

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



Yn gweithio ar ran
Llywodraeth Cymru
Working on behalf of the
Welsh Government



Service Collaboration Agreement



SERVICE COLLABORATION AGREEMENT DOCUMENTS	
Volume	Title
-	THE AGREEMENT - This Volume
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

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 st 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: https://aspireview.aspiren.com/WelshPublicSector/Live/?instanceid=45 For NMWTRA SharePoint Collaboration Portal at https://nmwcp.gwynedd.gov.uk/default.aspx
“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

“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"> • Works determined within the financial limits set out in the Price List • short term or Programmed Activities necessary to preserve the assets forming part of the Asset in a state of good repair, • reactive works to replace those parts of the Asset which have become unserviceable due to damage, defects and wear and tear <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”	<p>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.</p> <p>or Improvements identified in the Welsh Government’s Trunk Road Forward Programme</p>
“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

“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;



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- (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 1st 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 1st April 2016 until the 31st March 2017 and references to year 2 or the second year shall be taken as meaning the 1st April 2017 to 31st 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 utilised 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



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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.



Service Collaboration Agreement



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



Service Collaboration 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



Service Collaboration Agreement



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



-
- 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



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

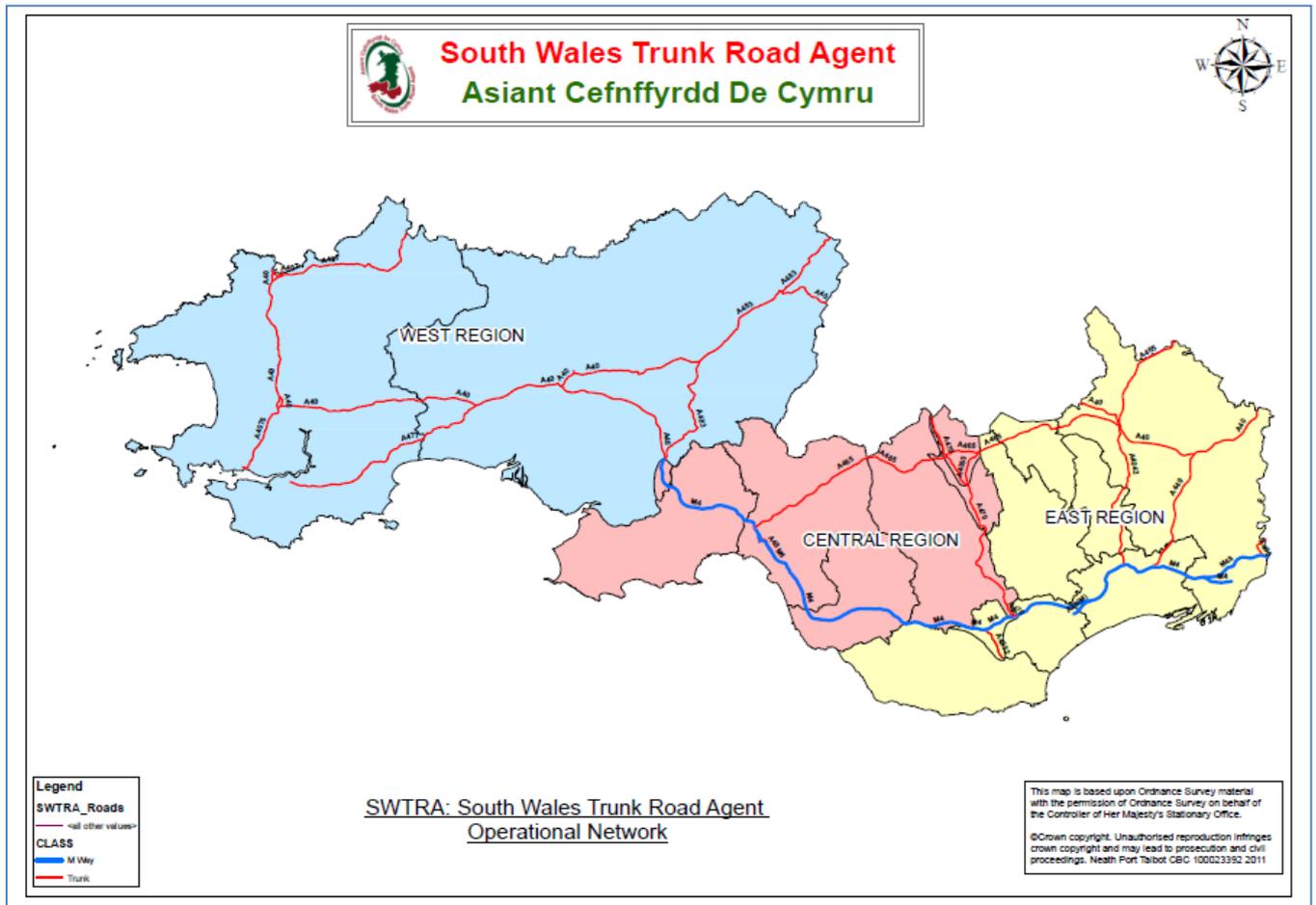
- 9.1 To constitute a valid decision of the Executive Group the representatives of each Authority must be present throughout the discussion of any item of business

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



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

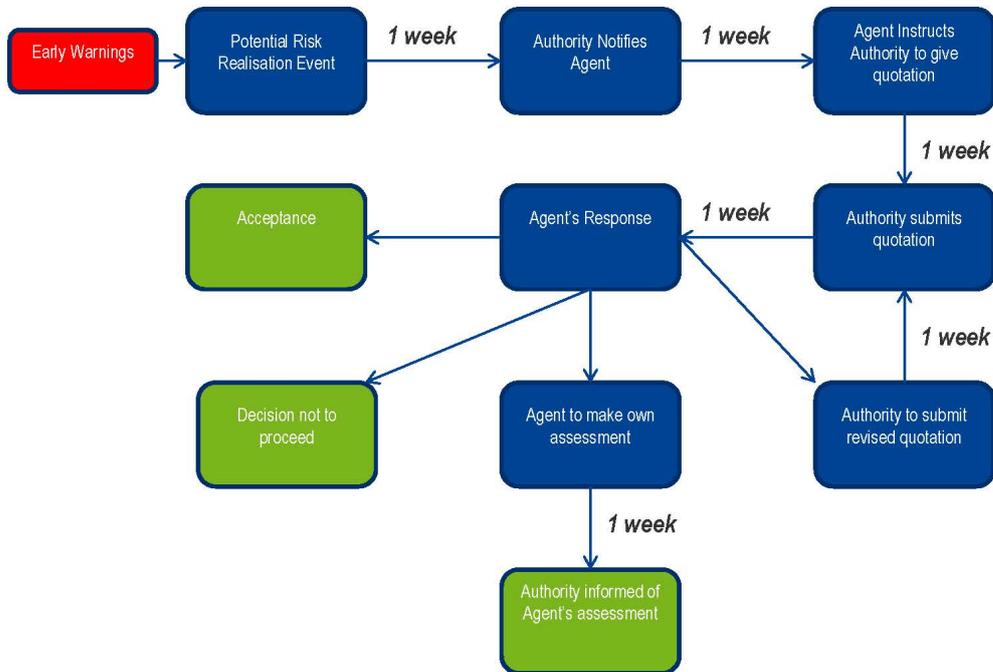


SAMPLE EARLY WARNING AND RISK/RISK REALISATION EVENT FORMS AND PROCESS MAPS

Risk Realisation Event Process



Risk Realisation Event Timescales





Service Collaboration Agreement



SCA 2016 EARLY WARNING	
EARLY WARNING NOTIFICATION	
Authority:	
Originator:	
Date:	
EW Reference:	
To:	
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:	
Issued By:	Date:
Received By:	Date: