the Recipient;
- (g) All information provided by or on behalf of the Recipient to the Project Authority Lead or the Project Authority Lead's Advisers in connection with this Agreement and, without prejudice to the generality of the foregoing, all of the information incorporated in this Agreement was true and accurate and not misleading when it was provided and nothing has occurred since then to make it untrue, inaccurate or misleading in any material respect;
- (h) [The Recipient is validly incorporated under the laws of England and Wales and has full power, authority and right to enter into and perform its obligations under this Agreement and any other Project Documents to which it is or is required to be a party and to consummate the transactions contemplated hereby;
- (i) The execution, delivery and performance of this Agreement and the other Project Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorised by all necessary corporate action on its part and do not contravene any applicable law, regulation or order binding on it or any of its assets or its constitutional documentation;
- (j) The audited accounts of the Recipient most recently delivered to the Project Authority Lead:
 - (i) Have been prepared in accordance with accounting principles and practices generally accepted and consistently applied in the United Kingdom; and

- (ii) Show a true and fair view: of the assets and liabilities of the Recipient as at the date to which they were drawn up; and of the profits/surplus of the Recipient (if applicable) for the financial period ending on that date.]
- (k) [The Recipient has the power to enter into and perform its obligations under this Agreement and any other Project Documents to which it is or is required to be a party and to consummate the transactions contemplated hereby;
- (l) The Recipient has taken all necessary decisions and obtained all necessary authorisations to enable it to enter into and perform its obligations under this Agreement and the other Project Documents to which it is a party and the consummation of the transactions contemplated hereby;
- (m) The Recipient has complied with any duties applicable to its management of its financial affairs and its preparation of accounts;
- (n) No report under section 114 of the Local Government Finance Act 1988 has been issued or is anticipated in respect of the Recipient.]

9.2 Should any representation or warranty no longer be true and accurate if given by the Recipient at any time when this Agreement is in force then the Recipient will immediately inform the Project Authority Lead and provide the Project Authority Lead with full details of the same.

10. Risk and Project Agreed Outputs

- 10.1 The Recipient shall identify any risks associated with the Project and shall take action to address and mitigate any risks.
- 10.2 The Recipient shall identify any material risks associated with the Project Outcomes and shall use reasonable endeavours to address and mitigate any risks.
- 10.3 From the Commencement Date until Completion of the Project the Recipient shall provide the Project Authority Lead with a report on risk and a report on progress with achieving the Project Agreed Outputs when the Recipient submits an application for payment of Project Funding and at any other time requested by the Project Authority Lead.
- 10.4 From the date of Completion until Successful Completion of the Project the Recipient shall comply with such monitoring requirements as specified by the Project Authority Lead to include an annual report on the progress in achieving the Project Agreed Outputs.

11. Purpose of Project Funding

- 11.1 The Recipient shall use the Project Funding only for the delivery of the Project and in accordance with the Project Purposes and the terms and conditions set out in this Agreement. The Project Funding shall not be used for any other purpose without the prior written agreement of the Project Authority Lead.

11.2 Any change to the purposes of the Project shall require the written consent of the Joint Committee and must be obtained in advance of implementing any change.

12. Payment of Project Funding

12.1 The Project must go through the process set out in clause 12 of the Joint Committee Agreement and be approved for funding from the Swansea Bay City Deal before any Project Funding can be released for the Project.

12.2 After the Project has been approved for funding from the Swansea Bay City Deal the Recipient may submit applications to the Project Authority Lead for payment of the Project Funding to the Recipient in accordance with the financial profile set out at Schedule 2.

12.3 An application by the Recipient to the Project Authority Lead for payment of Project Funding must be made on the form set out at Schedule 4 and must be accompanied by all the documents referred to in that form. The Recipient shall provide the Project Authority Lead with copies of such invoices and other information on request as the Project Authority Lead shall from time to time require in order to verify that the application relates to Expenditure on the Project. The application shall be signed by the chief financial officer or equivalent of the Recipient or such other person authorised by the Recipient as shall be agreed by the Project Authority Lead. The Recipient shall give the Project Authority Lead access to inspect any documents or sites relating to the Project.

12.4 In the event that there is an actual or anticipated material change to the Budget (as prescribed in Schedule 2) the Recipient shall immediately notify the Project Authority Lead who shall make any adjustments to the Maximum Amount of Project Funding and/or to the Maximum Project Funding Percentage as necessary.

12.5 Subject to clause 12.6 the Project Authority Lead shall pay Project Funding to the Recipient no later than 28 days after the Project Authority Lead receives an application for Project Funding which is in accordance with the financial profile.

12.6 The Project Authority Lead shall not be required to pay Project Funding to the Recipient if any of the following circumstances apply:

(a) The Project Authority Lead does not receive Government Funding for the Project from the Accountable Body.

(b) The Recipient has not submitted a claim and progress report to the Project Authority Lead or has failed to submit evidence that the claim relates to Expenditure that has been defrayed on the Project.

(c) The payment of Project Funding would cause the Project Authority Lead to breach any conditions imposed by the Accountable Body for the provision of the Project Funding.

(d) A Notification Event has occurred and is continuing or is likely to do so;

- (e) Any of the representations and warranties referred to in this Agreement would not be correct at the time of (or as a result of) the making of the Project Funding Payment; or
- (f) Making the Project Funding Payment would cause the total amount of Project Funding paid to the Recipient to exceed the Maximum Amount of Project Funding or exceed the Maximum Project Funding Percentage.

12.7 The amount of the Project Funding paid in total to the Recipient shall not in any circumstance exceed £[].

13. Monitoring and Evaluation

13.1 The Recipient must:

- (a) Provide the Project Authority Lead with such documents information and reports which the Project Authority Lead may reasonably require from time to time in order for the Project Authority Lead to monitor the Recipient's compliance with this Agreement;
- (b) Provide the Project Authority Lead with quarterly reports for the Joint Committee;
- (c) Meet Welsh Government Officials UK Government officials members of the Joint Committee and members of the Economic Strategy Board as the Project Authority Lead shall reasonably require;
- (d) Provide the Portfolio Management Office with such documents information and reports which the Portfolio Management Office may reasonably require from time to time.

13.2 The Recipient shall provide the Project Authority Lead with any information that the Project Authority Lead may reasonably request to enable the Project Authority Lead to evaluate the Project after it has completed.

14. Audit

14.1 The Recipient must:

- (a) Maintain clear accounting records identifying all income and expenditure in relation to the Project;
- (b) Without charge permit any officer of the Project Authority Lead, Accountable Body, Welsh Government, UK Government, 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 Recipient's premises or inspect any of the Project's activities or to examine and take copies of the Recipient's books of account and such other documents or records as in such officer's reasonable view may relate in any way to the Recipient's use of the Project Funding;
- (c) Retain this Agreement and all original documents for a period of 15 years or until the Project Authority Lead informs the Recipient in writing that it may destroy them.

15. Force Majeure

15.1 In this clause, "**force majeure**" means an event beyond the control of the Project Authority Lead or the Recipient, 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, unless solely restricted to employees of the Recipient, its contractors or any of their sub-contractors.
- (f) Epidemic or pandemic.

15.2 Neither the Project Authority Lead nor the Recipient 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.

15.3 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 (in the case of the Recipient) 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.

16. Duration

16.1 This Agreement shall continue in force until all the obligations of the Recipient of Project Funding for all the Projects have been unconditionally and irrevocably satisfied in full and no amount of Project Funding is capable of becoming repayable by the Recipient to the Project Authority Lead or (if earlier) until terminated by the Parties under the provisions of this Agreement.

16.2 This clause together with clauses 14,19,20,21,27,28 and 29 shall continue in force after the expiry or termination of this Agreement.

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

17.1 The Project Authority Lead may suspend payments of Project Funding if the Welsh Government or the UK Government suspend payment of Swansea Bay City Deal 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.

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

18.1 The Project Authority Lead may withdraw its agreement to pay the Project Funding to the Recipient 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 18, the obligations imposed on the Recipient 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.

19. Repayment of Project Funding

19.1 The Project Authority Lead may require the Recipient to repay all or part of the Project Funding to the Project Authority Lead if the Project Authority Lead is required to repay all or part of the Government Funding.

19.2 The Project Authority Lead may deduct amounts owed to it as repayment from any other funding that the Project Authority Lead may have awarded or may award to the Recipient.

19.3 All repayments of Project Funding must be made to the Project Authority Lead within 28 days of the date of the Project Authority Lead's demand. If applicable the Recipient must pay interest on any overdue repayments.

19.4 If, at any time, the Recipient receives or becomes entitled to receive Co-funding or Other Receipts in excess of the amounts specified in Schedule 2, the Recipient shall immediately provide details of the same to the Project Authority Lead. Upon any such notice the Project Authority Lead may:

- (a) reduce the Maximum Project Funding Percentage; and/or
- (b) reduce the Maximum Amount of Project Funding; and/or
- (c) require repayment of any or all Project Funding Payments or any part of them such that the reduced Maximum Amount of Project Funding is not exceeded.

19.5 The Recipient shall, unless the Project Authority Lead agrees otherwise, repay to the Project Authority Lead any Project Funding Payments made to it as a result of an administrative error whether such error is made by the Project Authority Lead, the Recipient or any other person.

20. Publicity

- 20.1 The Recipient shall not make or consent to the making of any public statement or announcement or engage in any promotional activity concerning this Agreement without the prior written consent of the Project Authority Lead.
- 20.2 The Recipient must acknowledge the support of the Welsh Government and the UK Government. Such acknowledgement must be in a form approved by the Project Authority Lead.
- 20.3 The Recipient agrees that from the Commencement Date until five years from the date of the final payment of Project Funding the Welsh Government may include details about the Recipient and the Project in promotional materials.

21. Indemnity

- 21.1 The Recipient 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 Recipient of any obligations under this Agreement.
- 21.2 The liability of the Recipient pursuant to clause 4.13(p) and clause 21.1 shall be limited to the total amount of Project Funding Payments received by the Recipient together with any direct losses occasioned by the Project Authority Lead.
- 21.3 The Project Authority Lead shall on demand indemnify and keep indemnified the Recipient 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 any obligations under this Agreement.
- 21.4 The liability of the Project Authority Lead pursuant to clause 21.3 shall be limited to the total amount of Government Funding received by the Project Authority Lead and paid to the Recipient by way of Project Funding. The liability of the Project Authority Lead shall not extend to any expectation the Recipient may have in relation to the award of future Project Funding.

22. No Liability of the Project Authority Lead

- 22.1 Nothing in this Agreement nor any other document shall constitute the Recipient as the agent of the Project Authority Lead or else shall impose any obligation or liability on the Project Authority Lead or any of the Project Authority Lead's Advisers (save in cases of fraud negligence or wilful misconduct on the part of the Project Authority Lead or the Project Authority Lead's Advisers) with respect to any actions of or obligation or liability assumed or incurred by the Recipient or its agents contractors or employees whether under contract statute or otherwise.
- 22.2 The Recipient agrees not to make any representation of suggestion to any person whether by conduct silence or otherwise which would contradict clause 22.1.

23. Assignment

- 23.1 The Parties acknowledge that the Project Funding is non-transferable and that they may not assign or transfer this Agreement or any of their rights benefits or obligations under this Agreement except where the Project Funding is assigned to another recipient subject to the written consent of the Welsh Government.

24. Variation

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

25. Notices

- 25.1 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.

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

Project Authority Lead

[]

Recipient

[]

26. Confidentiality

- 26.1 Subject to clause 27 (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.

- 26.2 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.

27. Freedom of Information

- 27.1 The Recipient acknowledges that the Project Authority Lead is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the Project Authority Lead to enable the Project Authority Lead to comply with these information disclosure requirements and shall provide all necessary assistance as reasonably requested by the Project Authority Lead to enable the project Authority Lead to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

28. Data Protection

- 28.1 The Recipient 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.
- 28.2 The Recipient 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.
- 28.3 To the extent the Recipient processes any Personal Data on behalf of the Project Authority Lead or another Council the Recipient shall:
- (a) Process such Personal Data only in accordance with the Project Authority Lead'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 Project Authority Lead.
 - (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 Project Authority Lead.
- (f) Inform the Project Authority Lead within twenty four (24) hours if any such Personal Data is (while within the processing Council'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 Project Authority Lead.
- (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 Project Authority Lead 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 Project Authority Lead 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 Project Authority Lead or its representatives to access any relevant premises, personnel or records of the Recipient on reasonable notice to audit and otherwise verify compliance with this clause.
- (l) Take such steps as are reasonably required to assist the Project Authority Lead in ensuring compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR and other applicable Data Protection Laws.
- (m) Notify the Project Authority Lead 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 Project Authority Lead 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.

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

29. State Aid

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

30. Sustainability

- 30.1 The Recipient's use of the Project Funding must be consistent with the duty of the Project Authority Lead and the Welsh Government to carry out sustainable development as required by the Well-being of Future Generations (Wales) Act 2015.

31. Termination

- 31.1 The Parties shall require the prior approval of the Joint Committee to terminate this Agreement. The Parties agree that subject to the prior approval of the Joint Committee this Agreement may be terminated upon terms agreed by the Parties.

32. Waiver

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

33. Dispute Resolution

- 33.1 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.
- 33.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 33.
- 33.3 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 the Project Authority Lead to its head of paid service and by the Recipient to its most senior employee.

- 33.4 If the head of paid service of the Project Authority Lead and the most senior employee of the Recipient 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.
- 33.5 If the Joint Committee is not able 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.
- 33.6 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 33.5 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.
- 33.7 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.
- 33.8 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.
- 33.9 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.
- 33.10 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.
- 33.11 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 33.12.
- 33.12 In the event that an arbitration is commenced pursuant to clause 33.11 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;
 - (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).

34. Interest

- 34.1 If either Party fails to pay any sum due to the other 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. Either Party may, but need not, set off sums payable by it to the other against any unpaid sums.

35. Relationship of parties

- 35.1 This Agreement shall not create any partnership or joint venture between the Project Authority Lead and the Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

36. Decisions of the Project Authority Lead

- 36.1 Except where any agreement decision or determination to be made by the Project Authority Lead under or in connection with this Agreement is expressly qualified such agreement decision or determination by the Project Authority Lead shall be made by the Project Authority Lead in its absolute discretion.

37. Contracts (Rights of Third Parties) Act 1999

- 37.1 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.

38. Entire Agreement

- 38.1 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.

39. Severability

- 39.1 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.

40. Execution

- 40.1 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.

41. Governing Law

- 41.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.
- 41.2 The Project Authority Lead and the Recipient 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
[PROJECT AUTHORITY LEAD] by affixing the common seal of [PROJECT
AUTHORITY LEAD]
in the presence of

SIGNATURE

NAME

POSITION

EXECUTED for and on behalf of
[RECIPIENT]

SIGNATURE

NAME

POSITION

SIGNATURE

NAME

POSITION

In the presence of

WITNESS SIGNATURE

NAME

ADDRESS

OCCUPATION

Schedule 1 Project Details

1 Project Description

- 1.1 [Details of the project for which Project Funding is being provided to be inserted here, together with details of the period for which funding is being provided]

2 Project Purpose

- 2.1 The purpose of the Project is [].

3 Project Documents

- 3.1 The following documents refer to the Project:

(a) Business Case [to be referenced and not attached]

(b) []

4 Completion

- 4.1 Completion shall be deemed to have occurred when there is practical completion of all project works or such other key date/stage as described below:-

.....

5 Projected Completion Date

- 5.1 []

6 Key Personnel

- 6.1 []

7 Project Agreed Outputs

- 7.1 See Schedule 6

Schedule 2 Financial Profile

1. Budget

1.1 [Extract of Business Case to be inserted here – detailing the following:-

Maximum Amount of Project Funding

Co-funding

Borrowing

Other receipts

Expenditure profile]

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

2. Financial Profile for Payment of Project Funding to the Recipient

[Insert details on a project specific basis. Eg the Recipient is to submit a claim for Project Funding to the PAL at the end of each quarter based on incurred expenditure and subject to all payments not exceeding the Maximum Amount of Project Funding. Alternatively the PAL may wish to make a payment to the Recipient of the Maximum Amount of Project Funding in a one stage payment subject to confirmation of incurred expenditure.]

3. Maximum Project Funding Percentage

[Insert here details of Maximum Project Funding Percentage applicable to this Project]

Schedule 3 Notification Events

- 1 Each of the following shall constitute a Notification Event:
 - 1.1 Repayment of any part of the Project Funding is required under European Law.
 - 1.2 Repayment of any part of the Project Funding is required by HM Treasury or the Welsh Government.
 - 1.3 The Project Authority Lead fails to comply with any conditions imposed on the Project Authority Lead by the Accountable Body in the Agreement between the Accountable Body and the Project Authority Lead.
 - 1.4 The Recipient fails to comply with any obligations imposed on the Recipient by the Project Authority Lead in this Agreement.
 - 1.5 The Project Funding in full or in part is not being used for the purposes set out in Schedule 1.
 - 1.6 The Recipient fails to achieve the Project Agreed Outputs.
 - 1.7 There is unsatisfactory progress towards completing the purposes set out in Schedule 1.
 - 1.8 The Project Authority Lead or the Recipient 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.
 - 1.9 The Recipient fails to provide information requested by the Project Authority Lead or any of its auditors agents or representatives.
 - 1.10 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 Project is or has been involved in fraudulent activity whilst the Project is or were being carried out.
 - 1.11 The Project Authority Lead has reason to believe that the Recipient or any of its employees or suppliers or any other person engaged by the Recipient in relation to the Project is or has been involved in fraudulent activity whilst the Project is or were being carried out.
 - 1.12 The Accountable Body has made an overpayment of Government Funding to the Project Authority Lead.
 - 1.13 The Project Authority Lead has made an overpayment of Project Funding to Recipient.
 - 1.14 Any declaration or representation made by the Project Authority Lead to the Accountable Body is discovered to have been materially incorrect at the time given.
 - 1.15 Any declaration made by the Recipient to the Project Authority Lead is discovered to have been materially incorrect at the time given.

- 1.16 There has been a modification to the auditor's opinion on the financial statements of the Project Authority Lead or the Recipient.
- 1.17 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 conditions imposed by the Accountable Body in the Agreement between the Accountable Body and Project Authority Lead.
- 1.18 Any event occurs or circumstances arise which in the opinion of the Project Authority Lead gives reasonable grounds for believing that the Recipient may not or may be unable to perform or comply with any of its obligations under this Agreement.

Schedule 4 Form of application for Project Funding Payment

To: Project Authority Lead

Date:

Dear Sirs

Grant Agreement (the “Agreement”) dated [] in relation to [] (Project Reference[s]: [] [and []])

We refer to the Agreement.

We wish to apply for a Project Funding Payment of £[] and request that you pay such amount to the credit of the Bank Account details of which are set out below:-

Bank account details

We confirm as follows:

- (a) The Maximum Amount of Project Funding will not be exceeded as a result of the making of such Project Funding Payment;
- (b) The Project Funding Payment applied for relates to the reimbursement of eligible Expenditure in relation to which no Project Funding Payment has already been made;
- (c) All of the representations and warranties referred to in the Agreement are true and accurate on the date of this application.

We provide the following in support of our application.

- (a) A report on progress in achieving the Project Agreed Outputs
- (b) A report on risk; and

We agree to provide the following documents to the Project Authority Lead if requested by the Project Authority Lead in support of our application:

- (a) A report signed by the Recipient’s chief finance officer on income and expenditure on the Project in relation to the period during which the expenditure to which the Project Funding Payment relates was incurred;
- (b) A breakdown and summary of the items of expenditure to which the Project Funding relates;
- (c) Copies of invoices and other supporting information which we consider will enable you to verify that this application for payment relates to eligible Expenditure; and
- (d) Copies of any other materials reasonably requested by the Project Authority Lead from time to time.

Yours faithfully

..... [to be signed by Chief Finance Officer]

Schedule 5 Recipient's Obligations

[Template form of Legal Charge and/or restrictions to be attached here to be used in accordance with clause 4.14. These will ensure that the payment of the funding is secured and recoverable in the event of clawback and also that the Recipient is unable to borrow and place a charge on any property benefitting from Project Funding without the consent of the Project Authority Lead]

Additional conditions to be inserted as required for individual projects relating to:

- 1 Delivery of certified copies of articles of association, resolutions to enter into this Agreement, specimen signatures
- 2 Evidence of availability of Co-funding
- 3 Details of contractual structure
- 4 Details of budget
- 5 Delivery of agreement for lease and lease
- 6 Delivery of licence for alterations
- 7 Deed of variation
- 8 Delivery of drawings
- 9 Delivery of certificate of title
- 10 Evidence of VAT status of the Recipient
- 11 Replies to property enquiries and results of searches
- 12 Delivery of certified copies of mortgages and charges
- 13 Delivery of planning permissions
- 14 Registration of titles and charges

Schedule 6 Project Agreed Outputs

[Set out here the Project Agreed Outputs to be achieved by the Recipient. Also include here any targets and outcomes imposed on the Accountable Body as part of the terms and conditions attached to any offer of Government Funding which the AB has passed onto the Project Authority Lead and the PAL is now passing onto the Recipient]

Schedule 7 Project Outcomes

Schedule 8 Project Impacts

Schedule 9 Welsh Government communications