

**DATED**

**2018**

**(1) CARMARTHENSHIRE COUNTY COUNCIL**

**and**

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

**(3) PEMBROKESHIRE COUNTY COUNCIL**

**(4) THE COUNCIL OF THE CITY AND COUNTY OF SWANSEA**

---

**AGREEMENT FOR THE ESTABLISHMENT OF A JOINT COMMITTEE FOR THE  
SWANSEA BAY CITY REGION**

---

## CONTENTS

1.	Interpretation	<u>56</u>
2.	Commencement and Duration	<u>1142</u>
3.	The Councils' Obligations	<u>1243</u>
4.	Establishment of a Joint Committee	<u>1344</u>
5.	Arrangements for the discharge of functions	<u>1445</u>
6.	Appointment of the Accountable Body	<u>1445</u>
7.	Duties of the Accountable Body	<u>1546</u>
8.	Duties of the Other Councils	<u>1647</u>
9.	<u>Portfolio Management Office and Programme Director</u>	17
10.	Implementation Plan	17
11.	Projects Funded by The Swansea Bay City Deal	18
12.	Processes for Funding Projects	18
13.	Borrowing	22
14.	Funding from other bodies	22
15.	Sub-committees	<u>2322</u>
16.	Programme Board	23
17.	Economic Strategy Board	23
18.	Commitment of the Councils	23
19.	Costs	23
20.	Audit and Scrutiny	<u>2425</u>
21.	Mitigation	26
22.	Withdrawal from this Agreement	26
23.	Termination of This Agreement	<u>2627</u>
24.	Liabilities of the Councils	<u>2627</u>
25.	Dispute Resolution	<u>2728</u>
26.	Notices	30
27.	Information and Confidentiality	30
28.	Data Protection	31

29.	Intellectual Property	33
30.	Freedom of Information	34
31.	Language	35
32.	Severability	35
33.	Relationship of Councils	35
34.	Third Party Rights	<del>36</del> 35
35.	Entire Agreement	36
36.	Law of Agreement or Jurisdiction	36
37.	Assignment	36
38.	Waiver	36
39.	Counterparts	<del>37</del> 36
40.	Discretion of the Councils	37
41.	Withdrawal of the United Kingdom from the European Union	37
	Schedule 1 Terms of Reference of the Joint Committee	38
	Schedule 2 Programme Board	42
	Schedule 3 Notices	45
	Schedule 4 Accounting Periods	46
	Schedule 5 Matters Reserved to The Councils	47
	Schedule 6 Economic Strategy Board	48
	Schedule 7 Projects Funded By the Swansea Bay City Deal	51
	Schedule 8 Project Approval Process	52
	Schedule 9 Flow of Funding	54
	Schedule 10 Change in Project Status	56
	Schedule 11 Welsh Government Guidance on Flexible Use of Capital Receipts	57
	Schedule 12 Terms of Reference of Joint Scrutiny Committee	64
	Schedule 13 Rules of Conduct of Co-opted Members of the Joint Committee and the Economic Strategy Board	65
	<a href="#">Schedule 14 Job Description of the Programme Director</a>	
	<a href="#">Schedule 15 Role of the Portfolio Management Office</a>	

THIS AGREEMENT IS MADE ON

2018

**BETWEEN:**

- (1) **Carmarthenshire County Council of County Hall**, Carmarthen, Carmarthenshire SA31 1JP (“Carmarthenshire”); and
- (2) **Neath Port Talbot County Borough Council** of Port Talbot Civic Centre, Port Talbot SA13 1PJ (“Neath”); and
- (3) **Pembrokeshire County Council** of County Hall, Haverfordwest, Pembrokeshire SA61 1TP
- (4) **The Council of the City and County of Swansea** of Civic Centre, Oystermouth Road, Swansea SA1 3SN

(together referred to as “the Councils”)

**WHEREAS:**

- (A) The Councils have agreed to work together in order to discharge their obligations to one another, the Welsh Government and the United Kingdom Government (“UK Government”) to promote and facilitate projects funded under the Swansea Bay City Deal in order to further the growth of the Swansea Bay City Region which comprises the areas of the Councils.
- (B) The Councils have accordingly agreed to enter into this Agreement to document and regulate their respective rights and obligations to each other and to enable the Councils to work together to establish and to participate in a joint committee.
- (C) The Councils have agreed heads of terms with the UK Government and the Welsh Government which set out the key elements of the Swansea Bay City Deal the investment themes and the governance arrangements which the UK Government and the Welsh Government expect the Councils to apply to the Swansea Bay City Deal.
- (D) The Councils acknowledge that the Government Funding of £241 million shall be provided to the projects in the Swansea Bay City Deal for a 15 year period from the Commencement Date and shall be paid by the Welsh Government to the Accountable Body.
- (E) The Welsh Government has agreed to allow the Swansea Bay City Region to retain 50% of the additional yield in non-domestic rates generated by the projects in the Swansea Bay City Region and has agreed to support the Councils in enabling them to fund revenue costs of the Swansea Bay City Deal projects. This support will be provided by allowing Councils to utilise the flexibility in the funding methods provided by the Guidance on the Flexible Use of Capital Receipts and reserves (documents appended at Schedule 11)
- (F) The Councils acknowledge that the Accountable Body may pay the Government Funding to the Delivery Lead or the Project Authority Lead as appropriate for the relevant project in the Swansea Bay City Deal.

- (G) The Councils acknowledge that the Government Funding is subject to the following conditions: entry into this Agreement by the Councils; satisfying the Government Reviews; further Funding Conditions approved by the Councils; and approval of the Implementation Plan.
- (H) The Councils acknowledge that the Regional Learning and Skills Partnership for South West and Mid Wales shall have a central role to play in leading on the strategic approach to the delivery of employment and skills in the region.

**IT IS AGREED AS FOLLOWS:**

**1. Interpretation**

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

**“Accountable Body”** the Council appointed under clause 6.1 of this Agreement who shall be responsible for receiving and distributing funds for and on behalf of the Councils in relation to the Swansea Bay City Deal and whose duties are set out in clause 7;

**“Accountable Body Costs”** the operational and management costs incurred by the Accountable Body in carrying out its role of Accountable Body;

**“Accounting Period”** those periods set out in ~~0~~Schedule 4 as may be amended from time to time in accordance with the terms of this Agreement;

**“this Agreement”** this 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 ;

**“Allocated Sum”** the funding allocated to a project in the Swansea Bay City Deal as recorded in its Project Business Case and in Schedule 7 to this Agreement subject to approval of the Project Business Case

**“Annual Costs Budget”** the approved annual costs budget held by the Portfolio Management Office for and on behalf of the Councils in relation to the payment of any Accountable Body Costs, Economic Strategy Board Costs, Joint Committee Costs (including Joint Scrutiny Committee Costs, Programme Board Costs and Portfolio Management Office Costs) in accordance with this Agreement;

**“Applicable Law”** means all applicable laws, statutes, regulations, regulatory requirements, guidance and codes of

practice in any relevant jurisdiction as amended, updated or replaced from time to time, including the Data Protection Laws;

<b>“Business Day”</b>	any day other than a Saturday or Sunday or a public or bank holiday in Wales;
<b>“Commencement Date”</b>	the date of this Agreement;
<b>“Conditions Longstop Date”</b>	the date agreed by the Joint Committee by when the Funding Conditions must be agreed by the Councils;
<b>“Confidential Information”</b>	all know-how and other information relating to the business, affairs or methods of all or any Council and any other participant in the Swansea Bay City Deal and any applicant for funding from the Swansea Bay City Deal, which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure;
<b>“Co-opted Body”</b>	a body from which a representative is co-opted as a non-voting member of the Joint Committee in accordance with Schedule 1;
<b>“Co-opted Member Protocol”</b>	the protocol agreed by the Councils specifying the standard of conduct required of co-opted members of the Joint Committee;
<b>“Council Contribution”</b>	the funding provided by each Council to the Annual Budget Costs as set out in clause 19;
<b>“Councils”</b>	Carmarthenshire County Council, Neath Port Talbot County Borough Council, Pembrokeshire County Council and the Council of the City and County of Swansea and “Council” shall be construed accordingly;
<b>“Councils’ Obligations”</b>	the obligations set out in clause 3;
<b>“DPA”</b>	the Data Protection Act <a href="#">2018</a> ;
<b>“DP Regulator”</b>	any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Laws;
<b>“Data”</b>	any data, document, code, information, Personal Data in connection with this Agreement;
<b>“Data Incident”</b>	the reasonable suspicion of, discovery by, or notice to a party that (a) Data has been or is likely to be accessed or obtained by an unauthorised person; or (b) a party’s

systems have been or are likely to be compromised or vulnerable; or a person has threatened the unauthorised access to or obtaining of any Data;

**“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, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/139/EC) and any legislation implementing or made pursuant to such directives, including the Data Protection Act 2018 (the "DPA") and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) from 25 May 2018 EU Regulation 2016/679 ("GDPR"); (c) [the DPA](#) (d) the Regulation of Investigatory Powers Act 2000 and the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000;

**“Data Subject”**

shall have the meanings set out in the DPA;

**“Delivery Lead”**

the organisation responsible for the preparation and submission of the Project Business Case for and delivery of each project as set out in the Implementation Plan;

**“Economic Strategy Board”**

the board established in accordance with clause 17 and Schedule 6;

**“Economic Strategy Board Costs”**

the operational and management costs of the Economic Strategy Board;

**“FOI Legislation”**

the Freedom of Information Act 2000 and subordinate legislation made under this and the Environmental Information Regulations 2004

**“Funding Conditions”**

any conditions imposed by the UK Government or the Welsh Government for the release of the Government Funding to be signed by the Accountable Body;

**“Government Funding”**

funding of £241 million to be made available to the Swansea Bay City Deal from the UK Government and the Welsh Government consisting of £115.6 million from the UK Government and £125.4 million from the Welsh Government;

**“Government Review”**

an examination carried out by the UK Government and Welsh Government jointly once a year of projects in the Swansea Bay City Deal in order to assess the progress and likelihood of the Councils' successful delivery of the Swansea Bay City Deal such reviews to take place no more than once in each calendar year during the currency of this Agreement;

**“IP Material”**

the Intellectual Property in the Material;

<b>“Implementation Plan”</b>	the implementation plan agreed by the Joint Committee setting out the activities that shall support the delivery of the Swansea Bay City Deal;
<b>“Intellectual Property”</b>	patents, rights to inventions, copyright and related rights, trade-marks, 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;
<b>“Internal Costs”</b>	the costs associated with each Council providing internal Council resources in relation to the Swansea Bay City Deal which includes but is not limited to: staffing costs and associated overheads; project management; technical and administrative support; communications; costs incurred in respect of managing Requests for Information;
<b><u>“Joint Appointment Committee”</u></b>	<u>a joint appointment committee established by the Councils and comprising the leaders of each Council and non executive members as agreed with the purpose of undertaking a selection process for the Programme Director and any other post as specified by the Joint Committee;</u>
<b>“Joint Committee”</b>	a committee of elected members from the Councils which shall be responsible for ensuring and overseeing the delivery of the functions set out in Schedule 1 (Terms of Reference of the Joint Committee) with a view to securing their more efficient, economical and effective discharge;
<b>“Joint Committee Costs”</b>	the operational and management costs of the Joint Committee;
<b>“Joint Committee Meeting”</b>	a meeting of the Joint Committee;
<b>“Joint Committee Withdrawal Notice”</b>	a notice issued by one of the Councils in accordance with clause 22 to give notice of its withdrawal from the Swansea Bay City Deal and this Agreement;
<b>“Joint Scrutiny Committee Costs”</b>	the operational and management costs of the Joint Scrutiny Committee
<b>“Local Authority”</b>	a principal council as defined in section 270 of the Local Government Act 1972 or any body established as a successor of a principal council;



<b>“Material”</b>	all data, text, graphics, images and other materials or documents created, used or supplied by a Council in connection with this Agreement unless before the first use or supply the Council notifies the other Councils that the data, text supplied is not to be covered by this definition;
<b>“Personal Data”</b>	shall have the meanings set out in the DPA and shall also include “Personal Information” classified as “personal information” or “personally identifiable information” or similar term under the Applicable Law governing a person’s processing of personal information about an individual;
<b>“Powers”</b>	<p>the powers of Welsh local authorities under:</p> <p>(i) 101, 102, 111, 112 and 113 of the Local Government Act 1972 and sections 19 and 20 of the Local Government Act 2000 and the regulations made under these Acts to make arrangements to discharge functions jointly and to employ staff and place them at the disposal of other local authorities;</p> <p>(ii) the powers in section 9 of the Local Government (Wales) Measure 2009 to collaborate;</p> <p>(iii) the well-being power in section 2 of the Local Government Act 2000;</p> <p>(iv) the incidental powers in section 111 of the Local Government Act 1972;</p> <p>(v) the powers in section 1 of the Local Authorities (Goods and Services) Act 1970 and section 25 of the Local Government (Wales) Act 1994 to provide services;</p> <p>(vi) all other powers them so enabling;</p>
<b>“PR Protocol”</b>	a protocol agreed by the Councils for the release of public statements and press releases relating to the Swansea Bay City Region
<b>“Programme Board”</b>	the board established in accordance with clause 16 and Schedule 2 for the purpose of implementing the Swansea Bay City Deal and the Councils’ obligations in relation to the Swansea Bay City Deal;
<b>“Programme Board Costs”</b>	the operational and management costs of the Programme Board;
<b><u>Programme Director</u></b>	<b><u>the regional post to be appointed in accordance with clause 6 and Schedule 14;</u></b>

<b>“Project Authority Lead”</b>	the Council responsible for the Government Funding element of funding for each project as set out in clause 12 and the Implementation Plan
<b>“Project Business Case”</b>	a document setting out details of a project proposed for inclusion in the Swansea Bay City Deal and explaining why it should be included in the Swansea Bay City Deal;
<b>“Project Conditions”</b>	the project funding conditions proposed by the Welsh Government or the UK Government for each project as referred to in clause 12;
<b>“<u>Portfolio Management Office</u>”</b>	<a href="#">the portfolio management office</a> established by the Councils to manage the Swansea Bay City Deal <a href="#">the duties of which are set out in Schedule 15</a> ;
<b>“<u>Portfolio Management Office Costs</u>”</b>	the operational and management costs of the <a href="#">Portfolio Management Office</a> ;
<b>“<u>Portfolio Management Office Costs Budget</u>”</b>	the budget for the <a href="#">Portfolio Management Office Costs</a> ;
<b>“Regional Project”</b>	a project located in the area of more than one of the Councils;
<b>“Regional Project Delivery Lead”</b>	the organisation responsible for preparation and submission of the Project Business Case for and delivery of a Regional Project;
<b>“Resolution”</b>	a decision taken by or on behalf of one of the Councils in compliance with that Council’s constitution and scheme of delegation;
<b>“Shadow Board”</b>	a board of representatives of the Councils who took provisional decisions on matters relevant to the Swansea Bay City Deal before the establishment of the Joint Committee;
<b>“Swansea Bay City Deal”</b>	a programme supported by the UK Government and the Welsh Government and administered through the joint committee established in accordance with clause 4 of this Agreement to provide the Swansea Bay City Region and its partners with new ways of working and resources to unlock significant economic growth across the Swansea Bay City Region and with an opportunity to continue tackling the area’s barriers to economic growth through developing higher value sectors and higher value employment opportunities to match, increasing the number of businesses within these sectors to widen the economic base, and improving the region’s GVA level against the UK average;
<b>“Swansea Bay City Region”</b>	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;

**“Withdrawing Council”**

a Council that has given notice of its intention to withdraw from the Swansea Bay City Deal and this agreement in accordance with clause 22

- 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 Any reference to the title of an officer of any of the Councils shall include any person holding such office from time to time by the same or any title substituted thereafter or such other officer of the relevant Council as that Council may from time to time appoint to carry out the duties of the officer referred to.
- 1.8 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.
- 1.9 References to “the parties” shall be to the parties to this Agreement.

**2. Commencement and Duration**

- 2.1 This Agreement shall commence on the Commencement Date and shall continue in force for fifteen years from the Commencement Date or until the earlier of the following dates:
  - (a) The condition subsequent set out in clause 2.2 (Condition Subsequent) is not satisfied or otherwise waived in writing by the Councils prior to the Conditions Longstop Date;
  - (b) All the Councils agree in writing to its termination; or
  - (c) There is only one remaining Council which has not withdrawn from this Agreement in accordance with clause 22 (Withdrawal from this Agreement).

2.2 The Condition Subsequent is that the Councils shall have approved the Funding Conditions before the Conditions Longstop Date.

### 3. The Councils' Obligations

3.1 The Councils agree to work together to carry into effect the Swansea Bay City Deal pursuant to and in accordance with this Agreement.

3.2 To that end the Councils shall develop, agree and promote the Swansea Bay City Deal and (without prejudice to the generality of that obligation) shall comply with their duties as set out at clauses 7 (Duties of the Accountable Body) and 8 (Duties of the other Councils). This is subject to the fiduciary financial and legal duties of each Council.

3.3 Without prejudice to the specific terms of this Agreement, the Councils further agree that they shall conduct their relationship:

(a) In accordance with the strategic aims of the Swansea Bay City Deal as follows:

- (i) The Internet of Economic Acceleration.
- (ii) The Internet of Life Science & Well-Being.
- (iii) The Internet of Energy.
- (iv) Smart Manufacturing.

and

(b) In accordance with the following principles:

- (i) Openness and trust: The Councils shall be open and trusting in their dealings with each other, make information and analysis available to each other, discuss and develop ideas openly and contribute fully to all aspects of making the joint working successful. The Councils shall embrace a commitment to transparency in their dealings and shall recognise the need to comply with statutory access to information requirements including FOI Legislation and supporting codes of practice.
- (ii) Commitment and drive: The Councils shall be fully committed to working jointly, shall seek to fully motivate employees and shall address the challenges of delivering the Swansea Bay City Deal with enthusiasm and a determination to succeed.
- (iii) Skills and creativity: The Councils recognise that each brings complementary skills and knowledge which they shall apply creatively to achieving the Councils' objectives, continuity, resolution of difficulties and the development of the joint working relationship and the personnel working within it. It is recognised that this shall involve the appreciation and adoption of common values.
- (iv) Effective relationships: The roles and responsibilities of each Council shall be clear with relationships developed at the

appropriate levels within each organisation with direct and easy access to each other's representatives.

- (v) Developing and adaptive: The Councils recognise that they are engaged in a potentially long term business relationship which needs to develop and adapt and shall use reasonable endeavours to develop and maintain an effective joint process to ensure that the relationship develops appropriately and in line with these principles and objectives.
- (vi) Reputation and Standing: The Councils shall pay the utmost regard to the standing and reputation of one another, and act with regard to each Council's own employer and member codes of conduct and shall not do or fail to do anything which may bring the standing or reputation of any other Council into disrepute or attract adverse publicity to any other Council.
- (vii) Reasonableness of decision making: The Councils agree that all decisions made in relation to this Agreement and the Swansea Bay City Deal shall be made by them acting reasonably and in good faith.
- (viii) Members and Officers' Commitments: Each Council shall use its reasonable endeavours to procure that their respective members and officers who are involved in the Swansea Bay City Deal shall at all times act in the best interests of the Swansea Bay City Deal, and act compatibly with regard to each Council's own employer and member codes of conduct, devote sufficient resources to deliver the Swansea Bay City Deal and respond in a timely manner to all relevant requests from the other Councils.

#### **4. Establishment of a Joint Committee**

- 4.1 In exercise of their Powers under sections 101(5) and 102 of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000 and all other enabling powers the Councils hereby create a joint committee to be known as the Swansea Bay City Region Joint Committee with effect from the Commencement Date.
- 4.2 The Councils shall use their Powers in sections 101, 102, 111, 112 and 113 of the Local Government Act 1972, sections 2, 19 and 20 of the Local Government Act 2000, section 1 of the Local Authorities (Goods and Services) Act 1970, section 25 of the Local Government (Wales) Act 1994, section 9 of the Local Government (Wales) Measure 2009 and all other enabling powers available from time to time to facilitate their effective participation in the Joint Committee and the effective delivery of the Swansea Bay City Deal.
- 4.3 The terms of reference of the Joint Committee as at the date of signature of this Agreement are set out at Schedule 1 to this Agreement.
- 4.4 The Councils may from time to time vary the terms of reference of the Joint Committee and this shall be a matter reserved to the Councils. In the event that the Councils agree to vary the terms of reference of the Joint Committee they shall notify the Portfolio Management Office and the Portfolio Management Office shall arrange for Schedule 1 to this Agreement to be amended. The reservation to the Councils does not preclude the Joint

Committee from making recommendations to vary the terms of the reference where it considers they shall promote the Councils' Obligations.

- 4.5 The Joint Committee shall operate and conduct its business in accordance with the terms of this Agreement including the Terms of Reference of the Joint Committee as set out at Schedule 1 to this Agreement.
- 4.6 The Joint Committee shall not have power to approve any matter which has been reserved to the Councils as set out in Schedule 5 to this Agreement.
- 4.7 The Joint Committee may delegate functions to sub-committees and officers.
- 4.8 This Agreement is without prejudice to each Council's other powers and responsibilities for its area.

## **5. Arrangements for the discharge of functions**

- 5.1 The Councils agree to use their powers under section 101(1) of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000 and all other enabling powers to enter into arrangements under which the Joint Committee shall discharge on their behalf the functions set out in the terms of reference of the Joint Committee in Schedule 1 to this Agreement.
- 5.2 Each Council hereby represents and confirms to the other Councils that it has obtained all necessary consents sufficient to ensure the delegation of functions and responsibilities provided for by this Agreement.
- 5.3 Each Council warrants that entering into this Agreement and its participation in the Joint Committee is consistent with its own constitution.

## **6. Appointment of the Accountable Body**

- 6.1 The Councils have agreed that with effect from the Commencement Date Carmarthenshire County Council shall act as the Accountable Body responsible for discharging the Councils' Obligations in relation to the Swansea Bay City Deal pursuant to and in accordance with this Agreement Carmarthenshire County Council shall act as the employer of the Portfolio Management | Office staff and Programme Director and shall have accountability for them. The Programme Director shall report to and be directly accountable to the Joint Committee.
- 6.2 The Joint Committee shall determine the appropriate functions under this Agreement in respect of the s151 officer, monitoring officer, democratic services, audit and scrutiny obligations as to whom such responsibilities shall lie with and shall notify the Welsh Government accordingly of this within 7 days of appointment. At the commencement of this Agreement responsibility for these functions are allocated as follows:-

Carmarthenshire County Council – Accountable Body and S.151 officer function

The Council of the City and County of Swansea – Monitoring Officer function and Democratic Services

Neath Port Talbot County Borough Council - Scrutiny function

Pembrokeshire County Council – Audit function

The Joint Committee shall give three months notice to all ~~Councils~~ Councils of any decision to change the responsibility for the functions set out in this clause.

6.16.3 If the Accountable Body defaults on any of the provisions of this Agreement and the Joint Committee decides that a replacement Accountable Body should be appointed or the Accountable Body withdraws pursuant to clause 22, then the Joint Committee shall appoint another Council as the Accountable Body with the consent of that Council such appointment to take effect when the withdrawal or termination takes effect or as soon as possible after that occurs.

6.26.4 If a replacement Accountable Body is appointed pursuant to clause 6.36.2 any reference to Carmarthenshire County Council in its capacity as the initial Accountable Body shall be read with reference to the replacement Accountable Body.

6.36.5 The Accountable Body shall act as the Accountable Body as set out in this Agreement and shall receive the Government Funding for and on behalf of the Councils and shall hold and manage such Government Funding in accordance with the terms of this Agreement. The Accountable Body shall receive the Councils' Contributions and shall hold and manage the Councils' Contributions in accordance with the terms of this Agreement.

6.6 If the Accountable Body is replaced as Accountable Body in accordance with clause 6.36.2 the Accountable Body shall comply with its duties in clause 7.2.

6.46.7 The Accountable Body (following an appointment a selection process agreed and undertaken by a joint appointments committee to be established by the Councils ) shall appoint a Programme Director on the employment terms and conditions of the Accountable Body to undertake the role identified in Schedule 14 of this Agreement who shall report at all times to the ~~Chair of the Joint Committee~~ and who shall oversee day to day operations of this Agreement and supervise the work of the Portfolio Management Office.

## **7. Duties of the Accountable Body**

7.1 The Accountable Body shall:

- (a) Act diligently and in good faith in all its dealings with the other Councils.
- (b) Act with reasonable skill and care and in accordance with best practice.
- (c) Act in accordance with the principles and strategic aims of this Agreement and any applicable policies agreed by the Joint Committee.

- (d) Comply with any investigation by any statutory ombudsman or tribunal relating to the Swansea Bay City Deal.
- (e) Act as the primary interface with Welsh Government, UK Government and any other funding bodies necessary to discharge the Councils' Obligations.
- ~~(f)~~ Hold and release any Government Funding in relation to the Swansea Bay City Deal and only to use and release such funds as agreed in accordance with the terms of such funding and this Agreement.
- ~~(f)~~~~(g)~~ Report to the Joint Committee on a quarterly basis detailing the amount of grant monies and Council contributions received to date, how those monies have been allocated to specific posts and projects and distributed to the relevant Councils and details of any internal recharges made to the Councils.
- ~~(g)~~~~(h)~~ Comply with the Funding Conditions.
- ~~(h)~~~~(i)~~ Undertake the accounting and auditing responsibilities set out in this Agreement.
- ~~(i)~~ Employ the Portfolio Management Office staff and Programme Director
- ~~(k)~~ Cooperate with any reasonable requests of the Councils that host the scrutiny, monitoring officer, democratic services and audit functions.
- ~~(l)~~~~(l)~~ Report to the Joint Committee on the proposed budget for the Accountable Body costs, Economic Strategy Board costs, Joint Committee costs, Joint Scrutiny costs, Programme Board costs and Portfolio Management Office costs before the commencement of each financial year for agreement.

7.2 If the Accountable Body is replaced as Accountable Body in accordance with clause 6.3 the Accountable Body shall take any action required by any or all of the other Councils to allow another of the Councils to take on the role of Accountable Body and to allow the other Councils to continue with this Agreement and the Swansea Bay City Deal. Without prejudice to the generality of the foregoing the Accountable Body shall promptly:

- (a) Transfer any information which it holds in its role as Accountable Body to any person or body to whom the Chair of the Joint Committee instructs it to transfer;
- (b) Co-operate with the other Councils to identify whether the Portfolio Management Office staff shall transfer to the replacement Accountable Body and shall promptly facilitate any such transfer unless otherwise agreed by the Councils;
- (c) Transfer any other assets which it holds in its role as Accountable Body to any person or body to whom the Chair of the Joint Committee instructs it to transfer;

## 8. Duties of the Other Councils

8.1 The Councils other than the Accountable Body shall act diligently and in good faith in all their dealings with the Accountable Body and shall assist the Accountable Body to discharge the Councils' obligations in relation to



the Swansea Bay City Deal pursuant to and in accordance with this Agreement and all applicable legislation.

8.2 It is acknowledged and agreed that the obligations and liabilities of each Council shall bind any successor authority in the event of any local government reorganisation.

## 9. **Portfolio Management Office and Programme Director**

9.1 The roles and functions of the Portfolio Management Office and Programme Director are set out in Schedules 14 and 15 of this Agreement. The Accountable Body shall establish a Portfolio Management Office and employ a Programme Director following a selection process agreed and to be agreed undertaken by the Joint Appointment Committee, to be responsible for the day to day management of matters relating to the Joint Committee and the Swansea Bay City Deal. The Programme Director shall report to and be directly accountable to the Joint Committee. The Portfolio Management Office shall have day to day responsibility for managing the identification assessment approval monitoring and evaluation processes for interventions and projects. The Programme Director or Portfolio Management Office shall deliver all administrative functions necessary to the implementation of the Swansea Bay City Deal. The Portfolio Management Office shall maintain a register of interests of co-opted members of the Joint Committee and the Economic Strategy Board. The Portfolio Management Office shall provide monitoring reports to the Joint Committee and to the Economic Strategy Board. Persons employed to work in the Portfolio Management Office shall be employed by the Accountable Body

9.2 The Accountable Body shall be responsible for accommodating the Portfolio Management Office in accordance with arrangements approved by the Joint Committee.

9.29.3 The Councils acknowledge that the Accountable Body has responsibilities as employer of the Programme Director and the Portfolio Management Office staff. The Councils further acknowledge that the Programme Manager reports directly to and receives instructions from the Joint Committee. The Councils agree to share equally the costs and expenses of any liabilities and any and all claims, actions, proceedings, demands, liabilities, arising or accruing in respect of or in connection with any act or omission of the Programme Director or Portfolio Management Office arising as a result of any instruction given by the Joint Committee or otherwise save where those liabilities arise as a result of a negligent act or omission of the Accountable Body. The Accountable Body indemnifies the other Councils from and against any liabilities and any and all claims, actions, proceedings, demands, liabilities, losses, costs and expenses arising or accruing as a result of the Accountable Body's said negligent act or omission.

## 10. **Implementation Plan**

10.1 The Joint Committee shall approve the Implementation Plan at its first meeting which complies with the provisions of clause 10.2 below. The Implementation Plan in order to be adopted must also be approved by the Welsh Government and the UK Government which may be given either before or after it is considered for adoption by the Joint Committee.

- 10.2 The Implementation Plan shall set out the high level activities that shall support the delivery of the Swansea Bay City Deal and shall include details of the nature of each of the projects, their outcomes and benefits, key tasks and the indicative timeline and interdependencies between the projects.
- 10.3 The Joint Committee shall review the Implementation Plan annually. The first review shall take place no later than one year after the approval of the Implementation Plan. Reviews in later years shall take place no later than one year after the previous review.

## 11. Projects Funded by The Swansea Bay City Deal

- 11.1 The Swansea Bay City Deal shall fund local and regional projects in the following themes:
- (a) Internet of Economic Acceleration.
  - (b) Internet of Life Science and Wellbeing.
  - (c) Internet of Energy.
  - (d) Smart Manufacturing.
- 11.2 Details of the allocation of Government Funding, private and public funding and local government contributions for each project are set out at [QSchedule 7](#).
- 11.3 The proportion of the Government Funding shall be in accordance with the details set out at [QSchedule 7](#) unless the Councils agree to vary this.

## 12. Processes for Funding Projects

- 12.1 The Delivery Lead for projects in the Swansea Bay City Deal shall be as set out in the Implementation Plan.
- 12.2 The Project Authority Lead for projects in the Swansea Bay City Deal shall be as set out in the Implementation Plan.
- 12.3 In order to receive funding from the Swansea Bay City Deal every project must observe the following procedure:
- (a) The Delivery Lead must submit a Project Business case to the [Portfolio Management](#) Office in accordance with the Implementation Plan. The Project Business case shall include a Resolution of the [relevant](#) Project Authority Lead and all Councils in whose area the project shall take place that they approve the submission of the Project Business case.
  - (b) If one or more of the Councils does not approve the Project Business Case for a Regional Project for submission to the UK Government and the Welsh Government the Regional Project shall be referred directly to the Joint Committee for the Joint Committee to decide whether:
    - (i) Additional time is to be allowed to address concerns of the particular Council; or
    - (ii) A revised Project Business Case is to be prepared omitting the Council which does not approve in which case a revised Project

Business Case shall be resubmitted and approved in accordance with this clause 12; or

- (iii) Whether a project is no longer viable and should no longer be progressed in which case clause 12.6 shall be followed.
- (c) All Project Business Cases for projects to be considered for funding from the Swansea Bay City Deal must meet the requirements of extant guidance from the UK and Welsh Governments which at the Commencement Date of this Agreement is guidance on the preparation of “five case business models” and accordingly every Project Business Case must include full details of:
- (i) The strategic case (strategic fit and clear investment objectives)
  - (ii) The economic case (optimising value for money)
  - (iii) The commercial case (attractiveness to the market and procurement arrangements)
  - (iv) The financial case (affordability – including the contributions to be made by other public and private sector partners and the basis for them); and
  - (v) The management case (deliverability – including confirmation of decisions made and required by the governance arrangements of third party funders of a project - and plans for delivery)
- (d) Upon receipt of a Project Business case the Portfolio Management Office shall assess the quality and financial profile of the Project Business Case and shall pass a copy of the Project Business Case to the UK Government and the Welsh Government to carry out their own assessments of the Project Business Case.
- (e) If the Programme Director is not satisfied with the quality of the Project Business Case (in accordance with the criteria agreed with the Joint Committee) it shall return the Project Business Case to the Delivery Lead and notify the Project Authority Lead. The Project Authority Lead shall request all Councils involved in the project to pass any resolutions necessary to agree to amendments of the Project Business Case. The Project Business Case shall be amended as necessary and resubmitted.
- (f) When the Portfolio Management Office is satisfied with the Project Business Case it shall send the Project Business Case to: the Programme Board with a request for the Programme Board to analyse the financial viability, deliverability and risk of the proposal and make a recommendation on whether or not the business case should proceed.
- (g) When the Portfolio Management Office has received a recommendation from the Programme Board it shall send the Project Business Case to the Economic Strategy Board ~~with a request for the Economic Strategy Board to assess the Project Business Case against the strategic aims and objectives of the Swansea Bay City Deal and make a recommendation on whether or not the Project Business Case should proceed. who will assess in line with their terms of reference set out in Schedule 6 including the production of a summary report to be annexed to the business case prior to submission to the Joint Committee.~~ The Economic Strategy Board

shall ~~make its recommendation to the Portfolio Management~~Regional Officer report within one month of receiving the Project Business case. In the absence of any ~~recommendation report~~ within such timescale the Portfolio Management Office shall be permitted to submit the recommendation ~~for from~~ the Programme Board to the Joint Committee for consideration.

- (h) The Portfolio Management Office shall submit the recommendations from the Programme Board and the Economic Strategy Board to the Joint Committee.
  - (i) The Joint Committee shall consider the Project Business Case and the recommendations of the Programme Board and the Economic Strategy Board and decide whether or not to approve the project for submission to the UK Government and the Welsh Government for approval by the UK Government and the Welsh Government for the release of Government Funding for the project
  - (j) If the Joint Committee approves a project for submission to the UK Government and the Welsh Government it shall request the Project Authority Lead and all Councils in whose areas the project shall take place consider and approve the Project Conditions proposed by the Welsh Government for the project. Upon approval of the Project Conditions the Joint Committee shall direct the Accountable Body to release the Government Funding for that element of the project.
  - (k) If the Joint Committee does not approve a project for submission to the UK Government and the Welsh Government or the Council or Councils in whose area the project shall take place does not approve the submission the Joint Committee shall inform the Portfolio Management Office and the Portfolio Management Office shall inform the Economic Strategy Board, the Programme Board, the Delivery Lead and the Project Authority Lead. The Joint Committee shall decide whether a revised Project Business Case shall be prepared or whether the project should no longer be progressed in which case the process in clause 12.6 shall be followed.
- 12.4 The Project Authority Lead shall be responsible for ensuring compliance with the Project Conditions imposed by the Welsh Government. Government Funding paid to any project must not exceed the amount allocated to the project in accordance with the Implementation Plan or as otherwise agreed by the Joint Committee.
- 12.5 If a Council wishes to withdraw from a project in the Swansea Bay City Deal, it shall do so in accordance with any funding agreement into which it has entered for the project and shall notify the Portfolio Management Office.
- 12.6 The Councils may agree to withdraw a project identified in the Implementation Plan and to replace it with another project or to change the Project Authority Lead for a project in the Implementation Plan in accordance with the following process as set out in Schedule 10 to this Agreement:
- (a) The Project Authority Lead responsible for the project which is to be withdrawn or given a change of Project Authority Lead must inform the Portfolio Management Office of the need for the project to be withdrawn or given a change of Project Authority Lead. If the Project Authority Lead informs the Portfolio Management Office of the need for a project to be

withdrawn the Project Authority Lead may propose a new project to take the place of the project to be withdrawn.

- (b) The Portfolio Management Office shall inform the Programme Board of the need for the project to be withdrawn or given a change of Project Authority Lead. The Portfolio Management Office shall also provide the Programme Board with details of any proposal for a new project from the Project Authority Lead which has informed the Portfolio Management Office of the need to withdraw a project in accordance with clause 12.6(a).
- (c) The Programme Board shall review the financial implications of the proposed withdrawal of a project or change of Project Authority Lead including consideration of abortive costs and any proposal for a new project in accordance with clause 12.6(a) and submit a report to the Economic Strategy Board.
- (d) The Economic Strategy Board shall consider the implications of the proposed withdrawal of a project or change of Project Authority Lead and any proposal for a new project in accordance with clause 12.6(a). The Economic Strategy Board shall provide recommendations to the Joint Committee on whether the new project proposed in accordance with clause 12.6(a) should replace the project to be withdrawn and if not the process for selecting new projects or reallocation of funding.
- (e) The Joint Committee shall consider the recommendations of the Economic Strategy Board and decide whether the new project proposed in accordance with clause 12.6(a) should replace the project to be withdrawn or whether there should be a bidding process for a new project for the Swansea Bay City Deal or reallocation of funding to another project in the Swansea Bay City Deal.
- (f) The Portfolio Management Office shall notify the Welsh Government and the UK Government of the decision of the Joint Committee and seek their approval for the release of Government Funding for the new project.
- (g) On receipt of the Welsh Government and UK Government approval the Portfolio Management Office shall, depending on the decision of the Joint Committee:
  - (i) Direct the Accountable Body to reallocate any funds in accordance with the Joint Committee decision to replace the project or reallocate and notify the relevant Project Authority Lead(s) and Delivery Lead(s); and/or
  - (ii) Commence a bidding process by inviting the Councils to submit strategic outline cases for Government Funding for replacement projects.
- (h) The Programme Board and the Economic Strategy Board shall assess the strategic outline cases and make recommendations to the Joint Committee as to which Councils should be invited to submit outline business cases in respect of which projects.
- (i) The Joint Committee shall consider the recommendations of the Programme Board and the Economic Strategy Board and may invite one or more of the Councils to submit outline business cases for replacement projects in the Swansea Bay City Deal.

- (j) The Joint Committee shall consider the outline business cases and may invite one or more of the Councils to submit full business cases for replacement projects in the Swansea Bay City Deal.
  - (k) If a Council submits a full business case for a replacement project in the Swansea Bay City Deal this shall be considered for funding from the Swansea Bay City Deal in accordance with the process set out in clauses 12.3(a) to 12.3(k) [12.3\(k\)](#).
- 12.7 A diagram representing the process for approving business cases is set out at [Schedule 8](#).
- 12.8 Diagrams representing the process for the flow of finances to local projects and Regional Projects in the Swansea Bay City Deal are set out at [Schedule 9](#). Funding shall be released from the Accountable Body on a project by project basis. Allocation shall be based on 1/15 of the Allocated Sum per project. No funding shall be released from the Accountable Body until the Project Business Case is approved. If project approval is delayed and funding not released in 2018/19 the release in future years shall be greater than the 1/15 allocated subject to the equivalent level of expenditure being incurred until funding is back in line with the 1/15 allocation. This profile shall be agreed with the Accountable Body when the Project Business Case is agreed with the Welsh Government.
- 12.9 [It is intended that the process identified in clause 12.3 and 12.6 shall take no longer than six \(6\) calendar months.](#)

### **13. Borrowing**

- 13.1 Each Council shall be responsible for borrowing to provide funding or otherwise securing funding for projects located in its own area.
- 13.2 The Councils may agree that borrowing for a Regional Project should be made by all the Councils equally or in proportions agreed by the Councils or that borrowing should be carried out by one Council on behalf of the other Councils if they so agree. The decisions as to whether borrowing for any project shall be carried out by one Council on behalf of the other Councils and the proportions shall be determined by the Councils as a matter reserved to the Councils.

### **14. Funding from other bodies**

- 14.1 If any body other than the Councils, the UK Government or the Welsh Government provides funding for a project funded by the Swansea Bay City Deal the Project Authority Lead may decide to enter into a funding agreement with the body providing funding or with the Delivery Lead.
- 14.2 If a project is located in the areas of more than one Council that project shall be regarded as a Regional Project. The Councils shall agree which Council may enter into a funding agreement with the body providing funding for a Regional Project or with the Regional Project Delivery Lead. This decision shall be a matter reserved to the Councils.
- 14.3 The retention of 50% of the additional net yield of non-domestic rates from projects in the Swansea Bay City Deal shall be applied across the Swansea Bay City Region proportionate to the Swansea Bay City Deal projects

subject to the method of ascertaining the proportions to be determined by the Joint Committee at the relevant time.

## **15. Sub-committees**

15.1 The Joint Committee shall establish the membership and terms of reference for any sub-committees or sub-groups which it establishes and may dissolve such sub-committees or sub-groups. Sub-committees to which the Joint Committee delegates functions are bound by the provisions of this Agreement regulating the taking of decisions by the Joint Committee. The Joint Committee may create additional sub-committees from time to time as it sees fit.

## **16. Programme Board**

16.1 The Joint Committee shall establish a Programme Board (“PB”) which shall report to the Joint Committee. The Programme Board shall have the terms of reference set out at Schedule 2.

## **17. Economic Strategy Board**

17.1 The Joint Committee shall facilitate the establishment of an Economic Strategy Board (“ESB”). The Economic Strategy Board shall have the terms of reference set out at ~~0~~[Schedule 6](#). The process for recruitment of the Economic Strategy Board’s membership shall be approved by the UK and Welsh Governments.

## **18. Commitment of the Councils**

18.1 Subject to clause 22 the Councils agree and undertake to commit to the Swansea Bay City Deal in accordance with the terms of this Agreement.

## **19. Costs**

### **19.1 Three Year and Annual Budget**

(a) The Joint Committee shall agree a budget for the Accountable Body costs, Economic Strategy Board Costs, Joint Committee Costs, Joint Scrutiny Committee Costs, Programme Board Costs and [Portfolio Management](#) Office Costs on a rolling 3 year basis. The Joint Committee shall review this budget annually and before the commencement of each financial year and shall agree the Annual Costs Budget each year with year 1 being confirmed and years 2 and 3 being indicative.

### **19.2 Internal Costs**

(a) The Internal Costs incurred by each Council for a project in its own area shall be borne in the first instance by the Council providing that internal resource but may subsequently be included as costs within a Project Business Case.

(b) If the [Portfolio Management](#) Office undertakes work to assist the development of an individual project the costs incurred may be included in the Project Business Case.

- (c) All Internal Costs for a Regional Project shall be agreed by the Regional Lead Body.

The Internal Costs incurred for a Regional Project shall be paid by the Project Authority Lead for the project. The Project Authority Lead for each project shall make provision for reimbursement of its Internal Costs in the business case it submits to the [Portfolio Management](#) Office for the project

### 19.3 Accounts

- (a) The Accountable Body shall prepare accounts for any Accountable Body, Joint Committee, Economic Strategy Board, Programme Board, Joint Scrutiny Committee and [Portfolio Management](#) Office costs incurred for the relevant accounting periods.

### 19.4 Annual Costs Budget

- (a) The Annual Costs Budget for Years 1-5 shall be funded from £50,000 which shall be paid by each Council each year for those five years. The funding of the Annual Costs Budget for future years shall be a matter for the Constituent Authorities to agree.

(b) Costs in the Annual Costs Budget not funded from Council Contributions shall be recovered from the Councils in a manner to be agreed by the Joint Committee to include the option of top slicing from Government Funding, where appropriate as project costs.

- (c) The Joint Committee shall if necessary consider and recommend to the Councils alternative funding options for the Annual Costs Budget. The Councils shall decide whether or not to agree to alternative funding options proposed by the Joint Committee.

## 20. Audit and Scrutiny

- 20.1 In exercise of their powers under sections 101 and 102 of the Local Government Act 1972, sections 19 and 20 of the Local Government Act 2000 and all other enabling powers the Councils hereby create a Joint Scrutiny Committee with effect from the Commencement Date. The Joint Scrutiny Committee shall provide a scrutiny function to ensure greater public accountability over decisions made by the Joint Committee and any of its sub-committees and related entities.
- 20.2 The terms of reference of the Joint Scrutiny Committee are set out at Schedule 12 to this Agreement.
- 20.3 The membership of the Joint Scrutiny Committee shall consist of 12 members. Each of the Councils shall nominate three members for appointment to the Joint Scrutiny Committee. The member nominated by each Council shall be an elected member of that Council but shall not be a member of that Council's executive and shall not be a member of the Joint Committee.
- 20.4 The Chair of the Joint Scrutiny Committee shall not be a member of the Council which is providing the Chair of the Joint Committee.



- 20.5 The role of the Joint Scrutiny Committee is to provide advice, challenge and support to the Joint Committee. The Joint Scrutiny Committee shall be required to:
- (a) Review and scrutinise the Joint Committee's financial affairs.
  - (b) Review and assess the Joint Committee's risk management, internal control and corporate governance arrangements.
  - (c) Review and assess the economy, efficiency and effectiveness with which resources have been used.
  - (d) Make reports and recommendations to the Joint Committee in relation to the points in (a) to (c).
- 20.6 The Accountable Body shall ensure audit that the finances and the discharge of functions relating to the Swansea Bay City Deal are audited.
- 20.7 If any Council is provided with funding from the Government Funding to implement a project in the Swansea Bay City Deal it shall audit the finances and the discharge of functions relating to that project.
- 20.8 Any Council which is provided with funding from the Government Funding to implement a project in the Swansea Bay City Deal shall keep records of time worked by any person working on the project and any other cost relating to the project. Any Council which holds such records shall permit the Accountable Body, the Joint Committee and the other Councils and any of their representatives to examine and copy those records in order to undertake any audit pursuant to this Agreement.
- 20.9 The Accountable Body shall keep records of time worked by any person working for the Accountable Body on any matter relating to the Joint Committee or the Swansea Bay City Deal.
- 20.10 Each Council shall permit all records referred to in this Agreement to be examined and copied from time to time by the Accountable Body or any representatives of the Accountable Body or any other representatives who reasonably require access to the same in order to undertake any audit of the funds received and spent pursuant to this Agreement. The Accountable Body shall permit all records held by it which are referred to in this Agreement or relate to this Agreement to be examined and copied from time to time by any representatives of any of the Councils. If a representative of any of the Councils requests from the Accountable Body a copy in electronic form of any record held by the Accountable Body which is referred to in this Agreement or relates to this Agreement the Accountable Body shall provide a copy of the requested record in electronic form if the record exists in electronic form when the Accountable Body receives the request.
- 20.11 The Auditor General for Wales shall have access to any document relating to the Joint Committee for the purpose of the Auditor General's examination of any auditable accounts, for the purpose of undertaking studies under section 145A of the Government of Wales Act 1998 or for the purpose of carrying out in accordance with any enactment other examinations or studies into the economy, efficiency and effectiveness with which a person has used resources in discharging the person's functions and any officer of the Wales Audit Office, the Welsh Government and the European Commission shall have access to any document relating to the Joint

Committee and shall be permitted at reasonable notice to visit the premises of the Accountable Body and the other Councils and to inspect activities funded by the Government Funding and to examine and take copies of books of account and other documents and records relating to activities funded by the Government Funding.

## **21. Mitigation**

- 21.1 Each Council shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Council is entitled to bring a claim against any other Council pursuant to this Agreement.

## **22. Withdrawal from this Agreement**

- 22.1 If a Council wishes to withdraw from the Swansea Bay City Deal and this Agreement, it shall provide not less than twelve months' written notice terminating at the end of a financial year of its intention to withdraw to the [Portfolio Management](#) Office ("Joint Committee Withdrawal Notice"). The Councils may require any Council which seeks to withdraw from the Swansea Bay City Deal and this Agreement to meet specified conditions before the Councils agree to accept the Joint Committee Withdrawal Notice. The specified conditions may include but shall not be limited to payment of any amounts due to be paid in accordance with this Agreement by the Council which seeks to withdraw and payment by that Council of any costs which the other Councils identify that they shall incur as a result of the withdrawal of that Council. The [Portfolio Management](#) Office shall notify the Accountable Body no later than ten Business Days after it receives a Joint Committee Withdrawal Notice and the Accountable Body shall notify the Welsh Government and the UK Government no later than 10 Business Days after it receives notification from the [Portfolio Management](#) Office.
- 22.2 In the event that a Joint Committee Withdrawal Notice is issued by the Accountable Body the Accountable Body shall during the period of notice comply with its obligations under clause 7.2.

## **23. Termination of This Agreement**

- 23.1 The Councils agree that this Agreement may be determined upon terms agreed by all the Councils.

## **24. Liabilities of the Councils**

~~23.2~~24.1 [The Councils' obligations and liabilities in respect of the Programme Director and Portfolio Management Office are set out in clause 9.3](#)

~~23.3~~24.2 [In addition to the circumstances set out in clause 9.3, the Accountable Body shall indemnify and keep indemnified each of the other Councils against any losses, claims, expenses, actions, demands, costs and liability suffered by that Council to the extent arising from any wilful default or breach by the Accountable Body of its obligations under this Agreement or negligent act or omission in relation to such obligations \(and "wilful" in this context shall, for the avoidance of doubt, not include matters which are outside the reasonable control of the Accountable Body\).](#)

23.424.3 No claim shall be made against the Accountable Body to recover any loss or damage which may be incurred by reason of or arising out of the carrying out by the Accountable Body of its obligations under this Agreement unless and to the extent such loss or damage arises from a wilful default or breach or negligent act or omission by the Accountable Body under clause 24.1.

23.524.4 Each of the other Councils (acting severally) shall indemnify and keep indemnified the Accountable Body and the other Councils against all losses, claims, expenses, actions, demands, costs and liabilities which the Accountable Body or the other Councils may incur by reason of or arising out of any wilful default or breach by a Council of its obligations under this Agreement (and "wilful" in this context shall, for the avoidance of doubt, not include matters which are outside the reasonable control of that Council or matters arising from any negligent act or omission in relation to such obligations) unless and to the extent that the same result from any breach by the Accountable Body of any such obligations.

23.624.5 The amount to be paid to the Accountable Body by any of the other Councils under Clause 24.424.3 shall be borne by each of the Councils to the extent of its responsibility, however in the event that the responsibility is a shared one between the Councils (so that it is not reasonably practicable to ascertain the exact responsibility between the Councils) then the amount to be paid shall be divided between the Councils equally unless the Councils agree otherwise.

23.724.6 A Council which receives a claim for losses, expenses, actions, demands, costs and liabilities which relates to this Agreement shall notify and provide details of such claim as soon as is reasonably practicable to the other Councils.

23.824.7 No Council shall be indemnified in accordance with this clause 24 unless it has given notice in accordance with clause 24.624.5 to the other Council against whom it shall be enforcing its right to an indemnity under this Agreement.

23.924.8 Each Council shall not be obliged to indemnify the other Councils to the extent that the insurances maintained by the other Councils at the relevant time provide an indemnity against the loss giving rise to a claim and to the extent that another Council recovers under a policy of insurance save that the Council responsible for liabilities suffered by another Council shall be responsible for the deductible under any such policy of insurance and any amount over the maximum amount insured under such policy of insurance.

## **24.25. Dispute Resolution**

24.125.1 The Councils undertake and agree to pursue a positive approach towards dispute resolution which seeks in the context of this joint working arrangement 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.

24.225.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 25. This is without prejudice to the right of any Council under section 103 of the Local Government Act 1972 to refer a dispute about the expenses of a joint committee to be determined by a single arbitrator agreed by the appointing authorities or, in the absence of agreement to be determined by the Welsh Ministers.

24.325.3 All disputes, claims or differences between the Councils 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 Council, be referred by each Council to its head of paid service.

24.425.4 If the Councils' heads of paid service do not agree a resolution of the Dispute within twenty Business Days of the date of service of any such request, 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 Business 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.

24.525.5 If the Councils are unable to agree on a mediator within ten Business Days of date of service of the notice referred to in clause 25.4 or the mediator agreed upon is unable or unwilling to act and the Councils cannot agree upon a substitute, any of the Councils may apply to CEDR to appoint a mediator as soon as practicable.

24.625.6 The Councils shall within five Business 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 Councils may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

24.725.7 All negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the Councils in any future proceedings.

24.825.8 If the Councils reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by the Councils or their duly authorised representatives, shall be and remain binding upon the parties.

24.925.9 The costs and expenses of the mediation shall be borne equally by the Councils. Each Council shall bear its own costs and expenses of its participation in the mediation.

24.1025.10 If mediation fails to secure a resolution within ten Business Days of the Mediator being appointed, the Councils shall attempt to settle the Dispute by arbitration

under the Rules of the London Court of International Arbitration (which Rules are deemed to be incorporated by reference into this clause) and otherwise in accordance with clause 25.11.

24.1125.11 In the event that an arbitration is commenced pursuant to clause 25.10, the parties agree that:

- (a) the tribunal shall consist of one arbitrator who is to be a chartered accountant who is a full member of one of the CCAB bodies 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).

24.1225.12 In the event that an arbitration is commenced pursuant to clause 25.10 the Portfolio Management Office shall notify the Welsh Government and the UK Government.

OR (reference of dispute to independent expert)

24.1325.13 All disputes, claims or differences between the Councils arising out of or in connection with this Agreement or its subject matter or formation, including any question regarding its existence, validity or termination shall, at the written request of any Council be referred to:

- (a) such chartered accountant who is a full member of one of the CCAB bodies if the dispute relates to a financial matter or a solicitor of at least ten years standing as a qualified solicitor if the dispute relates to any other matter as the Councils may agree in writing; or
- (b) failing agreement on the identity of the chartered accountant for a dispute relating to a financial matter or the solicitor for a dispute relating to any other matter within seven days of the date of service of the request, such chartered accountant as may be appointed for this purpose on the application of any Council by the President for the time being of one of the CCAB bodies if the dispute relates to a financial matter or such solicitor as may be appointed by the President for the time being of the Law Society of England and Wales if the dispute relates to any other matter.

24.1425.14 The chartered accountant or solicitor appointed under clause 25 (the "Expert") shall act on the following basis:

- (a) he shall act as expert and not as arbitrator;
- (b) his terms of reference shall be to determine the matter in dispute, as notified to him in writing by either party within thirty days of his appointment;

- (c) the Councils shall each provide the Expert with all information which he reasonably requires and the Expert shall be entitled (to the extent he considers it appropriate) to base his opinion on such information;
- (d) the Expert's determination shall (in the absence of manifest error) be conclusive; and
- (e) the Experts' costs shall be borne in such proportions as the Expert may direct or, failing any such direction, shall be borne equally between the Councils unless agreed otherwise by the Councils.

## **25-26. Notices**

### **25-126.1 Form of Notice**

Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to or sent by pre-paid first class post or special delivery post to the recipient at the address stated in QSchedule-3 (or such other address as may be notified in writing from time to time to all of the other Councils) or sent by facsimile to the number stated at QSchedule-3 (or such other number as may be notified in writing from time to time to all of the other Councils).

### **25-226.2 Service**

Any such demand, notice or communication shall be deemed to have been duly served:

- (a) If delivered by hand, when left at the proper address for service;
- (b) If given or made by pre-paid first class or special delivery post two Business Days after being posted; or
- (c) If sent by facsimile at the time of transmission provided that a confirmatory copy is on the same day that the facsimile is transmitted sent by pre-paid first class post in the manner provided for in clause 26.1 (Form of Notice)

Provided in each case that if the time of such deemed service is either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

## **26-27. Information and Confidentiality**

**26-127.1 Each** Council shall keep confidential the Confidential Information and Intellectual Property Rights of any of the Councils and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of the Confidential Information and Intellectual Property Rights of the Councils other than as permitted under the provisions of this Agreement. Each Council shall not use or disclose other than as permitted under the provisions of this Agreement any Confidential Information about the business of or belonging to any other Council or third party which has come to its attention as a result of or in connection with this Agreement.

~~26.2~~27.2 The obligation in clause 27.1 shall not apply to:

- (a) Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement.
- (b) Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause.
- (c) Any disclosure which is required by any law (including any order or a court of competent jurisdiction) any statutory obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law.
- (d) Any disclosure of information which is already lawfully in the possession of the disclosing Council without restrictions as to its use prior to its disclosure by the disclosing Council.
- (e) Any disclosure which is required or recommended by the rules of any governmental or regulatory authority including any guidance from time to time as to openness and disclosure of information by public bodies.
- (f) Any disclosure which is necessary to be disclosed to provide relevant information to any insurance broker in connection with obtaining any insurance required by this Agreement.
- (g) Any disclosure by a party to a department, office or agency of the Government.
- (h) Any disclosure for the purpose of the examination and certification of a party's accounts.

~~26.3~~27.3 Where disclosure is permitted under clauses 27.2(a), 27.2(f), 27.2(g) or 27.2(h) the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Council.

~~26.4~~27.4 No Council shall make any public statement or issue any press release or publish any other public document relating to, connected with or arising out of this Agreement or any other agreement relating to the Swansea Bay City Deal other than in accordance with any PR Protocol agreed by the Councils.

## **27.28. Data Protection**

~~27.1~~28.1 The Councils shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing Personal Data in connection with this Agreement, which processing shall be in respect of the types of Personal Data, categories of Data Subjects, nature and purposes, and duration, set out in a document to be agreed by the Councils.

~~27.2~~28.2 Each Council 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.

27.328.3 To the extent any Council processes any Personal Data on behalf of another Council the processing Council shall:

- (a) Process such Personal Data only in accordance with the other Council's written instructions from time to time and only for the duration of this Agreement.
- (b) Not process such Personal Data for any purpose other than those set out in this Agreement or otherwise expressly authorised by the other Council.
- (c) Take reasonable steps to ensure the reliability of all its personnel who have access to such Personal Data, limit such access to its personnel who require access, and remove, when no longer required, such access to the Personal Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Personal Data.
- (d) Implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Personal Data, including protecting such Personal Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access.
- (e) Not transfer such Personal Data outside the European Economic Area without the prior written consent of the other party.
- (f) Inform the other Council 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 other Council.
- (h) Not use or disclose any Personal Data to any Data Subject or to a third party other than at the written request of the other Council or as expressly provided for in this Agreement.
- (i) Return or irretrievably delete all Personal Data on termination or expiry of this Agreement and not make any further use of such Personal Data.
- (j) Provide to the other Council and any DP Regulator all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this clause and the Data Protection Laws.
- (k) Permit the other Council or its representatives to access any relevant premises, personnel or records of the processing Council on reasonable notice to audit and otherwise verify compliance with this clause.
- (l) Take such steps as are reasonably required to assist the other Council in ensuring compliance with its obligations under Articles 30 to 36 (inclusive) of GDPR and other applicable Data Protection Laws.



- (m) Notify the other Council within two (2) Business Days if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data; and
- (n) Provide the other Council with its full co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Personal Data.

27.428.4 If any Council receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data by another Council or to another Council's compliance with the Data Protection Laws, it shall as soon as reasonably practicable notify the other Council and it shall provide the other Council with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

27.528.5 If a Council requires another Council 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 other Council shall do so.

27.628.6 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

## **28-29. Intellectual Property**

28.129.1 Each Council shall retain all Intellectual Property in its Material.

28.229.2 Each Council shall grant all of the other Councils and any other person specified by the Joint Committee a non-exclusive, perpetual, non-transferable and royalty free licence to use, modify, amend and develop its IP Material for the discharge of the Councils' obligations in relation to the Swansea Bay City Deal and any other purpose resulting from the Swansea Bay City Deal whether or not the Council party granting the licence remains a party to this Agreement.

28.329.3 Any Intellectual Property in Material which is produced by the Joint Committee or the Portfolio Management Office shall be held by the Accountable Body on behalf of the Councils jointly.

28.429.4 Without prejudice to clause 29.1, if more than one Council owns or has a legal or beneficial right or interest in any aspect of the IP Material for any reason (including without limitation that no one Council can demonstrate that it independently supplied or created the relevant IP Material without the help of one or more of the other Councils), each of the Councils who contributed to the relevant IP Material shall grant to all other Councils to this Agreement a non-exclusive, perpetual, non-transferable and royalty free licence to use and exploit such IP Material as if all the other Councils were the sole owner under the Copyright Design and Patents Act 1988 or any other relevant statute or rule of law.

28.529.5 Any entity or person who is at the date of this Agreement a party to this Agreement and who has licensed any Intellectual Property under this Agreement shall have a non-exclusive, perpetual right to continue to use the licensed Intellectual Property.

28.629.6 Each Council warrants that it has or shall have the necessary rights to grant the licences set out in clause 29.2 and 29.4 in respect of the IP Material to be licensed.

28.729.7 Each Council agrees to execute such further documents and take such actions or do such things as may be reasonably requested by any other Councils (and at the expense of the Council or Councils making the request) to give full effect to the terms of this Agreement.

## **29-30. Freedom of Information**

29.130.1 Each Council acknowledges that it and the other Councils are subject to the requirements of FOI Legislation and therefore recognise that information relating to this Agreement may be the subject of an Information Request. The Councils shall comply with their own policy on FOI Legislation in respect of information disclosure obligations to the extent that they relate to the Swansea Bay City Deal.

29.230.2 Where a Council receives a request for information under either the FOI Legislation in relation to information which it is holding on behalf of any of the other Councils in relation to the Swansea Bay City Deal, it shall inform the Accountable Body and the other Councils of the request and its response.

29.330.3 The Accountable Body shall be required to assist any of the Councils in responding to a request for information to the extent that it relates to the Swansea Bay City Deal. This shall include co-ordinating the response when requested to do so by any of the Councils. All costs incurred by the Accountable Body in assisting a Council with a response to a request for information relating to the Swansea Bay City Deal shall be accounted for as Joint Committee Costs. Any Council which requests the Accountable Body to assist with or co-ordinate a response to a request for information relating to the Swansea Bay City Deal shall:

- (a) Provide the Accountable Body with a copy of the request for information as soon as practicable after receipt and in any event within two Business Days of receiving an Information Request.
- (b) Provide the Accountable Body with a copy of all information in its possession or power in the form the Accountable Body reasonably requires within ten Business Days (or such longer period as the Accountable Body may specify) of the Accountable Body requesting that information.
- (c) Provide all necessary assistance as reasonably requested by the Accountable Body to enable the Accountable Body to provide any required

assistance or co-ordination of a response to a request for information within the time for compliance set out in FOI Legislation.

29.430.4 Any Council which receives a request for information under FOI Legislation shall be responsible for determining in their absolute discretion whether any information requested under FOI Legislation:

- (a) Is exempt from disclosure under FOI Legislation.
- (b) Is to be disclosed in response to an Information Request.

29.530.5 Each Council acknowledges that the Accountable Body and any of the Councils may be obliged under FOI Legislation to disclose information:

- (a) Without consulting the other Councils where it has not been practicable to achieve such consultation; or
- (b) Following consultation with the other Councils and having taken their views into account.

### **30-31. Language**

30.131.1 The Joint Committee and Joint Scrutiny Committee shall undertake their functions in such a way as to comply with each of the Councils compliance notices issued under the Welsh Language Standards (No 1) Regulations 2015.

### **31-32. Severability**

31.132.1 If at any time any clause or part of a clause or schedule or appendix or part of a schedule or appendix to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

- (a) That shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement.
- (b) The parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Agreement complies with the laws of that jurisdiction.

### **32-33. Relationship of Councils**

32.133.1 Each of the Councils is an independent Local Authority and nothing contained in this Agreement shall be construed to imply that there is any relationship between the parties of partnership or principal/agent or of employer/employee. No party shall have any right or authority to act on behalf of another party nor to bind another party by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

### **33-34. Third Party Rights**

33-134.1 \_\_\_\_\_ The Councils as parties to this Agreement do not intend that any of its terms shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

### **34-35. Entire Agreement**

34-135.1 \_\_\_\_\_ This Agreement and all documents referred to in this Agreement set forth the entire agreement between the parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the parties. Each party acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement and that its only remedies are for breach of this Agreement, provided that this shall not exclude any liability which either party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the date of this Agreement.

### **35-36. Law of Agreement or Jurisdiction**

35-136.1 \_\_\_\_\_ This Agreement shall be governed by the laws of England and Wales as they apply in Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

### **36-37. Assignment**

36-137.1 \_\_\_\_\_ The rights and obligations of the Councils under this Agreement shall not be assigned, novated or otherwise transferred to any person other than to any public body acquiring the whole of the Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Council under this Agreement being:

- (a) The Welsh Ministers,
- (b) A devolved Welsh authority as defined in the Wales Act 2017.
- (c) A Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975,
- (d) A UK public body exercising functions in Wales or in England and Wales.

### **37-38. Waiver**

37-138.1 \_\_\_\_\_ No failure or delay by any Council to exercise any right, power or remedy shall operate as a waiver of it nor shall any partial exercise preclude any further exercise of the same or some other right, power or remedy unless a waiver is given in writing by that Council.

~~37.2~~38.2 Each Council shall pay its own costs incurred in connection with the preparation, execution, completion and implementation of this Agreement.

### **~~38.39.~~ Counterparts**

~~38.1~~39.1 This Agreement may be executed in any number of counterparts each of which so executed shall be an original but together shall constitute one and the same instrument.

### **~~39.40.~~ Discretion of the Councils**

~~39.1~~40.1 The discretion of any Council shall not be fettered or otherwise affected by the terms of this Agreement.

### **~~40.41.~~ Withdrawal of the United Kingdom from the European Union**

~~40.1~~41.1 The parties shall keep this Agreement under review in the context of the withdrawal of the United Kingdom from the European Union and any changes in any law which applies to the parties.

~~40.2~~41.2 Any adjustments which are required to this Agreement as a result of a change in any law resulting from the withdrawal of the United Kingdom from the European Union shall be referred to the Joint Committee to implement under the Joint Committee's terms of reference.

THE COMMON SEAL OF  
the Carmarthenshire County Council  
was hereunto affixed in the presence of

THE COMMON SEAL OF  
The Neath Port Talbot County Borough Council  
was hereunto affixed in the presence of

THE COMMON SEAL OF  
the Pembrokeshire County Council  
was hereunto affixed in the presence of

THE COMMON SEAL OF

the Council of the City and County of Swansea  
was hereunto affixed in the presence of

## Schedule 1 Terms of Reference of the Joint Committee

### 1 Governance

1.1 Leaders of the four local authorities

### 2 Purpose

2.1 The Joint Committee has ultimate responsibility and accountability for decisions taken in relation to the Swansea Bay City Deal, in line with the visions and interests of all participating parties and the Swansea Bay City Deal document signed on 20 March 2017.

2.2 The Joint Committee's functions shall include:

(a) Identifying and implementing appropriate governance structures for the implementation of any projects within the Swansea Bay City Deal programme. This shall include the formation of bodies corporate and any other structures which the Councils can lawfully establish or participate in.

(b) Agreeing and planning the overall strategy for and delivery of the programme for the Swansea Bay City Deal.

(c) Performance management of the Swansea Bay City Deal programme.

(d) Strategic communications.

(e) Monitoring of the impact of the Swansea Bay City Deal programme and reporting on this to the Councils.

(f) Authorising the Accountable Body to:

(i) Commission external support and

(ii) Oversee the delivery and management of project expenditure.

(g) Progressing a regional approach for the Swansea Bay City Region for the discharge of strategic functions. These functions may include land use planning, transport planning and economic development.

(h) Approval and adoption of the Implementation Plan.

~~(h)~~(i) Consideration and approval of project business cases.

~~(i)~~(i) Approval of any extension agreed by the Councils to the deadline for approval of the Implementation Plan.

~~(j)~~(k) Agreeing the terms and conditions of Government Funding.

~~(k)~~(l) Overseeing the proportion of each Council's responsibility for borrowing to provide funding for regional projects.

~~(l)~~(m) Reviewing performance of the Chair of the Economic Strategy Board on an annual basis.

(n) Agreeing the Annual Costs Budget.



(o) Agreeing any internal recharges to each Council that they are entitled to under this Agreement.

(p) Consider any recommendations of the Joint Scrutiny Committee.

(q) To oversee and manage the Programme Director appointed (though acknowledging that the Programme Director shall be an employee of the Accountable Body)

(m)(r) To receive, consider and approve any reports of the Programme Director

### **3 Membership**

3.1 Each of the Councils shall appoint its leader or equivalent as its representative as a member of the Joint Committee and all such members shall have full voting rights.

3.2 Each Council may appoint a deputy for its member on the Joint Committee who may attend meetings of the Joint Committee as a substitute for the Council's appointed member on the Joint Committee but such deputy shall only be entitled to attend meetings of the Joint Committee in the absence of the Council's appointed member.

3.3 The Joint Committee shall be entitled to co-opt on terms acceptable to the Joint Committee one representative of each of the following organisations to the Joint Committee as non-voting members<sup>1</sup> of the Joint Committee for a period of five years from the Commencement Date.

(a) Swansea University.

(b) University of Wales Trinity St David.

(c) Hywel Dda University Health Board.

(d) ~~Abertawe Bro Morgannwg~~ Swansea Bay University Health Board.

3.4 The Joint Committee may co-opt one representative of Milford Haven Port Authority to the Joint Committee as a non-voting member of the Joint Committee for a period of five years from the Commencement Date.

3.5 The Joint Committee may appoint additional persons to the Joint Committee as non-voting members of the Joint Committee for a period of five years from the Commencement Date. The Joint Committee shall not co-opt an additional person to the Joint Committee unless the Joint Committee has decided that the person has expertise relevant to one or more themes in the Swansea Bay City Deal.

3.6 The co-option of any person as a non-voting member shall be subject to that person confirming in writing to the Portfolio Management Office that he or she agrees to comply with the Co-opted Member Protocol. No co-option shall take effect until such confirmation has been given.

3.7 The Programme Director, head of paid service, monitoring officer and section 151 officer of each of the Councils shall be entitled to attend meetings of the Joint Committee as an adviser and shall not have a vote.

## **4 Chair**

4.1 The Chair of the Joint Committee shall be an elected member representative of a Council appointed to the Joint Committee.

4.2 The Chair of the Joint Committee shall be elected for a two year term in the first instance, reviewed annually thereafter.

The three Leaders of the remaining local authorities shall be appointed as Deputy Chairs.

## **5 Voting**

5.1 Each member of the Joint Committee shall have one vote. Decisions of the Joint Committee shall be made by simple majority vote. In the event of an equality of votes, the Chair of the Joint Committee shall have a casting vote. In the absence of the Chair or in the event of the Chair withdrawing from the meeting for a particular agenda item, then the Joint Committee shall determine which of the Deputy Chairs shall sit as chair pro tem and that Deputy Chair shall have the casting vote for such period as the Chair is absent from the meeting.

## **6 Conflict of Interest**

6.1 To allow the Joint Committee to undertake all its functions a clear distinction shall be drawn between those involved in specific scheme development and those preparing recommendations on those schemes. A robust system of declaration of conflict of interest shall be put in place.

6.2 Occasions shall arise where conflicts of interest preclude specific named members and/or local authorities from taking part in discussions which shall form views and recommendations on specific matters. Members have an obligation to declare any such interests which shall then be recorded.

6.26.3 For the avoidance of doubt, members shall at all times act in accordance with the Member Code of Conduct of their respective authorities

## **7 Proceedings of Meetings**

7.1 The rules of procedure in the constitution of the Council undertaking the monitoring officer function shall apply to meetings of the Joint Committee.

7.2 The leaders of the Councils shall be subject to the codes of conduct of their Councils.

7.3 Co-opted members of the Joint Committee who are not members of the Councils shall be subject to the rules of conduct in Schedule 13 and shall sign an undertaking in the form set out at Schedule 13 to confirm that they shall abide by those rules of conduct.

## **8 Quorum**

8.1 The quorum for a meeting of the Joint Committee shall be one representative from each of the four Councils.

## **9 Frequency**

9.1 The Joint Committee shall meet monthly initially until at such point it agrees otherwise. Additional meetings may be called by the Chair on at least seven clear days' notice issued through the [Portfolio Management](#) Office.

## **10 Allowances**

10.1 No allowances shall be paid.

## **11 Servicing**

11.1 The [Council undertaking the monitoring officer function](#) shall organise appropriate servicing for the meetings.

## **12 Sub groups**

12.1 The Joint Committee by agreement can introduce sub-groups or Task & Finish groups for any matters which they feel would be better dealt with in this way. These sub-groups shall report to the Joint Committee with any recommendations or draft papers or reports.

## **13 Letters of Support**

13.1 The Joint Committee may authorise the Chair of the Joint Committee to send letters of support on behalf of the Councils to businesses for projects which the Joint Committee decides are complementary to the Swansea Bay City Deal. The Joint Committee shall not give such authorisation to the Chair of the Joint Committee unless the Joint Committee is satisfied that the project for which a letter of support will be provided meets criteria agreed by the Joint Committee.

## **14 Review**

14.1 To be reviewed annually.

[1 Pursuant to paragraph 13\(1\)\(b\) Local Government & Housing Act 1989 which provides that co-opted members on a joint committee must be treated as nonvoting members.](#)

## Schedule 2 Programme Board

### 1 Governance

#### 1.1 Officer Governance

### 2 Purpose

#### 2.1 The Programme Board shall have five distinct roles:

- (a) Preparing recommendations on the Swansea Bay City Deal programme:
  - (i) Ensuring that all schemes are developed in accordance with the agreed package.
  - (ii) Overseeing production of business cases.
  - (iii) Preparing recommendations to the Joint Committee and Economic Strategy Board on all schemes whilst ensuring that due regard is given to all advisory/consultation bodies.
- (b) Advising on the strategic direction of the Economic Strategy Board.
- (c) Overseeing performance and delivery of the delivery of projects in accordance with diagram B in Schedule 8.
- (d) Working on a regional basis to improve public services especially in the areas of: economic development; transport, planning and strategic land use; housing and regeneration.
- (d)(e) Ensure that the Programme Director and Portfolio Management Office have undertaken a detailed analysis of the financial viability, deliverability and risk to the Swansea Bay City Deal programme and the business cases developed therein prior to being submitted to the Joint Committee

### 3 Accountable to

#### 3.1 Joint Committee

### 4 Reporting

#### 4.1 All reports prepared by the Board pertaining to Swansea Bay City Deal and regional or sub-regional matters, once approved by the Board, shall be submitted as draft to the Joint Committee for approval via the Portfolio Management Office.

### 5 Membership

#### 5.1 The Swansea Bay City Region Programme Board shall consist of the head of paid service of each of the Councils or another officer nominated by the head of paid service.

#### 5.45.2 The Project Director, monitoring officer and section 151 officer of each of the Councils shall be entitled to attend meetings of the Programme Board and shall

be called to provide advice and assistance as may be required for the members of the Programme Board to fulfil their obligations as set out in clause 2 of this Schedule 2

5.25.3 The Programme Board may co-opt additional representatives to the Board. Co-opted members may include representatives of the following organisations:

- (a) Swansea University.
- (b) University of Wales Trinity St David.
- (c) Hywel Dda University Health Board.
- (d) ~~Abertawe Bro Morgannwg~~ Swansea Bay University Health Board.

## **6 Chair**

6.1 The Chair shall be agreed by the Joint Committee.

6.2 The Chair shall be reviewed annually.

## **7 Voting/Agreement**

7.1 The Programme Board shall not have any decision making Powers.

7.2 Agreement shall be reached by consensus of all the heads of paid service referred to in 5.1 or their representatives.

7.3 Where alternative views and opinions are expressed these shall be recorded and included in any reporting process.

## **8 Conflicts of Interest**

8.1 To allow the Programme Board to undertake all its functions a clear distinction shall be drawn between those involved in specific scheme development and those preparing recommendations on those schemes to the Joint Committee. A robust system of declaration of conflicts of interest shall be put in place.

8.2 Occasions shall arise where conflicts of interest preclude specific named officers and/or local authorities from taking part in discussions which shall form views and recommendations on specific matters. Members have an obligation to declare any such interests which shall then be recorded.

## **9 Proceedings of meetings**

9.1 The chair of the Board shall arrange for minutes of the proceedings of each meeting to be taken, approved and recorded. This role shall be undertaken by the Portfolio Management Office.

## **10 Quorum**

10.1 For the Board to agree and submit recommendations, the Councils must be represented by all the heads of paid service referred to in 5.1 or their representatives .

## **11 Frequency**

11.1 The Programme Board shall meet monthly before the Joint Committee meeting and before all quarterly meetings of the Economic Strategy Board.

## **12 Allowances**

12.1 No allowances shall be paid.

## **13 Servicing**

13.1 The Portfolio Management Office shall organise appropriate servicing for the meetings.

## 14 Review

14.1 To be reviewed annually.

### **Schedule 3 Notices**

Chief Legal Officer  
Carmarthenshire County Council  
County Hall  
Carmarthen  
Carmarthenshire  
SA31 1JP

Chief Legal Officer  
Neath Port Talbot County Borough Council  
Port Talbot Civic Centre  
Port Talbot  
SA13 1PJ

Chief Legal Officer  
Pembrokeshire County Council  
County Hall  
Haverfordwest  
Pembrokeshire  
SA61 1TP

Chief Legal Officer  
City and County of Swansea Council  
Civic Centre  
Oystermouth Road  
Swansea  
SA1 3SN

#### **Schedule 4 Accounting Periods**

The initial Accounting Period shall be the date of this Agreement until 31 March and thereafter shall be:

Start of Accounting Period	End of Accounting Period
1 April	30 June
1 July	30 September
1 October	31 December
1 January	31 March



## **Schedule 5 Matters Reserved to The Councils**

- 1 Approving the Funding Conditions.
- 2 Making decisions on borrowing and on finding other sources of funding other than Government Funding for projects. Each Council shall be responsible for borrowing or providing other funding for projects located in its area. If a project is located in the areas of more than one Council each of the Councils in whose area the project is located may agree that borrowing or providing other funding should be shared between all of the Councils in whose areas the project is located equally or in proportions agreed by all of the Councils in whose areas the project is located.
- 3 Deciding which Council should enter into a funding agreement for a project located in the areas of more than one of the Councils.
- 4 Agreeing to replace a project identified in the Implementation Plan with a project which has completed the process set out in clause 12.6.
- 5 Varying the terms of reference of the Joint Committee.
- 6 Deciding whether to accept a Joint Committee Withdrawal Notice from one of the Councils and to allow a Council to withdraw from the Swansea Bay City Deal and this Agreement.
- 7 Deciding on conditions to impose on a Council which issues a Joint Committee Withdrawal Notice.
- 8 Deciding whether to continue or discontinue with any procurement or project forming part of the Swansea Bay City Deal in the administrative area of a Council which withdraws from the Joint Committee.
- 9 Agreeing the terms for termination of this Agreement by agreement of all the Councils.
- 10 Deciding on actions to implement the provisions of the dispute resolution procedure in clause 25.
- 11 Agreeing alternative funding options for the Annual Costs Budget.
- 12 Approving Project Conditions for projects in their areas in accordance with clause 12.

## Schedule 6 Economic Strategy Board

### 1 Purpose

- 1.1 To provide strategic direction for the Swansea Bay City Deal and provide strategic advice to the Joint Committee on matters relating to the Swansea Bay City Region. Specifically the role shall:
- (a) Submit strategic objectives for the Swansea Bay City Region.
  - (b) Monitor progress with regard to the delivery of the Swansea Bay City Deal in accordance with diagram B in Schedule 8.
  - ~~(c)~~ Oversight of business case production.
  - ~~(e)(d)~~ Consideration of regional added value and identifying opportunities for investment.
  - ~~(e)~~ Make recommendations to the Joint Committee.
  - ~~(d)(f)~~ Produce a summary report of issues considered by the Economic Strategy Board to be annexed to the submission of any business cases

### 2 Reporting

- 2.1 Joint Committee

### 3 Membership

- 3.1 Members shall be appointed through an open recruitment and nomination process. Members including co-opted members of the Joint Committee shall submit proposals to the Joint Committee for the recruitment and nomination process. Those proposals shall be subject to unanimous agreement by members of the Joint Committee the Welsh Government and the UK Government. Members shall include:
- (a) 1 private sector chair or other suitable representative.
  - (b) 5 private sector representatives.

3.2 For the avoidance of doubt the Joint Committee may appoint additional co-opted members should the Joint Committee determine appropriate

3.23.3 The Programme Director, head of paid service, monitoring officer and s151 officer of each of the Councils or their nominated representative shall be entitled to attend meetings of the Economic Strategy Board as an adviser or an observer but shall not have a vote.

### 4 Chair

- 4.1 The Chair shall be appointed following nominations by the unanimous agreement of: the Welsh Government, the UK Government and the Joint Committee.
- 4.2 The Chair shall be a private sector representative or other suitable representative.
- 4.3 The Chair shall be accountable to the Joint Committee.

4.4 The Chair shall be reviewed annually.

## **5 Voting/Agreement**

5.1 The Economic Strategy Board shall not have any formal decision-making powers.

5.2 The Economic Strategy Board shall reach agreement by consensus.

5.3 Where alternative views and opinions are expressed these shall be recorded and included in any reporting process.

## **6 Conflicts of Interest**

6.1 To allow the Economic Strategy Board to undertake all its functions a clear distinction shall be drawn between those involved in specific scheme development and those preparing recommendations on those schemes to the Joint Committee. A robust system of declaration of conflict of interest shall be put in place.

6.2 Occasions shall arise where conflicts of interest preclude specific named officers, individuals, committee members from taking part in discussions which shall form views and recommendations on specific matters. Members have an obligation to declare any such interests which shall then be recorded.

6.3 Co-opted members of the Economic Strategy Board shall be subject to the rules of conduct set out at Schedule 13 and shall sign an undertaking in the form set out at Schedule 13 to confirm that they will abide by those rules of conduct.

## **7 Proceedings of meetings**

7.1 The Portfolio Management Office shall arrange for minutes of the proceedings of each meeting to be taken, approved and recorded.

## **8 Quorum**

9 For the Economic Strategy Board to agree and submit recommendations, membership must be represented up to a quorate equivalent to 50% of the membership of the Economic Strategy Board. **Frequency**

9.1 The Economic Strategy Board shall meet with the following frequency or as and when required:

- (a) Quarterly in advance of any Joint Committee meeting; and
- (b) When necessary to deal with business as agreed by the Chair of the Economic Strategy Board.

## **10 Allowances**

10.1 There shall be no allowances paid.

## **11 Servicing**

11.1 The Portfolio Management Office shall organise appropriate servicing for the meetings.

## **12 Sub groups**

12.1 Thematic sub committees may be established as and when required and shall report to the Economic Strategy Board.

**13 Review**

13.1 To be reviewed annually.

## Schedule 7 Projects Funded By the Swansea Bay City Deal

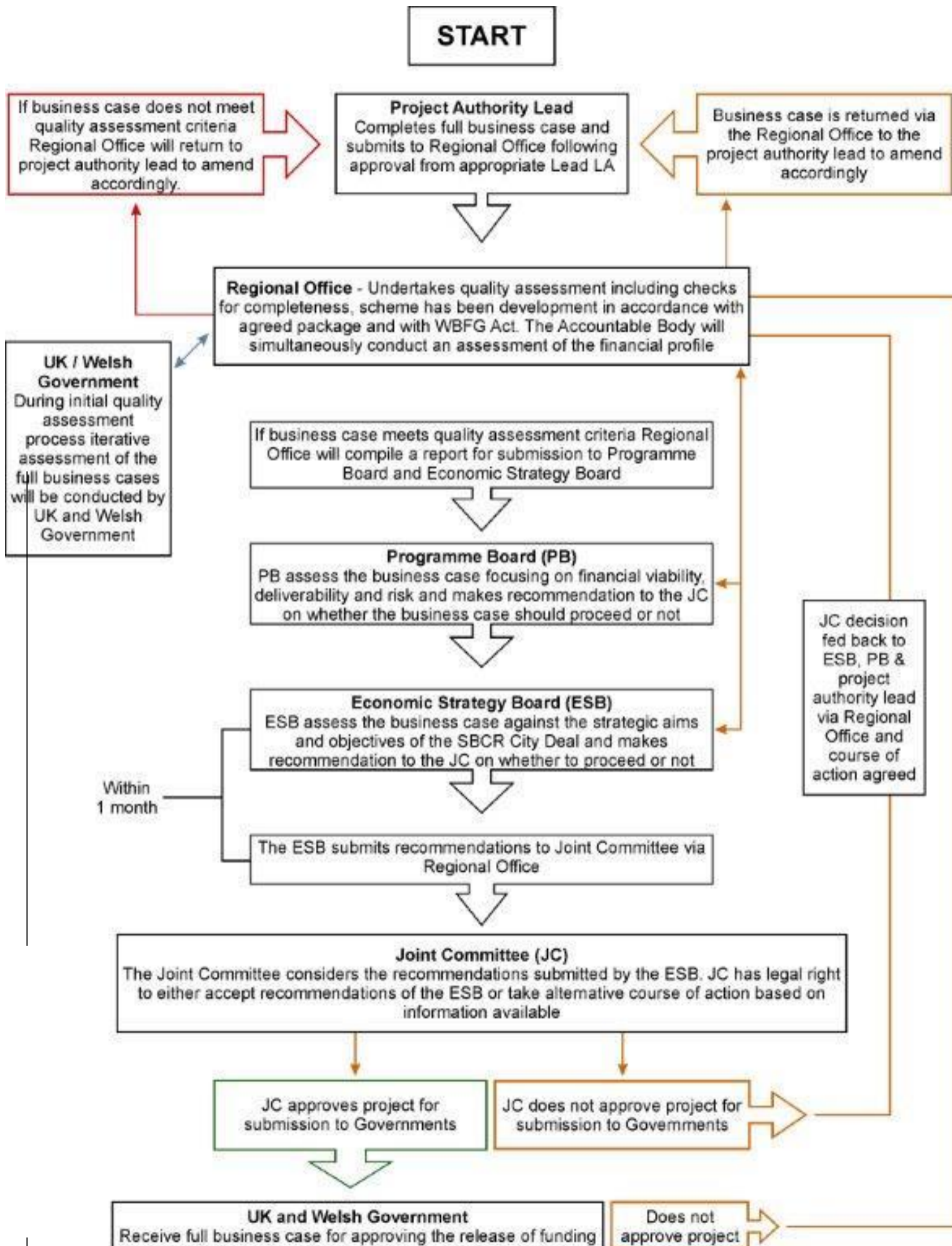
PROJECT NAME	Private (£ m)	Public (£ m)	City Deal (£ m)	Total Project Costs (£ m)
<b>Internet of Economic Acceleration</b>				
Digital Infrastructure	30.0	0.0	25.0	55.0
Swansea City & Waterfront Digital District	23.9	94.3	50.0	168.2
Creative Digital Cluster - Yr Egin	3.0	16.3	5.0	24.3
Centre of Excellence in Next Generation Digital Services (CENGS)	27.0	5.5	23.0	55.5
Skills & Talent Initiative	4.0	16.0	10.0	30.0
<b>Internet of Life Science &amp; Wellbeing</b>				
Life Science & Well-being Campuses	10.0	20.0	15.0	45.0
Life Science & Well-being Village	127.5	32.0	40.0	199.5
<b>Internet of Energy</b>				
Homes as Power Stations	382.9	119.2	15.0	517.1
Pembroke Dock Marine	25.9	22.4	28.0	76.3
<b>Smart Manufacturing</b>				
Factory of the Future	3.2	10.3	10.0	23.5
Steel Science Centre	0.0	60.0	20.0	80.0
<b>TOTALS</b>	<b>637.4</b>	<b>395.9</b>	<b>241.0</b>	<b>1,274.3</b>

Funding allocations are subject to approval of Project Business Cases and these projects are subject to change in accordance with Schedule 10

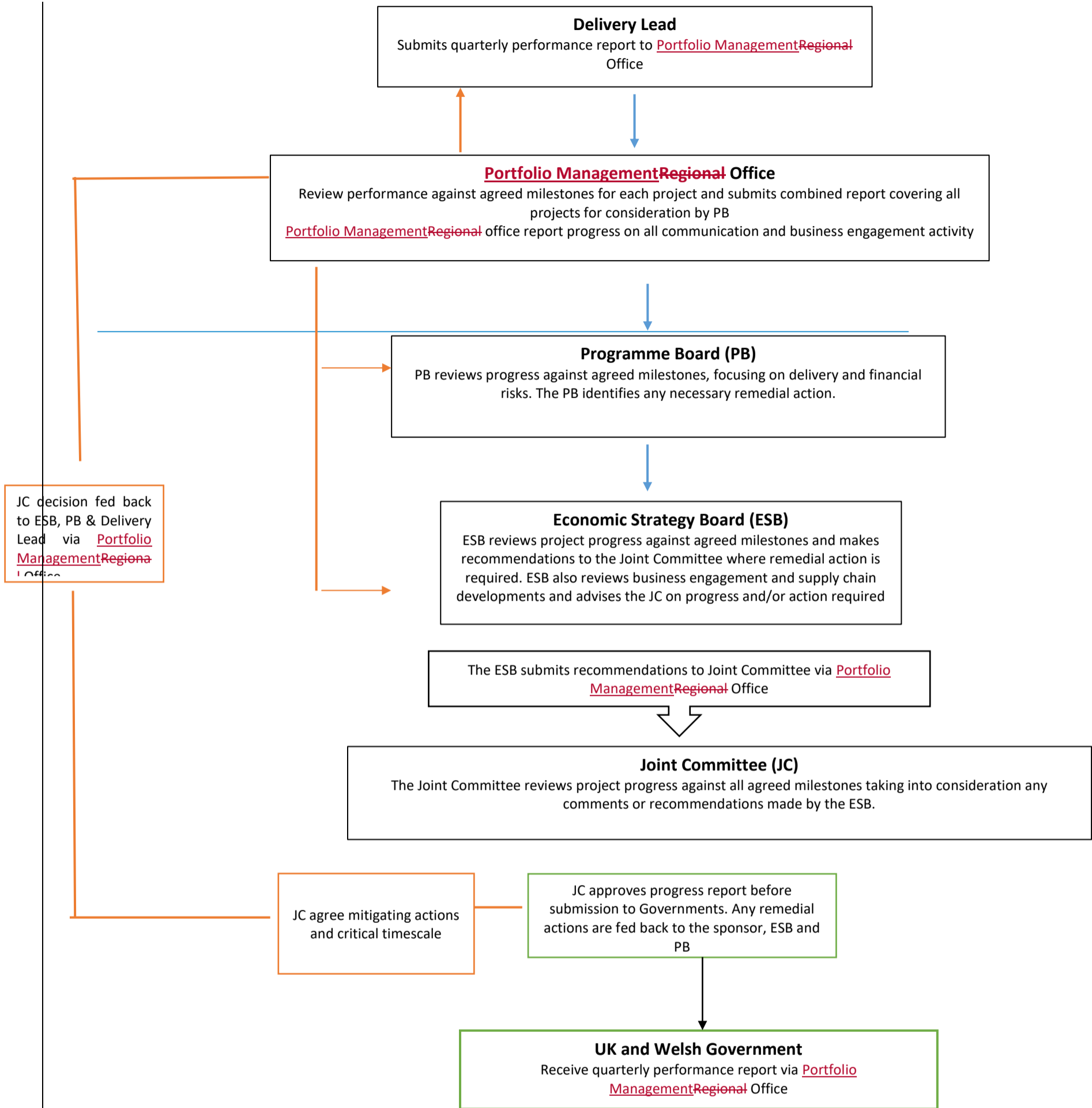
## Schedule 8 Project Approval Process

DIAGRAM A - Full Business Case Approval Process for agreed Swansea Bay City Deal Projects.

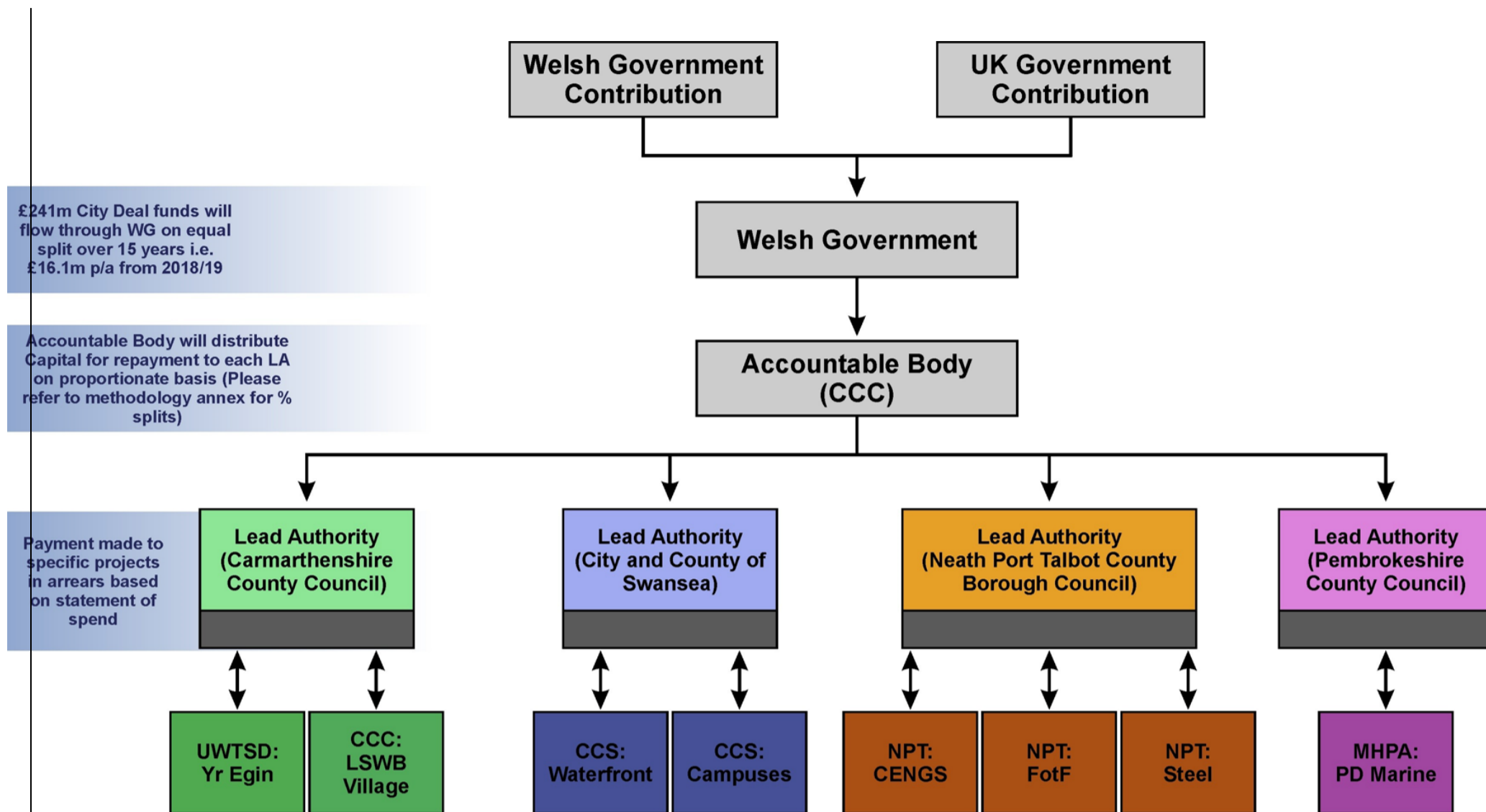
Completed Full Business Cases for each of the 11 projects will undergo initial quality assessment by the [Portfolio Management](#) office and Accountable Body before being considered by the respective Swansea Bay City Deal governance structures as highlighted below.



**Diagram B - Project Monitoring**

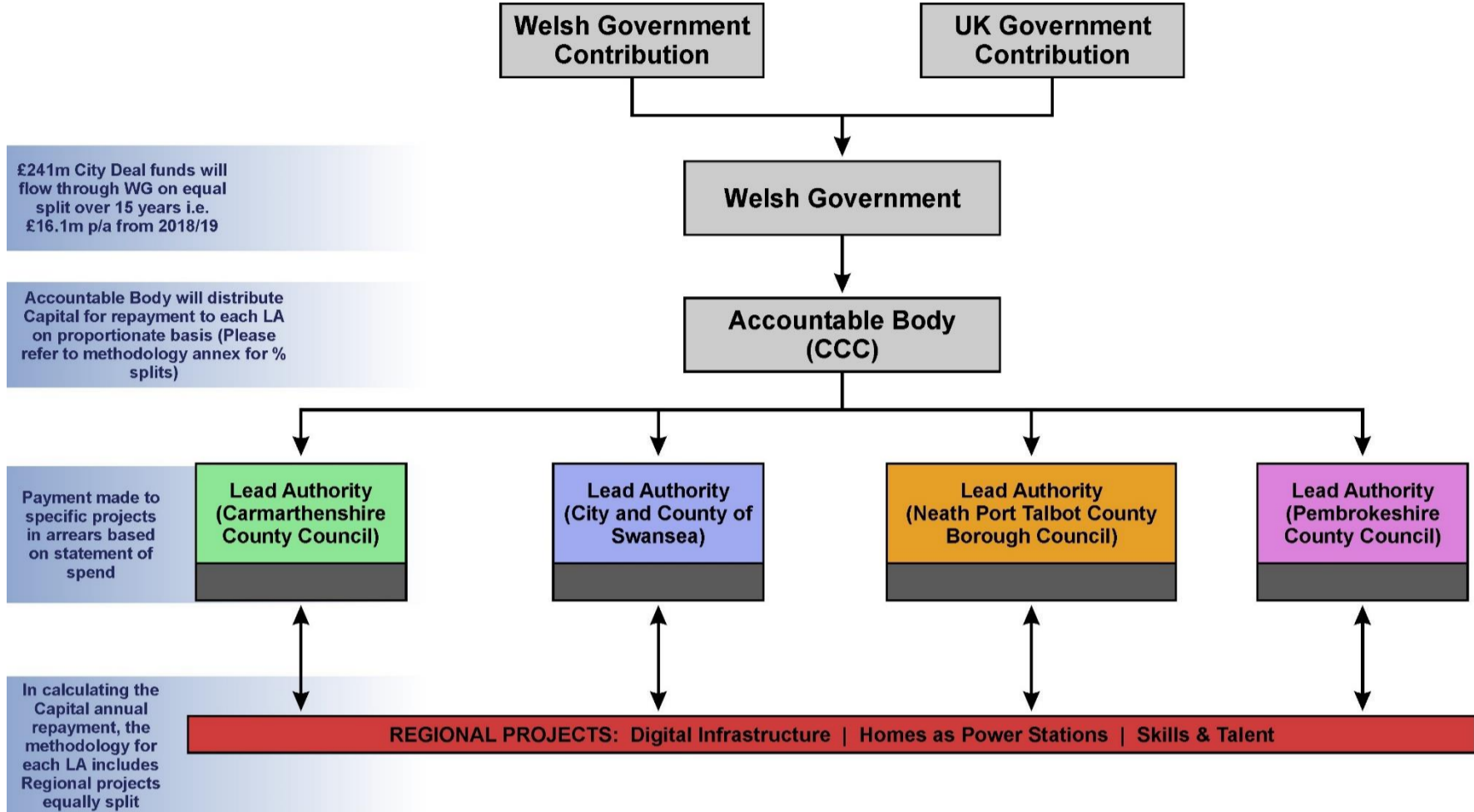


# SWANSEA BAY CITY DEAL FLOW OF FINANCES (LOCAL)

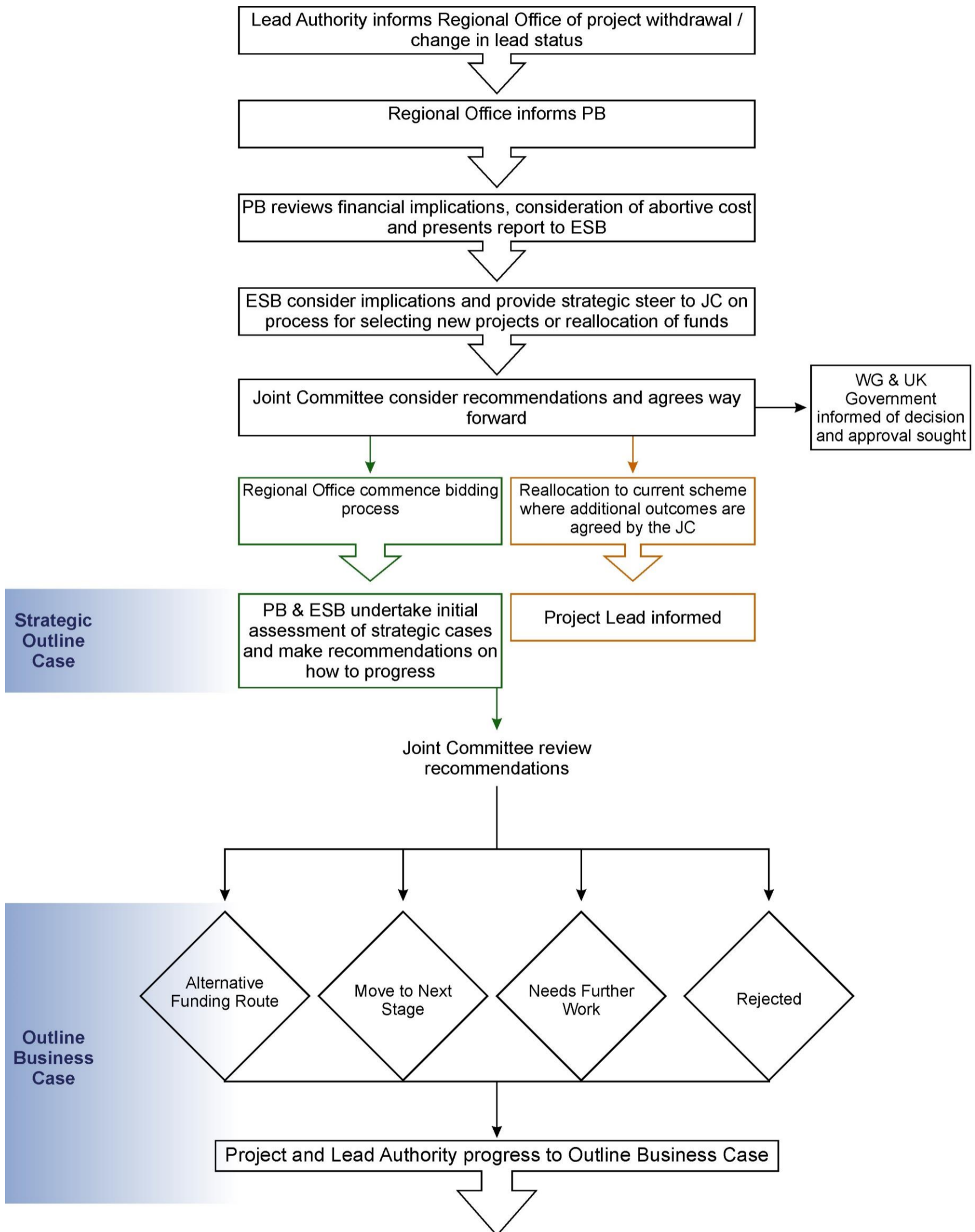




# SWANSEA BAY CITY DEAL FLOW OF FINANCES (REGIONAL)



## CHANGE IN PROJECT STATUS



Education and Public Services Group  
Y Grŵp Addysg a Gwasanaethau Cyhoeddus



Llywodraeth Cymru  
Welsh Government

To:  
Chief Finance Officers  
Local Authorities listed in Annex A

cc:  
Chief Finance Officers of Police Forces in Wales

03 May 2018

Dear Chief Finance Officers

**LOCAL GOVERNMENT ACT 2003 SECTIONS 16(2) (b) AND 20: TREATMENT OF CERTAIN COSTS AS CAPITAL EXPENDITURE**

1. This direction supersedes the previous direction issued on 15 March 2016.
2. In December 2017, the Secretary of State announced, the continuation of the capital receipts flexibility programme for a further three years, to give local authorities in England the continued freedom to use capital receipts from the sale of their own assets (excluding Right to Buy receipts) to help fund the revenue costs of transformation projects and release savings.
3. Accordingly, the Cabinet Secretary for Local Government and Public Services directs, in exercise of his powers under sections 16(2)(b) and 20 of the Local Government Act 2003 ("the Act"), that the local authorities listed in Annex A ("the Authorities") treat as capital expenditure, expenditure which:
  - a. is incurred by the Authorities that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery in a way that reduces costs or demand for services in future years for any of the public sector delivery partners; and
  - b. is properly incurred by the Authorities for the financial years that begin on 1 April 2016, 1 April 2017, 1 April 2018, 1 April 2019, 1 April 2020 and 1 April 2021.

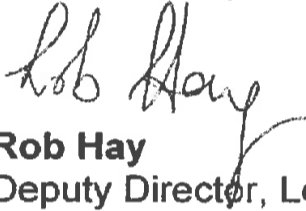


Parc Cathays • Cathays Park  
Caerdydd • Cardiff  
CF10 3NQ

Llinell Ymholiadau Cymraeg 0845 010 4400  
English Enquiry Line 0845 010 3300  
Epost • Email: LGFPMail@wales.gsi.gov.uk

4. In further exercise of Welsh Ministers' powers under section 20 of the Act, it is a condition of this direction that expenditure treated as capital expenditure in accordance with it, may only be met from capital receipts – within the meaning of section 9 of the Act and regulations made under that section (see Part 3 of SI 2003/3239(W319) as amended), which have been received in the years to which this direction applies.
5. This direction is given for the purposes of Chapter 1 of Part 1 of the Act only. It does not convey any other consent that may be required or any view as to the propriety of the expenditure. It is for each Authority to be satisfied that any amount to which this direction is applied is properly incurred in the financial year concerned.
6. When applying the direction, authorities are required to have regard to the *Guidance on Flexible Use of Capital Receipts* issued by Welsh Ministers under section 15(1)(a) of the Act.
7. If you have any queries in connection with the above, please do not hesitate to contact Local Government Finance Policy Division at:  
[LGFPMail@wales.gsi.gov.uk](mailto:LGFPMail@wales.gsi.gov.uk)

Yours faithfully



**Rob Hay**  
Deputy Director, Local Government Finance Policy Division

Authorised to sign this direction by the Cabinet Secretary for Local Government and Public Services

## Annex A: List of Authorities to which this direction applies

Welsh Local Authorities
Isle of Anglesey County Council
Gwynedd County Council
Conwy County Borough Council
Denbighshire County Council
Flintshire County Council
Wrexham County Borough Council
Powys County Council
Ceredigion County Council
Pembrokeshire County Council
Carmarthenshire County Council
Swansea City and County Council
Neath Port Talbot County Borough Council
Bridgend County Borough Council
Vale of Glamorgan County Borough Council
Rhondda Cynon Taff County Borough Council
Merthyr Tydfil County Borough Council
Caerphilly County Borough Council
Blaenau Gwent County Borough Council
Torfaen County Borough Council
Monmouthshire County Council
Newport City Council
Cardiff City and County Council

Welsh Fire & Rescue Authorities
North Wales Fire and Rescue Authority
South Wales Fire and Rescue Authority
Mid and West Wales Fire and Rescue Authority

Welsh Police and Crime Commissioner
Police and Crime Commissioner for Dyfed-Powys
Police and Crime Commissioner for Gwent
Police and Crime Commissioner for North Wales
Police and Crime Commissioner for South Wales

## Welsh Government

### GUIDANCE ON FLEXIBLE USE OF CAPITAL RECEIPTS

April 2018

*PART 1 of this document provides an informal commentary on Part 2.*

*PART 2 contains the statutory guidance to which local authorities must have regard.*

#### [PART 1]

---

#### INFORMAL COMMENTARY ON THE GUIDANCE ON FLEXIBLE USE OF CAPITAL RECEIPTS

*[References to the paragraphs in the formal guidance are in square brackets]*

##### POWER UNDER WHICH THE GUIDANCE IS ISSUED [1.1]

1. The **Local Government Act 2003** ("the Act"), section 15(1) requires a local authority "...to have regard (a) to such guidance as the Secretary of State may issue, and (b) to such other guidance as the Secretary of State may by regulations specify..." and section 24 of the Act states "In its application to Wales, ...for any reference to the Secretary of State there were substituted a reference to the Welsh Ministers."
2. The guidance on the flexible use of capital receipts in Part 2 of this document is issued under section 15(1) of the Act and authorities are therefore required to have regard to it.
3. Two codes of practice issued by the Chartered Institute of Public Finance and Accountancy (CIPFA) contain guidance on capital receipts and local authority accounting that complements the Welsh Government guidance. These publications are:
  - *The Prudential Code for Capital Finance in Local Authorities*
  - *The Code of Practice on Local Authority Accounting.*

4. Local authorities are required to have regard to the current edition of *Treasury Management in Public Services: Code of Practice and Sectoral Guidance Notes* by Regulation 19 of the *Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 (SI 2003/3239 (W319))* and to the *Local Authority Accounting Code* as proper practices for preparing accounts under section 21(2) of the Act.

#### **APPLICATION [3.1- 3.2]**

5. This guidance should be read alongside the relevant direction issued by Welsh Ministers.
6. This guidance applies with effect from 1 April 2016 to 31 March 2022 – i.e. for the financial year 2016-17 and for each subsequent financial year to which the flexible use of capital receipts direction applies.
7. The direction makes it clear that local authorities cannot borrow to finance the revenue costs of service reform. Local authorities can only use capital receipts from the disposal of property plant and equipment assets received in the years in which this flexibility is offered. Local Authorities may not use their existing stock of capital receipts to finance the revenue costs of qualifying projects..

#### **QUALIFYING EXPENDITURE [4.1 - 4.3]**

8. Welsh Ministers believe that individual authorities and groups of authorities are best placed to decide which projects will be most effective for their areas. The key criterion to use when deciding whether expenditure can be funded by the capital receipts flexibility is that it is forecast to generate ongoing savings or reduce revenue costs or pressures over the longer term to an authority, or several authorities, and/or to another public body.
9. A list of types of project that would qualify for the flexible use of capital receipts is included in the guidance. This list is not meant to be prescriptive or exhaustive and individual authorities with projects that will generate ongoing savings or reduce revenue costs or pressures over the longer term which are not included in the list can apply the flexibility to fund those projects.

#### **ACCOUNTABILITY AND TRANSPARENCY [5.1 - 5.6]**

10. Welsh Ministers believe it is important that individual authorities demonstrate the highest standards of accountability and transparency. The guidance recommends that each authority should prepare a separate disclosure note of the individual projects that have been funded or part funded through capital receipts flexibility. The disclosure note should be approved by the Responsible Financial

Officer at the same time the statutory accounts are certified and can be included as part of the year-end accounts documentation. The disclosure note should be considered and approved by the person presiding at the committee or meeting at which approval of the statement of accounts was given.



---

[PART 2]

---

**Welsh Government  
GUIDANCE ON FLEXIBLE USE OF CAPITAL RECEIPTS**

Issued under section 15(1)(a) of the *Local Government Act 2003*  
and effective from 1 April 2016

**(1) POWER UNDER WHICH THE GUIDANCE IS ISSUED**

1.1 The following guidance is issued by Welsh Ministers under section 15(1)(a) of the *Local Government Act 2003*.

**(2) DEFINITION OF TERMS**

2.1 In this guidance, **the Act** means the *Local Government Act 2003*.

2.2 **Local authority** has the meaning given in section 23 of the Act (and in regulations made under that section).

2.3 **Capital receipt** has the meaning given in section 9 of the Act (and in regulations made under that section).

2.4 **Qualifying expenditure** means expenditure on a project where incurring up-front costs will generate ongoing savings; reduce revenue costs or pressures over the longer term. The main part of this guidance details the types of project that will generate qualifying expenditure.

2.5 The **direction** means a direction made under section 16(2)(b) of the Act, to allow named local authorities to treat qualifying expenditure as being capital expenditure.

2.6 **Prudential indicators** has the meaning given in the CIPFA code of practice, *The Prudential Code for Capital Finance in Local Authorities*.

### **(3) APPLICATION**

#### **Effective date**

3.1 This guidance applies with effect from 1 April 2016, for the period for which flexible use of capital receipts will apply. This will be set out in the direction.

#### **Local authorities**

3.2 This guidance applies to all local authorities in Wales named in the directions issued by Welsh Ministers.

### **(4) QUALIFYING EXPENDITURE**

#### **Types of qualifying expenditure**

4.1 Qualifying expenditure is expenditure on any project that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery in a way that reduces costs or demand for services in future years for the Authority or any of the delivery partners. This includes investment which supports economic growth projects which are also designed to reduce revenue costs or pressures over the longer term. Within this definition, it is for individual local authorities to decide whether or not a project qualifies for the flexibility.

4.2 The set up and implementation costs of any new processes or arrangements can be classified as qualifying expenditure. The ongoing revenue costs of the new processes or arrangements cannot be classified as qualifying expenditure.

#### **Examples of qualifying expenditure**

4.3 There are a wide range of projects that could generate qualifying expenditure and the list below is not prescriptive. Examples of projects include:

- Preparatory work necessary to support local authority mergers as part of the programme to reform local government in Wales;
- Sharing back-office and administrative services with one or more other council or public sector body;
- Investment in service reform feasibility work, eg. setting up pilot schemes;
- Collaboration between local authorities and central government to free up land for economic use;

- Funding the cost of service reconfiguration, restructuring or rationalisation (staff or non-staff), where this leads to ongoing efficiency savings or service transformation;
- Sharing Chief Executives, management teams or staffing structures;
- Driving a digital approach to the delivery of more efficient public services and how the public interacts with constituent authorities where possible;
- Aggregating procurement on common goods and services where possible, either as part of local arrangements or using the National Procurement Service, Crown Commercial Services or other central purchasing bodies which operate in accordance with the Wales Procurement Policy Statement;
- Improving systems and processes to tackle fraud and corruption in line with the Local Government Fraud and Corruption Strategy – this could include an element of staff training;
- Setting up alternative delivery models to deliver services more efficiently and bring in revenue (for example, through selling services to others); and
- Integrating public facing services across two or more public sector bodies (for example children's social care, trading standards) to generate savings or to transform service delivery.
- Investment which supports economic growth projects which are also designed to reduce revenue costs or pressures over the longer term, across one or more local authorities and/or other public sector bodies.

## **(5) ACCOUNTABILITY AND TRANSPARENCY**

### **Preparation**

5.1 Following the end of each financial year, as part of the preparation of its annual accounts, a local authority should ensure it prepares a disclosure note in accordance with the timetable in paragraph 5.5

### **Content**

5.2 As a minimum, the disclosure note should list each project that made use of the capital receipts flexibility, ensuring that it details the split of up-front funding for each project between capital receipts and other sources, and that on a project-by-project basis, setting out the expected savings and/or benefits of investment.

5.3 The disclosure note may also include any other matters considered to be relevant.

### **Approval**

5.4 The disclosure note should be considered and approved by resolution of the committee or of the members meeting as a whole.

**Timing**

5.5 For any financial year, a disclosure note should be prepared and approved no later than approval of the statement of accounts.

**Publication**

5.6 Welsh Ministers expect the disclosure note once approved, to be made available to the public free of charge, in print or online.



Llywodraeth Cymru  
Welsh Government

Mr C Moore  
S. 151 Officer – Swansea Bay City Region  
Director of Corporate Services  
Carmarthenshire County Council  
County Hall  
CARMARTHEN  
SA31 1JP

16 May 2018

Dear *Chris*

**Swansea Bay City Region City Deal: Financial Arrangements**

I refer to the ongoing discussions you and others have been having with my predecessor and other colleagues in Welsh Government regarding the Swansea Bay City Region financing arrangements. In particular these have covered how the authorities within the city region are seeking flexibility to manage the financing of the City Deal projects, in the same way that authorities have flexibility to effectively and efficiently manage the funding of their own Capital Programmes.

As set out in the Heads of Terms, the Welsh Government and UK Government have committed to invest a combined total of up to £241 million on specific interventions, subject to the submission and approval of the full business cases in relation to the 11 identified projects and the agreement of governance arrangements. This funding is to be provided as capital funding. However, the Region has indicated that the nature of some projects means they require revenue rather than capital support.

Subject to confirmation by HM Treasury, the government capital grant funding is to be provided on a flat profile with payments of the grant being made over a 15-year period. The local authorities within the City Deal region are expected to manage the funding in respect of the individual projects in the most cost effective and efficient way. There are no plans for Welsh Government to set additional terms and conditions on the use of the capital grant funding or restrict any otherwise permitted funding mechanism beyond those already set out in the Heads of Terms and the standard requirements of grant offers to ensure the maintenance of the highest standards of regularity and propriety for the use public monies. Within this, we expect each local authority to optimise its own funding position.

As indicated previously, the Welsh Government will expect the equivalent value of the allocated grant funds to be clearly expended on the projects as per the business cases submitted.



BUDDSODDWR MEWN POBL  
INVESTOR IN PEOPLE

Ffôn \* Tel 029 20826871

Parc Cathays • Cathays Park  
Caerdydd • Cardiff  
CF10 3NQ

LocalGovernmentSettlement@wales  
.gsi.gov.uk

In light of the Swansea Bay City Region's need for revenue funds to support some of its projects, the Welsh Government recognises the four authorities will need to manage their capital funding so as to enable revenue expenditure to be supported. If this is to be achieved (at least in part) through the use of the local authorities' available Capital Receipts, local authorities will need to have reference to the latest Direction from Welsh Ministers on the use of capital receipts, issued under section 15(1) (a) of the Local Government Act 2003 and the accompanying statutory *Guidance on Flexible Use of Capital Receipts*.

This may involve each local authority allocating borrowing against other capital projects within its capital programme, to maximise flexibility and make most effective use of resources (including the use of Reserves). This will be a matter for the local authorities concerned, provided they clearly identify that the total value of the City Deal funding provided has been incurred as expenditure on City Deal projects.

As was set out in the Heads of Terms, the Swansea Bay City Region will need to work with the UK Government and the Welsh Government to develop an agreed implementation, monitoring and evaluation plan for whole Deal which sets out the proposed approach to evaluating the impact of delivery.

Linked to this, as part of the grant procedures, the authorities will need to demonstrate clearly that all expenditure has been incurred on each project in line with the relevant business case. This is in line with the City Deal ethos of local accountability, where we have already set out in our letter of 7 July 2017 to the City Deal Accountable Officer (Mark James) that we do not intend to impose additional terms and conditions on the grant offers beyond those required as a matter of course to ensure financial propriety and good governance.

I hope this letter gives you and your colleagues within the City Region sufficient reassurance and confidence in relation to the available funding flexibilities to ensure all the projects can be delivered.

Yours sincerely



Judith Cole  
Deputy Director  
Local Government Finance Policy, Workforce and Social Partnerships

Mark Drakeford AC/AM  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA-P-MD-1201-18

Rob Stewart

Leader, City and County of Swansea

[rob.stewart@swansea.gov.uk](mailto:rob.stewart@swansea.gov.uk)

11 April 2018

Dear Rob

I write further to recent correspondence and discussions with Leaders and yourself regarding the retention of non-domestic rates in relation to the Swansea Bay City Region City Deal.

This letter sets out an offer of an in-principle agreement to the original proposal which you put forward at the meeting with Leaders and the Secretary of State for Wales. I intend to initiate arrangements to allow the region to retain 50% of the additional net yield in non-domestic rates generated by the 11 projects which are to be delivered by the Deal.

Such an arrangement, of course, will rely upon a commitment from all four authorities to provide the information needed to enable my officials to assess the impact of the changes and to implement them.

Taking this forward will also involve each authority engaging in subsequent discussions with my officials in line with the principles set out in my letter of 10 August. Any change to the current arrangements for non-domestic rates will have significant wider implications for both local authorities and for the budgetary processes of the Welsh Government. These implications need to be fully understood and managed.

I need to be clear that my offer is predicated on the original proposal put to me by the four local authorities. That means that all four authorities will need to meet the forecast borrowing costs and manage any risk of the retained share of the rates yield being lower than estimated. Project business cases will still need to demonstrate that viable financial plans are in place for each project.

It is also the case that the changes needed to enable any share of the rates yield to be retained must be carried out within the relevant legal and financial governance requirements. The advice provided to me suggests that this is not a simple matter. The non-domestic rates system is complex and governed by a detailed statutory framework, consultative arrangements and public finance requirements. Whilst we will, as always, make every effort to ensure the administrative procedures are as simple and effective as possible, we will all have to operate within the required standards. I therefore ask that the four authorities work with my officials to ensure that the necessary changes are effected in line with these long-standing requirements.

I am very pleased that our work together has led to the proposals set out in this letter. I would be grateful for your confirmation that the four authorities wish to accept this offer and make the commitments outlined above so that we may move forward and focus our efforts on the delivery of the Deal.

I am copying this letter to the four Leaders and the Secretary of State for Wales.

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

*Copies to:*

Secretary of State for Wales  
Cllr Emlyn Dole, Leader, Carmarthenshire County Council  
Cllr Rob Jones, Leader, Neath Port Talbot County Borough Council  
Cllr David Simpson, Leader, Pembrokeshire County Council  
Cllr Mark James, Chief Executive, Carmarthenshire County Council



## Schedule 12 - Terms of Reference of Joint Scrutiny Committee

### 1. **Membership.**

- 1.1 The Joint Scrutiny Committee shall comprise of 12 members in total, 3 each from the 4 Constituent Authorities.
- 1.2 The membership may not include Executive Members

### 2. **Purpose**

2.1 The purpose of the Joint Scrutiny Committee shall be:

- 2.1.1 Performing the overview and scrutiny function for the Swansea Bay City Region City Deal (as specified in the Swansea Bay City Deal Joint Committee Agreement) on behalf of the 4 Constituent Authorities;
- 2.1.2 To develop a Forward Work Programme reflecting the functions under cl. 2.1.1 above
- 2.1.3 To seek reassurance and consider if the City Deal is operating according to the Joint Committee Agreement, its Business Plan, timetable and / or is being managed effectively;
- 2.1.4 To monitor any City Deal Regional projects against its Programme Plan
- 2.1.5 To make any reports and recommendations to the Constituent Authorities, whether to their executive Boards or Full Council as appropriate, in respect of any function which has been delegated to the Joint Committee pursuant to the Joint Committee Agreement

~~2.2 For the avoidance of doubt scrutiny of individual Authorities projects' shall be a matter for the relevant Constituent Authorities' Scrutiny Committee save where they have the potential to impact materially on the overall portfolio of the City Deal Projects.~~

2.2 Scrutiny of individual Authorities projects' shall be a matter for the relevant Constituent Authorities' Scrutiny Committee. Where individual projects have the potential to impact materially on the overall portfolio of the City Deal Projects the Joint Scrutiny Committee may consider provided that the relevant constituent Authority Scrutiny Committee is in agreement and does not wish to undertake scrutiny themselves.

### 3. **Chair**

- 3.1 The chair and Vice-Chair of the Joint Scrutiny Committee shall be elected by the Joint Scrutiny Committee
- 3.2 The chair and Vice-Chair of the Joint Scrutiny Committee shall not be from the same Authority as the Chair of the Joint Committee

### 4. **Voting**

- 4.1 Each member of the Joint Scrutiny Committee shall have one vote. Decisions of the Joint Scrutiny Committee shall be made by simple majority vote.
- 4.2 In the event of equality of votes the Chair of the Joint Scrutiny Committee shall have a casting vote.

### 5. **Conflicts of Interest**

- 5.1 Members of the Joint Scrutiny Committee must declare any interest either before or during the meetings of the Joint Scrutiny Committee (and withdraw from that meeting if necessary) in accordance with their Council's Code of Conduct or as required by law.

### 6. **Proceedings of Meetings**

- 6.1 The rules of procedure and access to information rules of the Host Authority for the scrutiny function shall apply to meetings of the Joint Scrutiny Committee
- ~~6.2~~ Members of the Joint Scrutiny Committee shall be subject to the Codes of Conduct for Members of their Councils.
- ~~6-26.3~~ Members shall be entitled to Joint Committee papers in accordance with the procedure rules of the Council that undertakes the monitoring officer and democratic services function.

### 7. **Quorum**

- 7.1 The quorum for meetings shall be no less than 8 members, which must include at least 1 member from each of the 4 Authorities

### 8. **Frequency**

- 8.1 The Joint Scrutiny Committee shall meet bi-monthly or on a frequency determined by the Joint Scrutiny Committee. Additional meetings may be convened by the Chair on at least 7 clear days notice.

### 9. **Allowances**

- 9.1 No allowances shall be paid

### 10. **Servicing**

- 10.1 The Host Authority for the joint scrutiny functions shall be Neath Port Talbot County Borough Council

### 11. **Sub-Groups**

- 11.1 The Joint Scrutiny Committee by agreement may create Task and Finish Groups.

### 12. **Review**

- 12.1 The Terms of reference of the Joint Scrutiny Committee shall be reviewed annually

### Schedule 13 - Rules of Conduct of Co-opted Members of the Joint Committee and the Economic Strategy Board

- 1 These rules apply to you in your capacity as:
  - 1.1 a co-opted member of the Joint Committee or
  - 1.2 the Economic Strategy Board of the Swansea Bay City Region.
- You must observe these rules whenever you attend a meeting of the Joint Committee or the Economic Strategy Board.
- 2 You shall conduct yourself appropriately and shall treat others with respect at meetings of the Joint Committee and the Economic Strategy Board.
- 3 You shall not conduct yourself in a manner which could reasonably be regarded as bringing the Joint Committee or the Economic Strategy Board or the Swansea Bay City Region into disrepute.
- 4 You shall abide by any policies and procedures adopted by the Joint Committee.
- 5 You shall prepare fully for meetings of the Joint Committee and the Economic Strategy Board including reading papers and seeking advice from the [Portfolio Management](#) Office when necessary.
- 6 You shall comply with any request for information from the [Portfolio Management Office](#) or the [monitoring officer undertaking the monitoring officer functions pursuant to this Agreement](#), properly and reasonably required in connection with your role as a member of the Joint Committee or the Economic Strategy Board.
- 7 As part of your role you may be requested by the Joint Scrutiny Committee to provide information or to attend a meeting and answer questions in connection with your activities as a member of the Joint Committee, the Economic Strategy Board or the Swansea Bay City Deal, as the case may be and you are expected to comply with any such request.
- 8 You shall not disclose confidential information nor any information relating to business of the Joint Committee or the Economic Strategy Board which is exempt from public access.
- 9 You shall avoid situations where your interests will conflict with the interests of the Swansea Bay City Region.
- 10 You shall regard yourself as having a personal interest in any business of the Joint Committee or Economic Strategy Board if it relates to or is likely to affect:
  - 10.1 Any employment or business carried on by you or any person who employs or has appointed you.
  - 10.2 Any firm in which you are a partner or any company for which you are a remunerated director.
  - 10.3 Any corporate body which has a place of business or land in the Swansea Bay City Region and in which you have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body.
  - 10.4 Any land in which you have a beneficial interest which is in the Swansea Bay City Region.
  - 10.5 Any land in the Swansea Bay City Region in which you have a licence to occupy for 28 days or longer.
- 11 You shall regard yourself as having a prejudicial interest in any business of the Joint Committee or Economic Strategy Board if you have a personal interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest.
- 12 You shall inform the [Portfolio Management](#) Office of your personal interests so that the [Portfolio Management](#) Office may register your interests on a register of interests of co-opted members of the Joint Committee and the Economic Strategy Board. You shall inform the [Portfolio Management](#) Office of your personal interests:
  - 12.1 No later than 28 days after your acceptance of co-option to the Joint Committee or the Economic Strategy Board; and
  - 12.2 No later than 28 days after you become aware of any new personal interests.
- 13 If you have a personal interest in any business which is considered at a meeting that you attend of the Joint Committee or the Economic Strategy Board you must disclose to that meeting the existence and nature of your interest before or at the commencement of the consideration of the business or when the interest becomes apparent.
- 14 If any of the following circumstances apply in respect of an item of business of the Joint Committee or the Economic Strategy Board you shall subject to paragraph 15 withdraw from the meeting and you shall not participate in the consideration of the business if:

- 14.1 The business relates to project for which the body which nominated or appointed you to the Joint Committee or the Economic Strategy Board is the Delivery Lead.
- 14.2 You have a prejudicial interest in the business.
- 15 Where you have a prejudicial interest in any business considered by the Joint Committee or the Economic Strategy Board you may attend a meeting of the Joint Committee or the Economic Strategy Board at which the business is considered for the purpose of making representations answering questions or giving evidence to the same extent that members of the public are allowed to attend the meeting for the purpose of making representations answering questions or giving evidence.

Undertaking to abide by the rules of conduct

I (name of co-opted member) undertake to abide by the rules of conduct of co-opted members of the Joint Committee and the Economic Strategy Board of the Swansea Bay City Region

Signed -----

Date -----

Schedule 14 – Job Specification and Role of Programme Director

Schedule 15 – Role of the Portfolio Management Office