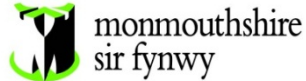


# Public Document Pack



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Y Rhadyr  
Brynbuga  
NP15 1GA

County Hall  
Rhadyr  
Usk  
NP15 1GA

Tuesday, 18 June 2019

Dear Councillor

## INDIVIDUAL CABINET MEMBER DECISIONS

Notice is hereby given that the following decisions made by a member of the cabinet will be made on Wednesday, 26 June 2019.

1. **FIXED PENALTY NOTICES HOUSEHOLD WASTE DUTY OF CARE** 1 - 28

**Division/Wards Affected:** All Wards  
**CABINET MEMBER:** County Councillor Sara Jones

**AUTHOR: AUTHOR:**

*Huw Owen, Principal EHO*

### CONTACT DETAILS:

**Tel:** 01873 735433  
**E-mail:** [huwowen@monmouthshire.gov.uk](mailto:huwowen@monmouthshire.gov.uk)

2. **SWTRA AGREEMENT - SIGNATURE AND SEAL** 29 - 76

**Division/Wards Affected:** All Wards  
**CABINET MEMBER:** County Councillor J Pratt

**AUTHOR:** Roger Hoggins, Head of Operations

### CONTACT DETAILS:

**Tel:** 01633 644133  
**E-mail:**  
[rogerhoggins@monmouthshire.gov.uk](mailto:rogerhoggins@monmouthshire.gov.uk)

Yours sincerely,

**Paul Matthews**  
Chief Executive

### CABINET PORTFOLIOS

County Councillor	Area of Responsibility	Partnership and External Working	Ward
P.A. Fox (Leader)	<p><b>Whole Authority Strategy &amp; Direction</b> Lead Officer – Chief Executive</p> <p>CCR Joint Cabinet &amp; Regional Development; Organisation overview; Regional working; Government relations; Public Service Board lead; WLGA lead</p>	<p>WLGA Council WLGA Coordinating Board Public Service Board</p>	Portskewett
R.J.W. Greenland (Deputy Leader)	<p><b>Enterprise and Land Use Planning</b> Lead Officer – Frances O’Brien Support Officers – Mark Hand, Cath Fallon</p> <p>Local Development Plan; Strategic Development Plan; Economic Resilience and Growth; Town Centre Investment and Stewardship; Development Management and Building Control; Housing Delivery</p>	<p>WLGA Council Capital Region Tourism</p>	Devauden
P. Jordan	<p><b>Governance and Law</b> Lead Officers – Matthew Gatehouse, Matthew Phillips, Ian Saunders</p> <p>Council &amp; Executive decision making; Constitution review and implementation of change; Law, Ethics &amp; Standards; Audit and Regulatory WAO Relations Support for Elected Members Democracy promotion &amp; citizen engagement Whole Authority Performance; Whole Authority Service Planning &amp; Evaluation Community Hubs and Contact Centre Community Learning Tourist Information / Museums / Theatre / Attractions</p>		Cantref
R. John	<p><b>Children &amp; Young People and MonLife</b> Lead Officers – Will McLean, Ian Saunders Support Officers – Nikki Wellington, Sharon Randall-Smith, Richard Simpkins</p> <p>Early Years Education</p>	<p>Joint Education Group (EAS) WJEC</p>	Mitchel Troy

	<p>All Age Statutory Education Additional Learning Needs; School Inclusion Post 16 entitlement / offer</p> <p>School standards and Improvement; Education Achievement Service Commissioning Coleg Gwent and University liaison. Leisure / Sport Outdoor education / Duke of Edinburgh Active Travel Countryside / Biodiversity</p>		
P. Jones	<p><b>Social Care, Safeguarding &amp; Health</b> Lead Officer – Julie Boothroyd Support Officers – Eve Parkinson, Jane Rodgers</p> <p>Children’s Services Fostering &amp; Adoption; Youth Offending Service; Adults Services Whole Authority Safeguarding (children &amp; adults); Disabilities; Mental Health; Health liaison.</p>		Raglan
P. Murphy	<p><b>Whole Authority Resources</b> Lead Officer – Peter Davies, Frances O’Brien Support Officers – Deb Hill-Howells, Sian Hayward, Tracey Harry, Mark Howcroft</p> <p>Finance; Information technology (SRS); Digital Programme Office Human Resources; Health &amp; Safety; Emergency Planning; Procurement; Land &amp; Buildings (inc. Estate, Cemeteries, Allotments, Farms); Vehicle Fleet / Passenger Transport Unit Property maintenance; Facilities Management (inc. Building Cleaning and Catering all ages)</p>	Prosiect Gwrydd Wales Purchasing Consortium	Caerwent
J. Pratt	<p><b>Infrastructure and Neighbourhood Services</b> Lead Officer – Frances O’Brien Support Officers – Roger Hoggins, Carl Touhig, Nigel Leaworthy</p> <p>County Roads / Pavements South Wales Trunk Road Agency</p>	SEWTA Prosiect Gwyrdd	Goytre Fawr

	<p>Highways Maintenance,  Transport, Traffic &amp; Network Management,  Car Parks / Illegal Parking Enforcement  Whole Authority De-carbonisation  Plastic Free Monmouthshire  Waste / Recycling / Cleansing  Grounds Maintenance  Parks &amp; Open Spaces/ Public Conveniences  Flood Prevention / Management / SUDs</p>		
S. Jones	<p><b>Social Justice &amp; Community Development</b>  Lead Officer – Frances O’Brien  Support Officers – Cath Fallon, David Jones,  Ian Bakewell</p> <p>Rural Deprivation / Isolation;  Digital Deprivation  Poverty / Disadvantage  Homelessness;  Supporting People  Community Safety / Equality / Protected  Characteristics  Public Relations; / Communications / Marketing  Trading Standards / Environmental Health;  Licensing;  Registrars</p>		Llanover

# Aims and Values of Monmouthshire County Council

## Our purpose

Building Sustainable and Resilient Communities

### Objectives we are working towards

- Giving people the best possible start in life
- A thriving and connected county
- Maximise the Potential of the natural and built environment
- Lifelong well-being
- A future focused council

## Our Values

**Openness.** We are open and honest. People have the chance to get involved in decisions that affect them, tell us what matters and do things for themselves/their communities. If we cannot do something to help, we'll say so; if it will take a while to get the answer we'll explain why; if we can't answer immediately we'll try to connect you to the people who can help – building trust and engagement is a key foundation.

**Fairness.** We provide fair chances, to help people and communities thrive. If something does not seem fair, we will listen and help explain why. We will always try to treat everyone fairly and consistently. We cannot always make everyone happy, but will commit to listening and explaining why we did what we did.

**Flexibility.** We will continue to change and be flexible to enable delivery of the most effective and efficient services. This means a genuine commitment to working with everyone to embrace new ways of working.

**Teamwork.** We will work with you and our partners to support and inspire everyone to get involved so we can achieve great things together. We don't see ourselves as the 'fixers' or problem-solvers, but we will make the best of the ideas, assets and resources available to make sure we do the things that most positively impact our people and places.



**SUBJECT:               FIXED PENALTY NOTICES HOUSEHOLD WASTE DUTY OF CARE**

**MEETING:             Individual Cabinet Member Decision – County Cllr Sara Jones**

**DATE:                 26<sup>th</sup> June 2019**

**DIVISION/WARDS AFFECTED: All**

**1.     PURPOSE:**

- 1.1 To inform the Cabinet Member of new legal powers introduced under The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 and consider the Council’s approach in using these powers.
- 1.2 To obtain additional authorisation for Officers under The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

**2.     RECOMMENDATIONS:**

- 2.1 That Officers within the Public Protection division be authorised under Section 34ZB Environmental Protection Act 1990 as amended by The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 , in order to enforce the legislation and carry out their duties. The specific officers to be authorised are set out in Appendix 1.
- 2.2 That the Scheme of Delegation to Officers in the Council’s Constitution is amended by the Monitoring Officer to reflect the changes in 2.1.
- 2.3 Agree the Fixed Penalty Notice enforcement charges set out in Appendix 1.
- 2.4 To adopt the general approach to serving Fixed Penalty Notices under the provisions of the Regulations, as set out in the Authority’s existing enforcement policy for dog fouling / littering provided in Appendix 2.

**3.     KEY ISSUES:**

- 3.1 The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 came into force on the 21<sup>st</sup> February 2019.
- 3.2 These Regulations insert a new section into Part II (Waste on Land) of the Environmental Protection Act 1990. This enables an authorised officer of a Local Authority to issue a fixed penalty notice for contravention of section 34(2A) of the Act. This section places a duty on the occupier of any domestic property to take all such reasonable measures available to ensure that any transfer of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.

- 3.3 For example a fixed penalty notice may now be served where fly-tipped waste can be traced back to an occupier of a domestic property who has failed to check that the person or business they have asked to take their waste is a registered waste carrier. It is reasonable to expect the occupier to ask the person or business to show them proof that they are registered to carry or accept waste and to make a note of details such as their name (or business name), vehicle type and registration.
- 3.4 **Fixed Penalty Notices (FPNs)** are encouraged by Welsh Government as part of an effective and efficient enforcement approach for dealing with environmental offences. The Regulations enable this Council to issue a fixed penalty of £300 payable within 14 days, for contravention of section 34(2A) Environmental Protection Act 1990.
- 3.5 In addition the Council may also make provision for a discount for early payment of a fixed penalty within 10 days, which is £150.
- 3.6 In discharging any enforcement powers it is good regulatory practice for an authority to set out its approach in an 'enforcement policy'. The Authority has a Corporate Enforcement Policy which applies good regulatory principles in line with the Enforcement Concordat and has a specific policy for dog fouling/littering which includes for the service of FPN's.
- 3.7 The proposed approach for issuing FPN's introduced by the Regulations is to adopt the general principles of the existing fouling/littering policy which is provided in Appendix 2 and specifically:
- A distinction in the approach dependent upon the age of the offender.
    - For persons aged 18 or over, where appropriate a FPN to be issued to give the opportunity to discharge liability to conviction;
    - For persons under 18 the FPN to be commuted to a warning in the first instance. FPNs issued for second offences following a warning, with the intervention of the Council's Youth Offending Service to be invited prior to consideration of any case for prosecution.
- Household waste offences are invariably committed by persons aged 18 or over.
- The FPN amount payable within 14 days to reduce if paid within 10 days to encourage early payment.
  - Prosecution proceedings to be taken in cases of non-payment by an offender aged 18 or over
- 3.8 It is proposed that the FPN level of £300 payable within 14 days for contravention of section 34(2A) Environmental Protection Act 1990, is discounted to £150 for early payment within 10 days, as set out in Appendix 1.
- 3.9 It is proposed that the decision to issue a FPN to give the opportunity to discharge liability for the offence or otherwise recommend to the Councils Legal section that the matter proceeds directly to prosecution in court, will be a matter for the investigating officer to consider on a case by case basis. FPNs will provide the opportunity for first time non-habitual offenders to avoid court and a possible criminal record. They offer a more efficient and proportionate response to tackling incidents where there is a breach of duty of care while helping to ease the burden on the court system. However in some instances it may be proportionate to prosecute the offender in court for example if there was the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped.



**4. EQUALITY AND FUTURE GENERATIONS EVALUATION, (includes social justice, safeguarding and corporate parenting):**

4.1 The completed 'Equalities & Future Generations Evaluation' form is provided as Appendix 3, attached. The revisions have a positive impact for the reasons provided.

**5. OPTIONS APPRAISAL:**

5.1 The use of fixed penalty notices afford a proportionate response for breach of household waste duty of care. The Authority would therefore wish to utilise these new powers introduced by the Regulations.

**6. EVALUATION CRITERIA:**

6.1 The proportionate use of FPNs to be monitored by the Principal Environmental Health Officer (Public Health) on a case by case basis.

**7. REASONS:**

7.1 To ensure fair, transparent, efficient and effective discharge of the Council's obligations under the Act.

**8. RESOURCE IMPLICATIONS:**

8.1 None directly arising from the authorisation of Officers under these Regulations. Detection rates for breach of household duty of care are very low. Any revenue obtained from the payment of FPN's will be very limited which are to be punitive and not of significance in terms of income generation.

**9. CONSULTEES:**

SLT  
Cabinet Members  
Chair of Strong Communities Select  
Monitoring Officer and Head of Legal Services  
Head of Finance  
Head of Operations  
Youth Offending Team Manager  
Head of Waste and Street Services  
Head of Public Protection

**Results of Consultation**

No adverse comments have been received

**10. BACKGROUND PAPERS:**

Guidance for Welsh Local Authorities on Household Waste Duty of Care Fixed Penalty Notices

**11 AUTHOR:**

Huw Owen, Principal EHO

**12. CONTACT DETAILS:**

**Tel:** 01873 735433

**E-mail:** [huwowen@monmouthshire.gov.uk](mailto:huwowen@monmouthshire.gov.uk)

**Appendices**

Appendix 1 Fixed Penalty Levels and Authorised Officers

Appendix 2 Existing Enforcement Policy for Dog Fouling and Littering

Appendix 3 Equality & Future Generations Evaluation

## Appendix 1

### The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019.

#### Fixed Penalty Levels and Authorised Officers

Legislation	Power	Fixed Penalty Notice Amounts	Proposed Authorisation
Section 34ZB Environmental Protection Act 1990 as amended by The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019.	To enable an authorised officer to issue a fixed penalty notice for contravention of section 34(2A) of the Environmental Protection Act 1990.	Fixed Penalty level of £300 payable within 14 days, reduced to £150 if paid within 10 days.	Principal Environmental Health Officer (Public Health)  Specialist Environmental Health Officers (Public Health)

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## Appendix 2

### Monmouthshire County Council Enforcement Policy for Dog Fouling and Littering

#### Introduction

- 1.1 This enforcement policy sets out Monmouthshire County Council's approach to discharging its powers in relation to offences of dog fouling and littering. It should be read in conjunction with the Council's Corporate Enforcement Policy which sets out the broader context and the Authority's approach to discharging enforcement responsibilities.
- 1.2 This enforcement policy is intended to guide the enforcement approach of authorised officers of the Council and any other agencies, such as the Police, with whom the Council has entered into an agreement for enforcement purposes.

#### Legislative Framework

- 2.1 The offence of failing to remove dog faeces is created under section 3 of the Dogs (Fouling of Land) Act 1996. Dropping litter is an offence contrary to section 87 of the Environmental Protection Act 1990.
- 2.2 The use of Fixed Penalty Notices (FPNs) is encouraged by the Welsh Assembly Government (WAG) as part of an enforcement approach to dealing with environmental offences. WAG has issued guidance on their use, entitled **Guidance on the Fixed Penalty Notice provisions of the Environmental Protection Act 1990, the Clean Neighbourhood Act 2005 and other legislation.**
- 2.3 Part 1 of Schedule 4 to the Police Reform Act 2002, as amended by section 122 of the Serious Organised Crime and Police Act 2005, creates the power for suitably designated Police Community Support Officers to issue fixed penalty notices (FPNs) for certain relevant offences.

#### General approach to enforcement

- 3.1 This enforcement Policy should be read in conjunction with the Council's Corporate Enforcement Policy, which sets out in greater detail the authority's general approach.

#### Authorised Officers.

- 4.1 Enforcement activities are undertaken by officers authorised in writing for those purposes. The Council has delegated power (26<sup>th</sup> February 2009) to the Corporate Director (RER) to authorise officers for the purpose of enforcement under the Environmental Protection Act 1990 and the Dogs (Fouling of Land) Act 1996, including the issue of FPNs.

Authorised Officers are expected to have regard to the Council's Corporate Enforcement Policy in discharging their powers.

### **Dealing with offences**

- 5.1 The Authority's usual approach to dealing with offences will depend upon the age of the offender as set out below:

#### *For offenders aged eighteen or over*

- 5.2 A Fixed Penalty Notice to be issued to give the offender the opportunity to discharge the liability to conviction for the offence.
- 5.3 The FPN amount of £75 payable within 14 days, to be reduced to £50 if paid within 10 days.
- 5.4 Payment in instalments to be considered and agreed in exceptional circumstances. Payment period by instalments not to exceed 5 months.
- 5.5 Prosecution proceedings to be taken in cases of non payment.
- 5.6 Repeat offenders are to be prosecuted with no opportunity given to pay a Fixed Penalty Fine.

#### *For offenders aged twelve to seventeen*

- 5.7 For first time offences the FPN to be commuted to a 'final warning' to be made in writing and addressed to the young person's parents/guardian.
- 5.8 For a second offence, following a 'final warning', offenders to be issued with a FPN with the option of reduced early repayment and possible payment by instalments as for those aged eighteen or over.
- 5.9 In cases of non payment, the intervention of the police and youth offending service to be invited, to consider the option of Restorative Justice work as an alternative to payment. Restorative Justice means repairing the harm caused whilst accepting responsibility for actions. This may include for example unpaid work in the community, or a piece of educational based work.
- 5.10 Cases of non payment and failure to cooperate in an alternative intervention programme, if offered, to be prosecuted.
- 5.11 Enforcement will be closely linked to an education based approach for this age range, with Enforcement Officers giving presentations and appropriate literature in school assemblies and similar fora.

## **General**

- 6.1 Alleged offenders contesting a FPN to be advised that there is no obligation to pay the penalty issued and that they have the option to plead 'not guilty' at a Magistrates Court on prosecution.

## **Complaints**

- 7.1 Any complaints or comments should be directed to the designated Officer in the Environmental Health Team, via one of the Council's One Stop Shops or by contacting one of the Council's main offices.
- 7.2 Any recipient of a FPN, pleading mitigation or otherwise contesting the FPN, should do so in writing.

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<p><b>Name of the Officer</b> completing the evaluation Huw Owen</p> <p><b>Phone no:</b> 01873 735433 <b>E-mail:</b> <a href="mailto:huwowen@monmouthshire.gov.uk">huwowen@monmouthshire.gov.uk</a></p>	<p><b>Please give a brief description of the aims of the proposal</b></p> <p>To inform the Member of new legal powers introduced by The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 and consider the Council's approach in using these powers.</p>
<p><b>Name of Service area</b></p> <p>Public Protection</p>	<p><b>Date</b></p> <p>June 2019</p>

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**Are your proposals going to affect any people or groups of people with protected characteristics?** Please explain the impact, the evidence you have used and any action you are taking below.

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Age	Delegation of powers will have neutral impact on people or groups of people with protected characteristics.	None	N/A
Disability	None	None	N/A
Gender reassignment	None	None	N/A
Marriage or civil partnership	None	None	N/A

Protected Characteristics	Describe any positive impacts your proposal has on the protected characteristic	Describe any negative impacts your proposal has on the protected characteristic	What has been/will be done to mitigate any negative impacts or better contribute to positive impacts?
Pregnancy or maternity	None	None	N/A
Race	None	None	N/A
Religion or Belief	None	None	N/A
Sex	None	None	N/A
Sexual Orientation	None	None	N/A
Welsh Language	Fixed penalty notices will be bilingual	None	N/A
Poverty	None	None	N/A

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**2. Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal. There's no need to put something in every box if it is not relevant!




Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<b>A prosperous Wales</b> Efficient use of resources, skilled, educated people, generates wealth, provides jobs	Positive: Ensures the appropriate officers in the Council have the powers available to ensure the proper disposal of waste and help reduce fly tipping.	N/A
<b>A resilient Wales</b> Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change)	N/A	N/A
<b>A healthier Wales</b> People's physical and mental wellbeing is maximized and health impacts are understood	Positive: the new power introduced will help council officers deal with fly tipping issues, which negatively affect the community's quality of life, in a proportionate and efficient manner.	N/A
<b>A Wales of cohesive communities</b> Communities are attractive, viable, safe and well connected	Positive: the Fixed Penalty Notice power will help give officers the 'tools' to deal with the improper disposal of household waste and fly tipping, the reduction of which can only be positive.	An approach to the issuing of fixed penalty notices which recognizes the importance of dealing with offenders below 18 years of age differently to those that are 18 or above
<b>A globally responsible Wales</b> Taking account of impact on global well-being when considering local social, economic and environmental wellbeing	Positive: setting an example for developing communities which are attractive, viable and safe.	N/A
<b>A Wales of vibrant culture and thriving Welsh language</b> Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation	.N/A	N/A

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Well Being Goal	Does the proposal contribute to this goal? Describe the positive and negative impacts.	What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts?
<b>A more equal Wales</b> People can fulfil their potential no matter what their background or circumstances	N/A	N/A

**3. How has your proposal embedded and prioritised the sustainable governance principles in its development?**

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Long Term</p> <p>Balancing short term need with long term and planning for the future</p>	<p>The Report takes account of legislation and proposes delegated powers that will assist Council officers in tackling fly tipping issues in Monmouthshire. Fixed Penalty Notice levels can be re appraised if / when legislation changes.</p>	
 <p>Collaboration</p> <p>Working together with other partners to deliver objectives</p>	<p>The Fixed Penalty Notice legislation has resulted from dialogue between Local Authorities, Welsh Government, Natural Resources Wales and other stakeholders. This dialogue will continue to ensure good practice followed in their use.</p>	

Sustainable Development Principle	Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why.	Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts?
 <p>Involving those with an interest and seeking their views</p> <p><b>Involvement</b></p>	<p>Legislation introduced as a result of stakeholders discussing with Welsh Government.</p>	
 <p>Putting resources into preventing problems occurring or getting worse</p> <p><b>Prevention</b></p>	<p>Provides the 'tools' for facilitating early action where small scale fly tipping instances occur and where person(s) responsible are identified. Efficient use of council resources essential in dealing with fly tipping and other environmental crime.</p>	
 <p>Considering impact on all wellbeing goals together and on other bodies</p> <p><b>Integration</b></p>		

**4. Council has agreed the need to consider the impact its decisions has on the following important responsibilities: Social Justice, Corporate Parenting and Safeguarding. Are your proposals going to affect any of these responsibilities?**

	Describe any positive impacts your proposal has	Describe any negative impacts your proposal has	What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts?

Social Justice	Powers enable a proportionate response / penalty for an offence.		
Safeguarding	Having the legislative powers available helps protect the public health of all age groups.		
Corporate Parenting			

**5. What evidence and data has informed the development of your proposal?**

- Monmouthshire County Council Corporate Enforcement Policy 2010
- The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019

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**6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?**

**The Household Waste Duty of Care (Fixed Penalties) (Wales) Regulations 2019 has introduced a power to enable authorised officers of the council to issue a fixed penalty notice for a breach of household waste duty of care where it is proportionate to do so.**

**The report is concerned with a) agreeing the penalty notice levels b) ensuring delegated powers are given to the appropriate officers c) the approach to issuing the fixed penalties reflects current practice in the county.**

**The delegation of powers will help give a useful tool to officers to deal with fly tipping offences in an efficient and proportionate manner.**

Close working essential between the delegated officers to ensure the powers are used in a fair, proportionate and consistent manner.

**7. ACTIONS:** As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

What are you going to do	When are you going to do it?	Who is responsible
a) Relevant officers to be informed of their authorisation and b) council's constitution to be amended accordingly.	a) On approval of report b) in liaison with the Council's Monitoring Officer and Head of Legal Services	Huw Owen

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**VERSION CONTROL:** The Equality and Future Generations Evaluation should be used at the earliest stage, such as informally within your service, and then further developed throughout the decision making process. It is important to keep a record of this process to demonstrate how you have considered and built in equality and future generations considerations wherever possible.

Version No.	Decision making stage	Date considered	Brief description of any amendments made following consideration
1	Individual Cabinet Member Decision – County Cllr Sara Jones	26.6.19	







Llywodraeth Cymru  
Welsh Government

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# Guidance for Welsh Local Authorities on Household Waste Duty of Care Fixed Penalty Notices

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## Introduction

The waste duty of care requires occupiers of domestic property to take all measures available to them as are reasonable in the circumstances to ensure that any transfer by them of household waste produced on their property is to an authorised person. This requirement aims to reduce the chances of this waste ending up in the hands of those who could potentially dispose of it illegally. More detail on this duty of care is set out in section 5 of the Waste Duty of Care Code of Practice<sup>1</sup>.

The fixed penalty notice (FPN) for breaches of the household waste duty of care provides authorities with an alternative enforcement option to prosecuting offenders through the courts. It allows an individual to discharge liability for the duty of care offence by payment of a fixed penalty. They can be a more proportionate enforcement response to certain offences. They can also act as an effective deterrent and even encourage behavioural change.

You should follow this guidance when issuing FPNs for breaches of this waste duty of care. Consideration should also be given to the Welsh Government's wider guidance on the use of fixed penalty notices for environmental offences<sup>2</sup>.

## When you can issue FPNs

You may issue a FPN where it appears to you that an occupier of a domestic property has failed to comply with their duty of care under section **34(2A) of the Environmental Protection Act 1990** in Wales. Examples of this include:

### ► Fly-tipping

Where fly-tipped waste can be traced back to an occupier of a domestic property who is found to have failed to take such measures as were reasonable in the circumstances to ensure that they transferred the waste to an authorised person.

### ► Unauthorised carrier

Where an unauthorised carrier is found to be carrying waste that was directly transferred to them by the occupier of a domestic property who is found to have failed to take such measures as were reasonable in the circumstances to ensure that they transferred the waste to an authorised person.

### ► Occupier of a domestic property is found

Where an occupier of a domestic property is found to be transferring their waste to a site that does not have a permit or exemption, and the occupier is found to have failed to take such measures as were reasonable in the circumstances to ensure that the operator of the site in question was an authorised person.

An authorised person may still fly-tip waste, so tracing fly-tipped waste to a household does not necessarily demonstrate a breach of the duty of care. An individual should be given an opportunity to demonstrate they took such measures as were reasonable in the circumstances to determine the person that took their waste was authorised to do so.

## When you cannot or should not issue FPNs

This FPN is not applicable where a householder intends for waste to be collected by the local authority, for instance where this is put out in household waste or recycling bins correctly. The local authority is an authorised person and so in putting the waste out for collection by a local authority within the correct receptacles, the householder has taken all measures as are reasonable in the circumstances to ensure the person they transfer it to is authorised. Alternative enforcement action should be considered if there is a need to deal with other household waste issues, for example if a householder has committed a separate waste offence.

### ► Fly-tipping

The Welsh Government wishes to encourage a balanced approach to enforcement. You should only issue an FPN when you are satisfied the evidence gathered indicates an offence has been committed and it is in the public interest to do so.

An effective environmental offences enforcement regime is one that is proportionate, consistent, targeted, transparent and accountable. Under general principles of public law, you have a duty to act fairly and proportionately and are encouraged to exercise discretion sensibly and reasonably and with due regard to the public interest. In no circumstances should enforcement be used as a means to generate income.

If an individual is considered to be a vulnerable person (for example due to age related ill-health or a mental or physical disability), close consideration should be given as to whether it would be proportionate and in the public interest to issue a fixed penalty notice, on a case-by-case basis.

### ► Tradespersons

As per section 5.2 of the Waste Duty of Care Code of Practice, where a tradesperson is working on a property, they are responsible for the waste they produce. As the occupier is not producing the waste, they are not transferring it to the tradesperson and so the duty of care does not apply.

### ► Household waste cleared by landlords

Where a landlord is arranging the clearance of premises after a tenancy has ended, the resulting waste is not household waste as they are not the occupier of the domestic property. This means the duty of care under Section 34(1) of the Environmental Protection Act applies instead and this FPN cannot be used.

### ► Opting for prosecution

FPNs should not be used where the evidence gathered suggests prosecution through the courts is more appropriate. Examples of this could include the deliberate transfer of waste to an unauthorised person in the knowledge that it would be fly-tipped (potentially an offence of “knowingly causing or knowingly permitting” an unauthorised deposit, treatment or disposal etc. of waste – under s33 of the Environmental Protection Act 1990), or when someone is a persistent offender or has a record of not paying fixed penalties for environmental offences.

## How to issue FPNs

Given the potential for illegally deposited waste offences to cross local authority borders, it is recommended you consider the benefits of consistent, and possibly collaborative, approaches to enforcement with neighbouring authorities.

The fixed penalty notice can be given as an offer for an individual to discharge any liability to conviction for failing to meet their household waste duty of care. Instead of proceeding to prosecute, you may first offer the opportunity to pay the fixed penalty.

### **Opportunity to demonstrate duty of care**

An individual's household waste can still be deposited illegally or in the possession of an unauthorised carrier, even if they meet their duty of care (e.g. the "authorised person" to whom the householder transferred the waste to may have subsequently transferred this to an unauthorised person). Before you decide to enforce, either directly through prosecution or by first giving a FPN, the case should be investigated. You should give individuals an opportunity to demonstrate they met their duty of care.

**This could include one or more (depending on what is reasonable in the individual circumstances of each case) of the following:**

- ▶ Details of the business and of any vehicle used which can be linked to an authorised operator;
- ▶ A record of the checks made, including the operators registration, permit or exemption number;
- ▶ A receipt for the transaction which includes the business details of a registered operator;
- ▶ A copy or photograph of the carrier's waste license or site's permit.

However, it should be emphasised there is no duty on an individual to keep a waste transfer note or any other written records when transferring their household waste. The absence of written records does not prevent an individual from making the case they met their duty of care.

**When giving the individual the opportunity to demonstrate they met their duty of care, you should inform them:**

- ▶ of the evidence gathered, e.g. if their waste has been found fly-tipped by an unauthorised person
- ▶ they may face prosecution, and why
- ▶ whether a FPN may be offered to discharge liability for the offence.

If there is sufficient evidence an individual householder has complied with their duty of care you cannot issue an FPN, or if a convincing case is made after an FPN has been issued, the FPN should be withdrawn.

## Issuing the fixed penalty notice

When issuing an FPN, the notice must name the householder and tell them:

- ▶ why they have been given a fixed penalty, i.e. the circumstances alleged to constitute the offence;
- ▶ that the FPN is offered as an option to discharge liability for a criminal offence without prosecution. However, should they decide not to pay, this may lead to a prosecution;
- ▶ that they can provide evidence to the local authority at any time to justify the case not being taken to prosecution, even if the FPN is not paid;
- ▶ how much they must pay and how they can pay it, including to whom it should be paid and the address to do so;
- ▶ the deadline for the payment (14 days from the date of the notice, not including the date of the notice);
- ▶ that proceedings will not be taken for the offence during the payment period;
- ▶ what happens if they pay the penalty early, for example if there is a discount
- ▶ any other ways in which the fixed penalty may be paid.

The level of penalty is set out in the legislation; which is as follows:

- ▶ Fixed penalty: £300
- ▶ Discounted penalty for early payment (if offered): £150

## Where waste comes from multiple individuals in the household

The duty of care applies to the individual occupier of the property who is arranging the transfer of household waste produced in that property. You will need to consider who in the household is responsible for the breach of the duty of care before issuing the FPN against them. There must be clear evidence directly linking the individual issued with the FPN and the breach of duty of care.

## Cross-boundary approach

The FPN can be used when an individual appears to have failed to comply with their duty of care in Wales only. This relates to the point where the transfer of waste took place, not the final disposal point of the waste. This would typically be if they took their waste to an unauthorised site in Wales, or if they transfer their waste to an unauthorised carrier in Wales, even if the waste is ultimately taken out of Wales. If the offence has occurred in England, Welsh local authorities may wish to coordinate any enforcement response with the English local authority in whose area the offence took place.

Given the potential for fly-tipping to cross local authority borders, it is recommended you consider the benefits of consistent, possibly collaborative approaches to enforcement with neighbouring authorities. This approach is consistent with the cross-cutting theme of partnership working in the Welsh Government's strategy "*A Fly-tipping Free Wales*"<sup>3</sup>.

For cases that cross authority boundaries in Wales, any enforcement authority in Wales can issue an FPN where it appears to them a person has failed to comply with the duty of care. This will typically be as a result of investigating fly-tipped waste in their area and tracing it back to an individual, even if that individual originally transferred the waste outside that area. It is recommended information concerning cross boundary cases is shared between neighboring authorities to help coordinate enforcement action.

Once an FPN has been issued, no authority can begin proceedings until after the 14 day payment period for that FPN has ended. Additionally, a FPN cannot be given to someone if one has already been given to them by the same authority or another authority.

To avoid duplication of FPNs, if you issue an FPN for a breach of the duty of care that took place in the area of another authority, you must give that other authority a copy of the FPN at the time of issuing.

## Non-payment of fixed penalties

As the FPN is offered as an option to discharge liability for the offence, an alleged offender may choose not to accept or pay a fixed penalty. They may also provide evidence at any time that they did not commit the offence.

Where an individual does not pay an FPN you are expected to take the case to prosecution unless they have given a convincing reason for you not to do so. Detailed evidence gathering should be carried out at the start of the investigation before an FPN is offered to ensure prosecution can take place if needed. Failure to follow up an unpaid FPN with prosecution for the original offence will discredit the use of fixed penalties and the duty of care itself.

The need to follow up unpaid fixed penalty notices with prosecution for the original offence must be considered in the development of an enforcement strategy and the necessary resources made available. It is not acceptable for an authority to decide after a FPN has been issued that it does not have the resources to prosecute if the notice is unpaid.

### Informal Review Process

There is no right of appeal against an FPN as they are offered as an optional means of discharging liability for an offence. However, liability for that alleged offence can be disputed or the appropriateness of enforcement challenged. If after the FPN is issued you receive a convincing case that they should not be prosecuted, you should withdraw the FPN and promptly inform the recipient of the decision.

The grounds of such a case might include, but are not limited to:

- ▶ if the person issued with the penalty was not the person that committed the offence, for instance where someone else arranged for the disposal of the waste
- ▶ if the person issued with the FPN brings forward evidence that could undermine any later prosecution
- ▶ if evidence is provided that the person issued with an FPN is in some way vulnerable and enforcement would not be in the public interest
- ▶ if evidence is provided that enforcement would, for any other reason, not be considered to be in the public interest

You should consider any information provided when deciding whether or not to start criminal proceedings against the person if the FPN goes unpaid.



## Awareness Raising

You should not view your enforcement regime in isolation. In addition to taking enforcement action, you should aim to reduce breaches of the household waste duty of care through clear, well-designed communications. Raising awareness of successful enforcement action can help deter others from committing offences. Where enforcement is deemed not appropriate, there may still be an opportunity to educate people on the household waste duty of care to prevent future breaches.

You should communicate to the community your reasons for the use of the FPN and make it clear that enforcement is about preventing waste crime and protecting the environment.

The Welsh Government and Fly-tipping Action Wales have developed communication materials to help support awareness raising activity and this will be shared with local authorities.

## Reporting

You should report regularly and consistently on your use of the FPN to help the public understand the approach to enforcement.

WasteDataFlow includes a category for reporting the Duty of care FPN.

## References

- <sup>1</sup> Waste Duty of Care: Code of Practice (England and Wales):  
[www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice](http://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice)
- <sup>2</sup> Welsh Government Guidance on Fixed Penalty Notices  
[gov.wales/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/?lang=en](http://gov.wales/topics/environmentcountryside/epq/cleanneighbour/fixedpenalty/?lang=en)
- <sup>3</sup> The Welsh Government's "A Fly-tipping Free Wales" Strategy:  
[gov.wales/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en](http://gov.wales/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en)

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**SUBJECT:** SWTRA Agreement – Signature and seal

**MEETING:** Individual Cabinet Member decision (Cabinet member for Infrastructure and Neighbourhood services)

**DATE:** 26<sup>th</sup> June 2019

**DIVISION/WARDS AFFECTED:** ALL

## 1. PURPOSE:

MCC entered into a joint agreement with Neath Port Talbot CC and Camarthenshire CC to undertake maintenance works on the Trunk Road network in South Wales on behalf of Welsh Government. The agreement was approved in 2016 and an individual cabinet member decision taken to do so. However the report at that time omitted approval to sign and seal the agreement.

## 2. RECOMMENDATIONS:

2.1 That the Head of Legal Services be authorised to sign and seal the SWTRA agreement (appendix 1) on behalf of Monmouthshire County Council.

## 3. KEY ISSUES:

3.1 Neath Port Talbot CBC act as the South Wales Trunk Road Agency providing the management and maintenance of various aspects for the trunk roads and motorways in South Wales (there is a mirror agent in North Wales).

3.2 Routine maintenance services are provided by three regions (East, Central and West).

3.3 In each region there is a lead authority. In the East MCC acts as the lead authority (covering the Gwent authorities and Cardiff) with Cardiff CC providing some services on the trunk road but being managed through MCC.

3.4 The three authorities developed a joint agreement to confirm the arrangement with SWTRA and Welsh Government. The agreement was subject to various amendments but the final agreement between MCC and SWTRA was submitted to MCC for seal and signature.

3.5 Whilst our legal officers were party to preparing the agreement, on reference back to the report that approved the agreement it did not stipulate that the agreement may be formally signed and sealed.

- 3.6 All three authorities have been working to the agreement since its inception in 2016 so MCC is effectively operating within the agreement. The signature finalises the matter for SWTRA.

#### **4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING):**

This report seeks approval to sign and seal an agreement. The actual detail of the level of service as described in the agreement is set by South Wales Trunk Road Agency in consultation with Welsh Government. Monmouthshire County Council does not decided upon any aspects of service described in the Agreement so it is not for Monmouthshire County Council to consider the impact upon Future Generations, Wellbeing or Protected Characteristics. Therefore the EFGE is not completed.

There are no safeguarding or social justice implications arising from the decisions proposed in this report

#### **5. OPTIONS APPRAISAL**

5.1 The recommendation is quite specific which realistically means the alternative option is not to sign. Given that MCC has been operating within the agreement since 2016 the authority is committed to the agreement. It is within the gift for the authority to withdraw from the agreement but to do so will require SWTRA to either negotiate an agreement with another authority to act as lead for the East Region or to put this aspect of the service out to contract (which is outside of the agreement as is and contrary to the arrangements made between SWTRA, the three 'lead' authorities and Welsh Government. Whilst this may be considered in the future at this time to withdraw would be financially detrimental to MCC (in particular loosing recovery of shared overheads) at this time officers would not recommend that this be pursued.

#### **6. EVALUATION CRITERIA**

The financial performance of the MCC aspect of the agreement is reported within the council's financial monitoring arrangements. The operational performance of MCC is monitored by SWTRA in line with the agreement.

#### **7. REASONS:**

Approval to sign and seal the agreement was omitted from the original report in 2016. This report seeks approval to do so thereby closing this outstanding aspect of the agreement.

**8. RESOURCE IMPLICATIONS:**

None arising directly from the report

**9. CONSULTEES:**

Enterprise DMT  
Head of Legal Services  
SLT

**10. BACKGROUND PAPERS:**

Report to individual Cabinet Member on 20<sup>th</sup> May 2016 titled:  
Future Provision of South Wales Trunk Road Agency (SWTRA)

**11. AUTHOR: Roger Hoggins, Head of Operations**

**12. CONTACT DETAILS:**

Tel: 01633 644133  
E-mail: rogerhoggins@monmouthshire.gov.uk

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# South Wales Trunk Road Agent

Managing and Improving  
Motorways and Trunk Roads  
through South Wales



# Asiant Cefnffyrdd De Cymru

Rheoli a Gwella'r Traffyrdd  
a'r Cefnffyrdd yn Ne  
Cymru

## SOUTH WALES TRUNK ROAD AGENT SERVICE COLLABORATION AGREEMENT

### THE AGREEMENT





## Service Collaboration Agreement



SERVICE COLLABORATION AGREEMENT DOCUMENTS	
Volume	Title
-	<b>THE AGREEMENT - This Volume</b>
A	Not Used
B	Not Used
C	Specification
D	Costing & Payment Mechanism
E	Health, Safety and Environment
F	Asset Data and Network Information
G	Performance Management
H	Risk Register
I	Reporting Forms
J	Testing
K	Special Requirements

THIS AGREEMENT is made the

2017





## Service Collaboration Agreement



### BETWEEN:

- (1) **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL** of Civic Centre Port Talbot SA13 1PJ
- (2) **CARMARTHENSHIRE COUNTY COUNCIL** of County Hall, Carmarthen, Carmarthenshire, SA31 1JP
- (3) **MONMOUTHSHIRE COUNTY COUNCIL** of County Hall, The Rhadyr, Usk, NP15 1GA

("the Authorities" and "Authority" means any one of them)

### WHEREAS:-

- (1) The Agent has entered into an Agency Agreement with the Welsh Government for the management, maintenance and improvement of trunk roads in South Wales
- (2) In discharging its obligation to the Welsh Government, the Agent, as more particularly described in its procurement strategy wishes to deliver its routine maintenance obligations in partnership with the Authorities in order to benefit from the existing skills and resources available
- (3) This Agreement is entered into to establish the relationship rights and liabilities between the Authorities in order to implement and develop a delivery partnership for the routine and cyclic maintenance and inspection based activities (which may or may not reduce during the Term) in accordance with the standards and priorities set out in the Agency Agreement.

**NOW IT IS AGREED** as follows:-

### 1. Definitions and interpretation

1.1 In this agreement unless the context otherwise requires:

"the 1972 Act" means the Local Government Act 1972

"the 1980 Act" means the Highways Act 1980

"the 1994 Act" means the Local Government (Wales) Act 1994

"the 1996 Act" means the Housing Grants, Construction and Regeneration Act 1996

"the 2000 Act" means the Local Government Act 2000

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Adverse Weather Service	is the Service provided by the Partner Authority to meet the requirements of the Agent’s published Adverse Weather Plan.
“Agent”	means Neath Port Talbot County Borough Council
Agent Director	means the Corporate Director at the Agent with responsibility for leading on the Agency Agreement
“Agency Agreement”	means the Welsh Government Managing Agent Agreement between the Welsh Government and the Agent relating to the maintenance and improvement of trunk roads made between the Welsh Government and the Agent commencing on the 1 <sup>st</sup> April 2016
“Agency Area”	means the trunk roads within the area defined by the Agency Agreement
“Agency Manager”	means the person appointed by the Agent to the post of managing the implementation of the Agency Agreement and also defined by the Agency Agreement
“The Service”	is work or works comprising Routine Cyclic Maintenance Activities; Reactive Maintenance; Adverse Weather Service; Emergency Works and Minor Improvements undertaken by the Partner Authority on behalf of the Agent to the Asset
“The Agreement”	is the Service Collaboration Agreement between the Authority as the Agent Authority and the Partner Authority.
“Area Information”	is contained within Volume F of the Service Collaboration Agreement and contains details required by the Partner Authority for the provision of the Service
“The Asset”	is the trunk road comprising the individual highway infrastructure components within the geographic extent of the boundaries indicated in Volume F of the Service Collaboration Agreement.
“The Agreement Manager”	is the Agency Manager, other delegated representative responsible for managing work under the Agreement or, where applicable, his nominated delegates from within the NMWTRA Trunk Road Management Unit (TRMU). The Agent is also the Client under the CDM 2015 Regulations for this Agreement.
“Authority” or “Partner Authority” or “Authorities”	means any one of the Authorities which for the purposes of this Agreement shall also include Neath Port Talbot County Borough Council in its own right and not as Agent
“Agent Works”	means works carried out pursuant to an Agent Works Order

“Agent Works Order”	Agent Works Order means an instruction issued by the Service Manager, Agreement Manager or his delegated representative to the Partner Authority Trunk Road Works Manager to carry out a Task as more particularly described in the Agent Works Order Instruction Form a sample of which is enclosed at Schedule Three
“Category 1 Defects”	are defects that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short term structural deterioration;
“Category 2 Defects”	are defects that are <u>not</u> Category 1 Defects
“Collaboration”	means the arrangements established by the Authorities for the implementation and administration of the Agency Agreement in respect of routine and cyclic maintenance and inspection based activities as more particularly described in this Agreement.
“Confidential Information”	means any information which has been designated as confidential by an Authority or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which related to the business, affairs, assets, goods or services or operations of the Authorities.
“Chief Officers”	means the Head of Paid Service or their delegated officers within each Authority
“Cyclical Maintenance Activity Schedule of Indicative Cost”	is the schedule contained in Volume D Appendix C within which the Partner Authority has entered his time-based costs for the provision of Routine Cyclic Maintenance Activities
“Agent’s Software Database System”	is the current version of the Agents’ standard software system for processing storing and managing data relating to the Asset and the Service
“Database”	is the relevant Agent’s intranet site as follows: For SWTRA, the SIMS site at: <a href="https://aspireview.aspiren.com/WelshPublicSector/Live/?instanceid=45">https://aspireview.aspiren.com/WelshPublicSector/Live/?instanceid=45</a> For NMWTRA SharePoint Collaboration Portal at <a href="https://nmwcp.gwynedd.gov.uk/default.aspx">https://nmwcp.gwynedd.gov.uk/default.aspx</a>
“Defect”	means something which is not in accordance with the Specification
“Defined Cost”	means the amount paid by the Authority in providing the Agent Works as more particularly defined at Schedule Four

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“Data Protection Act 1998”	means the Data Protection Act 1998 and includes any subordinate legislation made under this Act from time to time together with any guidance and/or code of practice issued by the Information Commissioner in relation to such legislation
“Duty Engineer”	is the Agent’s representatives responsible for managing and co-ordinating the response of the Agent to network incidents and adverse weather
“Duty Officer”	is the Partner Authority’s Works Unit representative responsible for managing and co-ordinating the response of the Partner Authority to network incidents and adverse weather and includes the role of Duty Winter Officer. The Duty Officer will liaise directly with Agreement Manager
“Emergency”	is an unforeseen event which directly or indirectly affects the Agency Area and causes or has the potential to cause disruption to the free flow of traffic within the Agency Area or threatens the safety of the users of the Agency Area or is an unforeseen event within the Agency Area likely to affect areas outside the Agency Area or is an immediate or imminent threat to the integrity of any part of the Agency Area or adjacent areas.
“Emergency Services”	includes representatives of the Police, Ambulance, or Fire Services or others (Category 1) authorised to deal with an Emergency within the Partnership Area or which has an effect upon the Partnership Area.
“Emergency Works”	are unforeseen renewal works repairs or other actions resulting from an Emergency event within the Asset.
“Financial Year”	means a period of 12 months commencing on 1 April in any year and ending on 31 March in the following year
“Fixed Cost Component Schedule”	is the schedule contained in Volume D Appendix A within which the Partner Authority has entered his fixed costs for providing all of the Service
“Government”	is the Welsh Government who has ultimate responsibility for the Trunk Roads in Wales.
“Government’s Vehicles”	are the vehicles owned by the Welsh Government and detailed in in Volume F of the Service Collaboration Agreement
“Head of Paid Service”	means the officer so designated under Section 4 of the Local Government and Housing Act 1989 by any Authority
“Highway Works”	are construction or maintenance works.

“Maintenance Works”	<p>are:</p> <ul style="list-style-type: none"> <li>• Works determined within the financial limits set out in the Price List</li> <li>• short term or Programmed Activities necessary to preserve the assets forming part of the Asset in a state of good repair,</li> <li>• reactive works to replace those parts of the Asset which have become unserviceable due to damage, defects and wear and tear</li> </ul> <p>emergency works to replace or renew those parts of the Asset resulting from incidents, weather related or other natural occurrences</p>
“Monthly Progress Meetings”	are those held in accordance with Volume C Clause 80002 AR.
“Network Incident”	is an event on or adjacent to the Trunk Road network which requires an Incident Response
“Overseeing Organisation”	means the Welsh Government
“Partner Representative”	means the delegated officer representative of each Authority appointed to the Executive Group and more particularly described in Schedule Two
“Personal Data”	shall have the meaning set out in the Data Protection Act 1998 and includes Sensitive Personal Data as defined by the same Act
“Service Collaboration Agreement”	and the Agreement is the formal Agreement between the Partner Authority and the Agent
“Partnership Area”	means the geographical area of Trunk Road Network defined in Volume F Section 1 of the Service Collaboration Agreement.
“Partner Authority Trunk Road Works Manager”	means the person undertaking that role under Volume C Clause 80003 AR
“Partner Authority”	is the organisation who has undertaken to deliver the Services to the Agent under the terms of the Service Collaboration Agreement
“Performance Improvement Plan and PIP”	means that part of the Partner Authority’s plan defined in Volume G of the Service Collaboration Agreement.

“Programmed Works”	are Improvements or planned maintenance work to enhance the Asset identified by the Agent and undertaken by the Agent’s Framework Contractor or the Partner Authority.  or Improvements identified in the Welsh Government’s Trunk Road Forward Programme
“Routine Cyclic Maintenance Activities”	are cyclical activities to be undertaken by the Partner Authority on an annual basis
“Re-active Works”	are works that the Partner Authority will be instructed to undertake on an ad-hoc basis by the Agent
“Risk Realisation”	means an additional sum calculated by the Agent payable to the Authorities in line with the principles of this Agreement
“Sub-Partner”	means a Local Authority who carries out work for the Partner Authority under this Agreement and who is not the Partner Authority
“Task”	means work within the service which the Agent may instruct the Authority to carry out within a stated period of time
“Task Completion Date”	means the date for completion stated in an Agent Works Order Instruction unless later changed in accordance with this Agreement.
“Termination”	means the termination of this Agreement pursuant to clause 14
“Trunk Roads”	mean the Agency Area highway network including motorways and special roads (where relevant), boundaries and operational interfaces identified in Volume F of the Service Collaboration Agreement
“TUPE Regulations”	means the means the Transfer of Undertakings (Protection of Employment) Regulations 2006
“Variable Cost Schedule of Indicative Cost”	is the schedule contained in Volume D Appendix B within which the Partner Authority has entered his variable labour, plant and material costs for for the provision of Reactive Works and Emergency Works
“Welsh Government”	means the Welsh Government of Cathays Park Cardiff CF10 3NQ

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“WTTC”	is the Welsh Transport Technology Consultant who manages the communications infrastructure and supporting control systems of the Asset on behalf of the Welsh Government.
“WGMA”	is the Welsh Government Agency Maintaining Agreement between the Welsh Government and the Agent
“Welsh Government Owned Asset”	is property owned or leased by the Welsh Government as identified in Volume F.

1.2 In this Agreement unless the context requires otherwise:

- (a) references to volumes, clauses, paragraphs, recitals and schedules are references to volumes, clauses and paragraphs of, and recitals and schedules to, this Agreement and any reference to a paragraph is to the relevant paragraph of the schedule in which the reference appears;
- (b) a reference to any statute or statutory provision shall include any subordinate legislation made under the relevant statute or statutory provision and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be, amended, modified or re-enacted (with or without modification) provided that no such amendment, modification or re-enactment made after the date hereof shall apply for the purposes of this Appointment to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;
- (c) references to a “**person**” shall be construed so as to include any individual, firm, corporation, government, state or agency of a state or any joint venture, trust, association or partnership local authority (whether or not having separate legal personality);
- (d) references to any gender shall include every gender, and the singular shall include the plural and vice versa;
- (e) references to “**indemnify**” and “**indemnifying**” any person against any circumstance include indemnifying and keeping that person harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses (including legal fees on a solicitor own client basis, taxes and fines) made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- (f) references to writing shall include any mode of reproducing words in a legible and non-transitory form;
- (g) references to a “**party**” or the “**parties**” mean any of the Authorities
- (h) the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word “**other**” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;



## Service Collaboration Agreement



- (i) the words “includes” and “including” shall be interpreted as “includes without limitation” and “including without limitation”;
- (j) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

1.3 The recitals and 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 any reference to this Agreement shall include the recitals and schedules.

1.4 The headings to clauses and schedules are for convenience only and shall not affect the construction or interpretation of this Agreement.

1.5 In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.

### 2. The Collaboration

2.1 This Agreement is made pursuant to the powers contained in the 1972 Act, Section 25 of the 1994 Act and section 20 of the 2000 Act as being conducive to the discharge of the functions of the Authorities as local highway authorities for the purposes of the 1980 Act

2.2 It is agreed between the Authorities that a delivery collaboration shall be established pursuant to section 101 of the 1972 Act section 25 of the 1994 Act and section 20 of the 2000 Act for the Collaboration and which shall be known as “South Wales Trunk Road Agent Service Collaboration Agreement”

2.3 The Collaboration shall operate in accordance with the terms of this Agreement.

2.4 This Agreement shall take effect from the 1<sup>st</sup> April 2016 and shall continue until Termination.

2.5 For the avoidance of doubt references in the schedules to the term year 1 or the first year shall be taken as meaning the 1<sup>st</sup> April 2016 until the 31<sup>st</sup> March 2017 and references to year 2 or the second year shall be taken as meaning the 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018

2.6 Notwithstanding the above each Authority is an independent body and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Authorities (except as expressly provided in this Agreement) of principal/agent or of employer/employee. No Authority shall have the right to act on behalf of another nor to bind the other by contract or otherwise except to the extent expressly permitted by the terms of this Agreement. In particular for the avoidance of doubt, none of the provisions relating to the principles of working in partnership shall be taken to establish any partnership as defined by The Partnership Act 1890.

### 3. Agreement Documents

3.1 The following documents form part of, or will, when agreed and approved by all parties form part of this Agreement:

- 3.1.1 Volume C The Specification
- 3.1.2 Volume D Costing and Payment Mechanism
- 3.1.3 Volume E Health, Safety and Environment



- 3.1.4 Volume F Asset Data and Network Information
- 3.1.5 Volume G Performance Management
- 3.1.6 Volume H Risk Registers
- 3.1.7 Volume I Reporting Forms
- 3.1.8 Volume J Testing
- 3.1.9 Volume K Special Requirements

Volumes A and B are Not Used

(hereinafter jointly referred to as “the Service Collaboration Agreement”)

## 4. Responsibilities of the Agent

4.1 The Agent shall be responsible for:

- 4.1.1 implementing the Agency Agreement and ensuring compliance with its requirements in respect of the Collaboration;
- 4.1.2 allocating services to the Partner Authority for the provision of the Agency Service;
- 4.1.3 coordinating the delivery of routine and cyclical maintenance services throughout the Authorities areas
- 4.1.4 being the source of all communication with the Welsh Government
- 4.1.5 servicing and supporting the management of this Agreement;
- 4.1.6 establishing Standing Orders, Financial Regulations, and Procurement Strategies
- 4.1.7 providing such services (including water and electricity) and “free issue” plant and materials and equipment as more particularly described in the Service Collaboration Agreement
- 4.1.8 providing a right of access for the Authority as necessary for the work included in this Agreement.
- 4.1.9 providing things which he is to provide as stated in the Service Collaboration Agreement.

4.2 Any right or responsibility of the Agent as Agent shall be exercised in accordance with this Agreement

## 5. Commencement and Term

- 5.1 This Agreement shall come into force on the date hereof
- 5.2 Termination shall be in accordance with clause 14
- 5.3 Following Termination of this Agreement whether pursuant to clause 14 or otherwise

- 5.3.1 The provisions of clauses 11, 12, 13, 15 and 16 shall bind the parties and remain in full force and effect notwithstanding Termination;
- 5.3.2 Any rights or obligations to which any of the parties may be entitled or be subject before Termination shall remain in full force and effect; and
- 5.3.3 Termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event which gave rise to the Termination or any other right to damages or other remedy which any party may have in respect of any breach of this Agreement which existed at or before the date of Termination

### **6. Staffing and Operational matters**

- 6.1 Provision of services within the Agency Area shall be by the Partner Authority in accordance with Service Collaboration Agreement or external contractors appointed in accordance with the Agent's procurement strategy
- 6.2 Partner Authorities may, if required by the Agent, operate within any part of the Agency Area in accordance with section 25 of the 1994 Act and in accordance with the Agency work allocation protocol contained within this Agreement
- 6.3 On the date of entering into this Agreement the Authorities are to confirm to the Agent that they have all necessary consents and delegations to perform the obligations of this Collaboration Agreement and shall provide the Agent with a list of officers who are authorised to accept Agent Works Orders
- 6.4 Authorities must ensure they appoint appropriate and suitably qualified personnel to undertake any Agent Works

### **7. Partnership Authorities**

- 7.1 The staff structure and appointment of staff for any Partnership Authority engaged in the provision of the Agency Service shall be the responsibility of the relevant Authority and each of the Authorities shall appoint sufficient and suitable staff to ensure that Partnership Authority meet their obligations under this Agreement.
- 7.2 Each Authority shall be responsible for executing its part of its obligations under this Agreement not only in accordance with the Service Collaboration Agreement agreed with that authority but also in a proper workmanlike and substantial manner in accordance with generally accepted practice and with due regard to all relevant health and safety requirements either by law or which it is best practice to provide and shall be responsible for the safety, proper functioning, fitness for purpose and compliance with all legal requirements of all plant tools and equipment it brings into the Service

### **8. Service Delivery**

- 8.1 Relevant (to be determined by the Agent alone) trunk road routine and cyclical maintenance and inspection type services shall be allocated by the Agent to each Authority in accordance with the plan annexed hereto at Schedule Two by way of an Agent Works Order Instruction and in accordance with the Service Collaboration Agreement.
- 8.2 Each Authority shall at all times comply with all codes of practice, laws and legal obligations relating (whether in whole or in part) relating to this Agreement and any Agent Works Order Instruction, including health and safety and non-discrimination laws, environmental laws and regulations and minimises any interference caused by their work, to the Agent and others.
- 8.3 Where an Agent Works Order Instruction is placed, the Authority will accept the appointment of Principal Contractor and Principal Designer in accordance with the Construction Design and Management Regulations as may be required by Volumes C and E of the Service Collaboration Agreement.
- 8.4 In the performance of any Agent Works Order Instructions, each Authority must conform with the obligations of this Agreement Each Authority shall ensure that it has sufficient and capable resources to deliver the service requirements set out in the Service Collaboration Agreement.
- 8.5 Each Authority shall be entitled to subcontract any elements of any Agent Works Order Instructions provided that the consent of the Agent is obtained, such consent is not to be unreasonably withheld. If Agent consent is given, such consent shall not relieve or excuse the Authority from any liability or obligation under the this Agreement and the Authority shall be responsible for the acts, defaults or neglect of any sub-contractor in all respects as if they were the acts, defaults or neglect of the Authority or his agents or employees. In the event of such defaults or neglect, Authorities may request the same be treated as a Risk Realisation Event and the Agent will accordingly make an application to the Welsh Government. Funding of such Risk Realisation Event will be at the discretion of the Welsh Government with no right of appeal for the Authorities
- 8.6 The Authorities undertake to use their best endeavours to provide the services set out in the Service Collaboration Agreement efficiently and demonstrably at good value for money and in accordance with the requirements of the Agency Agreement.
- 8.7 Each Authority shall submit to the Agent by the 1st February of each year of the term of this Agreement a procurement strategy that shall detail where applicable any sub contracted work where applicable that will not be delivered directly by the Authority. The Agent will respond to the procurement strategy within 4 weeks either accepting it or requesting changes be made.
- 8.8 The updated programme, resource schedule and indicative price list (as more particularly defined in the Volume D) and a list of works they wish to subcontract is to be submitted for the following financial year (commencing 1st April) will be submitted by the Authority by 1st February for agreement by the Agent. The Agent will respond to the updated programme, resource schedule and price list within 4 weeks either accepting it or requesting changes be made.
- 8.9 The Authority does not start work until the commencement date and provides the Agent Works until the later of the end of the service period and the latest Task Completion Date.
- 8.10 The Agent may instruct the Authority to stop or not to start any work and may later instruct him to re-start or start it.

## 9. Management

- 9.1 This Agreement shall be managed in accordance with the provisions of Schedule One
- 9.2 Each of the Authorities in performance of their obligations under this Agreement and any Agent Works Order Instruction shall at all times act in the spirit of mutual trust and cooperation
- 9.3 The provisions of this Agreement shall be reviewed annually
- 9.4 Each Authority hereby agrees that for the purposes of the maintenance work undertaken by each Authority the Housing Grants, Construction and Regeneration Act 1996 as may be amended from time to time will apply

## 10. Communications

- 10.1 Each communication which this Agreement requires has effect when it is received in writing at the last address notified by the recipient for receiving communications.
- 10.2 If this Agreement requires the Agent or the Authority to reply to a communication, unless otherwise stated in this Agreement, he replies within the period for reply.
- 10.3 For the purposes of clause 10.2 the period for reply shall be 2 weeks
- 10.4 Either party may request, in writing, an extension of time for reply. The other party at its discretion may within one week grant in writing an extension of time to reply.

## 11. Defects

- 11.1 The Agent may notify a Defect at any time before the later of the end of the service period and the latest date for completion of a Task.
- 11.2 The Authority corrects Defects whether notified or not, within a time which minimises the adverse effect on the Agent and others
- 11.3 The Authority and the Agent may each propose to the other that the Service Collaboration Agreement should be changed so that a Defect does not have to be corrected. If the Authority and the Agent are prepared to consider the change, the Authority submits a quotation for reduced Prices to the Agent for acceptance. If the Agent accepts the quotation, he gives an instruction to change the Service Collaboration Agreement and the Prices accordingly.
- 11.4 Failure to address Defects will follow the process outlined in Volume G
- 11.5 If the Authority has not corrected a notified Defect within the time required by this Agreement, the Agent shall arrange completion of the notified Defect

## 12. Property

- 12.1 Each Partner Authority shall provide and shall repair and maintain all property, assets and vehicles required to perform any Agency Service as identified in Volume C & F of the Service Collaboration Agreement
- 12.2 Each Partner Authority shall provide and shall repair and maintain all plant tools and equipment required to perform any Agency Service
- 12.3 If any plant tools or equipment are provided to an Authority by the Agent then the Agent shall ensure that adequate insurance arrangements are in place for the use of such plant tools or equipment. Prior to use of such plant tool or equipment the Authority shall produce to the Agent details of those suitably qualified staff who are able to utilise such plant tools or equipment along with any details so required by the Agent to determine whether such suitably qualified staff are able to use such plant tools or equipment. For the avoidance of doubt no plant tools or equipment shall be utilise by those suitably qualified staff who have not been approved by the Agent. Where such plant tools or equipment are provided the Authorities shall take all reasonable measures required to preserve them in good condition, including all day-to-day maintenance, and shall promptly deliver them up to the lender on request as soon as they are no longer required.
- 12.4 If any plant tools or equipment are lent or hired by any Authority (including the Agent) to another, the provisions of this clause 12.4 shall apply. Prior to use of such plant tool or equipment the Authority shall produce to the Agent details of those suitably qualified staff who are able to utilise such plant tools or equipment along with any details so required by the Agent to determine whether such suitably qualified staff are able to use such plant tools or equipment. For the avoidance of doubt no plant tools or equipment shall be utilised by those suitably qualified staff who have not been approved by the Agent. The borrowing Authority shall take all reasonable measures required to preserve them in good condition, including all day-to-day maintenance, and shall promptly deliver them up to the lender on request as soon as they are no longer required. Where loaned equipment is permanently damaged or lost, the borrower shall arrange to provide the lender with a replacement or with its equivalent market value, as the lender desires.
- 12.5 Following the completion of an Agent Works Order Instruction, the Authority
- 12.5.1 returns to the Agent, equipment and any other such items provided by the Agent,
  - 12.5.2 provides items of equipment only if operated by the Authority's staff for the Agent's use as stated in the Service Collaboration Agreement and
  - 12.5.3 provides information for the Agent's use as stated in the Service Collaboration Agreement.

## 13. Liability and Insurance

- 13.1 In the event of:
- 13.1.1 a successful claim being brought against any or more than one of the Authorities arising in respect of negligence, nuisance, breach of statutory duty or any other tort or in

respect of any other legal right or remedy, howsoever arising out of the performance of the works under the Agency Agreement,

- 13.1.2 Including, for the avoidance of doubt breach of the conditions or requirements of the Agency Agreement or
- 13.1.3 any occurrence affecting or abating the valuation of any work or materials supplied pursuant to the Agency Agreement resulting from a breach thereof by any Authority, or
- 13.1.4 a successful prosecution against any Authority or their employees in respect of any failure to comply with any legal requirement to be complied with during the course of the works under the Agency,
- 13.1.5 a successful claim or abatement of payment from the Welsh Government to the Local Authority to the Agent as a result of a breach of the Agency Agreement or a failure to meet its requirements.

then as between the Authorities all liabilities, costs, claims, demands, expenses, fines and other penalties (including legal fees and expenses) arising therefrom or in any way relating thereto shall be borne by any Authority to the extent of its responsibility and each of the Authorities shall indemnify and keep indemnified and account to the other Authorities accordingly.

13.2 Where the Agent appoints an Authority to undertake an Agent Works Order Instruction, the following provisions shall apply:

- 13.2.1 The Agent indemnifies the Authority against claims, proceedings, compensation and costs payable which are the unavoidable result and arise from
  - 13.2.1.1 fault,
  - 13.2.1.2 negligence,
  - 13.2.1.3 breach of statutory duty,
  - 13.2.1.4 infringement of an intellectual property right or
  - 13.2.1.5 interference with a legal right

by the Agent or by a person employed by or contracted to the Agent

- 13.2.2 The Authority indemnifies the Agent against claims, proceedings, compensation and costs payable which are the unavoidable result and arise from
  - 13.2.2.1 fault, negligence, breach of statutory duty, infringement of an intellectual property right or interference with a legal right and
  - 13.2.2.3 claims, proceedings, compensation and costs payable arising from or in connection with the Authority's fulfilling the Agent Works Order Instruction caused by fault, negligence, breach of statutory duty, infringement of an intellectual property right or interference with a legal right on the part of the Authority

13.2.3 The liability of each Authority to indemnify the other is reduced to the extent that events which are the other Authority's responsibility contributed to the losses, claims, proceedings, compensation and costs.

13.3 Each of the Authorities shall ensure that for the duration of this Agreement they have in place the following insurance

13.3.1 public liability insurance with a minimum limit of £10,000,000 per any one occurrence;

13.3.2 professional indemnity insurance with a minimum limit of £10,000,000 per any one occurrence

13.3.3 contractors all risk insurance with a minimum limit of £10,000,000 per any one occurrence

13.3.4 employers liability insurance with a minimum limit of £10,000,000 per any one occurrence; and

13.4 The provisions of this clause shall survive the termination of this Agreement

## 14. Termination

### Termination of the Agency Agreement

14.1 In the event of the termination of the Agency Agreement this Agreement shall automatically terminate on the same date as the effective termination of the Agency Agreement. Any costs which cannot be reclaimed under the terms of this Agreement shall be borne by each Authority in their own right

### Termination by default

14.2 In the event that an Authority (save for the Agent) commits a breach of its obligations under this Agreement the Agent shall serve on the Authority a written notice specifying such breach and the Authority shall within twenty eight calendar days remedy such breach.

14.3 In the event of more than one notice served under clause 14.2 in a calendar year then or alternatively within twenty eight calendar days of an unsatisfactory performance review, the Authority shall produce a plan setting out the following:-

14.3.1 Proposals and timescales for bringing that aspect of the service up to a satisfactory standard.

14.3.2 The agreed corrective action to prevent unsatisfactory performance in the future.

14.3.3 Proposals for additional monitoring and any future targets.

Hereinafter referred to as an "Improvement Plan"

14.4 If a notice served under clause 14.2 is not complied or unsatisfactory performance or failure is not corrected by the Authority following the submission of its Improvement Plan within agreed



timescales or if there are two or more aspects of unsatisfactory performance or failure occurring at any one time, the Agent may take remedial action within the terms of the Agreement on the Authority for all or part of the services, which may include making alternative arrangements for the relevant work or function to be undertaken by others.

#### **Termination without fault**

- 14.5 This Agreement may be terminated on the 1st April in any year by any one or more of the Authorities serving on the other Authorities no less than six calendar months' notice of termination ("the Notice of Termination") whereupon the remaining Authorities may conclude a revised partnership between themselves save where the terminating authority is the Agent. Such Notice of Termination may not expire between the periods of 1st October and 31st March of year of the duration of this Agreement
- 14.6 In the event that no revised partnership is set up the Agent may make such arrangements as are necessary to provide the Agency Service either to the continuing satisfaction of the Welsh Government or until such time as a new Agency Agreement is entered into by the Welsh Government

#### **Determination of Agreement by the Courts**

- 14.7 Where the courts have determined that this Agreement should not have been awarded because the Agent committed a breach of its statutory obligations then this Agreement shall terminate within 3 calendar months of the date of judgement of the court unless any decision is appealed beforehand. For the avoidance of doubt in respect of such judgement the Authorities shall not be entitled to any further payment in accordance with the terms of this Agreement. In the event of any losses or debts incurred as a result of such judgement, Authorities may request the same be treated as a Risk Realisation Event and the Agent will accordingly make an application to the Welsh Government. Funding of such Risk Realisation Event will be at the discretion of the Welsh Government with no right of appeal for the Authorities

**PROVIDED THAT** in any event of Termination of this Agreement

- 14.8 any rights or obligations to which any of the Authorities may be entitled or be subject before Termination shall remain in full force and effect; and
- 14.9 Termination shall not affect or prejudice any right to damages or other remedy which any party to this Agreement may have which existed at or before the date of Termination or which occurred as a result of any act or omission prior to Termination

#### **15. Financial Arrangements and Payment Mechanism**

- 15.1 The financial arrangements associated with the administration of the Collaboration shall be as set out in Schedule Four and Volume D of the Service Collaboration Agreement.





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## 16. Risk

16.1 Risks associated with the administration of the Collaboration shall be as set out in Volume H of the Service Collaboration Agreement.

## 17. Confidentiality

17.1 The Authorities shall:

- 17.1.1 treat all Confidential Information as confidential and safeguard it accordingly and
- 17.1.2 not disclose any Confidential Information of any other Authority without the prior written consent of that Authority, except to such person and to such extent as may be necessary for the performance of this Agreement

17.2 Each Authority shall take all necessary precautions to ensure that all Confidential Information obtained from other Authorities under or in connection with this Agreement

- 17.2.1 is given only to such of the staff or contractors engaged in connection with the performance of this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for performance of this Agreement;
- 17.2.2 is treated as confidential and not disclosed (without prior approval) or used by any person otherwise than for the purposes of this Agreement.

17.3 Each Authority shall ensure that its staff are aware of the confidentiality obligations under this Agreement

17.4 Each Authority shall not use any Confidential Information it received from another Authority otherwise than for the purposes of this Agreement

## 18. Data Protection

18.1 The Authorities agree to comply and have adequate measures in place to ensure all its officers, employees, servants, contractors or agents comply at all times with the provisions and obligations of the Data Protection Act 1998 and in particular

- 18.1.1 the Authorities shall not use Personal Data or any part thereof for any purposes whatsoever other than for the purpose of performing this Agreement
- 18.1.2 the Authorities shall keep and dispose of all Personal Data in a safe and secure manner
- 18.1.3 the Authorities shall retain all Personal Data for only as long as is necessary for performing this Agreement



18.1.4 the Authorities shall immediately inform the Host Authority of any breaches or suspected breaches of the provisions of the Data Protection Act 1998 in relation to information obtained in the course of performing the this Agreement

**19. Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and complaints**

19.1 The Authorities acknowledge that they are subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 together referred to as (FOIA) and all information held by the Authorities is subject to this Legislation

19.2 The Authorities shall provide all necessary assistance as reasonably requested by each other to respond to a request made under FOIA in accordance with the legislation

19.3 Each Authority shall be responsible for determining at its absolute discretion whether information held by it is exempt from disclosure in accordance with the provisions of FOIA and whether the information is to be disclosed in respect of any request made to it

19.4 Authorities shall provide all necessary information to each other to answer any complaints under their complaints procedures or enquiries from any statutory body

**20. Force Majeure**

20.1 Notwithstanding anything else contained in this Agreement no Authority shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not by way of limitation national emergency war flood earthquake strike or lockout other than a strike or lockout induced by the Authority so incapacitated, imposition of governmental regulations or law which renders performance of the Agreement impossible

20.2 The Authorities agree to give written notice forthwith to the other upon becoming aware of the reasons likely to result in a delay and of the likely duration of the delay and subject to the giving of each notice, the performance of such notifying Authority's obligations shall be suspended during the period such circumstances persist and such notifying Authority obligations shall be granted an extension of time for performance equal to the period of the delay.

**21. Variation**

If all Authorities agree to changes to this Agreement a memorandum of variation shall be prepared by the Agent for execution on behalf of the Authorities by the same method of execution of this Agreement and appended to this Agreement

**22. Statutory change to status of Authorities**



Authorities may transfer or novate the whole of this Agreement to another public authority constituted or authorised to discharge the functions and/or responsibilities of that particular Authority under this Agreement.

### **23. Severability**

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

### **24. Entire Agreement**

24.1 This Agreement constitutes the entire agreement and understanding of the Authorities and supersedes any previous agreement between the Authorities relating to the subject matter of this Agreement

24.2 Each of the Authorities acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement representation warranty or understanding whether negligently or innocently made of any person whether party to this Agreement or not other than as expressly set out in this Agreement

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

25.1 The Authorities agree that the provisions of the said Act are hereby excluded

### **26. Co-operation**

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

### **27. Litigation**



## Service Collaboration Agreement



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- 27.1 The Authorities agree to promptly notify the others by written notice upon becoming aware of or in receipt of any process or other notice of the commencement of proceedings in which any Authority is named in connection with this Agreement
- 27.2 No litigation will be commenced in connection with anything arising out of this Agreement without the prior written notification to the Authorities
- 27.3 The Authorities shall fully and effectively co-operate with each other in the prosecution defence settlement negotiations in relation to proceedings
- 27.4 No settlement of any claim made against any Authority in connection with or arising from this Agreement, will be made without that Authority's consent



## 28. Dispute relating to this Collaboration Agreement

28.1 Without prejudice to the obligations in clause 29 prior to any dispute difference or disagreement pursuant to the remaining provisions of this clause 28 the Authorities shall seek to resolve the matter as follows:

- 28.1.1 in the first instance the issue shall be referred to the Executive Group
- 28.1.2 if the aforementioned chief officers are unable to resolve the matter within 30 working days then the issue shall be referred to the Head of Paid Service of the Local Authorities and the Chief Executive officer of the other Authority
- 28.1.3 if the Heads of Paid Service are not able to resolve the matter within a further thirty (30) working days then decision shall be reached between them as to what steps should then be put in place to resolve such dispute difference or disagreement

## 29. Notices

29.1 Any demand notice or other communication given or made under or in connection with this Agreement will be in writing and sent to the Head of Paid Service of any Authority

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

- 29.2.1 if sent by prepaid first class post on the second working day after the date of posting or
- 29.2.2 if delivered by hand upon delivery at the address provided for in this Agreement or
- 29.2.3 if sent by facsimile on the day of transmission provided that a confirmatory copy is sent by pre-paid first class post on the same working day that the facsimile is transmitted  
provided however that if it is delivered by hand or sent by facsimile or email on a day which is not a working day or after 4.00pm on a working day it will instead be deemed to have been given or made on the next working day

29.3 Any such demand notice or other communication will in the case of this Agreement by post or delivery by hand be addressed to the recipient's address stated in this Agreement or at such other address as may from time to time be notified in writing by the Authorities as being the address for service

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

## 30. Governing Law

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

### 31. TUPE Regulations

- 31.1 The TUPE Regulations may apply to the expiry or termination of this agreement and the parties agree that in the event that the TUPE Regulations do so apply, the contracts of employment of any relevant employees shall transfer to a successor organisation as at the date of expiry or termination. In the event that the TUPE Regulations do apply the Authorities shall:
- 31.1.1 ensure that all wages, salaries and other benefits including without limitation all holiday pay, payments of PAYE, national insurance contributions and pension contributions of any relevant employees and other employees including former employees of the Authorities who have been engaged in the Collaboration up to the date of termination are satisfied;
  - 31.1.2 indemnify and keep indemnified the Agent from and against all actions and proceedings and all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) arising from any claim whatsoever by any current or former employee of the Authorities in respect of or in any way relating to any period prior to and including the date of expiry or termination;
  - 31.1.3 comply with its obligations under Regulation 11 and 13 of the TUPE Regulations and shall indemnify the Agent against all liability, loss, damages, injury, claims, costs and expenses (including legal expenses) as a result of or in connection with any breach by the Company of Regulation 11 and/or 13 of the TUPE Regulations.
- 31.2 In the event that the TUPE Regulations do apply the Agent shall use its reasonable endeavours to procure that any successor organisation shall be responsible for the payment of all salaries and the provision of all other benefits (together with relevant deductions) for the relevant employees from the date of expiry or termination. In the event that the TUPE Regulations do not apply on expiry or termination of this agreement, the Authorities shall be responsible for any ongoing costs (including redundancy payments) in relation to all of its employees and shall indemnify the Agent against all Direct Losses arising from any claim whatsoever by or on behalf of any current or former employee of the Authorities or person who is or has at any time been engaged in the provision of the Collaboration prior to the date of expiry or termination or otherwise.
- 31.3 The Authorities shall within a period of six (6) months prior to the expiry of this agreement or following notification by the Agent to the Authorities of its intention to terminate or re-tender this agreement:
- 31.3.1 provide to the Agent promptly and at no cost full and accurate details regarding the number, identity, age, sex, length of service, job title and terms and conditions of employment, which shall include, but without limitation, all employee liability information under Regulation 11 of the TUPE Regulations, in respect of any person employed or engaged by the Company in the provision of the Collaboration (“Authority Assigned Employees”) who it is expected, if they remain in the employment of the Company until immediately before the date of expiry or termination, would be relevant employees (“Retendering Information”);



## Service Collaboration Agreement



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- 31.3.2 notify the Agent immediately in writing of any material changes to the Retendering Information as and when such changes arise;
- 31.3.3 be precluded from making any increase or decrease in the numbers of Authority Assigned Employees without the prior written consent of the Authority (such consent not to be unreasonably withheld);
- 31.3.4 be precluded from transferring any of the Authority Assigned Employees to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the Collaboration without the prior written consent of the Agent (such consent not to be unreasonably withheld); and
- 31.3.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of employment of the Authority Assigned Employees without the prior written consent of the Agent (such consent not to be unreasonably withheld).
- 31.4 The Authorities shall indemnify and keep indemnified in full the Agent against all losses arising from any claim by any party as a result of the Authority failing to provide or promptly to provide the Agent with any Retendering Information or failing to provide full Retendering Information or as a result of any material inaccuracy in or omission from the Retendering Information.



## Service Collaboration Agreement



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**IN WITNESS WHEREOF** this Agreement has been duly executed and delivered the day and year first above written

The Common Seal of )  
**Neath Port Talbot CBC** )  
was hereunto affixed in the presence of:- )

Proper Officer

The Common Seal of )  
**Carmarthenshire CC** )  
was hereunto affixed in the presence of:- )

Authorised Signatory

The Common Seal of )  
**Monmouthshire CC** )  
was hereunto affixed in the presence of:- )

Authorised Signatory



## SCHEDULE ONE

### Establishment of Executive Group

#### 1. The Executive Group

- 1.1 The Authorities shall establish the Executive Group in accordance with the provisions of this Schedule to undertake the duties and responsibilities assigned to it under this Agreement.
- 1.2 The Authorities shall certify to the Agent that they have delegated to their representative on the Executive Group all powers and duties require to fulfil the requirements of this Agreement.

#### 2. The Duties and Responsibilities of the Executive Group

- 2.1 The role of the Executive Group is to support the Agent in ensuring that the delivery of routine and cyclical activities as more particular described in this Agreement are in accordance with the Agency Agreement, Welsh Government requirements and to place the Agent and the Authorities with the best opportunity to retain the Agency Agreement.
- 2.2 The duties required to support this role are as listed below:
  - 2.2.1 to undertake the Collaboration in accordance with the Service Collaboration Agreement(s) identified, to receive reports on the management of the Collaboration and to take any necessary action to ensure that the operation of this Agreement is satisfactory
  - 2.2.2 to comply with all relevant standards for the Collaboration
  - 2.2.3 to ensure that the Service Collaboration Agreement is delivered in line with the efficiency saving proposals submitted in response to the Welsh Government's review of Trunk Road Services
  - 2.2.4 to ensure that the Service Collaboration Agreement is costed in accordance with requirements of the Welsh Governments to have a fully transparent cost recovery model
  - 2.2.5 to monitor, review and ensure mechanisms are in place to deliver and maintain the performance requirements stipulated in Volume G of the Service Collaboration Agreement
  - 2.2.6 to monitor, review and ensure mechanisms are in place to deliver and maintain the service quality levels stipulated in Specification in Volume C of the Service Collaboration Agreement
  - 2.2.7 to develop proposals for such additional services as may be appropriate
  - 2.2.8 to obtain appropriate advice, assistance and services and where necessary authorise the Agent to undertake the procurement of consultants and advisers



## Service Collaboration Agreement



- 2.2.9 to co-ordinate and respond to consultations which have implications for the Agency Area
- 2.2.10 to provide advice to the Authorities on strategic regional and local policy on Collaboration issues in the Agency Area
- 2.2.11 to do such other things in accordance with the terms of this Agreement as may be agreed from time to time by the Authorities
- 2.2.12 to liaise with the Agent to produce a report to the Executive Group on the performance of all Authorities in their performance of their obligations.

### **3. Establishment and Constitution**

- 3.1 There shall be constituted an Executive Group consisting of one representative appointed by each of the Authorities
- 3.2 Having the functions, powers and duties described in this Agreement
- 3.3 Upon and subject to the terms and conditions described in this Agreement

### **4. Appointment of Representatives**

- 4.1 Each of the Authorities shall appoint a Partner Representative who shall hold office until
  - 4.1.1 he or she ceases to be an Employee of the Authority he or she represents
  - 4.1.2 the Authority has decided that another person should act in his or her place and has advised the Agent of that in writing
  - 4.1.3 the person is suspended from his or her employment

and the first Partner Representatives shall be:-

Agent Director -	Mr Gareth Nutt
Agent Representative -	Mr Richard Jones
Carmarthenshire County Council -	Ms Ruth Mullin
Monmouthshire County Council	Mr Roger Hoggins

- 4.2 The Authorities may also nominate a substitute in the temporary absence of the Partner Representative
- 4.3 It is the responsibility of each Partner Representative including any substitute to secure full delegated authority from their employer to undertake functions in management of the Service contained in this Agreement

## **5. Meetings**

- 5.1 Executive Group meetings shall be held at least quarterly each year but additional non-scheduled meetings may be convened if a Partner Representative requests such a meeting or a meeting is requested by the Agent
- 5.2 Meetings shall be held at the office of the Agent or a location to be agreed by the Executive Group but in default of agreement at the offices of the Agent
- 5.3 At the first meeting convened under this Agreement and at subsequent meetings the members of the Executive Group shall agree the timetable for meetings for the forthcoming year
- 5.4 Any meeting shall require 7 days written notice to be given to the members of the Executive Group save in the case of an emergency when a shorter period of notice can be given if all the members of the Executive Group agree to accept such shorter period of notice

## **6. Chair**

- 6.1 The Executive Group shall be chaired by the Agent Director

## **7. Minutes**

- 7.1 The minutes of any meeting shall be delivered to all members of the Executive Group within 10 working days of the meeting being held by the Agent

## **8. Method of Decision Making**

- 8.1 The Executive Group is not a corporate body and cannot make decisions by majority vote and as a consequence of this it must act by the Representative exercising their delegated power
- 8.2 The Executive Group will therefore act by unanimous decision making subject to the Dispute Resolution Procedure set out in clause 28 of this Agreement

## **9. Quorum**

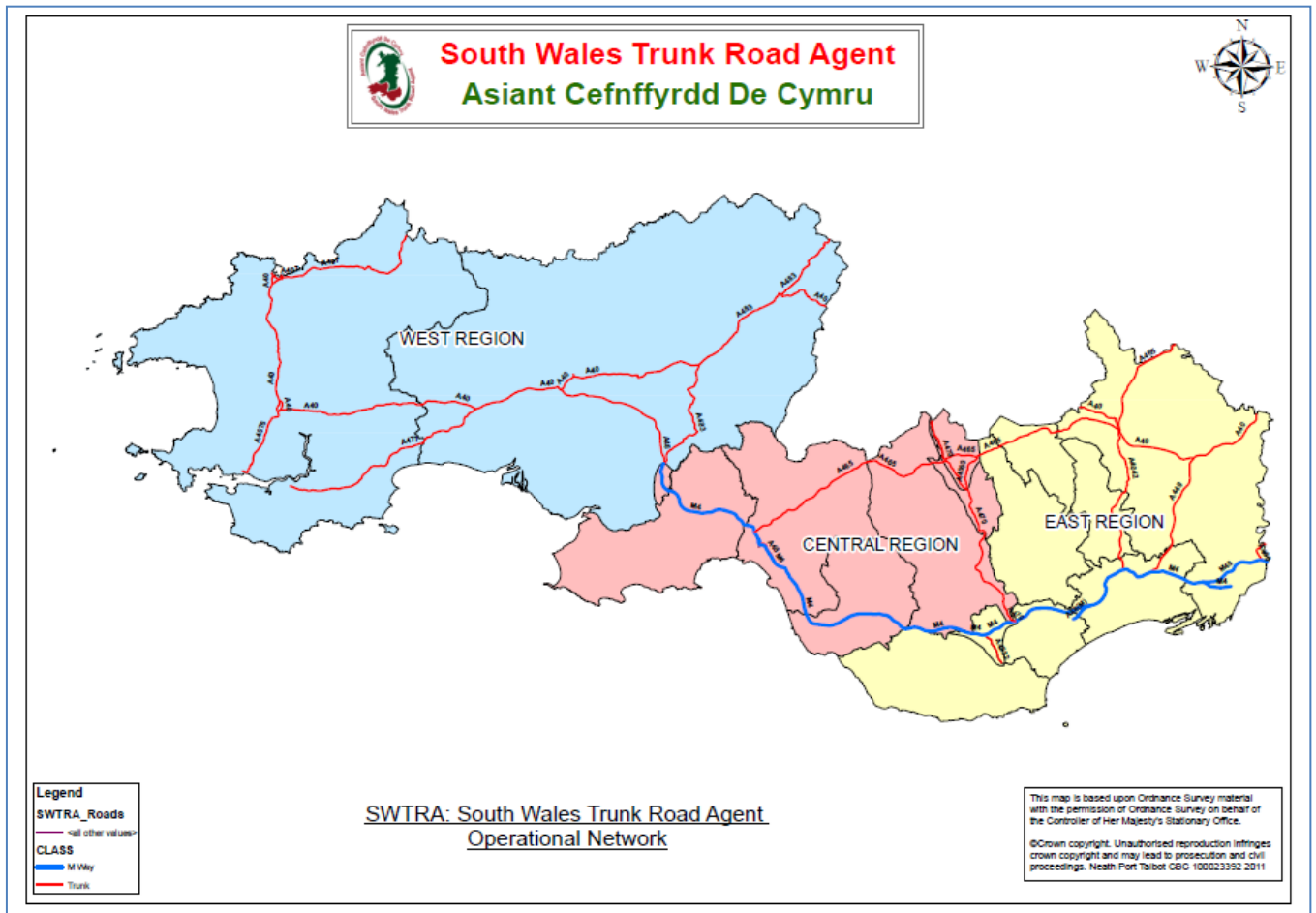
- 9.1 To constitute a valid decision of the Executive Group the representatives of each Authority must be present throughout the discussion of any item of business

## **10. Urgent Action**

- 10.1 In cases of urgency Partner Representatives may agree any course of action within the remit of the Executive Group in writing which shall include exchange of emails

**SCHEDULE TWO**

**South Wales Trunk Road Agent Operational Network Plan**



**West Region**  
**Central Region**  
**East Region**

**Carmarthenshire County Council**  
**Neath Port Talbot County Borough Council (Agent)**  
**Monmouthshire County Council**



# Service Collaboration Agreement



## SCHEDULE THREE

### WORKS ORDER INSTRUCTION

#### Agent Works Order



**Asiant Cefnffyrdd De Cymru**  
**South Wales Trunk Road Agent**

#### Contract Details:

To:		Works Order No:	
Description:	SAMPLE		
A&E Issue Date:		TO Raised:	
Estimated Cost:		Recharge No:	
Contact for the Works:		Scheme Type:	
Raised By:		Authorised By:	

#### Works Details

Temporary Repair Due:	
Road Name:	
Defect ID:	
Defect Description:	
Defect Location:	
Defect Priority:	

BOQ Item	Description	Quantity	Rate

Is a permanent repair required: **Yes**

If Yes: **7 Working Day Repair**

Est. Commencement Date	
Permanent Repair Due:	
Road Name:	
Defect ID:	
Defect Description:	
Defect Location:	
Defect Priority:	
Est. Completion Date	

BOQ Item	Description	Quantity	Rate
	SAMPLE		

**Overall Total:** £

Received for Partner Authority By: \_\_\_\_\_ Date & Time: \_\_\_\_\_

Actual Costs:		Actual Commencement Date:	
		Actual Completion Date	

Certified Costs: \_\_\_\_\_ For Agent\_SAMPLE For Partner Authority.



# Service Collaboration Agreement



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**Certified Complete:** \_\_\_\_\_ **For Agent** \_\_\_\_\_ **For Partner Authority.**

## SCHEDULE FOUR

### 1. General

1.1 The following Clauses apply to Application for Payment and shall be read in conjunction of Volume D of the Service Collaboration Agreement and the Sample Forms and the Flowcharts at the end of this Schedule.

### 2. Price

2.1 The Price or Prices is the total price entered by the Authority against an item in the Schedule of Indicative Costs appended to Volume D of the Service Collaboration Agreement.

### 3. Defined Cost

3.1 "Defined Cost is the amount paid by the Authority in providing the Service (excluding any tax which the Authority can recover and overheads) for.

- *people employed by the Authority,*
- *plant and materials,*
- *work subcontracted by the Authority and*
- *equipment.*

3.2 The amount for equipment includes amounts paid for hired equipment and an amount for the use of equipment owned by the Authority which is the amount the Authority would have paid if the equipment had been hired"

### 4. Payment

#### Assessing the amount due

4.1 The Authority assesses the amount due and, by each assessment day, applies to the Agent for payment of the change in the amount due since the last payment. There is an assessment day in each month from the starting date until the month after the later of the end of the service period and the latest date for completion of a Task.

#### The amount due is

- 4.2 the total Cost (being the actual costs incurred with any agreed overheads) of programmed Routine Cyclic Maintenance Activities in the Schedule of Indicative Costs at Appendix C to Volume D of the Service Delivery Agreement based on the proportion of work completed against the agreed resourced programme for the Routine Cyclic Maintenance Activity(ies)
- 4.3 1/12th of the total of the Fixed Costs in the Price Schedules at Appendix A to Volume D of the Service Collaboration Agreement
- 4.4 the Price for each item in the Schedule of Indicative Costs appended to Volume D of the Service Delivery Agreement or Agent Works Order which the Authority has completed where a quantity is stated for an item in the Schedule of Indicative Costs at Appendix D to Volume D of the Service Collaboration Agreement for each Agent Works Order, the amount due is calculated by multiplying

the quantity which the Authority has completed by the rate in the Schedule of Indicative Costs at Appendix C to Volume D of the Service Delivery Agreement plus,

- any tax which the law requires the Agent to pay to the Authority and
- other amounts to be paid to the Authority, less
- amounts to be paid by or retained from the Authority.

4.5 The Agent corrects any wrongly calculated amount due and notifies the Authority of the correction before paying the Authority.

### **Payment Terms**

4.6 The frequency of valuation of Authority's application for payment will be monthly, on the assessment day which is the first working day of each month

4.7 Certification of the amount due will be within 7 days of the assessment day and payment of the amount due made within 21 days of the assessment day.

### **Interest**

4.8 Interest is paid if a payment is late or includes a correction of an earlier payment. Interest is assessed from the date by which the correct payment should have been made until the date when it is paid.

4.9 Interest on late payment will be paid at a rate of 2% above Bank of England base rate.

## **5. Early Warning**

5.1 The Authority and the Agent give an early warning by notifying the other as soon as either becomes aware of any matter which could

- increase the total of the Prices,
- interfere with the timing of the service or
- impair the effectiveness of the service.

5.2 The Authority may give an early warning by notifying the Agent of any other matter which could increase his total cost. Early warning of a matter for which a Risk Realisation event has previously been notified is not required.

5.3 The Authority and the Agent co-operate in making and considering proposals for how the effect of each matter which has been notified as an early warning can be avoided or reduced and deciding and recording actions to be taken.

## **6. Risk Realisation Risk Realisation**

### **Risk Realisation events**

6.1 The following are Risk Realisation events.

- 6.1.1 The Agent gives an instruction changing the Service Collaboration Agreement unless the change is in order to make a Defect acceptable.



- 6.1.2 The Agent does not provide
- a right of access or
  - other things which he is to provide as stated in the Service Collaboration Agreement.
- 6.1.3 The Agent gives an instruction to stop or not to start any work unless the instruction arises from a fault of the Authority.
- 6.1.4 The Agent does not reply to a communication from the Authority within the period required by this Agreement.
- 6.1.5 The Agent changes a decision which he has previously communicated to the Authority.
- 6.1.6 The Agent does not work in accordance with a Task Programme agreed under Appendix 1/13 of Volume C or within the conditions stated in the Service Collaboration Agreement.
- 6.1.7 The Agent gives an instruction changing an Agent Works Order Instruction.
- 6.2 Within the allowance of the hourly rate applied to staff within the SCA, an allowance of 324 hours per operative has been made for non-productive time. This allowance is to cover annual leave, bank holidays and short term sickness absence. In the event that the combined non-productive time of the workforce exceeds the cumulative allowance provided, then the Authority will be required to notify of the Agent by means of a Risk Realisation event. The Authority will seek to mitigate any such costs by instigating occupational health checks etc., and undertake all measures to facilitate staff to return to work soonest, in accordance with their individual Human Resources policies.' 'Long term sickness absence, as defined in accord with the individual Authority Human Resource policies, will be treated as a Risk Realisation event, and the Agent will be notified via such. The Authority will seek to mitigate any such costs by instigating occupational health checks etc., and undertake all measures to facilitate staff to return to work soonest, in accordance with their individual Human Resources policies.'

### **Notifying Risk Realisation events**

- 6.3 The Authority notifies the Agent of an event which has happened or which he expects to happen as a Risk Realisation event. If the Authority does not notify a Risk Realisation event within one week of becoming aware of the event, he is not entitled to a change in the Prices or a Task Completion Date unless the event arises from an instruction of the Agent.
- 6.4 The Agent notifies the Authority of his decision whether the event is a Risk Realisation event within one week of the Authority's notification to the Agent of the event. If the Agent agrees that the event is a Risk Realisation event, he includes with his notification an instruction to the Authority to submit a quotation for the event.

### **Quotations for Risk Realisation events**



## Service Collaboration Agreement



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- 6.5 A quotation for a Risk Realisation event comprises proposed changes to the Prices or rates assessed by the Authority. The assessment of a change to an Agent Works Order Instruction may include a proposed change to the Task Completion Date. The Authority submits details of his assessment with each quotation. The Authority submits a quotation within one week of being instructed to do so by the Agent or, if no such instruction is received, within one week of the notification of a Risk Realisation event.
- 6.6 If the Authority does not provide a quotation for a Risk Realisation event within the time allowed, the Agent assesses the Risk Realisation event and notifies the Authority of his assessment.
- 6.7 The Agent replies within one week of the Authority's submission accepting or disagreeing with the quotation.
- 6.8 If the Agent does not agree with the quotation, the Authority may submit a revised quotation within one week of the Agent's reply. If the Agent does not agree with the revised quotation or if none is received, the Agent assesses the Risk Realisation event and notifies the Authority of his assessment.

### Assessing Risk Realisation events

- 6.9 For a Risk Realisation event which affects only the quantities of work shown in the Schedule of Indicative Costs as appended to Volume D of the Service Collaboration Agreement, the change to the Price(s) is assessed by multiplying the changed quantities of work by the appropriate rates in the Schedule of Indicative Cost in Appendix B to Volume D of the Service Collaboration Agreement
- 6.10 For other Risk Realisation events, the changes to the Prices are assessed by forecasting the effect of a Risk Realisation event upon the Defined Cost or, if the Risk Realisation event has already occurred, the assessment is based upon the Defined Cost due to the event which the Authority has incurred. Effects on Defined Cost are assessed at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered. Effects on Defined Cost are assessed separately for
- people employed by the Authority,
  - plant and materials,
  - work subcontracted by the Authority and
  - equipment.
- 6.11 The Authority shows how each of these effects is built up in each quotation for a Risk Realisation event. The percentages for overheads and profit stated in the Authority's Offer are applied to the assessed effect of the event on the Defined Cost.
- 6.12 A delay to a Task Completion Date is assessed as the length of time that, due to the Risk Realisation event, completion of the Task is forecast to be delayed.
- 6.13 The cost of preparing quotations for Risk Realisation events is not included in the assessment of Risk Realisation events.
- 6.14 Assessments for changed Prices for Risk Realisation events are in the form of changes to the Schedule of Indicative Costs as appended to Volume D of the Service Collaboration Agreement.
- 6.15 The assessment of a Risk Realisation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

### Implementing Risk Realisation events

- 6.16 A Risk Realisation event is implemented when
- a. the Agent notifies his acceptance of the Partner Authority's quotation,
  - b. the Agent notifies the Partner Authority of his own assessment
- or
- c. a Partner Authority's quotation is treated as having been accepted by the Agent
- 6.17 The assessment of a Risk Realisation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.
- 6.18 The changes to the Prices, and Task Completion Date are included in the notification implementing a Risk Realisation event.



## Service Collaboration Agreement



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### SAMPLE EARLY WARNING AND RISK RISK REALISATION EVENT FORMS AND PROCESS MAPS

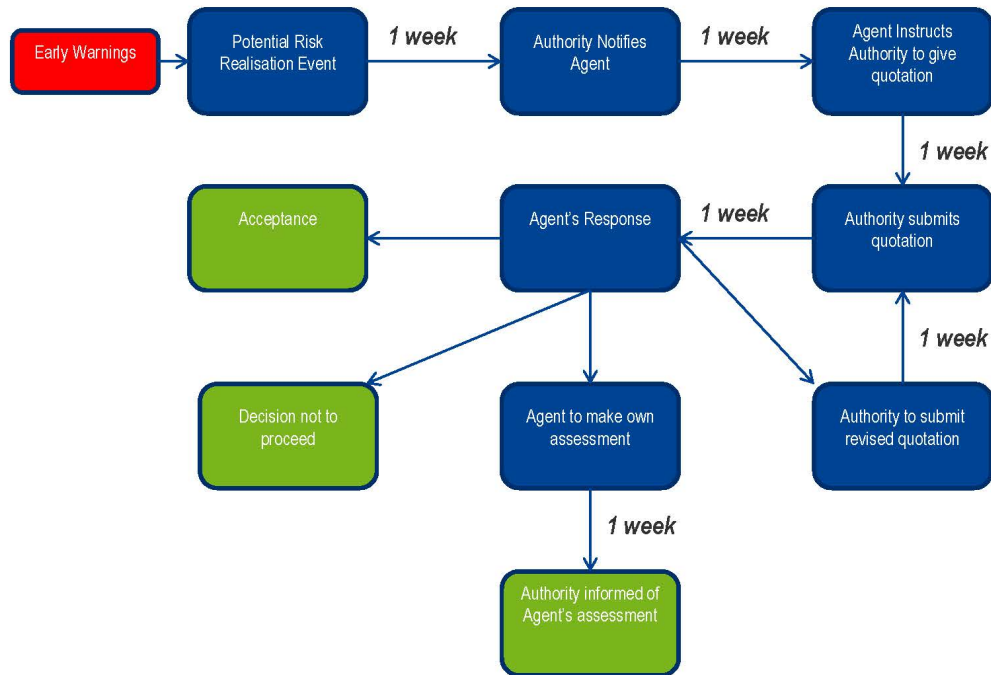




Risk Realisation Event Process



### Risk Realisation Event Timescales







## Service Collaboration Agreement



SCA 2016 EARLY WARNING	
<b>EARLY WARNING NOTIFICATION</b>	
<b>Authority:</b>	
<b>Originator:</b>	
<b>Date:</b>	
<b>EW Reference:</b>	
<b>To:</b>	
You are given Early Warning that an *occurrence/situation is anticipated which may:	
<input type="checkbox"/> Increase the total of the Prices	
<input type="checkbox"/> Interfere with the timing of the service	
<input type="checkbox"/> Impair the effectiveness of the service	
The details are as follows:	
<b>Issued By:</b>	<b>Date:</b>
<b>Received By:</b>	<b>Date:</b>

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