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**Date: 18th February 2021**

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Dear Sir/Madam,

A Special digital meeting of **Council** will be held via Microsoft Teams on **Wednesday, 24th February, 2021 at 5.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Chrissy'.

**Christina Harrhy**  
CHIEF EXECUTIVE

## AGENDA

Pages

- 1 To receive apologies for absence.
- 2 Declarations of Interest.

Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on this agenda in accordance with the Local Government Act 2000, the Council's Constitution and the Code of Conduct for both Councillors and Officers.

A greener place Man gwyrddach



Correspondence may be in any language or format | Gallwch ohebu mewn unrhyw iaith neu fformat

To receive and consider the following reports: -

3	Capital Strategy Report 2021/2022.	1 - 12
4	Treasury Management Annual Strategy, Capital Finance Prudential Indicators and Minimum Revenue Provision Policy for 2021/2022.	13 - 46
5	Budget Proposals For 2021/22 and Medium-Term Financial Outlook.	47 - 74
6	Council Tax Setting Resolution 2021/22.	75 - 80

To note the following report which was considered as an urgent item by Cabinet: -

7	Bus Emergency Scheme (BES) - Request to All Councils To Sign Up To BES 2 Scheme.	81 - 162
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## SPECIAL COUNCIL - 24TH FEBRUARY 2021

**SUBJECT: CAPITAL STRATEGY REPORT 2021/2022**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE SERVICES**

### 1. PURPOSE OF REPORT

- 1.1 To submit for approval the Authority's Capital Strategy report for 2021/22 financial year in accordance with the Prudential Code that was introduced by the Local Government Act 2003.
- 1.2 The report cross-references to the report by the Corporate Director of Education and Corporate Services on Revenue and Capital Budgets ["the budget report"]; and the Treasury Management Annual Strategy, Capital Finance Prudential Indicators and Minimum Revenue Provision Policy for 2021/2022.

### 2. SUMMARY

- 2.1 The Capital Strategy outlines the principles and framework at the very high level that shape the Authority's capital investment proposals. The principal aim is to deliver an affordable programme of capital consistent with the financial strategy that contributes to the achievement of the Council's priorities and objectives as set out in the Authority's Corporate Plan; consider associated risks; recognise financial constraints over the longer term; and represent value for money.
- 2.2 The Strategy defines at the highest level how the capital programme decision making identifies the issues and options that influence capital spending, and sets out how the resources and capital programme will be managed. In addition the Capital Strategy should comply with the Prudential Code for local authority capital investment introduced through the Local Government Act 2003. The key objectives of the Code are to ensure that capital investment plans are affordable, prudent and sustainable.
- 2.3 The Capital Strategy sets out the framework for capital investment decisions. The strategy for funding this investment is underpinned by the Prudential Code for Local Authority investment, which was introduced by The Local Government Act 2003. The Prudential Code has the following key objectives:
  - That capital investment plans are affordable, prudent and sustainable;
  - That treasury management decisions are taken in accordance with good professional practice;
  - That local strategic planning, asset management and proper option appraisal are supported.

### **3. RECOMMENDATIONS**

3.1 That the annual Capital Strategy Report be approved.

### **4. REASONS FOR THE RECOMMENDATIONS**

4.1 The Annual Capital Strategy report is a requirement of the CIPFA's Prudential Code (2017 edition).

4.2 The Prudential Code was first introduced through the Local Government Act 2003. Authorities are required by regulation to have regard to the Prudential Code when carrying out their duties in England and Wales under Part 1 of the Local Government Act 2003.

### **5. THE REPORT**

#### **5.1 Corporate Priorities**

5.1.1 Underlying the capital strategy is the recognition that the financial resources available to meet corporate and departmental priorities are constrained in the current economic climate. Therefore the Authority must rely more on internal resources and seek ways in which investment decisions can be no less than self-sustaining or generate positive returns both in terms of meeting corporate objectives and producing revenue savings.

5.1.2 The Authority's corporate priorities and well-being objectives are set out in its Corporate Plan, which is published on the Council's website:

[Link to Council's Corporate Plan 2018-2023](#)

#### **5.2 Capital Expenditure and Financing**

5.2.1 Capital expenditure is defined as costs incurred by the Authority in acquiring new property, plant and equipment (PPE); or costs incurred by enhancing the existing PPE asset base. Capital expenditure can also be incurred in instances where the asset is owned by a third party but the Authority has provided the third party with a loan or grant. In such instances the expenditure is recorded as if incurred directly by the Authority.

5.2.2 In accordance with accounting definitions, expenditure can be capitalised when it relates to:

- The acquisition or creation of a new fixed asset - capitalisation will depend on the creation of rights to future economic benefits controlled by the Authority;
- The enhancement of an existing fixed asset - capitalisation will depend on the works substantially increasing the value of the asset, extending its useful life or increasing its use in service provision.

5.2.3 The Authority has a de-minimus limit for capital expenditure of £10,000. Capital expenditure that is below this de-minimus limit, irrespective of meeting the definition set out in paragraph 5.2.2, is charged to a revenue budget with the exception being the purchase of vehicles which are always capitalised.

5.2.4 The Authority's core capital programme is approved by Council annually as part of the Budget Report, and is funded from the General Capital Grant and Supported Borrowing Approvals. Both of these funding streams are confirmed annually by Welsh government as part of the Local Government Finance Settlement.

5.2.5 The Authority's three year core capital programme from 2021/22 is summarised below:

	<b>2020/21 Approved Budget</b>	<b>2021/22 budget</b>	<b>2022/23 budget</b>	<b>2023/24 budget</b>
	£000s	£000s	£000s	£000s
Council Fund	11,363	11,349	9,726	9,726
Housing Revenue Account	36,000	35,200	35,800	37,600
<b>TOTAL</b>	<b>47,363</b>	<b>46,549</b>	<b>45,526</b>	<b>47,326</b>

Table 1: Prudential Indicator: Estimates of Capital Expenditure

5.2.6 Further details of the 2021/22 – 2023/24 core capital programme and the funding of the programme can be found in the Budget Report.

5.2.7 In addition to the core capital budget that is approved by Full Council, the Authority's capital programme is also funded from slippage (previous years unspent capital budget that is carried forward); external grants and contributions; section 106 funding; and virement of revenue budgets (revenue contribution to capital outlay {RCCO}).

5.2.8 The Housing Revenue Account (HRA) is a ring-fenced account which ensures that council housing does not get subsidised, or is itself subsidised, by other local services. HRA capital expenditure is therefore recorded separately and includes building 400 affordable homes over the next 5 years, achieving the Welsh Quality Housing Standard (WHQS) on existing Council Stock which is due to be completed by December 202 and the implementation of the Post Asset Management Programme which is designed to maintain the Council Housing Stock to the WHQS standard over the next 30 years.

5.2.9 **Governance:** the core capital budget is approved annually by Full Council as part of the revenue budget setting process. All other capital projects / capital works that do not form part of the core capital programme will require a cabinet report prior to commencement of the capital scheme. Capital projects / works that require to be funded by prudential borrowing will need a decision by full Council. The Cabinet report will need to include the following:

- A link to Corporate Priorities and how the capital project would seek to fulfil such priorities;
- Full option appraisal of the project to demonstrate value for money;
- That capital investment plans are affordable, prudent and sustainable;
- Where prudential borrowing is considered that treasury management decisions are taken in accordance with good professional practice;
- That local strategic planning and asset management plans are supported.

5.2.10 All capital expenditure must be financed, either from external sources (government grants and other contributions); the Authority's own resources (revenue contribution, reserves and capital receipts); or debt (borrowing {supported and unsupported}; leasing; and Private Finance Initiative).

5.2.11 Debt (including leases) is a source of finance that can be used to fund a capital scheme. However, debt is repayable over time. The Authority sets aside a Minimum Revenue Provision (MRP) every year for the repayment of existing debt. MRP forms part of the debt management budget and is monitored by Corporate Finance. As part of the annual Treasury Management Strategy, which is approved by Full Council in February (along with the Revenue Budget and the Capital Programme), a MRP statement is presented as an appendix to the Strategy annually, and sets out the MRP Policy that is to be adopted by the Authority at the start of the new financial year. The full MRP statement is set out in Appendix 8 of the Treasury Management Annual Strategy.

5.2.12 The Authority's cumulative outstanding amount of debt finance is measured by the capital financing requirement (CFR). This increases with new debt-financed capital expenditure and reduces with MRP and capital receipts used to replace debt. The Authority's estimated CFR is set out in Appendix 6 of the Treasury Management Annual Strategy.

### 5.3 **Asset management**

5.3.1 Asset management is about using assets (property, plant & equipment) to deliver value and achieve the organisation's business objectives. To ensure that capital assets continue to be of long-term use, the Authority has an asset management strategy in place.

5.3.2 The Authority's asset management strategy can be found on its website:

[Link to Council's Asset Management Strategy](#)

5.3.3 As at 31st March 2020 the Authority's fixed assets (property, plant and equipment) had a net book value of £1,158m. The net book valuation is an accounting valuation, which does not translate to market value. Further details can be found in Note 22 to the Authority's 2019/20 Statement of Accounts:

[Link to Council's Statement of Accounts](#)

5.3.4 **Asset disposals:** When a capital asset is no longer needed, it may be sold so that the proceeds, known as capital receipts, can be spent on acquiring new assets; enhancing the existing asset base; or to repay debt.

5.3.5 Whilst the Authority is intending to dispose of land and building in the future, a change in the law means that any future sale proceeds will need to take in to affect a drainage assessment. This has arisen as a result of the Welsh Minister for Environment signing off a Commencement Order that brings Schedule 3 of the Flood and Water Management Act 2010 into force in Wales.

5.3.6 Since 7th January 2019, all proposed new developments in Wales must include Sustainable Drainage Systems (SuDS). These must comply with the Welsh Ministers' Standards and signed off by the SuDS Approving Body (SAB). The current voluntary standards will become mandatory at the same time. SuDS aim to manage rainfall in a way similar to natural processes, making use of the landscape and natural vegetation to control the flow and volume of surface water. SuDS can deliver multiple benefits including:

- flood risk reduction;
- improved water quality;
- opportunities for habitat creation;
- enhanced biodiversity;
- supporting well-being through bringing people closer to green and blue community spaces.

5.3.7 Each site could have a different SuDS solution, which depends on the site specifics and topography. Each scheme would need to be considered by the authority at the planning stage

and for the SuDS to be approved and adopted. Since the SuDS are site specific it is not possible to forecast a receipt with any degree of accuracy.

5.3.8 **Capital receipts:** As of 1<sup>st</sup> April 2018, Welsh Government issued a capitalisation directive that allows Welsh Authorities to use capital receipts to fund revenue expenditure incurred as a result of transforming service delivery; cutting back services to generate savings; or investing in economic growth projects that are designed to reduce revenue costs or pressures over time. The use of capital receipts to fund such expenditure is permitted until 31 March 2022.

5.3.9 A summary of the Capitalisation Directive issued by the Welsh Government that the Authority can adopt for the Flexible Use of Capital Receipts is detailed in Appendix 1. At present there are no plans to utilise the current capital receipts reserve to fund transformation expenditure.

5.3.10 **Governance:** If in the future the Authority decided to utilise the Capital Receipts Directive to fund revenue expenditure a Cabinet decision will be required. The cabinet report will need to demonstrate:

- A robust business case with a full option appraisal;
- Identification of actual capital receipts received that are uncommitted;
- An analysis of what the capital receipt could have been used for;
- Value for money.

## 5.4 **Treasury Management**

5.4.1 The Chartered Institute of Public Finance & Accountancy defines treasury management as “The management of the organisation’s borrowing; investments and cash flows; its banking; money market and capital market transactions; the effective control of the risks associated with those activities; and the pursuit of optimum performance consistent with those risks”.

5.4.2 Surplus cash is invested until required, while a shortage of cash will be met by borrowing, to avoid excessive credit balances or overdrafts in the bank current account. Investment balances tend to be high at the start of the financial year as revenue income is received before it is spent, but reduce in the long-term as capital expenditure is incurred before being financed.

5.4.3 Due to decisions taken in the past, the Authority currently has £301.6m nominal debt outstanding as at 31 March 2020, at an average interest rate of 4.51% and £107.4m nominal treasury investments at an average rate of 0.68%.

5.4.4 The Annual Treasury Management Strategy is approved by Full Council every February, and sets out the Authority’s Borrowing Strategy; Investment Strategy; and respective prudential indicators.

## 5.5 **Investments for Service Purposes**

5.5.1 The Authority provides capital grants to local businesses and the voluntary sector for the purpose of economic regeneration (Caerphilly Enterprise Fund – 2020/21 capital budget of £148k). Such grants are awarded on application and criteria basis.

5.5.2 **Governance:** Decisions to award local businesses and the voluntary sector capital grants are undertaken by the relevant service manager in consultation with the Head of Service. The Caerphilly Enterprise Fund grant applications are assessed by the Business Enterprise Renewal Team, the Cabinet Member for Economy and Enterprise and a Grant Officer from Finance. The final decision to award is undertaken by the Head of Regeneration and Planning. In either case the award decision is posted on the intranet.

5.5.3 The decision to make a loan or to purchase share capital will be referred to the Head of Finance, who will in turn make a recommendation to Cabinet and Full Council once an appraisal exercise

has been undertaken. The decision to award will need to be funded from the capital programme and will be subject to a robust business case in the first instance.

## 5.6 **Commercial Activities**

- 5.6.1 A number of local authorities in England are investing in commercial property, either via a fund manager or direct purchase of property in order to generate enhanced treasury returns above the rate of inflation. The returns generated from this type of investments are supporting revenue budgets in an environment when central government revenue support funding is declining year on year.
- 5.6.2 At present the Authority does not invest in commercial property either directly (through property acquisitions) or indirectly (through a fund manager). However, the Authority would like to keep its options open for future investment in property and other commercial investments.
- 5.6.3 In the event of the Authority purchasing a commercial investment, the Authority may seek to finance the purchase through borrowing, (for debt to yield purchases the Authority will not be able to borrow from the PWLB). In any such case arising the Authority will prepare a detail report for Council that includes a full option appraisal and risk assessment of the investment. The report will highlight the rationale for the commercial investment.
- 5.6.4 With financial return being the main objective, the Authority accepts higher risk on commercial investment than with treasury investments. The principal risk exposures include a decline in the property market; volatility in the capital value of property; capital being tied up in the medium/long-term horizon and active management of properties when purchased directly rather than purchasing the property through a fund manager.
- 5.6.5 In recognition of the risks stipulated in the above paragraph, the Authority will adopt a policy whereby 50% of the annual income generated will be ring fenced in an earmarked reserve to offset in any fall in capital values or capital income; or fund any other associated cost. The remaining 50% of the annual income generated will be made available to the Authority to support frontline services and enabling the Authority to achieve a balanced budget. Periodic reviews will take place at least once a year to review this policy. The Head of Corporate Finance would recommend changes to the policy, if appropriate, at any time by way of a report to Cabinet.
- 5.6.6 **Governance:** Treasury management decisions on commercial investments are made in accordance with the approved Treasury management Strategy. Non treasury investments will be referred to the Head of Finance and the Corporate Management Team to consider with further referral to Cabinet and Full Council for the final decision. Monitoring of the commercial investments (treasury management related) will be included within the treasury management monitoring reports (or other Council reports) that are presented to the Policy and Resources Committee. Non-treasury management commercial investments will be reported separately by the Head of Corporate Finance.
- 5.6.7 The Authority will seek expert independent and external advice whenever a commercial investment opportunity arises prior to investing. Legal advice will also be sought from within the Authority, and where necessary externally.

## 5.7 **Revenue Budget Implications**

- 5.7.1 Although capital expenditure is not charged directly to the revenue budget, interest payable on loans and MRP repayments are charged to revenue, offset by any investment income receivable. The net annual charge is known as financing costs; this is compared to the net revenue stream i.e. the amount funded from Council Tax, business rates and general government grants.

5.7.2 Further details on the revenue implications of capital expenditure are set in Appendix 6 of the Treasury Management Annual Strategy, Capital Finance Prudential Indicators and Minimum Revenue Provision Policy for 2021/2022 report.

5.7.3 **Sustainability:** Due to very long-term nature of capital expenditure and financing, the revenue budget implications of expenditure incurred in the next few years will extend for up to 50 years.

## **5.8 Knowledge and Skills**

5.8.1 The Council employs professionally qualified and experienced staff in senior positions with responsibility for making capital expenditure, borrowing and investment decisions.

5.8.2 Where Council staff do not have the knowledge and skills required, use is made of external advisers and consultants that are specialists in their field. The Authority currently employs Arlingclose Limited as treasury management advisers. This approach is more cost effective than employing such staff directly, and ensures that the Authority has access to knowledge and skills commensurate with its risk appetite.

5.8.3 The Council will employ, where necessary, consultants and other professional experts to advise upon technical issues relating to non-treasury management commercial investments.

5.8.4 **Training:** Key relevant staff will undertake training as and when opportunities arise or whenever there are changes in regulations. The contract for Treasury Consultancy Services includes requirements for Member and Officer training to be provided during any year. Officers will look to schedule treasury management training for Members for autumn 2021. Further Member training will be undertaken as and when required.

## **6. ASSUMPTIONS**

6.1 The details set out in the report are based on information collected from Heads of Service for the delivery of capital works.

6.2 It has been assumed that the Authority will fund a proportion of its capital programme through supported borrowing.

6.3 It has been assumed that the HRA's borrowing needs are based on the current Business Plan at the time of writing this report.

## **7. LINKS TO STRATEGY**

7.1 The report has links to the strategic themes of the Authority, taking into account cross-cutting issues where relevant. It has specific links to the following documents:

### **a) Medium Term Financial Plan**

The Capital Strategy is closely linked to the Medium Term Financial Plan (MTFP), primarily with respect to the affordability of the capital programme.

### **b) Treasury Management Strategy**

The Treasury Management Strategy links to the Capital Strategy in determining the Authority's approach to borrowing and investments, including borrowing to fund capital expenditure. The Treasury Management Strategy is closely related to the Prudential Code and Prudential Indicators.

The Authority has an integrated Treasury Management Strategy, and has adopted the CIPFA Code of Practice for Treasury Management in Public Services. The Treasury Management Strategy deals with borrowing and investment arising as a consequence of all the financial transactions of the authority, not exclusively those arising from capital spending.

### **c) Statement of Accounts**

Capital expenditure incurred during the year is reflected in the Balance Sheet of the Statement of Accounts ensuring stewardship of assets is demonstrated. The accurate monitoring and recording of capital expenditure ensures that this document is free from material error. The Statement of Accounts is externally audited at the end of each financial year to certify that it presents a true and fair view of the financial position of the Authority.

### **d) Regulatory Framework of Capital Spend**

The Procurement Strategy, along with the Contract Standing Orders and Financial Regulations, looks at who can be used to supply goods and services to the Authority, and how these goods and services should best be obtained to secure value for money.

7.2 Prudent financial management contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:-

- A prosperous Wales.
- A resilient Wales.
- A healthier Wales.
- A more equal Wales.
- A Wales of cohesive communities.
- A Wales of vibrant culture and thriving Welsh Language.
- A globally responsible Wales.

## **8. WELL-BEING OF FUTURE GENERATIONS**

8.1 The establishment of a capital strategy is a key element of effective financial management and risk management of the Authority's resources, which assists the achievement of the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015.

## **9. EQUALITIES IMPLICATIONS**

9.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

## **10. FINANCIAL IMPLICATIONS**

10.1 There are no financial implications arising from this report.

## **11. PERSONNEL IMPLICATIONS**

11.1 There are no personnel implications.

## 12. CONSULTATION

- 12.1 The report was presented to the Policy and Resources Scrutiny Committee on the 12<sup>th</sup> January 2021 for their comment as part of the consultation process. The Scrutiny Committee made the following comments and recommendation to Council: -

One Member wished to know if capital receipts had been used to fund expenditure incurred as a result of transforming service delivery, as per a Welsh Government directive allowing this avenue of funding. The Head of Financial Services and S151 Officer advised that the Council had not made use of this capitalisation directive because it was the intention to use capital receipts to fund the Place Shaping strategy and other investment proposals that will be shared with Members. The Member also asked about the use of the Caerphilly Enterprise Fund, officers advised that the fund had been fully utilised through grants to local businesses and was administered by the Business Renewal Team.

Following consideration and discussion the Policy and Resources Scrutiny Committee by a majority present, and in noting in that there were no abstentions and no votes against, RECOMMENDED to Council that the annual Capital Strategy Report 2021/22 be approved.

- 12.2 No external consultation is required for the purposes of the report. However, advice has been sought from the Authority's current Treasury Management Adviser.

## 13. STATUTORY POWER

- 13.1 Local Government Act 1972

Author: Rhiann Williams – Group Accountant -Treasury Management & Capital

Consultees: Policy and Resources Scrutiny Committee  
Corporate Management Team (CMT)  
Stephen Harris – Head of Financial Services & Deputy S151 Officer  
Andrew Southcombe – Finance Manager, Corporate Finance  
Robert Tranter- Head of Legal Services & monitoring Officer  
Cllr E. Stenner – Cabinet Member for Finance, Performance & Planning

Appendix 1: Flexible Use of Capital Receipts Policy

## **Appendix 1: Flexible Use of Capital Receipts Policy**

### **Legislation**

- The Local Government Act 2003 (“the Act”), section 15(1) requires a local authority “...to have regard (a) to such guidance as the Secretary of State may issue, and (b) to such other guidance as the Secretary of State may by regulations specify...”. and section 24 of the Act states “In its application to Wales, ...for any reference to the Secretary of State there were substituted a reference to the Welsh Ministers.”
- In December 2017, the Secretary of State announced, the continuation of the capital receipts flexibility programme for a further three years, to give local authorities in England the continued freedom to use capital receipts from the sale of their own asset (excluding Right to Buy receipts) to help fund the revenue costs of transformation projects and release savings. These powers have been exercised under sections 16(2)(b) and 20 of the Local Government Act 2003 (the Act). This will cover expenditure incurred from 1<sup>st</sup> April 2016 up to 31 March 2022, and relates to expenditure incurred as a result of service transformation that reduces costs and generate savings.
- In Further exercise of Welsh Minister’s powers under section 20 of the Act, the continuation of the capital receipts flexibility programme will also be extended to Welsh local authorities within the meaning of section 9 of the Act and regulations made under that section (part 3 SI 2003/3239{W319}).

### **Application**

- The direction makes it clear that local authorities cannot borrow to finance the revenue costs of service reform. Local authorities can only use capital receipts from the disposal of property plant and equipment assets received in the years in which this flexibility is offered.
- Capital receipts generated from the sale of Council houses Right to Buy scheme are excluded.
- Welsh Ministers believe that individual authorities and groups of authorities are best placed to decide which projects will be most effective for their areas. The key criterion to use when deciding whether expenditure can be funded by the capital receipts flexibility is that it is forecast to generate ongoing savings or reduce revenue costs or pressures over the longer term to an authority, or several authorities, and/or to another public body.
- The Capitalisation Directive for the Flexible Use of Capital receipts applies from 1<sup>st</sup> April 2016 to 31<sup>st</sup> March 2022.

### **Accountability & Transparency**

- A disclosure note will be included in the Statement of Accounts in the relevant year detailing the individual projects that have been funded or part funded through capital receipts flexibility.
- As a minimum, the disclosure note should list each project that made use of the capital receipts flexibility, ensuring that it details the split of up-front funding for each project between capital receipts and other sources, and that on a project-by-project basis, setting out the expected savings and/or benefits of investment.

## **Qualifying Expenditure**

- Qualifying expenditure is expenditure on any project that is designed to generate ongoing revenue savings in the delivery of public services and/or transform service delivery in a way that reduces costs or demand for services in future years for the Authority or any of the delivery partners. This includes investment which supports economic growth projects which are also designed to reduce revenue costs or pressures over the longer term.
- The set up and implementation costs of any new processes or arrangements can be classified as qualifying expenditure. The ongoing revenue costs of the new processes or arrangements cannot be classified as qualifying expenditure.

## **Examples of Qualifying Expenditure**

- There are a wide range of projects that could generate qualifying expenditure and the list below is not prescriptive. Examples of projects include:
  - Preparatory work necessary to support local authority mergers as part of the programme to reform local government in Wales;
  - Sharing back-office and administrative services with one or more other council or public sector body;
  - Investment in service reform feasibility work, e.g. setting up pilot schemes;
  - Collaboration between local authorities and central government to free up land for economic use;
  - Funding the cost of service reconfiguration, restructuring or rationalisation (staff or non-staff), where this leads to ongoing efficiency savings or service transformation;
  - Sharing Chief Executives, management teams or staffing structures;
  - Driving a digital approach to the delivery of more efficient public services and how the public interacts with constituent authorities where possible;
  - Aggregating procurement on common goods and services where possible, either as part of local arrangements or using the National Procurement Service, Crown Commercial Services or other central purchasing bodies which operate in accordance with the Wales Procurement Policy Statement;
  - Improving systems and processes to tackle fraud and corruption in line with the Local Government Fraud and Corruption Strategy – this could include an element of staff training;
  - Setting up alternative delivery models to deliver services more efficiently and bring in revenue (for example, through selling services to others); and
  - Integrating public facing services across two or more public sector bodies (for example children's social care, trading standards) to generate savings or to transform service delivery.
  - Investment which supports economic growth projects which are also designed to reduce revenue costs or pressures over the longer term, across one or more local authorities and/or other public sector bodies.

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## SPECIAL COUNCIL – 24TH FEBRUARY 2021

**SUBJECT: TREASURY MANAGEMENT ANNUAL STRATEGY, CAPITAL FINANCE PRUDENTIAL INDICATORS AND MINIMUM REVENUE PROVISION POLICY FOR 2021/2022**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE SERVICES**

### 1. PURPOSE OF REPORT

- 1.1 To submit for approval the Authority's Annual Strategy for Treasury Management.
- 1.2 To submit for approval a dataset of Prudential Indicators relevant to Treasury Management and Capital Finance. The report also cross-references to the report by the Corporate Director of Education and Corporate Services on Revenue and Capital Budgets ["the budget report"] also considered in this meeting.
- 1.3 To seek approval for the Minimum Revenue Provision (MRP) policy to be adopted by the Authority for 2021/2022.

### 2. SUMMARY

- 2.1 The revised (2017) "Code of Practice for Treasury Management in the Public Services" provides that an Annual Strategy be submitted to Members on or before the start of a financial year to outline the activities planned within the parameters of the Treasury Management Policy Statement and the Treasury Management Practices.
- 2.2 The Local Government Act 2003 (the '2003 Act') also requires the Authority to set out its Treasury Management Strategy for borrowing for the forthcoming year and to prepare an Annual Investment Strategy, which sets out the policies for managing its investments, giving priority to the security and liquidity of those investments.
- 2.3 Under Section 15 of the '2003 Act', the Welsh Government (WG) issued guidance on local government investments which is incorporated within the report. Definitions of Local Government investments are given in **Appendix 1**.
- 2.4 Under the provisions of the Local Government Act 2003, The Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 and subsequent amendments [The Capital

Regulations], and the CIPFA's "The Prudential Code for Capital Finance in Local Authorities" [the Code], the Authority is obliged to approve and publish a number of indicators relevant to Capital Finance and Treasury Management.

- 2.5 With effect from 1<sup>st</sup> April 2008, WG introduced the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2008 [the "Amendment Regulations"] which requires the Authority to prepare an Annual Minimum Revenue Provision Policy Statement. This report sets out what the Authority needs to do in order to comply with this requirement.

### **3. RECOMMENDATIONS**

- 3.1 That the Annual Strategy for Treasury Management 2021/22 be approved.
- 3.2 That the strategy be reviewed quarterly within the Treasury Management monitoring reports presented to Policy & Resources Scrutiny Committee and any changes recommended be referred to Cabinet, in the first instance, and to Council for a decision. The Authority will also prepare a half-yearly report on Treasury Management activities
- 3.3 That the Prudential Indicators for Treasury Management be approved as per Appendix 5.
- 3.4 That the Prudential Indicators for Capital Financing be approved as per Appendices 6 & 7.
- 3.5 That Members adopt the MRP policy as set out in Appendix 8.
- 3.6 The continuation of the 2020/21 investment strategy and the lending to financial institutions and Corporates in accordance with the minimum credit rating criteria disclosed within this report.
- 3.7 That the Authority borrows £37.2m for the General Fund to support the 2021/22 capital programme and £52.0m for the HRA WHQS and Affordable Homes programme.
- 3.8 That the Authority continues to adopt the investment grade scale as a minimum credit rating criterion to assess the credit worthiness of suitable counterparties when placing investments.
- 3.9 That the Authority adopts the monetary and investment duration limits as set in Appendix 3 of the report.

### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 The Annual Strategy report is a requirement of the CIPFA "Code of Practice for Treasury Management in the Public Services".
- 4.2 The Investment Strategy is a requirement of the Local Government Act 2003.
- 4.3 To comply with the legislative framework and requirements as indicated in paragraphs 2.1 to 2.5.

## **5. THE TREASURY MANAGEMENT REPORT**

### **5.1 Interest Rate Prospects- Short-term**

- 5.1.1 The Authority uses Arlingclose Limited as its Treasury Management Adviser and part of their service is to assist the Authority to formulate a view on interest rates.
- 5.1.2 The Monetary Policy Committee [MPC] maintained Bank Rate in November 2020 to 0.10% and extended its Quantitative Easing programme by £150 billion to £895 billion. The MPC voted unanimously for both, but no mention was made of the potential future use of negative interest rates.
- 5.1.3 The impact on the UK from coronavirus, together with its exit from the European Union and future trading arrangements with the bloc, will remain a major influence on the Authority's treasury management strategy for 2021-22. The Bank of England (BoE) expects the UK economy to shrink by 2% in Q4 2020 before growing by 7.25% in 2021. The Bank of England (BoE) also forecasts the economy will now take until Q1 2022 to reach its pre-pandemic level.
- 5.1.4 Consumer price inflation was registered as 0.5% year on year in September 2020. The most recent labour market data for the three months to August 2020 showed the unemployment rate rose to 4.5% while the employment rate fell to 75.6%. Both measures are expected to deteriorate further due to the ongoing impact of coronavirus on the jobs market.
- 5.1.5 GDP growth fell by 19.8% in the second quarter of 2020, a much sharper contraction from the fall of 2.0% in the previous 3 months. Monthly GDP estimates have shown the economy is recovering but remains well below its pre-pandemic peak. Looking ahead, the BoE's November Monetary Policy Report forecast economic growth rise in 2021. GDP growth in the eurozone rebounded by 12.7% in Q3 after contracting in the first half of the year. Headline inflation, however, remains extremely weak, registering a fall of 0.3% year-on-year in October. the third successive month of deflation. The ECB is expected to continue holding its main interest rate of 0% and deposit facility rate of -0.5% for some time with further monetary stimulus expected later in 2020. The US economy contracted at an annualised rate of 31.7% in Q2 2020 and then rebounded by 33.1% in Q3. The Federal Reserve also provided strong indications that interest rates are unlikely to change from current levels over the next three years.
- 5.1.6 Central bank actions and geopolitical risks will continue to produce significant volatility in financial markets, including bond markets. This will have an impact on the Council's Treasury returns. If interest rates fall then the Council's investment income will reduce.
- 5.1.7 The Authority's treasury management adviser Arlingclose is forecasting that the BoE Bank Rate will remain at 0.1% until at least the end of 2023. The risks to this forecast are judged to be to the downside as the BoE and UK government continue to react to the coronavirus pandemic and the Brexit transition period ends. The BoE extended its asset purchase programme to £895 billion in November while keeping Bank Rate on hold. However, further interest rate cuts to zero, or possibly negative, cannot yet be ruled out but this is not part of the Arlingclose central forecast.

## **5.2 Interest Rate Prospects- Long-term**

- 5.2.1 Gilt yields are expected to remain very low in the medium-term while short-term yields are likely to remain below or at zero until such time as the BoE expressly rules out the chance of negative interest rates or growth/inflation prospects improve. The central case is for 10-year and 20-year to rise to around 0.5% and 0.75% respectively over the time horizon. The risks around the gilt yield forecasts are judged to be broadly balanced between upside and downside risks, but there will almost certainly be short-term volatility due to economic and political uncertainty and events.
- 5.2.2 Arlingclose interest rate forecasts are shown in **Appendix 2**.

## **5.3 Credit Outlook**

- 5.3.1 After spiking in late March as coronavirus became a global pandemic, credit default swap (CDS) prices for the larger UK banks have steadily fallen back to almost pre-pandemic levels. Although uncertainly around COVID-19 related loan defaults lead to banks provisioning billions for potential losses in the first half of 2020. However, general bank profitability in 2020 is likely to be significantly lower than in previous years.
- 5.3.2 The credit ratings for many UK institutions were downgraded on the back of downgrades to the sovereign rating. Credit conditions more generally though in banks and building societies have tended to be relatively benign, despite the impact of the pandemic.
- 5.3.3 Looking forward, the potential for bank losses to be greater than expected when government and central bank support starts to be removed remains a risk, as does the outcome of the Brexit deal, suggesting a cautious approach to bank deposits in 2021/22 remains advisable.

## **5.4 External Debt - Capital Borrowings and Borrowing Portfolio Strategy**

- 5.4.1 The Authority's primary objective when borrowing money is to strike an appropriately low risk balance between securing low interest costs and achieving certainty of those costs over the period for which funds are required. The flexibility to renegotiate loans should the Authority's long-term plans change is a secondary objective.
- 5.4.2 Given the significant cuts to public expenditure and in particular to local government funding, the Authority's borrowing strategy continues to address the key issue of affordability without compromising the longer-term stability of the debt portfolio. With short-term interest rates currently much lower than long-term rates, it is likely to be more cost effective in the short-term to either use internal resources, or to borrow short-term loans instead. By doing so, the Authority is able to reduce net borrowing costs (despite foregone investment income) and reduce overall treasury risk.
- 5.4.3 The difference between current long-term borrowing rates and short-term investment rates has resulted in a "cost of carry" scenario, indicating that it is more advantageous to use internal funding in lieu of borrowing. The cost of carry is likely to remain an issue until the Bank Rate and short term market rates increase in the future. The Authority, having adopted the policy of internal borrowing from the latter half of 2008/09, has an internal borrowing position of £81m (as at 31<sup>st</sup> March 2020) from which capital expenditure has been funded. Unless the policy is prudent, the Authority will no longer adopt the policy of internal borrowing. The benefits of internal / short-term borrowing will be monitored regularly against the potential for incurring

additional costs by deferring borrowing into future years when long-term borrowing rates are forecast to rise modestly.

5.4.4 It is anticipated that the borrowing requirement of £37.2m will need to be taken up in 2021/22 for the General Fund to support the capital programme and provision has been made in the budget to fund this level of borrowing. Much of this borrowing has been deferred from previous financial years. The HRA will borrow £52.0m in 2021/22 to fund the WHQS capital programme and new affordable homes programme, though some of the HRA borrowing may be deferred to future years subject to the Business Plan revisions.

5.4.5 Therefore, the total 2021/22 borrowing requirement will be £89.2m comprising of:

- 2021/22 supported borrowing approvals - £4.9m
- 2020/21 supported borrowing approvals - £4.9m
- 2019/20 supported borrowing approvals - £4.9m
- 2018/19 supported borrowing approvals - £4.9m
- 2017/18 supported borrowing approvals - £5.0m
- 2016/17 supported borrowing approvals - £5.0m
- 21st Century Schools LGBI- £4.2m
- 21st Century Schools prudential borrowing (Band A) - £3.4m
- HRA WHQS - £22.0m
- HRA Affordable Housing - £30.0m

The LGBI borrowing is funded by WG contributions to support the 21<sup>st</sup> Century Schools Band A capital programme. The borrowing approvals relate to previous financial years whereby the borrowing had been deferred and subsequently these are now being rolled forward until the Authority raises such loans. Capital expenditure in the relevant financial year that would have been funded by the borrowing approvals was subsequently funded from internal borrowing. Retrospectively borrowing these approvals will replenish the internal borrowing.

5.4.6 Whilst PWLB interest rates have been included in Appendix 2, it is possible that loans may be taken from other sources if interest rates are more advantageous. It is suggested that the target rate for new borrowing be set at 2.80% for a 25-year period loan. However, other periods will be considered if the rates are favourable.

5.4.7 Current PWLB forecasts suggest interest rates will remain volatile during 2021/22 and will be influenced by geopolitical tensions; global economic prospects and the outcome of the Brexit deal. The use of internal borrowing to fund the 2021/22 capital programme or the decision to defer borrowing as set out in paragraph 5.4.4 could expose the Authority to rising interest rates thus making it expensive to borrow at a later date. A budget to cover the cost of raising £37.2m new debt finance will remain in place irrespective of the decision to borrow internally or externally.

5.4.8 Any short-term funding would need to be in line with the 'Upper Limit for Variable Rates' as defined in the prudential indicators in **Appendix 5** (30% of Net Debt Outstanding) within the CIPFA "Prudential Code for Capital Expenditure in Local Government".

5.4.9 Officers, in conjunction with the Treasury Management Adviser, will continue to monitor both the prevailing rates and the market forecasts, responding to changes when necessary. The following borrowing sources will be considered by the Authority to fund short-term and long-

term borrowing (and in no particular order):

- Internal reserves
- Public Works Loan Board (PWLB)
- Local Authorities
- European Investment Bank (NB the EIB will only lend up to 50% towards the funding of a specific project and needs to meet the EIB's specific criteria. The project cost must also be at least €10m)
- Leasing
- Capital market bond investors
- Other commercial and not for profit sources
- Any other bank or building society authorised to operate in the UK
- UK public and private sector pension funds
- UK Municipal Bonds Agency and other special purpose companies created to enable local authority bond issues
- Any counterparty approved for investments

5.4.10 In addition, capital finance may be raised by the following methods that are not borrowing, but may be classed as other debt liabilities:

- operating and finance leases
- hire purchase
- Private Finance Initiative
- sale and leaseback

5.4.11 The Authority may borrow short-term loans (up to twelve months) to cover unexpected cashflow shortages.

5.4.12 The Authority may arrange forward starting loans during 2021/22, where the interest rate is fixed in advance, but the cash is received in later years. This would enable certainty of cost to be achieved without suffering a cost of carry in the intervening period as well as mitigate against the risk of rising borrowing interest rates.

5.4.13 **Municipal Bond Agency:** The UK Municipal Bonds Agency plc was established in 2014 by the Local Government Association as an alternative to the PWLB. It plans to issue bonds on the capital markets and lend the proceeds to local authorities. This will be a more complicated source of finance than the PWLB for two reasons: borrowing authorities may be required to provide bond investors with a guarantee over the very small risk that other local authority borrowers default on their loans; and there will be a lead time of several months between committing to borrow and knowing the interest rate payable. Any decision to borrow from the Agency will therefore be the subject of a separate report to Cabinet.

## 5.5 Authorised Limit for External Debt (The Authorised Limit)

5.5.1 As a consequence of 5.4.1 to 5.4.13 above, the Authorised Limit will be the upper limit of the Authority's borrowing, based on a realistic assessment of risks. It will be established at a level that will allow the Authority to borrow sums, in excess of those needed for normal capital expenditure purposes in the event that an exceptional situation arises and would allow for take-

up of supported borrowing. It is not a limit that the Authority would expect to borrow up to on a regular basis.

- 5.5.2 The limit will include borrowing and other long-term liabilities such as leases, private finance schemes and deferred purchase schemes.

## **5.6 The Operational Boundary**

- 5.6.1 This is based on the maximum level of external debt anticipated to be outstanding at any time in each year. It will be consistent with the assumptions made in calculating the borrowing requirements of the capital programme, but will also include an estimate of any borrowing for short term purposes, such as temporary shortfalls in incomes or to support active treasury management which would seek to take advantage of beneficial interest rate movements. It also allows for other long-term liabilities such as leases, private finance schemes and deferred purchase schemes.

- 5.6.2 The Operational Boundary should be set at a level which allows some flexibility but should be sufficiently below the Authorised Limit so that any breach of the operational boundary provides an early warning indicator of a potential breach of the Authorised Limit, allowing corrective action to be taken.

## **5.7 Interest Rate Exposure**

- 5.7.1 The Authority's borrowing policy makes use of both fixed and variable rate opportunities. Whilst fixed-rate borrowing and investment provides certainty with regard to future interest rate fluctuations, the flexibility gained by the use of variable interest rate instruments can aid performance. It allows the Treasury Manager to respond more quickly to changes in the market and to short term fluctuations in cash flow without incurring the penalties that would result from the recall of fixed rate investments.

## **5.8 Maturity Structure of Borrowing**

- 5.8.1 Whilst the periods of loans are dictated by the interest rates prevalent at the time, it is important to be mindful of the maturity profile of outstanding debt. Large 'peaks' are to be avoided, as it is possible for substantial loans to reach maturity at times when prevailing interest rates are high, and conversely, when interest rates are low, windows of opportunity may be lost.
- 5.8.2 As a result, it is necessary to determine both an upper and lower limit for borrowings which will mature in any one year.
- 5.8.3 Over the course of the medium-term financial plan and future years, a number of high interest rate PWLB loans will mature resulting in a saving to the Authority as the interest rate on replacement loans are likely to be lower in comparison.
- 5.8.4 Historically, the Authority has favoured PWLB loans with a twenty-five year loan maturity profile, but in the current climate of low interest rates (including Bank Rate); the Authority will also consider shorter dated loans (including local authority borrowing) to fund capital expenditure. Periods in excess of 25 years should also be considered in the event interest rates become advantageous.

5.8.5 The Authority has £30m of LOBO loans (Lender's Option Borrower's option) of which £20m of these can be "called" within 2021/22. A LOBO is called at its contract review date when the Lender is able to amend the interest rate on the loan at which point the Borrower can accept the new terms or reject and repay the loan. Any LOBOs called will be discussed with the Treasury Management Adviser prior to acceptance of any revised terms. Depending on the advice received, the Authority will consider, in the event of a repayment, the use of its cash investments balances or raising new debt to repay the loan.

## 5.9 Gross Debt and the Capital Financing Requirement

5.9.1 A further requirement of the revised Prudential Code is to ensure that over the medium term debt will only be for a capital purpose, the Authority will ensure that debt does not, except in the short term, exceed the total of capital financing requirement in the preceding year plus the estimates of any additional capital financing requirement for the current and next two financial years.

## 5.10 Debt Rescheduling

5.10.1 Due to the difference in the rates, it is unlikely that there will be many viable opportunities to reschedule loans (General Fund and the HRA) in the foreseeable future. However, should any such opportunities arise; any decision on debt rescheduling will be supported by the appropriate report detailing the options and potential savings from the Authority's Treasury Management Adviser.

## 5.11 Policy on Borrowing In advance of Need

5.11.1 Whilst the Authority is able to borrow in advance of need, it is a requirement of the Code that any instance of pre-funding must be supported by a clear business case setting out the reasons for such activity. The Authority will prepare a business case whenever there is need to borrow in advance of need.

## 5.12 Annual Investment Strategy

5.12.1 The CIPFA Code and the Welsh Government Guidance require the Authority to invest its funds prudently, and to have regard to the security and liquidity of its investments before seeking the highest rate of return, or yield. The Authority's objective when investing money is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.

5.12.2 **Current strategy (2020/21)** - At present the Authority lends to financial institutions, corporates and the UK Government using a range of financial instruments to diversify risk. These include unsecured corporate bonds; covered bonds (secured); fixed term deposits; certificate of deposits (CDs); T-Bills; the DMADF (DMO) money market funds and call accounts.

5.12.3 **The 2021/22 Investment Strategy** will continue with the lending approach as set out in the 2020/21 Strategy. Considerations will be given to pooled investments (property funds; equity funds; multi-asset funds) and non-treasury investments for the purpose of enhancing returns. Pooled funds will be held for minimum of five years to offset any premature exit costs. A lesser period would be considered only if it is cost neutral to the Authority.

- 5.12.4 This Strategy (2021/22), in line with the Welsh Government guidance, sets out the Authority's policies for (and in order of priority) the security, liquidity and yield of its investments. It will have regard to credit ratings and determine the periods for which funds may be prudently invested, whilst aiming to achieve, or better a target rate for investments of **0.1% (the base rate)**. Creditworthiness approach, investment periods and the rationale for the target rate are explained in **Appendix 3**. The Authority's objective when investing cash is to strike an appropriate balance between risk and return, minimising the risk of incurring losses from defaults and the risk of receiving unsuitably low investment income.
- 5.12.5 The strategy sets out which investments the Authority may use for the prudent management of its balances during the financial year within the areas of 'specified' and 'non-specified' investments, and provides the appropriate authorisation for the in-house investment team to manage such investments. These are listed in **Appendix 4**.
- 5.12.6 The Authority will continue to diversify into more secure and/or higher yielding asset classes during 2021/22 in order to mitigate the risk stemming from regulations associated with Bank Bail-In; political uncertainty; and the risk of zero or negative Bank Rate. Short-term cash that is required for liquidity management will be deposited with local authorities (secured), Government securities (secured), money market funds (unsecured) and bank and building society investments (unsecured). Up to £60m will be made available for long-term investments.
- 5.12.7 In view of the ongoing volatility in the economy, and bank bail in risk, it is recommended that investments (both new and maturing) be placed with the most secure institutions as well as the most secure instruments (subject to liquidity requirements) as detailed in **Appendix 3**. Currently this would be AAA rated covered bonds, the Government (Debt Management Account Facility and Treasury Bills and Gilts), other Local Authorities and Public Bodies, such as Police and Fire Authorities, Repos, Registered Landlords, AAA Money Market Funds, and highly credit rated banks (subject to the creditworthiness limits referred to in the appendix 3). In light of Statutory and regulatory changes adopted by the Bank of England and Regulators with respect to Bail-In, it is recommended that the Authority moves away from unsecured lending (where possible and subject to liquidity requirements) to secured investments.
- 5.12.8 With respect to Repo agreements, Repo/Reverse Repo is accepted as a form of securitised lending and should be based on the GMRA 2000 (Global Master Repo Agreement). Should the counterparty not meet our senior unsecured rating then a 102% collateralisation would be required. The acceptable collateral can be anyone or combination of the following securities:
- Index linked Gilts
  - Conventional Gilts
  - UK Treasury bills
  - DBV (Delivery By Value)
  - Corporate bonds
- 5.12.9 The Welsh Government maintains that the borrowing of monies for the purposes of investing or on-lending to benefit from differences in interest rates is unlawful. This Authority will not engage in such activity.
- 5.12.10 Under the Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2004 regulation 12(b), the acquisition of share or loan capital in any corporate body would not be defined as capital expenditure as long as it is an investment for the purposes of the prudent management of the Authority's financial affairs. Due to the high risk of capital loss involved with such instruments, this Authority will not engage in such activity.

- 5.12.11 A loan or grant to another body for capital expenditure by that body is also deemed by the 2003 Regulations to be capital expenditure by the Authority. This Authority will only engage in such activity with the approval of Council.
- 5.12.12 In the event that any existing investment appears to be at risk of loss, the Authority will make proper revenue provision of an appropriate amount in accordance with the relevant Accounting Regulations.
- 5.12.13 At the end of the financial year, the Authority will prepare a report on its investment activity as part of its Annual Treasury Management Strategy Report. This report will be supported throughout the year by quarterly monitoring reports to the Policy & Resources Scrutiny Committee (the responsible body for scrutiny of Treasury Management activities as required by the Code), which will include a review of the current strategy. A report to Council will also be prepared on a half-yearly basis.
- 5.12.14 It is a fundamental requirement of the Code that officers engaged in Treasury Management follow all Treasury Management policies and procedures and all activities must comply with the Annual Strategy.
- 5.12.15 The Welsh Government has reservations regarding borrowing in advance of need on the grounds that more money than is strictly necessary is likely to be put at risk in the investment market. As a result Officers must report any investment made as a result of borrowing in advance and must set out the maximum period for which the funds can be prudently committed. In the event that this Authority decides to take up such borrowing, it is suggested that any deposit made with these funds be limited to a maturity period of up to twelve months and pro-rata to coincide with the profiling of capital expenditure.

## **6. Policy on Use of Financial Derivatives**

- 6.1 The Localism Act 2011 includes a general power of competence that removes the uncertain legal position over English local authorities' use of standalone financial derivatives (i.e. those that are not embedded into a loan or investment). Although this change does not apply to Wales, the latest CIPFA Code requires authorities to clearly detail their policy on the use of derivatives in the Annual Treasury Management Strategy.
- 6.2 In the absence of any legislative power, the Authority's policy is not to enter into standalone financial derivatives transactions such as swaps, forwards, futures and options. Embedded derivatives will not be subject to this policy, although the risks they present will be managed in line with the overall risk management strategy.

## **7. Non-Treasury Investments**

- 7.1 Although not classed as treasury management activities and therefore not covered by the CIPFA Code or the WG Guidance, the Authority may also purchase property for investment purposes and may also make loans and investments for service purposes. Such loans and investments will be subject to the Authority's normal approval processes for revenue and capital expenditure and need not comply with this treasury management strategy. As a result of a change in PWLB terms, PWLB loans are no longer available to local authorities planning on buying investment assets primarily for yield.

## **8. Treasury Management Adviser**

- 8.1 The Authority has appointed Arlingclose Limited as its external Treasury Management Adviser and receives a number of services including specific advice on investment, debt and capital finance issues; counterparty advice; economic forecasts and commentary; workshops, training and seminar events; and technical advice (including accountancy).

## **9. Treasury Management Training**

- 9.1 The revised CIPFA Code, adopted by the Authority in January 2012, requires that Local Authorities must ensure that all staff and those Members with responsibility for Treasury Management receive the appropriate training. To this end the following will be observed:

- The contract for Treasury Consultancy Services includes requirements for Member and Officer training to be provided during any year.
- Officers will attend any courses/seminars that are appropriate especially where new regulations are to be discussed.
- Officers will update Members during the financial year by way of seminars/workshops/reports.
- Officers will utilise on line access to the CIPFA Treasury Forum and the CIPFA Technical Information Service.
- Relevant staff are encouraged to study professional qualifications from CIPFA; the Association of Corporate Treasurers; and other relevant organisations.

- 9.2 Officers will look to schedule Member training for autumn 2021. Further training will be undertaken as and when required.

## **10. PRUDENTIAL INDICATORS**

### **10.1 Capital Financing Requirement**

- 10.1.1 The Capital Financing Requirement (CFR) measures the authority's underlying need to borrow for a capital purpose. In accordance with best professional practice, the authority does not associate borrowing with particular items or types of expenditure. CIPFA's Prudential Code for Capital Finance in Local Authorities recommends that the Authority's total debt should be lower than its highest forecast CFR over the next three years.

- 10.1.2 The capital financing requirement is below the authorised borrowing limits in order to allow scope for short-term cash flow borrowing and provision for unforeseen contingencies.

- 10.1.3 The estimated values of Capital Financing Requirement for the period under review are shown in **Appendix 6** attached.

## **10.2 Prudential Indicators – “Prudence”**

10.2.1 The proposed Prudential Indicators for Treasury Management Strategy are detailed in **Appendix 5**.

## **10.3 Prudential Indicators – “Affordability” [Appendices 6 and 7]**

10.3.1 There is a requirement to analyse and report the capital financing costs, and express those costs as a percentage of the net revenue streams of the Authority.

10.3.3 The General Fund future revenue streams are based upon the content of “the Budget Report”.

10.3.4 Future revenue streams for Housing Revenue Account (H.R.A.) have been projected on the basis of a 1.5% increase applied to the rental income (using 2020/21 as a base), less an adjustment for estimated reduction in housing stock as a result of the “Right to Buy” sales.

## **10.4 Capital Expenditure and Funding**

10.4.1 The summary Capital Expenditure and funding, as shown in **Appendix 7** of this report has been considered in “the Budget Report”.

10.4.2 The Revenue Support Grant (RSG) provided by the Welsh Government (WG) includes an element to off-set the costs of borrowing funds for capital purposes. WG has announced supported borrowings of £4.84m in respect of the 2021/22 financial year, together with General Capital Grant funding of £4.86m.

10.4.3 For calculation purposes, it has been assumed that the supporting borrowing element of funding support will remain static for 2022/23 and for 2023/24, whilst the capital grant has been revised down to 2019/20 level. HRA provisional values for the years 2021-2024 are based on the 2020/21 allocation of the Major Repairs Allowance of £7.35m and assumed to continue at this level for future years.

## **11. MINIMUM REVENUE PROVISION (MRP)**

11.1 In accordance with the Amendment Regulations, rather than applying a defined formula, the Authority is now only required to apply a charge that is ‘prudent’. A “prudent” period of time for debt repayment is defined as one which reflects the period over which the associated capital expenditure provides benefits.

11.2 The Amendment Regulations also introduced an additional reporting requirement. Authorities are now required to submit to full Council, for approval, an Annual MRP Statement, setting out the policy to be adopted for the year following.

11.3 The Authority will continue to apply the revised MRP policy that was agreed by Members on 24<sup>th</sup> January 2017. MRP on supported borrowings will be charged at 2% over 50 years. MRP on unsupported borrowings will be charged at the PWLB annuity loan rate equivalent to the life of the asset. The MRP policy is detailed in **Appendix 8**.

## **12. OTHER LOCAL ISSUES**

### **12.1 The Authority's Banker**

12.1.1 The Authority will ensure that its day-to-day banking activity is undertaken with an investment grade bank. If the Authority's Bank is downgraded during the contract period (as specified under the Banking Services Contract) to non-investment grade, reasonable measures will need to be undertaken to mitigate the risk associated with further downgrades, and the risk of losing funds if the Bank was to default.

12.1.2 Reasonable measures will need to include (and not limited to) keeping balances to a minimum; hourly review of bank balances for the Group Accounts and subsequently transferring surplus balances to a Call Account; re-routing material income (maturing investments, grants) to a bank account held outside of the existing bank arrangement; and consideration of contingency banking arrangements with another bank should the risk be severe to the Authority's operational requirements. Cabinet will be kept informed if such risks arise.

### **12.2 Policy on Apportioning Interest to the HRA**

12.2.1 On 1st April 2015 the HRA exited the subsidy mechanism by way of the HRA buyout process. As a result, the Authority will operate a single consolidated pool of debt that will hold all debt (new and old loans), and annually recharge the HRA the interest payable on all loans using the average rate of interest as a recharge rate.

**12.3 Markets in Financial Instruments Directive:** The Authority has opted up to professional client status with its providers of financial services, including advisers, banks, brokers and fund managers, allowing it access to a greater range of services but without the greater regulatory protections afforded to individuals and small companies. Given the size and range of the Authority's treasury management activities, the Chief Financial Officer believes this to be the most appropriate status.

### **12.4 IFRS 9 Classification**

12.4.1 Under the IFRS 9 standard, the accounting for certain investments depends on the Authority's "business model" for managing them. The Authority aims to achieve value from its internally managed treasury investments by a business model of collecting the contractual cash flows and therefore, where other criteria are also met, these investments will continue to be accounted for at amortised cost

## **13. ASSUMPTIONS**

13.1 The details set out in the report are based on interest rate forecasts provided by the Authority's Treasury Management Adviser.

13.2 It is currently assumed that investment cash balances remain at £100m throughout 2021/22 in order to deliver the investment returns stated within this report.

13.3 It has been assumed that the Authority will fund a proportion of its capital programme through supported borrowing.

13.4 It has been assumed that the HRA's borrowing needs are based on the current Business Plan at the time of writing this report.

## **14. LINKS TO STRATEGY**

14.1 The report has links to the strategic themes of the Authority, taking into account cross-cutting issues where relevant. It has specific links to the effective and efficient application and use of resources.

14.2 Prudent financial management contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:-

- A prosperous Wales.
- A resilient Wales.
- A healthier Wales.
- A more equal Wales.
- A Wales of cohesive communities.
- A Wales of vibrant culture and thriving Welsh Language.
- A globally responsible Wales.

## **15. WELL-BEING OF FUTURE GENERATIONS**

15.1 The establishment of treasury management strategy is a key element of effective financial management and risk management of the Authority's cash balances, investments and the timely service of debt, which assists the achievement of the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015.

## **16. EQUALITIES IMPLICATIONS**

16.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

## **17. FINANCIAL IMPLICATIONS**

17.1 As detailed throughout the report.

## **18. PERSONNEL IMPLICATIONS**

18.1 There are no personnel implications.

## **19. CONSULTATION**

19.1 The report was presented to the Policy and Resources Scrutiny Committee on the 12<sup>th</sup> January 2021 for their comment as part of the consultation process. The Scrutiny Committee made the following comments and recommendation to Council: -

One Member expressed the view that a future unstable economy as a result of the Covid-19 pandemic presented challenges to those planning financial strategies.

Another Member observed that it was impossible to make accurate financial predictions in a climate of uncertainty on considerations such as interest rates. The Head of Financial Services and S151 Officer recognised that unfortunately the future global outlook was looking bleak but advised that the draft budget proposals gave a flavour of the financial outlook for the four years beyond 2021/22 but that this was dependent on outside factors. One Member queried if it was necessary to borrow £37.2M for the General Fund when historically the capital programme was usually underspent. The Head of Financial Services and S151 Officer advised that the figure represented borrowing approvals received over an extended period and was not actual money borrowed as internal balances linked to the Council's reserves and investments had been used instead. Members heard that the figure is included in the report to ensure budget cover, but the Council was not intending to borrow in the next financial year. The Member also asked if there was an intention to use a Municipal Bond Agency. The Group Accountant advised that there was no intention to borrow from the Municipal Bond Agency at this stage. The Council are in regular dialogue with our Treasury Advisors regarding possible investment options that would maximise returns.

Having noted the contents of the report the Policy and Resources Scrutiny Committee by a majority present, and in noting in that there were no abstentions and no votes against, RECOMMENDED to Council that recommendations 3.1 – 3.9 be approved.

- 19.2 No external consultation is required for the purposes of the report. However, advice has been sought from the Authority's current Treasury Management Adviser.

## **20. STATUTORY POWER**

### 20.1 Local Government Act 1972

Author: Rhiann Williams – Group Accountant -Treasury Management & Capital

Consultees: Policy and Resources Scrutiny Committee  
Corporate Management Team (CMT)  
Stephen Harris – Head of Financial Service and S151 Officer  
Andrew Southcombe – Finance Manager, Corporate Finance  
Robert Tranter- Head of Legal Services & monitoring Officer  
Cllr E. Stenner – Cabinet Member for Finance, Performance & Planning

### **Appendices:**

Appendix 1 Local Government Investments - Definitions  
Appendix 2 Interest Rates – Forecasts/Indicative  
Appendix 3 Credit Policy, Investment Ratings, Periods and Targets  
Appendix 4 Investments to be used and “in house” authorisations  
Appendix 5 Treasury Management Strategy Indicators

Appendix 6	Prudential Indicators – Capital Finance
Appendix 7	Capital Expenditure and Funding
Appendix 8	MRP Policy

## Appendix 1

### Local Government Treasury Management Definitions

- **Investment**

In the context of a local authority cash deposit, an investment is a monetary asset deposited with a credible institution with the objective of providing income in the future. This is a transaction which relies upon the power in section 12 of the 2003 Act and is recorded in the balance sheet under the heading of investments within current assets or long-term investments.

- **Long-term Investment**

This is any investment other than one which is contractually committed to be paid within 12 months of the date on which the investment was made.

- **Credit Rating Agency**

An independent company that provides investors with assessments of an investment's risk and the three most prominent are.

Standard and Poor's (S & P)  
Moody's Investors Service Limited (Moody's)  
Fitch Ratings Limited (Fitch)

- **Specified Investment**

An investment is a specified investment if it satisfies the following conditions:

1. The investment is denominated in sterling and any payments or repayments in respect of the investment are payable only in sterling.
2. The investment is not a long-term investment (as defined above).
3. The investment is not considered to be capital expenditure.
4. One or both of the following conditions is both:
  - The investment is made with the UK Government or a local authority (as defined in section 23 of the 2003 Act) or local authorities in Scotland and Northern Ireland or a parish or community council.
  - The investment is made with a body or in an investment scheme which has been awarded a high credit rating by a credit rating agency

5. The principal sum to be repaid at maturity is the same as the initial sum invested other than investments in the UK Government.

- **Non-specified Investments**

These are investments, which do not meet the conditions of specified investments.

## Appendix 2 Interest Rate Forecasts

### Bank Rate (Forecasts as at November 2020 and subject to change)

	Arlingclose (Central case)
2021/22 Q1	0.10%
2021/22 Q2	0.10%
2021/22 Q3	0.10%
2021/22 Q4	0.10%
2022/23	0.10%
2023/24	0.10%

### PWLB (Forecasts as at November 2020 and subject to change- Source Arlingclose (Upside case))

	Q1 – 2021/22	Q2 – 2021/22	Q3 – 2021/22	Q4 – 2021/22
5 Year	1.25%	1.35%	1.40%	1.45%
10 Year	1.55%	1.65%	1.65%	1.75%
20 year	1.90%	2.00%	2.00%	2.05%
50 Year	1.80%	1.90%	1.90%	1.95%

For budget setting and financial planning, the following rates have been assumed.

Budget Period	Investment Returns	Borrowing Rates (PWLB 50 Years)
2021/22	0.10%	1.95%
2022/23	0.10%	1.95%
2023/24	0.10%	1.95%
2024/25	0.10%	1.95%
2025/26	0.10%	1.95%

## Appendix 3 Credit Risk Policy

### **Bank Bail-In**

Bail-in legislation has now been fully implemented in the European Union and major economies around the World. In addition, the largest UK banks have ring-fence their retail and investment banking functions into separate legal entities during 2018 and 2019. The impact of the structural change on the banks credit rating was minimal. Bail-In proposals, an approach where retail customers of a failing bank are protected under compensation schemes (up to a threshold) and losses are covered by investor's equity capital in the first instance, followed by junior debt and then senior unsecured debt and deposits. The Bank of England has stated that in the event of failure, banks with assets greater than £25 billion are more likely to be bailed-in than made insolvent, increasing the chance of the Authority maintaining operational continuity.

A bail-in is likely, although not certain, to happen over the course of a weekend, with much of the preparatory work having been undertaken in advance as the bank continues to fail regulatory conditions. The announcement of a bail-in, including which creditors will be affected, will normally be made by the Bank of England on a Sunday evening before the Asian markets open. Apart from the affected creditors, the bank will open for business as normal on the Monday morning. Where a banking group comprises several UK bank companies, it is likely that all group banks will be bailed-in together. Separately capitalized subsidiaries in other countries might not be bailed-in; that will be a matter for the local regulator. Before a bail-in, the bank's ordinary shareholders will have their shares expropriated and they will therefore no longer be the bank's owners. Building societies, which are mutually owned by their customers, will be converted to banks before bail-in. Hybrid capital instruments that convert to equity in certain circumstances will also be converted. Creditors will then be bailed-in in this order:

- junior or subordinated bonds, in order of increasing seniority;
- senior unsecured bonds issued by the non-operating holding company (if any);
- senior unsecured bonds issued by the operating bank companies;
- Unsecured deposits (money market funds, call accounts and fixed-term deposits with banks and building societies) and certificates of deposit (except interbank deposits of less than seven days original maturity); and
- Insured deposits that are larger than the FSCS £85,000 coverage limit.

Subject to cashflow liquidity requirements, the Authority will manage bail-in risk by way of investing surplus cash in instruments that are considered to be exempt from bail-in and include (and in no particular order) the Government, Corporate bonds, Registered Providers (Housing Associations) and secured bank instruments (Repos, Covered Bonds and other collateralised instruments). These instruments are considered to have a medium to long-term investment horizon, and therefore it is likely that the Authority will hold investment instruments with financial institutions that will not be exempt from the bank bail-in process such as fixed term deposits, call accounts and money market funds. The Authority will look to limit such holdings for the purpose of managing liquidity.

### **Counterparty Criteria**

The Authority considers, in order of priority, security, liquidity and yield when making investment decisions. Credit ratings remain an important element of assessing credit risk, but they are not a sole feature in the Authority's assessment of counterparty credit risk. The intention of the strategy

is to provide security of investment and minimisation of risk which will also enable diversification and thus avoidance of concentration risk.

The Authority also considers alternative assessments of credit strength, and information on corporate developments of and market sentiment towards counterparties. In accordance with the 2017 Treasury Management Code of Practice, the Authority will use the following key tools to assess credit risk:

- Published credit ratings of the financial institution and its sovereign rating;
- Sovereign support mechanisms;
- Credit default swaps (where quoted);
- Share prices (where available);
- Economic fundamentals, such as a country's net debt as a percentage of its GDP;
- Corporate developments, news, articles, markets sentiment and momentum;
- Subjective overlay.

The only indicators with prescriptive values remain to be credit ratings. Other indicators of creditworthiness are considered in relative rather than absolute terms.

The Authority is advised by Arlingclose Limited, who provides counterparty risk management services. Credit rating lists are obtained and monitored by Arlingclose, who will notify changes in ratings as they occur. Where an entity has its credit rating downgraded so that it fails to meet the approved investment criteria then:

- no new investments will be made;
- any existing investments that can be recalled or sold at no cost will be, and
- Full consideration will be given to the recall or sale of all other existing investments with the affected counterparty.

Where a credit rating agency announces that a credit rating is on review for possible downgrade (also known as "rating watch negative" or "credit watch negative") so that it may fall below the approved rating criteria, then only investments that can be withdrawn [on the next working day] will be made with that organisation until the outcome of the review is announced. This policy will not apply to negative outlooks, which indicate a long-term direction of travel rather than an imminent change of rating.

When deteriorating financial market conditions affect the creditworthiness of all organisations, as happened in 2008 and 2011, this is not generally reflected in credit ratings, but can be seen in other market measures. In these circumstances, the Authority will restrict its investments to those organisations of higher credit quality and reduce the maximum duration of its investments to maintain the required level of security. The extent of these restrictions will be in line with prevailing financial market conditions. If these restrictions mean that insufficient commercial organisations of high credit quality are available to invest the Authority's cash balances, then the surplus will be deposited with the UK Government, via the Debt Management Office or invested in government treasury bills or with other local authorities. This will cause a reduction in the level of investment income earned but will protect the principal sum invested.

The Authority defines “high credit quality” organisations and securities as those having a credit rating of A- or higher that are domiciled in the UK or a foreign country with a sovereign rating of AA+ or higher. For money market funds and other pooled funds “high credit quality” is defined as those having a credit rating of A- or higher.

Due to the ongoing strengthening of bank regulations it is recommended that the Authority adopts the Investment Grade scale as the minimum credit rating criteria. This will enable greater flexibility when placing investments especially during periods of regulatory stress tests where the outcome can result in a downsized counterparty list as a result of the downgrading of credit ratings. Furthermore, the need to hold a diversified investment portfolio and the impact of bank bail-in regulations means that the Authority will need to adopt a more structured credit rating criteria matrix for specific instruments. The table below details maximum monetary and investment duration limits.

<b>Maximum Monetary and Investment Duration Limits</b>						
<b>Credit Rating (Long-Term)</b>	<b>Banks Unsecured</b>	<b>Banks Secured</b>	<b>Government</b>	<b>Local Authorities</b>	<b>Corporates</b>	<b>Registered Providers</b>
UK Govt	-	-	£ Unlimited 50 years	-	-	-
AAA	£20m 5 years	£20m 20 years	£20m 50 years	£20m 50 years	£10m 20 years	£10m 20 years
AA+	£10m 5 years	£20m 10 years	£20m 25 years	£10m 25 years	£10m 10 years	£10m 10 years
AA	£10m 4 years	£20m 5 years	£20m 15 years	£10m 15 years	£10m 5 years	£10m 10 years
AA-	£10m 3 years	£20m 4 years	£20m 10 years	£10m 10 years	£10m 4 years	£10m 10 years
A+	£10m 2 years	£20m 3 years	£10m 5 years	£10m 5 years	£10m 3 years	£10m 5 years
A	£10m 13 months	£20m 2 years	£10m 5 years	£10m 5 years	£10m 2 years	£10m 5 years
A-	£10m 6 months	£20m 13 months	£10m 5 years	£10m 5 years	£10m 13 months	£10m 5 years
BBB+	£10m 100 days	£10m 6 months	£10m 2 years	£10m 2 years	£10m 6 months	£10m 2 years
BBB	£5m next day only	£5m next day only	-	£5m next day only	-	£5m next day only
None Rated	£1m 6 months	-	£5m 25 years		-	£5m 5 years
REITS			£20m per fund			
Pooled funds			£20m per fund			

**Credit rating:** Investment limits are set by reference to the lowest published long-term credit rating from a selection of external rating agencies. Where available, the credit rating relevant to the specific investment or class of investment is used, otherwise the counterparty credit rating is used. However, investment decisions are never made solely based on credit ratings, and all other relevant factors including external advice will be taken into account.

**Banks Unsecured:** Call accounts, term deposits, certificates of deposit and senior unsecured bonds with banks and building societies, other than multilateral development banks. These investments are subject to the risk of credit loss via a bail-in should the regulator determine that the bank is failing or likely to fail. Unsecured investment with banks rated BBB are restricted to overnight deposits at the Authority's current account bank [Barclays Bank Plc] or the Debt Management Office. The use of Banks unsecured instruments will be limited to aid the management of cashflow liquidity. In accordance with advice from the Authority's Treasury Management adviser, International banks will also be considered.

**Banks Secured:** Covered bonds, reverse repurchase agreements and other collateralised arrangements with banks and building societies. These investments are secured on the bank's assets, which limits the potential losses in the unlikely event of insolvency, and means that they are exempt from bail-in. Where there is no investment specific credit rating, but the collateral upon which the investment is secured has a credit rating, the highest of the collateral credit rating and the counterparty credit rating will be used to determine cash and time limits. The combined secured and unsecured investments in any one bank will not exceed the cash limit for secured investments. Investments placed in conjunction with a Repo Agreement will be classed as a secured investment.

**Government:** The Debt Management Office, Loans, bonds and bills issued or guaranteed by national governments and multilateral development banks. These investments are not subject to bail-in, and there is an insignificant risk of insolvency. Investments with the UK Central Government may be made in unlimited amounts for up to 50 years. Multilateral / Supranational institutions and State Agencies will also be classed as Government institutions as a number of sovereign states are key shareholders.

**Local Authorities:** Fixed term deposits / bills/ Bonds issued by local and regional authorities who include police and fire authorities. These investments are not subject to bail-in, and there is an insignificant risk of insolvency. Local authorities are not rated by credit rating agencies (though a handful of authorities have obtained a credit rating), but it is assumed that local authorities have the same credit rating as the UK Government (AA). Therefore a limit of £10m and duration of 15 years will be applied.

**Corporates:** Loans, bonds and commercial paper issued by companies other than banks and registered providers. These investments are not subject to bail-in, but are exposed to the risk of the company going insolvent. Loans to unrated companies will only be made as part of a diversified pool in order to spread the risk widely.

**Registered Providers:** Loans and bonds issued by, guaranteed by or secured on the assets of Registered Providers of Social Housing, formerly known as Housing Associations. These bodies are tightly regulated by the Homes and Communities Agency and, as providers of public services; they retain the likelihood of receiving government support if needed. Consideration will also be given to providing liquidity facilities, such as a revolving credit facility, subject to a detailed credit assessment of the Registered Provider.

**Pooled Funds:** Shares or units in diversified investment vehicles consisting of the any of the above investment types, plus equity shares and property. These funds have the advantage of providing wide diversification of investment risks, coupled with the services of a professional fund manager in return for a fee. **Money Market Funds** that offer same-day liquidity and aim for a constant net asset value will be used as an alternative to instant access bank accounts to manage short-term liquidity, while long-term strategic **pooled funds** whose value changes with market prices and/or have a notice period will be used for longer investment periods.

Bond, equity and property funds offer enhanced returns over the longer term, but are more volatile in the short term. These allow the Authority to diversify into asset classes other than cash without the need to own and manage the underlying investments. Because these funds have no defined maturity date, but are available for withdrawal after a notice period, their performance and continued suitability in meeting the Authority's investment objectives will be monitored regularly.

**Real estate investment trusts:** Shares in companies that invest mainly in real estate and pay the majority of their rental income to investors in a similar manner to pooled property funds. As with property funds, REITs offer enhanced returns over the longer term, but are more volatile especially as the share price reflects changing demand for the shares as well as changes in the value of the underlying properties. Investments in REIT shares cannot be withdrawn but can be sold on the stock market to another investor.

### Investment periods

- **Short-term (up to 365 days)**

At the time of writing, all short-term investments are managed in-house as a result of day-to-day cash flow management.

For the purpose of flexibility to respond to day-to-day cash flow demands, the proposed minimum percentage of its overall investments that the Authority will hold in short-term investments is **40%**.

Members are reminded that once a deposit has been made for a fixed period it can only be withdrawn (repaid early) by mutual consent albeit at a cost and subject to the underlying terms and conditions of the contract.

- **Long-term (one year and over)**

The Authority will continue to invest in long-term investments. Excluding the UK Government, It is suggested that no more than £20m be placed with any one institution with duration as set out in the table above. The Authority will not have more than £60m deposited in long-term investments (the Upper Limit).

### Target Rate

Forecasts of base rate can be quite diverse as illustrated by the table in **Appendix 2**. In view of the uncertainty inherent in such predictions, it would be imprudent to set a target rate which may be difficult to achieve. In view of the foregoing, it is proposed to set a target rate of return for short-term deposits in 2021/22 of at least **0.10%**.

This rate reflects the forecast of Bank Rate and the relationship between that rate and the rate achievable from the DMADF. If deposits are made with other counterparties as detailed in Section (a) of this Appendix, it is possible that the above rate could be exceeded.

## **Appendix 4- Specified and Non-Specified Investments**

Investments are categorised as “Specified” or “Non-Specified” within the investment guidance issued by the Welsh Government.

Specified investments are sterling denominated investments with a maximum maturity of one year. They also meet the “high credit quality” as determined by the Authority and are not deemed capital expenditure investments under Statute. Non specified investments are, effectively, everything else.

The Authority’s credit ratings criterion is set out in **Appendix 3** and will be consulted when using the investments set out below. Credit ratings are monitored on a daily basis and the Treasury Management Adviser will advise the Authority on rating changes and appropriate action to be taken.

The types of investments that will be used by the Authority and whether they are specified or non-specified are listed in the table below.

	Specified	Non-Specified
<b>Government</b>		
Debt Management Account Deposit Facility	✓	✗
Gilts (UK Government)	✓	✓
Treasury Bills (T-Bills- UK Government)	✓	✗
Bonds issued by AAA rated Multilateral Development Banks	✓	✓
<b>Registered Providers (Housing Associations)</b>		
Registered Providers (Housing Associations)	✓	✓
<b>Corporates</b>		
Corporate Bonds (including Floating Rate Notes and Commercial Paper)	✓	✓
<b>Local Authorities</b>		
Term deposits with other UK local authorities	✓	✓
Local Authority Bills / Bonds	✓	✓
<b>Banks- Secured</b>		
Repurchase Agreements (Repos)- Banks & Building Societies	✓	✓
Covered Bonds	✓	✓
Other Collateralised arrangements	✓	✓
<b>Banks- Unsecured</b>		
Term deposits with banks and building societies	✓	✗
Certificates of deposit with banks and building societies	✓	✗
AAA-Rated Money Market Funds	✓	✗
Authority's Banker	✓	✗
<b>Pooled Funds (Variable Net Asset Valuation)</b>		
Other Money Market and Collective Investment Schemes	✗	✓
Pooled Funds (Property; Bonds; Equity; Multi-Asset)	✗	✓
Real Estate Investment Trusts	✗	✓

## **Authorisation for the in-house team**

### **A. Short-term Investments**

Due to the nature of the in-house team's duties, in that they need to respond to cash-flow fluctuations by dealing on the money market generally between 8.00am and 10.00am each day, it is impractical for each decision to be referred to the most senior management levels.

As a result, it is proposed that day-to-day decisions remain the responsibility of the Group Accountant (Treasury Management & Capital) who is the *de facto* Treasury Manager. In the absence of the Group Accountant (Treasury Management & Capital), the responsibility will pass to any of the appropriate line managers.

It is proposed that all Treasury Management decisions that arise from the daily cashflow will be supported by the completion of a pro-forma which will evidence compliance with the strategy.

### **B. Long-term Investments**

It is proposed that decisions regarding long-term investments be referred to the Head of Financial Services & S151 Officer (as Chief Financial Officer) after consultation with the Finance Manager for Corporate Finance.

### **C. General Authorisations**

Whilst it is generally the intention to refer all decisions regarding long-term borrowing to the Head of Financial Services, there are times when to do so will risk the loss of a potentially advantageous deal, due to non-availability. This is particularly relevant to the raising of PWLB loans.

The Authority's Treasury Management Adviser continually monitors the movement of interest rates and can predict the changes in PWLB rates. On occasions it may be necessary to respond to advice from the Adviser to take up PWLB loans (whether as part of the current years funding requirement, or as part of a rescheduling exercise) before interest rates increase and make the necessary application to the PWLB before their cut-off time. In these circumstances, it is not always possible to have access to the Head of Financial Services & S151 Officer, at short notice, for approval.

As a result, it is proposed that, if the Head of Financial Services & S151 Officer is unavailable, the decision be referred to the Finance Manager Corporate Finance. In the absence of both, then the decision will be made by the Group Accountant (Treasury Management and Capital) provided that the reason for the transaction is appropriately documented, falls within the approved Annual Strategy and prudential indicators, and failure to act upon the advice given would result in additional interest charges.

In all the foregoing, it must be remembered that any action taken, based on a view of interest rates, can only be assessed on the data available at the time.

## Appendix 5 Treasury Management Strategy Indicators 2021/22-2023/24

	Budget 2021-22	Budget 2022-23	Budget 2023-24
	£000	£000	£000
<b>Authorised limit for external debt -</b>			
Borrowing	441,284	458,621	474,144
Other long term liabilities	26,274	24,097	21,829
<b>Total</b>	<b>467,558</b>	<b>482,718</b>	<b>495,973</b>
<b>Operational boundary for external debt -</b>			
Borrowing	353,027	366,897	379,315
Other long term liabilities	26,274	24,097	21,829
<b>Total</b>	<b>379,301</b>	<b>390,994</b>	<b>401,144</b>
Capital Financing Requirement	431,942	441,364	451,049
<b>Upper limits for interest rate exposure</b>			
Principal outstanding on borrowing	353,027	366,897	379,315
Principal outstanding on investments	100,000	90,000	80,000
<b>Net principal outstanding</b>	<b>253,027</b>	<b>276,897</b>	<b>299,315</b>
<b>Fixed rate limit – 100%</b>	253,027	276,897	299,315
<b>Variable rate limit – 30%</b>	75,908	83,069	89,795
<b>Upper limit for total invested for over 365 days</b>	<b>60,000</b>	<b>60,000</b>	<b>60,000</b>

Maturity structure of fixed rate borrowing	Upper Limit	Lower Limit
Under 12 months	35%	0%
Over 12 months and within 24 months	40%	0%
Over 2 years and within 5 years	50%	0%
Over 5 years and within 10 years	75%	0%
Over 10 years	100%	0%

	Budget 2021-22	Budget 2022-23	Budget 2023-24
	£000	£000	£000
<b>Gross Debt and Net Debt</b>			
<b>Outstanding Borrowing</b>	353,027	366,897	379,315
<b>Other long term liabilities</b>	26,274	24,097	21,829
<b>Gross Debt</b>	<b>379,301</b>	<b>390,994</b>	<b>401,144</b>
<b>Less investments</b>	100,000	90,000	80,000
<b>Net Debt</b>	<b>279,301</b>	<b>300,994</b>	<b>321,144</b>

	Budget 2021-22	Budget 2022-23	Budget 2023-24
	£000	£000	£000
<b>Gross and The CFR</b>			
Gross Debt	379,301	390,994	401,144
CFR	431,942	441,364	451,049

## Appendix 6 - Prudential Indicators - Capital Finance

<b>Ratio of Financing costs to net revenue stream</b>	<b>Budget 2021-22</b>	<b>Budget 2022-23</b>	<b>Budget 2023-24</b>
<b>General Fund</b>	<b>£000</b>	<b>£000</b>	<b>£000</b>
Principal repayments	2,736	3,536	3,675
Interest costs	8,453	8,516	8,213
Debt Management costs	42	41	42
Rescheduling discount			
Investment income	(1,443)	(1,368)	(1,518)
Interest applied to internal balances	812	825	838
<b>Total General Fund</b>	<b>10,600</b>	<b>11,550</b>	<b>11,250</b>
Net revenue stream	<b>367,178</b>	<b>370,133</b>	<b>373,205</b>
<b>Total as percentage of net revenue stream</b>	<b>2.89%</b>	<b>3.12%</b>	<b>3.01%</b>
<b>Housing Revenue Account</b>			
Principal repayments	1,951	1,912	1,874
Interest costs	5,509	5,639	5,766
Rescheduling discount			
Debt Management costs	34	37	38
<b>Total HRA</b>	<b>7,494</b>	<b>7,588</b>	<b>7,678</b>
Net revenue stream	<b>51,273</b>	<b>53,357</b>	<b>53,882</b>
<b>Total as percentage of net revenue stream</b>	<b>14.62%</b>	<b>14.22%</b>	<b>14.25%</b>

<b>Capital financing requirement [end of year position]</b>	<b>Budget 2021-22</b>	<b>Budget 2022-23</b>	<b>Budget 2023-24</b>
	<b>£000</b>	<b>£000</b>	<b>£000</b>
Council Fund	290,419	289,672	288,691
Housing Revenue Account	141,523	151,692	162,358
<b>Total Authority</b>	<b>431,942</b>	<b>441,364</b>	<b>451,049</b>

## Appendix 7 - Capital Expenditure and Funding

	Budget 2021-22	Budget 2022-23	Budget 2023-24
	£000	£000	£000
<b>Expenditure</b>			
Council Fund	11,349	9,726	9,726
Housing Revenue Account	35,200	35,800	37,600
<b>Total</b>	<b>46,549</b>	<b>45,526</b>	<b>47,326</b>
<b>Funding</b>			
Surplus/ (Deficit) Balance b/f	454	509	287
Borrowing - Supported (GF)	4,842	4,842	4,842
General Capital Grant - WG	4,856	3,020	3,020
Internal Borrowing	-	-	-
RCCO Budget	128	128	128
Capital underspends from previous years		-	-
General Fund working balances	-	-	-
One off funding- MRP Review	1,578	1,514	1,449
RCCO- (HRA)	23,850	15,450	16,550
Unsupported Borrowing HRA- WHQS			
Unsupported Borrowing HRA- Affordable Housing	4,000	13,000	13,700
Major Repairs Allowance (HRA)	7,350	7,350	7,350
<b>Total</b>	<b>47,058</b>	<b>45,813</b>	<b>47,326</b>
<b>Surplus C/f</b>	<b>509</b>	<b>287</b>	

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## **Appendix 8 MRP 2021/22 Policy**

The Minimum Revenue Provision (MRP) is an amount charged to the revenue account for the repayment of debt, which has been used to finance capital expenditure. The Local Government Act 2003 requires the Authority to have regard to the Welsh Government's Guidance on Minimum Revenue Provision (most recently issued in 2010).

The broad aim of the WG Guidance is to ensure that debt is repaid over a period that is either reasonably commensurate with that over which the capital expenditure provides benefits, or, in the case of borrowing supported by Government Revenue Support Grant, reasonably commensurate with the period implicit in the determination of that grant.

The WG Guidance requires the Authority to approve an Annual MRP Statement each year. The Authority's MRP policy for 2021/22 is stated below.

### **Supported Borrowings**

MRP on historic debt liability as at the 31<sup>st</sup> March 2007 and subsequent capital expenditure funded from supported borrowings will be charged to revenue over 50 years.

The MRP charge for supported borrowing will be based on an assumed annuity rate of 2%.

The annuity method results in a lower charge in earlier years and a higher charge in the later years, and takes into consideration the time value of money.

### **Unsupported Borrowings**

The MRP charge for individual assets funded through unsupported borrowing will be based on the estimated life of each asset or 25 years where this cannot be determined.

The MRP charge for unsupported borrowing will be based on the average Public Works Loan Board (PWLB) interest rate for new annuity loans in the year that an asset becomes operational.

Advice on asset life (land and buildings) will be sought from the Council's property valuation team. The first MRP Charge will start in the year after the asset becomes operational.

### **MRP Charges Relating to Other Capital Expenditure**

- 1 For assets acquired by leases or the Private Finance Initiative [and for the transferred debt from local authorities], MRP will be determined as being equal to the element of the rent or charge that goes to write down the balance sheet liability.
- 2 For capital expenditure loans to third parties that are repaid in annual or more frequent instalments of principal, the Council will make nil MRP, but will instead apply the capital receipts arising from principal repayments to reduce the capital financing requirement instead. In years where there is no principal repayment, MRP will be charged in accordance with the MRP policy for the assets funded by the loan, including where appropriate, delaying MRP until the year after the assets become operational. While this is not one of the options in the WG Guidance, it is thought to be a

prudent approach since it ensures that the capital expenditure incurred in the loan is fully funded over the life of the assets.

- 3 MRP on purchases of freehold land will be charged over 50 years. MRP on expenditure not related to fixed assets but which has been capitalised by regulation or direction will be charged over 20 years.
- 4 The MRP charge for the HRA will be determined by using an interest rate of 2% on the opening capital financing requirement on a reducing balance basis.
- 5 The Authority has the option to make voluntary overpayments on MRP where possible to reduce the revenue charge in later years.

Capital expenditure incurred during 2021/22 that is financed by debt will not be subject to an MRP charge until 2022/23.



## SPECIAL COUNCIL – 24TH FEBRUARY 2021

**SUBJECT: BUDGET PROPOSALS FOR 2021/22 AND MEDIUM-TERM FINANCIAL OUTLOOK**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE SERVICES**

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- 1.1 The attached report, which was considered by Cabinet on 17th February 2021 sought Cabinet endorsement of the 2021/22 budget proposals prior to final determination by Council on 24th February and provided an update on the Medium-Term Financial Plan (MTFP).
  - 1.2 It was noted that the 3.1% uplift in the Provisional Financial Settlement along with the proposed increase in Council Tax of 3.9% will mean that there will be no requirement for any new savings to be identified to balance the budget for the 2021/22 financial year. Furthermore, the proposals in the report will also maintain service provision across the Council, fund increasing demand and service pressures in key areas such as Social Services and Education, enable new community focussed investments in areas such as Caerphilly Cares and the proposed Community Empowerment Fund, provide the capacity and resilience required to drive forward the Team Caerphilly Transformation Programme and Place Shaping Plan, and address legacy issues in respect of income shortfalls in a number of service areas.
  - 1.3 Cabinet noted that details of the 2021/22 Final Local Government Financial Settlement will not be announced until 2nd March 2021, however it is anticipated that this will not vary significantly from the position set out in the Provisional Settlement.
  - 1.4 The Council is on a journey of recovery, improvement and transformation and the proposals set out in the report provide a sound platform to move forward with its ambitious plans.
  - 1.5 Cabinet discussed the report at length and sought further information regarding the level of Caerphilly CBC Band D Council Tax compared to neighbouring Local Authorities, the number of households in receipt of support through the Council Tax Reduction Scheme (CTRS), the financial impact of Covid-19, and assumptions around future budget planning. The Cabinet Member provided detailed responses to Members' queries and Cabinet were pleased to note the report and recommendations.
  - 1.6 Council is asked to note the comments above and to consider the recommendations of Cabinet that:
    - i) The revenue budget proposals for 2021/22 of £368.227m be agreed as detailed throughout the report and summarised in Appendix 1;

- ii) The proposal to appoint four fixed-term Project Managers be approved for an initial period of 2 years to support the delivery of the Council's Transformation Programme and Place Shaping Plan, with the total costs of £368k being funded from the £1.8m reserve previously approved by Council to support the delivery of the MTFP (paragraph 5.3.37);
- iii) The movements on the General Fund in Appendix 2 be noted and the proposal that for one year only £1.050m of the General Fund balance be used to support the 2021/22 budget be agreed due to there being no assumed Council Tax surplus in the 2020/21 financial year;
- iv) The proposed Capital Programme for the period 2021/22 to 2023/24 as set out in Appendix 3 be agreed;
- v) The proposal to increase Council Tax by 3.9% for the 2021/22 year be agreed to ensure that a balanced budget is achieved (Council Tax Band D being set at £1,230.57);
- vi) The updated MTFP be noted as set out in Appendix 4 showing an indicative potential savings requirement of £21.1m for the four-year period 2022/23 to 2025/26.

Author: C. Evans, Committee Services Officer

Appendices:

Appendix Report to Cabinet 17<sup>th</sup> February 2021.



## SPECIAL CABINET – 17TH FEBRUARY 2021

**SUBJECT: BUDGET PROPOSALS FOR 2021/22 AND MEDIUM-TERM FINANCIAL OUTLOOK**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION & CORPORATE SERVICES**

### 1. PURPOSE OF REPORT

- 1.1 To seek Cabinet endorsement of the 2021/22 budget proposals contained within this report prior to final determination by Council on the 24<sup>th</sup> February 2021.
- 1.2 To provide an update on the Medium-Term Financial Plan (MTFP).

### 2. SUMMARY

- 2.1 At its meeting on the 13<sup>th</sup> January 2021, Cabinet endorsed the 2021/22 Draft Budget Proposals based on the Welsh Government (WG) Provisional Local Government Financial Settlement for 2021/22.
- 2.2 The report provided details of a range of cost and service pressures that require funding, along with a proposed increase of 3.9% in Council Tax to enable the Authority to set a balanced budget for the 2021/22 financial year.
- 2.3 Following further consultation this report now presents Final Budget Proposals for the 2021/22 financial year, along with additional information for Cabinet consideration in respect of movements on the General Fund and the proposed Capital Programme for the three-year period 2021/22 to 2023/24.

### 3. RECOMMENDATIONS

- 3.1 Prior to consideration and determination at Council on the 24<sup>th</sup> February 2021, Cabinet is asked: -
  - 3.1.1 To endorse the revenue budget proposals for 2021/22 of £368.227m as detailed throughout the report and summarised in Appendix 1.
  - 3.1.2 To endorse the proposal to appoint four fixed-term Project Managers for an initial period of 2 years to support the delivery of the Council's Transformation Programme and Place Shaping Plan, with the total cost of £368k being funded from the £1.8m reserve previously approved by Council to support the delivery of the MTFP (paragraph 5.3.37).
  - 3.1.3 To note the movements on the General Fund in Appendix 2 and endorse the proposal that for one year only £1.050m of the General Fund balance should be used to support the 2021/22 budget due to there being no assumed Council Tax surplus in the 2020/21 financial year (paragraph 5.4.4).
  - 3.1.4 To endorse the proposed Capital Programme for the period 2021/22 to 2023/24 as set out in Appendix 3.

- 3.1.5 To support the proposal to increase Council Tax by 3.9% for the 2021/22 financial year to ensure that a balanced budget is achieved (Council Tax Band D being set at £1,230.57).
- 3.1.6 To note the updated MTFP set out in Appendix 4 showing an indicative potential savings requirement of £21.1m for the four-year period 2022/23 to 2025/26.

#### 4. REASONS FOR THE RECOMMENDATIONS

- 4.1 Council is required annually to approve proposals to set a balanced budget and agree a Council Tax rate.
- 4.2 Council is required to put in place a sound and prudent financial framework to support service delivery.

#### 5. THE REPORT

##### 5.1 Background and Context

5.1.1 The Council's financial position underpins its ability to make strategic decisions in order to deliver high quality effective services to our residents.

5.1.2 The financial picture of the Council is complex, but in summary it consists of four key elements: -

- **The Revenue Budget** – This funds the day-to-day expenditure on the range of services that we provide to our citizens including the staff costs, maintaining our buildings and other assets such as the highway network, utility costs, maintaining our fleet of vehicles and the cost of servicing debt (i.e. loan and interest payments).
- **The Capital Budget** – This funds one-off investments to create or enhance our assets such as schools, libraries and the highway network. This would include the construction of new buildings, major refurbishments and the acquisition of specialist vehicles and equipment.
- **Reserves** – These are approved one-off sums that have been set aside or earmarked for a range of different purposes. A report is prepared annually providing details of the reserves held by the Council and identifying any reserves that are uncommitted and can be released for other purposes such as supporting the Capital Programme.
- **Grants** - The Council receives a number of grants from external bodies such as the Welsh Government. These grants are for specific purposes and the Council must comply with detailed grant terms and conditions. Some of the grants are also subject to audit by our External Auditors.

5.1.3 To date the Council has managed the austerity measures using a “salami slicing” approach i.e. reducing budgets gradually across the whole organisation, whilst trying to protect key services such as Education and Social Services. This approach has served us well, with £106m of savings being achieved over the last 13 years.

5.1.4 However, if we are to remain an innovative, modern and adaptive organisation, whilst managing increasing demands against reducing funding, we must take a longer-term strategic approach that mobilises our staff, our elected members, our partners and our communities.

5.1.5 This new whole-authority transformation operating model is entitled “Team Caerphilly – Better Together”, with the underlying principle of being a Council that has a “social heart and a commercial head”. The key elements of this new operating model are: -

- Improving the way we work.
- Enhancing relationships with our communities and partners.
- Developing proud and trusted staff.

5.1.6 It is important that we strike a balance between investing in our day-to-day services and providing financial support to improve how we deliver services.

5.1.7 Our revenue budget is used to support service delivery on an annual basis and our capital budget is used to fund infrastructure projects across the county borough. We also make use of our reserves wherever we can to support the Council's capital expenditure and approval has already been given to set aside £28.6m to boost the Capital Programme by investing in our Place Shaping Plan.

5.1.8 It is crucial that we manage our revenue and capital budgets and our reserves closely and as a collective, in order to maximise the return on investments. As part of our new operating model we will undertake a forensic review of our financial position through the following: -

- Introducing a structured programme of Service Reviews that will evaluate the services that we provide to ensure that they remain relevant, are provided in the most effective and efficient way and are providing value for money.
- Encouraging and supporting more innovative approaches to service delivery.
- Embracing new technologies to modernise the way that we work, streamline processes, improve workflow and drive out efficiencies.
- Adopting a more commercial approach to service delivery to generate additional income to reinvest in services to help them remain resilient i.e. "profit for purpose".
- Routinely reviewing our reserves to identify further sums that may be available to support the Capital Programme moving forward.

## **5.2 Welsh Government (WG) Provisional Local Government Financial Settlement for 2021/22**

5.2.1 The Local Government Financial Settlement received from WG on an annual basis is referred to as Aggregate External Finance (AEF). This consists of a Revenue Support Grant (RSG) and Redistributed Non-Domestic Rates (business rates). Details of the Provisional Local Government Financial Settlement are normally announced by WG in early October each year. However, due to the impact of the Covid-19 pandemic and the delay in undertaking the UK Government spending review, details of the Provisional Local Government Financial Settlement for 2021/22 were not released until the 22<sup>nd</sup> December 2020.

5.2.2 The key points of the WG Provisional 2021/22 Local Government Financial Settlement are the following: -

- An overall net cash increase of 4% in the Aggregate External Finance (Revenue Support Grant (RSG) and Redistributed Non-Domestic Rates) on an all-Wales basis. This cash increase includes specific grants totalling circa ££5.13m that have been transferred into the RSG in respect of the 2020/21 teachers' pay award and coastal risk management.
- For Caerphilly CBC there is a cash uplift of 3.1% in the Aggregate External Finance which equates to £9m after adjusting for changes in the Council Tax base.

- Caerphilly CBC's element of the £5.13m specific grants transferred into the Settlement is £247k relating to the 2020/21 teachers' pay award.
- Changes to other pass-ported grants in the Provisional Settlement result in a net reduction of £202k in relation to the tapering of WG funding for PFI Schemes.
- The capital allocations available to Caerphilly CBC in the RSG and from the General Capital Grant have decreased by £45k from the 2020/21 financial year.

5.2.3 The UK Government has allocated £766m to WG in respect of the ongoing financial impact of Covid-19 for the 2021/22 financial year. This is far below the levels of funding that have been allocated in 2020/21 and the distribution of this funding will continue to be dealt with outside of the core Financial Settlement.

5.2.4 The 2021/22 Budget Proposals set out in this report do not include additional costs or income losses associated with Covid-19 on the assumption that these costs will continue to be funded through WG from April 2021. This does present a significant financial risk and the position will be closely monitored as we progress through the new financial year.

5.2.5 Details of the 2021/22 Final Local Government Settlement will not be announced until the 2<sup>nd</sup> March 2021, however it is anticipated that this will not vary significantly from the position set out in the Provisional Settlement.

### 5.3 2021/22 Budget Proposals

5.3.1 The proposals contained within this report will deliver a balanced budget for 2021/22 on the basis that Council Tax is increased by 3.9%. Table 1 provides a summary: -

Table 1 – Summary

Paragraph	Description	£m	£m
5.2.2	Aggregate External Finance (3.1% uplift)		9.000
5.3.3 – 5.3.11	Schools cost pressures	3.233	
5.3.12 – 5.3.17	General Fund Services inflationary cost pressures	2.787	
5.3.18 – 5.3.48	General Fund service pressures/proposed new investments	8.088	
5.3.49	Approved savings in advance from 2020/21		2.011
5.5.1 – 5.5.2	Proposed Council Tax increase (3.9%)		3.097
	<b>TOTAL: -</b>	<b>14.108</b>	<b>14.108</b>

5.3.2 It is pleasing to report that based on Council Tax being increased by 3.9% there will be no requirement for any new savings to be identified to balance the budget for the 2021/22 financial year. Furthermore, the proposals in this report will: -

- Maintain service provision across the Council.
- Fund increasing demand and service pressures in key areas such as Social Services and Education.
- Enable new community focussed investments in areas such as Caerphilly Cares and the proposed Community Empowerment Fund.
- Provide the capacity and resilience required to drive forward the Team Caerphilly Transformation Programme and Place Shaping Plan.
- Address legacy issues in respect of income shortfalls in a number of service areas.

5.3.3 The Schools cost pressures totalling £3.233m are set out in Table 2 below -

Table 2 – Schools Cost Pressures

	<b>£m</b>
Teachers Pay at 3.1% (Sept 2020) and 1% (Sept 2021)	2.042
Teachers Employer Pension Contributions	0.000
APT&C Pay at 1% – Including £250 for salaries of £24k or less	0.293
APT&C Employer Pension Contributions	0.000
Living Wage	0.016
Non-Pay Inflation at 0.75%	0.169
Other Service Pressures	0.713
<b>TOTAL: -</b>	<b>3.233</b>

- 5.3.4 **Teachers Pay** - Teachers pay increased across most of the scale ranges by 3.1% with effect from September 2020 and funding has been provided in the Provisional Settlement to reflect the 2021/22 impact of this. However, the Chancellor of the Exchequer has announced a pay freeze for the public sector for 2021/22 except for those earning £24k or less (these will receive a lump sum uplift of up to £250), and those working in certain sectors such as frontline NHS staff. Due to this announcement WG has not received funding for 2021/22 pay uplifts for those staff in Local Government (including teachers) who earn in excess of £24k.
- 5.3.5 Whilst the Chancellor’s statements in relation to pay constraints are acknowledged there is a risk of resistance to such pay policy, particularly considering the demands on staff during the ongoing Covid-19 pandemic. With this in mind it is considered prudent to include some provision in the 2021/22 budget proposals for potential pay awards so a further uplift of 1% in teachers’ pay is currently assumed from September 2021 (along with provision for those staff who will qualify for the £250 uplift). This will be held centrally in the first instance and reviewed once there is clarity around the agreed pay position for the 2021/22 financial year.
- 5.3.6 **Teachers Employers’ Pension Contributions** – There was a significant uplift of 7.12% in employer pension contributions for teachers from September 2019. This increase has been fully funded in the budgets delegated to schools and there is currently no assumed further increase for the 2021/22 financial year.
- 5.3.7 **APT&C Pay at 1%** - As mentioned in paragraph 5.3.5, whilst the Chancellor’s statements in relation to pay constraints are acknowledged, it is considered prudent to include some provision in the 2021/22 budget proposals for potential pay awards so a 1% uplift for APT&C staff is assumed from April 2021 (along with provision for those staff who will qualify for the £250 uplift). This will also be held centrally in the first instance and reviewed once there is clarity around the agreed pay position for the 2021/22 financial year.
- 5.3.8 **APT&C Employer Pension Contributions** - The Greater Gwent (Torfaen) Pension Fund is subject to an independent triennial valuation of its assets and liabilities. The results of the latest valuation concluded that no increase would be required in the employer contributions for the 2020/21 and 2021/22 financial years with an increase of 1% being required for 2022/23.
- 5.3.9 **Foundation Living Wage** – Caerphilly CBC is a Living Wage Foundation employer, so a sum is included in the budget proposals in respect of relevant school staff to allow for annual increases in the Foundation Living Wage hourly rate.
- 5.3.10 **Non-pay Inflation at 0.75%** - The Consumer Prices Index (CPI) inflation rate in December 2020 was 0.6%. It is proposed that the non-pay uplift for 2021/22 should be set at 0.75% to allow some limited headroom for increases during the financial year.
- 5.3.11 **Other Service Pressures** – This includes the following: -

- Second satellite class for Trinity Fields.
- Floor area and National Non-Domestic Rates (NNDR) changes.
- Potential changes in social needs funding (primary and secondary).
- Potential for further costs arising from formula changes linked to updated Free School Meals data.

5.3.12 The General Fund Services inflationary cost pressures totalling £2.787m are set out in Table 3 below: -

Table 3 – General Fund Services Inflationary Cost Pressures

	<b>£m</b>
Pay at 1% (APT&C staff) – Including £250 for salaries of £24k or less	1.773
Living Wage (APT&C staff)	0.037
Employer Pension Contributions (APT&C staff)	0.000
Non-pay Inflation at 0.75%	1.100
Non-pay inflation (Fees and Charges) at 0.75%	(0.123)
<b>TOTAL: -</b>	<b>2.787</b>

- 5.3.13 **Pay at 1% (APT&C staff)** – As previously mentioned it is considered prudent to include some provision in the 2021/22 budget proposals for potential pay awards so a 1% uplift for APT&C staff is assumed from April 2021 (along with provision for those staff who will qualify for the £250 uplift). This will be held centrally in the first instance and reviewed once there is clarity around the agreed pay position for the 2021/22 financial year.
- 5.3.14 **Foundation Living Wage (APT&C staff)** – Caerphilly CBC is a Living Wage Foundation employer, so a sum is included in the budget proposals in respect of APT&C staff to allow for annual increases in the Foundation Living Wage hourly rate.
- 5.3.15 **Employer Pension Contributions (APT&C staff)** – As mentioned in paragraph 5.3.8 the results of the latest triennial valuation of the Pension Fund concluded that no increase would be required in the employer contributions for the 2020/21 and 2021/22 financial years with an increase of 1% being required for 2022/23.
- 5.3.16 **Non-pay Inflation at 0.75%** - The Consumer Prices Index (CPI) inflation rate in December 2020 was 0.6%. It is proposed that the non-pay uplift for 2021/22 should be set at 0.75% to allow some limited headroom for increases during the financial year.
- 5.3.17 **Non-pay Inflation (Fees and Charges) at 0.75%** - A generic increase of 0.75% is assumed for Fees and Charges.
- 5.3.18 It is incumbent upon the Council to set a realistic budget each year. Table 4 provides details of the 2021/22 General Fund inescapable service pressures that have been identified along with a range of new investments that require consideration in respect of funding: -

Table 4 – General Fund Inescapable Service Pressures and Proposed New Investments

	<b>£m</b>
Council Tax Reduction Scheme (CTRS) additional liability	0.602
Other pass-ported grants	(0.202)
Social Services cost pressures	2.500
Education & Lifelong Learning cost pressures	1.436
Planning Services	0.428
Digital Services	1.212
Additional capacity for Transformation/Place Shaping	0.526
Income budget realignment	0.567
Caerphilly Cares	0.284
Community Empowerment Fund	0.328
Fire Service Levy	0.162
Glamorgan Archives	0.011
Health & Safety – Fire Safety Officers	0.080
City Deal (Partnership revenue contribution)	0.003
City Deal (debt charges)	0.089
Review of Car Parking charges	0.090
Education Achievement Service (EAS)	(0.028)
<b>TOTAL: -</b>	<b>8.088</b>

- 5.3.19 **CTRS additional liability** – The Authority is required to fund a Council Tax Reduction Scheme (CTRS). This replaced Council Tax Benefit in 2013 and is a means-tested benefit that assists in full or part towards a resident’s Council Tax bills. The additional liability arises from the proposal to increase Council Tax by 3.9% in 2021/22.
- 5.3.20 **Other pass-ported grants** – Adjustment required to reflect the net reduction in the Provisional Settlement of £202k in relation to the tapering of WG funding for PFI Schemes
- 5.3.21 **Social Services cost pressures** – Based on an assessment of current commitments it is anticipated that growth of £2.5m is required to meet the full-year cost of placements in the 2021/22 financial year. Areas where pressures are being experienced include children’s residential care and fostering, domiciliary care and supported living.
- 5.3.22 **Education and Lifelong Learning cost pressures** – There are a range of cost pressures within this service area totalling £1.436m. The most significant of these relate to school improvement, Additional Learning Needs (ALN), potential additional costs arising from the forthcoming renewal of contracts for Home to School/College Transport, and budget realignment to address the increasing cost of maternity cover. It is also proposed to reinstate the £333k ‘50/50 Building Maintenance Budget in Schools’ which was previously withdrawn to support MTFP savings requirements. Since the withdrawal of this budget, financial support has been offered to schools through Education Reserves, but this is not sustainable in the medium to longer-term and without this funding there will be an adverse impact on maintenance programmes.
- 5.3.23 **Planning Services** – At its meeting on the 9<sup>th</sup> December 2020, the Housing & Regeneration Scrutiny Committee considered a report outlining proposals for staff budget growth and realignment of fee income targets in Planning Services. The recommendations in the report were endorsed by the Scrutiny Committee and if approved as part of the 2021/22 budget will require funding of £428k.
- 5.3.24 **Digital Services** – Over the past 12 months the Council has witnessed the benefits of advanced technology firsthand. The Covid-19 pandemic has changed the landscape greatly, and there is little doubt that services would not have continued functioning without the adoption of new technology and digital transformation. Moving forward we need to ensure that we have a secure and safe environment for the delivery of all services via a robust investment and change

programme. To ensure that we have a fit-for-purpose ICT infrastructure and digital application the IT service has developed a 5-year strategy that looks at developing a culture of transformation through the use of modern technology.

- 5.3.25 To facilitate the development of digital, investment in core infrastructure and systems will be required. The proposed funding of £1.212m will allow for the review of the existing infrastructure along with investment in the latest Microsoft Office 365 licenses for greater working flexibility and the highest level of security, whilst at the same time enhancing the customer experience of service delivery.
- 5.3.26 The investment will also provide the ability to analyse data and use information for informed decision-making based on real live data, which we are currently unable to do. ICT and digital technologies are core to future business models and for the organisation to flourish it will require a continuous investment programme over the coming years. This will also mean investing now to save for the future. As we take forward the proposed investment in Microsoft technologies other applications will be rationalised and in some cases withdrawn to develop a more agile application base. This will give us the opportunity to explore and evaluate the use of Cloud services and assess the practicalities of “On Premise” solutions via “Cloud” services.
- 5.3.27 **Additional capacity for Transformation/Place Shaping** – The financial challenges we face in future years are unprecedented and coupled with the changing needs of our communities and the emergence of new technologies, it is inevitable and expected that the Council responds to these demands and opportunities in order for us to remain relevant and sustainable over the longer-term. Even before the emergence of Covid-19 it was widely accepted that the Council cannot continue as it is, and it was acknowledged that we needed to examine the way in which we operate and use our resources to deliver the services required by our communities across the county borough.
- 5.3.28 The Council is on a journey of recovery, improvement and transformation and key to this is the Future Caerphilly Transformation Strategy, ***Team Caerphilly – Better Together*** that was approved by Cabinet at its meeting on the 12<sup>th</sup> June 2019. This Strategy sets out details of a major transformation programme to examine how a future operating model for the Council can be developed.
- 5.3.29 The principles of this new operating model include how services are prioritised, how they can become more business efficient, to explore opportunities for greater customer focus and digital delivery, and to consider alternative delivery models and seek out commercial opportunities. Furthermore, to enable the Council to continue providing high quality value for money services in an environment that will require new approaches and new skills, the Strategy acknowledges that a new relationship will need to be built with staff and communities.
- 5.3.30 The Strategy is multi-faceted and at the core of the programme of change is the new mantra of ***Social Heart and Commercial Head***. This recognises a commitment to public service and the needs of citizens, but also demonstrates a commitment to explore commercial and investment opportunities, where appropriate, to generate income that can be reinvested in services to help them remain resilient in the current challenging financial climate.
- 5.3.31 The strategic programme of “whole-authority” work is being delivered through the following key themes, which underpin the new operating model of the Council: -



5.3.32 Good progress has been made in implementing the Strategic Action Plan that underpins the Transformation Strategy. The emergence of Covid-19 and the required response has accelerated the pace of change in some areas and we will now seek to build on this moving forward to ensure that we can offer cost effective, resilient services that meet the needs of our communities through these challenging times and in the medium to longer-term.

5.3.33 The learning that the Council has developed through its response to Covid-19 has helped reshape and expand the transformation programme. At its meeting of the 22<sup>nd</sup> July 2020, Cabinet endorsed the inclusion of ten corporate reviews within the **Team Caerphilly – Better Together** programme, all of which expand on or embed further many of the positive changes implemented in response to Covid-19. The Corporate Reviews are as follows: -

1	Walk in Services Review	OneCouncil	Learning Organisation
2	Remote Contact Review		
3	Front Line Delivery Review		
4	Support Services Review		
5	Information, Insight and Intelligence Review		
6	Flexible Working Review	Workforce & Resources	
7	Sustainable Financial Planning Review		
8	Workforce Development Review		
9	Corporate Volunteering & Community Partnership Review		
10	Decision-Making Review		

5.3.34 The Council is also developing an ambitious Place Shaping investment programme for the county borough, totalling up to circa £360m spanning the next few years, which will lever in significant socio-economic benefits. Details of this proposed major investment programme will be shared with Members in a Joint Scrutiny Committee meeting on the 22<sup>nd</sup> February 2021 prior to Cabinet consideration on the 24<sup>th</sup> February 2021.

- 5.3.35 In order to deliver this wide ranging and ambitious change programme of significant investments consisting of many individual complex projects, whilst continuing with the Council's transformation programme and other priorities such as the Covid-19 response, Regeneration, Housing new build, and delivering the Corporate Plan objectives; investment in additional staff resource is required.
- 5.3.36 The £526k growth bid will be used to permanently fund the current three fixed-term Transformation Manager posts and the existing fixed-term Communications and Engagement Officer post. In addition to this, a permanent Head of Transformation is required to lead the overall Transformation Programme as well as a Head of Prosperity, in order to accelerate our economic regeneration priority.
- 5.3.37 In addition to the proposed £526k growth bid, project management capacity is also required to develop the many projects within the Transformation Programme and Place Shaping Plan. Four fixed-term Project Manager posts are therefore proposed to accelerate the projects already in place and to commence projects that have not yet begun. It is proposed that these posts are initially implemented for a period of two years at a total cost of £368k and are funded from the £1.8m reserve previously approved by Council to support the delivery of the MTFP.
- 5.3.38 The additional staff resources are required to deliver the exciting and bold over-arching change programme for the county borough and the organisation, ensuring that both remain sustainable and resilient, economically, socially and environmentally over the longer-term.
- 5.3.39 **Income budget realignment** – There are a number of service areas where there is a trend in recent years of income budgets not being achieved. Despite steps being taken to introduce further efficiencies to address these shortfalls it is now prudent to recognise the actual levels of income being generated in these areas and to adjust budgets accordingly. The proposed adjustments are £273k for Leisure Centres, £83k for Llancaiach Fawr, £94k for Caerphilly Adventures and £117k for Industrial Property rentals.
- 5.3.40 **Caerphilly Cares** – At its meeting on the 11<sup>th</sup> November 2020, Cabinet approved a proposal to develop the existing Buddy Scheme and Community Regeneration Legacy into the Caerphilly Cares service, which aims to ensure people receive the right support, in the right place, and right time, using a single point of contact through a triage system. Cabinet also approved the use of 2020/21 underspends in the Children and Communities Grant (CCG) and/or Social Services Reserves to fund this service in the short-term.
- 5.3.41 There is now an opportunity to approve funding totalling £284k to fund this service on a recurring basis from 2021/22 onwards.
- 5.3.42 **Community Empowerment Fund** – It is proposed to establish a Fund totalling £328k which would result in an allocation of £4.5k to each Member to support community-based projects. If this funding is agreed a further report will be prepared outlining the parameters for this proposed initiative.
- 5.3.43 **Fire Service Levy** – The 2021/22 draft budget for the South Wales Fire & Rescue Service requires an increase of 2.57% in Caerphilly CBC's contribution. A 0.75% uplift is proposed for the Council's core budgets for non-pay inflation in 2021/22 which results in a further £162k being required to meet the proposed 2.57% for the Fire Service Levy.
- 5.3.44 **Glamorgan Archives** – A further sum of £11k is also required to meet the Council's 2021/22 contribution to the Glamorgan Archives service.
- 5.3.45 **Health & Safety – Fire Safety Officers** – It is proposed that funding of £80k should be built into the 2021/22 base budget to fund two Fire Safety Officer posts that are currently funded on a fixed-term basis.

- 5.3.46 **City Deal partnership revenue contribution and City Deal debt charges** – There is a small increase of £3k required for 2021/22 in respect of the revenue contribution for the City Deal Partnership. The City Deal includes a borrowing requirement of £120m for the ten partner Local Authorities and an additional £89k is required for 2021/22 to meet the current anticipated cost for Caerphilly CBC's share of potential borrowing that may be undertaken during the year.
- 5.3.47 **Review of Car Parking charges** – On the 15<sup>th</sup> December 2020 a Joint Scrutiny Committee meeting (Environment & Sustainability Scrutiny and Housing & Regeneration Scrutiny Committees) took place to consider the findings of the joint task and finish group that was established to review car parks managed by the Council. The Joint Scrutiny Committee endorsed some of the recommendations in the report and these were subsequently agreed by Cabinet on the 13<sup>th</sup> January 2021, resulting in a funding requirement of £90k.
- 5.3.48 **Education Achievement Service (EAS)** - There is a proposed 2% reduction in the level of the Council's contribution to the EAS in 2021/22 which results in a saving of £28k.
- 5.3.49 **Savings in Advance** - The Final 2020/21 Budget Proposals approved by Council on the 20<sup>th</sup> February 2020 included savings in advance of £1.931m. Further savings in advance totalling £80k have also been identified during the 2020/21 financial year resulting in a total of £2.011m being available to support the budget for 2021/22.

## 5.4 General Fund Balances

- 5.4.1 Details of the projected movement on General Fund balances are provided in Appendix 2.
- 5.4.2 The current General Fund balance is £10.684m, which reflects the position previously agreed by Council.
- 5.4.3 Based on the 2020/21 month 9 budget monitoring reports it is anticipated that there will be a net transfer to the General Fund of £1.598m from a projected year-end net underspend across all Directorates.
- 5.4.4 Cabinet will recall that in previous years the Council Tax surplus has been channelled through the General Fund each year to support the base budget in the following financial year. In normal years this surplus is estimated to be circa £1.050m but Members will be aware that Council Tax collection has been adversely impacted during 2020/21 due to Covid-19. Whilst the Welsh Government has provided some funding to mitigate this it would not be prudent at this stage to assume that a Council Tax surplus will be achieved in the current year to support the budget for 2021/22. For one year only it is therefore recommended that the £1.050m required to support the 2021/22 budget should be funded through a call on the General Fund.
- 5.4.5 After allowing for the above movements the updated projected balance for the General Fund is £11.232m. This represents 3.05% of the proposed 2021/22 Net Revenue Budget which is marginally above the minimum level of 3% that is recommended by the Section 151 Officer.

## 5.5 Council Tax Implications 2021/22

- 5.5.1 The budget proposals within this report include a proposed increase of 3.9% in Council Tax for the 2021/22 financial year. This will increase the Caerphilly CBC Band D precept from £1,184.38 to £1,230.57 i.e. an annual increase of £46.19 or weekly increase of £0.89.
- 5.5.2 The proposed increase of 3.9% for 2021/22 will result in the following totals for the Caerphilly CBC element of the Council Tax (the Police & Crime Commissioner and Town/Community Council precepts will be added to these totals): -

Table 5 – 2021/22 Council Tax (CCBC Element) at 3.9% Increase

<b>Band</b>	<b>Council Tax (CCBC Element) £</b>	<b>Weekly Increase £</b>
<b>A</b>	820.38	0.59
<b>B</b>	957.11	0.69
<b>C</b>	1,093.84	0.79
<b>D</b>	1,230.57	0.89
<b>E</b>	1,504.03	1.09
<b>F</b>	1,777.49	1.28
<b>G</b>	2,050.95	1.48
<b>H</b>	2,461.14	1.78
<b>I</b>	2,871.33	2.07

## 5.6 Capital Programme

5.6.1 The proposed Capital Programme for the three-year period 2021/22 to 2023/24 is detailed in Appendix 3 of this report and summarised in Table 6.

Table 6 – Summary of Capital Programme 2021/22 to 2023/24

	<b>2021/22</b>	<b>2022/23</b>	<b>2023/24</b>
	<b>£m</b>	<b>£m</b>	<b>£m</b>
Capital Programme proposals	11.349	9.726	9.726
WG funding available	(9.698)	(7.862)	(7.862)
<b>Capital funding gap</b>	<b>1.651</b>	<b>1.864</b>	<b>1.864</b>
<b>Funded by: -</b>			
Surplus/(Deficit) b/fwd	0.454	0.509	0.287
One-Off funding from MRP Policy Review	1.578	1.514	1.449
RCCO budget (Miscellaneous Finance)	0.128	0.128	0.128
<b>Total Additional Funding</b>	<b>2.160</b>	<b>2.151</b>	<b>1.864</b>
<b>Surplus/(Deficit) carried forward</b>	<b>0.509</b>	<b>0.287</b>	<b>0.000</b>

5.6.2 As outlined in paragraph 5.1.7, approval has already been given to set aside £28.6m to boost the Capital Programme by investing in our Place Shaping Plan. This funding is not currently shown in the above table and will be released into the Capital Programme as and when specific schemes are approved.

## 5.7 Financial Outlook for Future Years

5.7.1 Due to the ongoing programme of austerity and increasing demand for a number of services, the financial position for Local Government has been very challenging in recent years. During the period 2008/09 to 2020/21 Caerphilly CBC has delivered savings of £106m to address reductions in funding and inescapable cost and service pressures.

- 5.7.2 Whilst the 3.1% uplift in the 2021/22 Provisional Settlement is welcomed, the future funding situation for Local Government is likely to be challenging due to the unprecedented fiscal impact of Covid-19 and the strain that this will put on public finances for years to come
- 5.7.3 The UK Government has undertaken a spending review for 2021/22 only at this stage, so there is no indication of likely funding levels in the medium to longer-term. The Council's MTFP has been updated based on a range of assumptions, resulting in a potential savings requirement of £21.1m for the four-year period 2022/23 to 2025/26. This is £400k higher than the updated MTFP presented to Cabinet on the 13<sup>th</sup> January 2021 with the increase being attributable to the re-profiling of debt charges to reflect the updated five-year business plan for the Cardiff Capital Region City Deal. Details of the updated MTFP are provided in Appendix 4 and the following is a summary of the key assumptions: -
- A 1% uplift year-on-year in respect of WG funding.
  - An increase of 3.9% per annum for Council Tax.
  - 2% per annum for pay inflation (all staff including teachers).
  - 1% per annum for APT&C employer pension contributions.
  - Tapered increase in non-pay inflation rising to Bank of England target of 2% by 2025/26.
  - A total of £2.3m over the four-year period for schools' service pressures.
  - £1.5m per annum for anticipated increased demand for Social Services.
- 5.7.4 Future financial forecasting is very sensitive to even minor changes in assumptions. For example, a 2% increase in WG funding per annum would reduce the four-year potential saving requirement to £9.2m. Conversely, a cash flat position in terms of WG funding would increase the potential savings requirement to £32.7m. A range of potential scenarios will be considered during the coming months.
- 5.7.5 The Council's Transformation Programme will be the key driver in ensuring that financial resilience is maintained in future years. The financial position will be regularly reviewed, and periodic updates will be provided for Members.

## **5.8 Conclusion**

- 5.8.1 This report provides details of the Budget Proposals for 2021/22 based on the WG Provisional Local Government Financial Settlement.
- 5.8.2 A balanced budget can be delivered based on a proposed Council Tax increase of 3.9%.
- 5.8.3 Details of the 2021/22 Final Local Government Settlement will not be announced until the 2<sup>nd</sup> March 2021, however it is anticipated that this will not vary significantly from the position set out in the Provisional Settlement.
- 5.8.4 The report also provides details of the updated Medium-Term Financial Plan (MTFP), which indicates that further savings of circa £21.1m may be required for the four-year period 2022/23 to 2025/26.

## **6. ASSUMPTIONS**

- 6.1 The UK Government has allocated £766m to WG in 2021/22 for the ongoing financial impact of Covid-19. This is far below the levels of funding that have been allocated in 2020/21 and the distribution of the funding will continue to be dealt with outside of the core Financial Settlement. The 2021/22 Budget Proposals set out in this report do not include additional costs or income losses associated with Covid-19 on the assumption that these costs will continue to be funded through WG grants.

6.2 A range of other assumptions have been made throughout the report in respect of pay and non-pay inflationary increases, inescapable service pressures and the level of funding settlements moving forward.

## **7. LINKS TO RELEVANT COUNCIL POLICIES**

7.1 The budget setting process encompasses all the resources used by the Council to deliver services and meet priorities.

7.2 Effective financial planning and the setting of a balanced budget support the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015: -

- A prosperous Wales.
- A resilient Wales.
- A healthier Wales.
- A more equal Wales.
- A Wales of cohesive communities.
- A Wales of vibrant culture and thriving Welsh Language.
- A globally responsible Wales.

## **8. WELL-BEING OF FUTURE GENERATIONS**

8.1 Effective financial planning is a key element in ensuring that the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015 are met.

## **9. EQUALITIES IMPLICATIONS**

9.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential unlawful discrimination and/or low level or minor negative impact has been identified; therefore, a full EIA has not been carried out.

## **10. FINANCIAL IMPLICATIONS**

10.1 As detailed throughout the report.

## **11. PERSONNEL IMPLICATIONS**

11.1 Where staff reductions may be required as a consequence of savings proposals in future years the Council will firstly try to achieve this through 'natural wastage' and not filling vacancies. However, where this is not possible the Council will utilise agreed HR policies and compulsory redundancies will only be considered when all other options have been fully exhausted.

11.2 The Trade Unions have been consulted on the 2021/22 draft budget proposals.

## **12. CONSULTATIONS**

12.1 The Council undertook a large-scale consultation called 'The Caerphilly Conversation' between 18<sup>th</sup> November 2020 and 3<sup>rd</sup> January 2021. Designed to seek the views of those who live and work within the county borough, the survey provided people with the opportunity to share their experiences of life across the area; their views on public services, and suggestions for where things could be improved as we look to the future.

12.2 Key areas covered in the survey included: -

- Understanding residents' views on the Council's response to Covid-19.
  - Helping shape the Council's recovery over future years.
  - Helping inform our deliberations over next year's budget.
  - Preferences on the Council Tax levels for the forthcoming year.
  - Informing our ongoing discussions around Place Shaping over the medium to longer-term.
  - Providing specific insight that can help shape the ten corporate reviews linked to the Team Caerphilly – Better Together transformation strategy.
- 12.3 The survey was available on the Council's website and promoted widely through digital media channels. To ensure as many people as possible were able to have their say, the survey was also included in a special edition of Newsline that was delivered to every home within the county borough.
- 12.4 Among the questions asked was a focus on preferences on Council Tax levels for the 2021/2022 financial year. The survey highlighted that *'Councils are required by law to set a balanced budget each year. Council tax raises around £72.8 million a year, which represents around 20.4% of the Council's total budget. In 2020/2021, Council Tax increased in Caerphilly county borough by 4.7%'*. In light of the situation, residents were asked to indicate their preference in relation to an increase in Council Tax for the 2021/22 financial year.
- 12.5 The following provides a summary of views based on 1,006 responses: -
- 31% of respondents would support a proposed increase of 4.7%.
  - 7% of respondents would be prepared to pay an even greater increase.
  - 33% would support a lower increase.
  - 30% of respondents did not support any increase in Council Tax at all.
- 12.6 The budget proposals in this report include an increase of 3.9% in Council Tax for 2021/22.
- 12.7 The wider results of the survey will be important in helping shape a number of key strategic programmes moving forward, including the Council's emerging Place Shaping Plan, its service review and corporate review programme and the wider transformation agenda. The full summary report of 'The Caerphilly Conversation' findings can be found on the Council's website [www.caerphilly.gov.uk](http://www.caerphilly.gov.uk)
- 12.8 On the 14<sup>th</sup> January 2021 a Joint Scrutiny Committee meeting was held to consider the 2021/22 Draft Budget Proposals that were presented to Cabinet on the 13<sup>th</sup> January 2021. A summary of the key points raised during the meeting is provided below: -
- Members asked for an update on the work of the Transformation Team and were advised that there is a bold plan for both the Council and communities and that this has now been enhanced with 10 new corporate reviews and the emerging Place Shaping Plan. Members were advised that further details of the Place Shaping Plan would be made available in February 2021 and officers stressed that the Team Caerphilly transformation programme provides a framework that is pivotal for the MTFP and in order to deliver this agenda it is vital that additional staffing capacity is put in place.
  - A Member questioned the additional £526k for Transformation/Place Shaping in Table 4 of the Draft Budget Proposals Report and asked about the monitoring process for performance and value for money. The governance framework for the Team Caerphilly Transformation Programme was outlined which includes Scrutiny reports, Cabinet reports, Member Seminars and monitoring by a Programme Board. Members were advised that in order to achieve transformation additional resources are needed to support the programme and existing staff will have the opportunity to be considered for new roles, but this would require back-filling of positions to ensure that day-to-day work continues.

- Members sought further detail on the APT&C employer pension contribution increase for 2022/23. The Joint Scrutiny Committee were advised that the Torfaen Pension Fund is subject to an independent actuarial assessment every three years and that the recommendation for the 2020/21 and 2021/22 financial years was that no increase in employer contribution levels would be required. However, an increase of 1% was recommended for 2022/23. The next triennial valuation will determine whether increases will be required from 2023/24 but the updated MTFP appended to the Draft Budget Proposals Report currently assumes an increase of 1% per annum.
- Members sought comparative details on the proposed 2021/22 Council Tax uplift of 3.9% and noted that this would result in a Band D property having an 89p weekly increase. Officers advised Members that the 2020/21 Band D Caerphilly CBC element of Council Tax is £1,184 and that this is second lowest in Wales and the lowest in Gwent. By way of comparison the 2020/21 Band D figure for Blaenau Gwent CBC is £1,712 and £1,670 for Merthyr Tydfil CBC. Members were also reminded that the Council Tax Reduction Scheme (CTRS) provides significant financial support for eligible households.
- Members noted that the proposed 3.9% increase in Council Tax will provide additional revenue of £3.097m and that there would also be a corresponding increase of £602k in the CTRS budget. A Member asked if a lower increase in the Council Tax would result in a lower increase in the CTRS budget. Officers explained that the increase in Council Tax must be matched by a corresponding increase in the CTRS budget and that funding was provided through the Financial Settlement.
- The Joint Scrutiny Committee noted the £2.5million cost pressures for Social Services and asked if provision had been made for an expected increase in demand for adult mental health support as a result of the Covid-19 pandemic, both with the public and for Council staff. Members were advised that there is nothing specific in terms of increased mental health support included in this uplift, however the Authority will be working with Aneurin Bevan University Health Board (ABUHB) who are currently consulting on proposals to transform Adult Mental Health Services. There will be a presentation to the Social Services Scrutiny Committee in February to explain the proposals and Members indicated their support to discuss this going forward.
- Members asked if the Transformation Strategy was contrary to the regional approach of City Deal in terms of supporting businesses. The Joint Scrutiny Committee was assured that the strategies complimented each other and that they run concurrently. The Committee was also advised that the Council was doing its utmost to help businesses during the challenging climate created by the ongoing Covid-19 pandemic and that Business Grants in excess of £40m had been paid to local businesses since March 2020.

12.9 On the 28<sup>th</sup> January 2021 the 2021/22 Draft Budget Proposals were presented to the Voluntary Sector Liaison Committee. A summary of the key points raised during the meeting is provided below: -

- A representative of the Voluntary Sector asked for reassurance that Welsh Government will reimburse all the additional costs incurred during the Covid-19 pandemic. It was appreciated that there will be no requirement for any new savings to be identified to balance the budget for the 2021/22 financial year, however, concerns were raised regarding future funding for the Voluntary Sector. The Committee was informed that Welsh Government has worked very closely with Local Authorities throughout the pandemic and to date, in the current financial year, Caerphilly has received in excess of £12m to address additional costs and shortfalls in income. Officers are lobbying through the Society of Welsh Treasurers and with finance colleagues in Welsh Government to ensure that the Covid-19 funding does continue into the next financial year. It was highlighted that in the current year the UK government has allocated around £5billion to the Welsh Government to deal with the response to Covid-19, however next year in the draft budget for Welsh Government there is currently only a commitment to provide £766m. The Committee was advised that this

presents a significant financial risk, however, the way Welsh Government has responded to the situation and worked with the Local Authorities in the current year provides some reassurance moving forward.

- Clarification was sought on the latest position regarding Covid-19 Business Grants and the Committee was informed that in excess of £40m has been issued to local businesses since the start of the pandemic. The Committee was also informed that the Welsh Government will be making an announcement regarding further funding in respect of business grants linked to the latest extended lockdown. Details will be shared with the Voluntary Sector as soon as they are available.
- A query was raised in relation to the budget consultation process and a request was made for the Voluntary Sector to be involved earlier on in the budget discussions next year. Officers explained that the timeframe for consultation has been restricted this year due to the late announcement of the Provisional Financial Settlement and assurances were given that there will be full engagement with the Voluntary Sector moving forward.
- In conclusion, the Voluntary Sector Liaison Committee expressed their appreciation to the Finance Department for the valuable work they have carried out during the Covid-19 pandemic.

### 13. STATUTORY POWER

#### 13.1 The Local Government Acts 1998 and 2003.

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Appendices: -

Appendix 1 – Net Revenue Budget 2021/22.

Appendix 2 – Movement on General Fund.

Appendix 3 – Capital Programme 2021/22 to 2023/24.

Appendix 4 - Indicative Medium-Term Financial Plan 2022/23 to 2025/26

Background Papers: -

[Cabinet \(12/06/19\)](#)

Future Caerphilly Transformation Strategy - #TeamCaerphilly – Better Together.

Cabinet (16/07/20)

Strengthening TeamCaerphilly

Cabinet (11/11/20)

Caerphilly Cares

Special Housing and Regeneration Scrutiny Committee (09/12/20)

Planning Services Staffing and Budget Report

Joint Scrutiny Committee (Housing & Sustainability Scrutiny and Housing & Regeneration Scrutiny Committees) 15/12/20.

Caerphilly County Borough Council Car Parks Task and Finish Group.

Cabinet (13/01/21)

Draft Budget Proposals for 2021/22.

**NET REVENUE BUDGET 2020/21**

	£'000	£'000
<b>Base Budget 2020/21</b>		<b>356,130</b>
<b>Schools Cost Pressures</b>		
Teachers Pay at 3.1% (Sept 2020) and 1% (Sept 2021)	2,042	
Pay at 1% (APT&C staff) - Including £250 for salaries of £24k or less	293	
Living Wage	16	
Non-Pay Inflation at 0.75%	169	
Other Service Pressures	713	<b>3,233</b>
<b>General Fund Services Inflationary Cost Pressures</b>		
Pay at 1% (APT&C staff) - Including £250 for salaries of £24k or less	1,773	
Living Wage (APT&C staff)	37	
Non-pay inflation at 0.75%	1,100	
Non-pay inflation (Fees & Charges) at 0.75%	(123)	<b>2,787</b>
<b>General Fund Inescapable Service Pressures and Proposed New Investments</b>		
Council Tax Reduction Scheme (CTRS) additional liability	602	
Other pass-ported grants	(202)	
Social Services cost pressures	2,500	
Education & Lifelong Learning cost pressures	1,436	
Planning Services	428	
Digital Services	1,212	
Additional capacity for Transformation/Place Shaping	526	
Income budget realignment	567	
Caerphilly Cares	284	
Community Empowerment Fund	328	
Fire Service Levy	162	
Glamorgan Archives	11	
Health & Safety – Fire Safety Officers	80	
City Deal (Partnership revenue contribution)	3	
City Deal (debt charges)	89	
Review of Car Parking charges	90	
Education Achievement Service (EAS)	(28)	<b>8,088</b>
<b>Savings In Advance</b>		<b>(2,011)</b>
<b>Proposed Expenditure</b>		<b>368,227</b>
<b>Funding</b>		
WG Support		(292,367)
Council Tax (3.9%)		(74,810)
One-off Contribution from General Fund in lieu of Council Tax Surplus		(1,050)
<b>Total Funding</b>		<b>(368,227)</b>

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**APPENDIX 2**

**MOVEMENT ON GENERAL FUND**

	£'000	£'000
<b>Opening Balance 01/04/2020</b>		<b>15,022</b>
<b>2019/20 Council Tax Surplus to support 2020/21 Budget</b>		<b>(1,050)</b>
<b>Take From General Fund Previously Agreed by Council: -</b>		
Communities Directorate Write-Off	(575)	
Covid19 Earmarked Reserve	(2,713)	<b>(3,288)</b>
	<hr/>	<hr/>
<b>Current General Fund Balance</b>		<b>10,684</b>
<b>Net Take to General Fund from Projected 2020/21 Outturn:-</b>		
Education and Corporate Services	1,244	
Social Services	1,138	
Communities	(875)	
Miscellaneous Finance	91	<b>1,598</b>
	<hr/>	<hr/>
<b>Proposed Use of Balances in lieu of Council Tax Surplus</b>		<b>(1,050)</b>
<b>Projected Balance 31/03/2021</b>		<b>11,232</b>
		<hr/> <hr/>

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**CAPITAL PROGRAMME 2021/22 to 2023/24**

<b>Scheme</b>	<b>2021/22 £000's</b>	<b>2022/23 £000's</b>	<b>2023/24 £000's</b>
<b><u>Education and Lifelong Learning</u></b>			
Health & Safety Regulations Works	296	296	296
Basic Needs Accommodation	221	221	221
School Security	150	62	62
School Asset Management	420	590	590
School Boiler Replacement Programme	335	253	253
<b>Total Education &amp; Lifelong Learning</b>	<b>1,422</b>	<b>1,422</b>	<b>1,422</b>
<b><u>Communities</u></b>			
Sport Pitches	30	30	30
<b>Total Community &amp; Leisure Services</b>	<b>30</b>	<b>30</b>	<b>30</b>
Environmental Schemes	200	200	200
<b>Total Countryside</b>	<b>200</b>	<b>200</b>	<b>200</b>
Voluntary Sector Capital Grants	80	50	50
<b>Total Economic Development</b>	<b>80</b>	<b>50</b>	<b>50</b>
Infrastructure Retaining Walls	314	314	314
Street Lighting	50	50	50
Land Purchase-Future Schemes	40	40	40
Major Highway Reconstruction	739	739	739
Bridge Strengthening	441	441	441
Land Drainage- Corporate	123	123	123
Land Drainage - Non Corporate	123	123	123
Vehicle Restraint Systems	148	148	148
Corporate Maintenance - Tips Mines Spoils	246	246	246
Monmouth & Brecon Canal.	200	200	200
Footway Reconstruction	148	148	148
<b>Total Engineers</b>	<b>2,572</b>	<b>2,572</b>	<b>2,572</b>
Commercial And Industrial Grants	30	30	30
Town Centres	18	18	18
<b>Total Urban Renewal</b>	<b>48</b>	<b>48</b>	<b>48</b>
CCTV Replacement	74	74	74
Kitchen Refurbishments	419	419	419

<b>Total Public Protection</b>	<b>493</b>	<b>493</b>	<b>493</b>
Corporate Asset Management	690	690	690
<b>Total Property</b>	<b>690</b>	<b>690</b>	<b>690</b>
<b>Total Communities</b>	<b>4,113</b>	<b>4,083</b>	<b>4,083</b>
<b><u>Social Services &amp; Housing</u></b>			
Condition Surveys	340	340	340
<b>Total Social Services</b>	<b>340</b>	<b>340</b>	<b>340</b>
Disabled Facility Grants	1,130	1,133	1,133
Home Imp Grants/Miscellaneous	240	246	246
Home Repair Grant	780	788	788
<b>Total Private Housing</b>	<b>2,150</b>	<b>2,167</b>	<b>2,167</b>
<b>Total Social Services &amp; Housing</b>	<b>2,490</b>	<b>2,507</b>	<b>2,507</b>
<b><u>Corporate Services</u></b>			
IT Hardware & Software	220	200	200
<b>Total ICT</b>	<b>220</b>	<b>200</b>	<b>200</b>
<b>Total Corporate Services</b>	<b>220</b>	<b>200</b>	<b>200</b>
<b>Corporate Projects</b>	<b>3,104</b>	<b>1,514</b>	<b>1,514</b>
<b>Total Capital Programme</b>	<b>11,349</b>	<b>9,726</b>	<b>9,726</b>

## Indicative Medium-Term Financial Plan - 2022/23 to 2025/26

Description	2022/23 £000s	2023/24 £000s	2024/25 £000s	2025/26 £000s
<b>Aggregate External Finance (1% uplift per annum)</b>	<b>2,924</b>	<b>2,953</b>	<b>2,982</b>	<b>3,012</b>
<b>Council Tax (3.9% increase per annum)</b>	<b>3,228</b>	<b>3,368</b>	<b>3,513</b>	<b>3,665</b>
<b>Total Funding to support budget</b>	<b>6,152</b>	<b>6,321</b>	<b>6,496</b>	<b>6,677</b>
<b>Schools Cost Pressures</b>				
Teachers Pay (2% uplift per annum)	1,311	1,685	1,719	1,754
APT&C Pay (2% uplift per annum)	268	275	283	290
APT&C Employer Pension Contributions (1% uplift per annum)	135	139	142	146
Living Wage	16	16	16	16
Non-Pay Inflation (1.25%, 1.50%, 1.75%, 2.00%)	283	344	408	474
Schools Service Pressures	305	1,011	500	530
<b>Total Schools Cost Pressures</b>	<b>2,318</b>	<b>3,470</b>	<b>3,068</b>	<b>3,210</b>
<b>General Fund Services Inflationary Pressures</b>				
APT&C Pay (2% uplift per annum)	2,562	2,613	2,665	2,719
Living Wage	37	37	37	37
Employer Pension Contributions (1% uplift per annum)	912	921	930	940
Non-Pay Inflation (1.25%, 1.50%, 1.75%, 2.00%)	1,991	2,512	3,085	3,717
Non-Pay Inflation - Fees and Charges (1.25%, 1.50%, 1.75%, 2.00%)	(196)	(238)	(282)	(328)
<b>Total General Fund Services Inflationary Pressures</b>	<b>5,306</b>	<b>5,845</b>	<b>6,436</b>	<b>7,085</b>
<b>Inescapable Service Pressures</b>				
CTRS Additional Liability (3.9% per annum)	626	650	675	702
Social Services	1,500	1,500	1,500	1,500
Digital Services	100	100	0	0
City Deal (Partnership Revenue Contribution)	3	3	3	3
City Deal (Debt Charges)	337	532	248	97
Education Achievement Service (EAS)	(15)	(10)	0	0
<b>Inescapable Service Pressures</b>	<b>2,550</b>	<b>2,774</b>	<b>2,426</b>	<b>2,302</b>
<b>Annual Shortfall</b>	<b>4,022</b>	<b>5,769</b>	<b>5,434</b>	<b>5,920</b>
<b>Cumulative Shortfall</b>	<b>4,022</b>	<b>9,791</b>	<b>15,226</b>	<b>21,145</b>

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## SPECIAL COUNCIL – 24TH FEBRUARY 2021

**SUBJECT: COUNCIL TAX SETTING RESOLUTION 2021/22**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE SERVICES**

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### RESOLUTIONS

In accordance with the requirements of The Local Government Act 1992 (as amended) the following resolutions are submitted for consideration with the recommendation that they be approved:-

1. That it be noted that at its meeting on the 9th December 2020 the Cabinet calculated the following amounts for the year 2021/2022 in accordance with regulations made under Section 33(5) of The Local Government Finance Act 1992 and powers granted under The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Amendment) (Wales) Regulations 2007 (as amended).

- (a) **60,793.26** Being the amount calculated by the Cabinet, in accordance with Regulation (3) of The Local Authorities (Calculation of Council Tax Base) (Wales) Regulations 1995 (as amended), as its council tax base for the year.

- (b) **Part of Council's Area:**

	<u>Tax Base</u>
	<u>No. of D Band</u>
	<u>Equivalent Properties</u>
Aber Valley	2,021.25
Argoed	857.68
Bargoed	3,689.61
Bedwas, Trethomas & Machen	3,878.38
Blackwood	2,952.00
Caerphilly	6,281.05
Darren Valley	718.70
Draethen, Waterloo & Rudry	615.41
Gelligaer	6,279.57

	<u>Tax Base</u>
	<u>No. of D Band</u>
	<u>Equivalent Properties</u>
Llanbradach & Pwllypant	1,486.17
Maescwmmer	897.09
Nelson	1,591.05
New Tredegar	1,347.84
Penyrheol, Trecenydd & Energlyn	4,468.28
Rhymney	2,566.71
Risca East	2,043.13
Risca West	1,819.97
Van	1,639.61
Remainder	15,639.76
<b>Total</b>	<b>60,793.26</b>

*being the amounts calculated by the cabinet, in accordance with regulation 6 of the Regulations, as the amounts of its council tax base for the year for dwellings in those parts of its area to which one or more special items relate.*

2. That the following amounts be now calculated by the Council for the year 2021/2022 in accordance with Sections 32 to 36 of the Local Government and Finance Act 1992:-

- (a) **£368,227,794** *being the aggregate of the amounts which the Council estimates for the items set out in Section 32(2)(a) to (d) of the Act;*
- (b) **£1,050,000** *being the aggregate of the amounts which the Council estimates for the items set out in Section 32(3) (a) to (c) of the Act;*
- (c) **£368,076,546** *being the amount by which the aggregate at (2)(a) above exceeds the aggregate at (2)(b) above, calculated by the Council, in accordance with Section 32(4) of the Act, as its budget requirement for the year;*
- (d) **£292,367,432** *being the aggregate of the sums which the Council estimates will be payable for the year into its council fund in respect of redistributed non-domestic rates, revenue support grant, an authority's council tax reduction scheme or additional grant;*
- (e) **£1,245.36** *being the amount at (2)(c) above less the amount at (2)(d) above, all be divided by the amount at (1)(a) above, calculated by the Council, in accordance with Section 33(1) of the Act, as the basic amount of its council tax for the year;*
- (f) **£898,752** *being the aggregate amount of all special items referred to in section 34(1) of the Act;*
- (g) **£1,230.57** *being the amount at (2)(e) above less the result given by dividing the amount at (2)(f) above by the amount at (1)(a) above, calculated by the Council, in accordance with Section 34(2) of the Act, as the basic amount of its council tax for the year for dwellings in those parts of its area to which no special item relates;*

**(h) Part of the Council's Area**

	<b>Local Precept £</b>	<b>County Borough Levy £</b>	<b>Total County Borough &amp; Community Council Band D Charge £</b>
Aber Valley	19.79	1,230.57	1,250.36
Argoed	15.00	1,230.57	1,245.57
Bargoed	33.85	1,230.57	1,264.42
Bedwas, Trethomas & Machen	25.77	1,230.57	1,256.34
Blackwood	20.00	1,230.57	1,250.57
Caerphilly	15.50	1,230.57	1,246.07
Darren Valley	18.06	1,230.57	1,248.63
Draethen, Waterloo & Rudry	32.50	1,230.57	1,263.07
Gelligaer	21.13	1,230.57	1,251.70
Llanbradach & Pwllypant	22.89	1,230.57	1,253.46
Maesycwmmmer	20.40	1,230.57	1,250.97
Nelson	18.18	1,230.57	1,248.75
New Tredegar	12.56	1,230.57	1,243.13
Penyrheol, Trecenydd & Energlyn	14.22	1,230.57	1,244.79
Rhymney	13.64	1,230.57	1,244.21
Risca East	12.00	1,230.57	1,242.57
Risca West	27.70	1,230.57	1,258.27
Van	16.68	1,230.57	1,247.25
Remainder	0.00	1,230.57	1,230.57

*being the amounts given by adding to the amount at (2)(g) above the amounts of the special item or items relating to dwellings in those parts of the Council's area mentioned above divided in each case by the amount at (1)(b) above, calculated by the Council, in accordance with Section 34(3) of the Act, as the basic amounts, of its council tax for the year for dwellings in those parts of its area to which one or more special items relate;*

(i)

<b><u>Valuation Bands</u></b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>
	<b>£</b>								
<b>County Borough Council</b>	820.38	957.11	1,093.84	1,230.57	1,504.03	1,777.49	2,050.95	2,461.14	2,871.33
<b><u>Community Councils</u></b>									
Aber Valley	13.19	15.39	17.59	19.79	24.19	28.59	32.98	39.58	46.18
Argoed	10.00	11.67	13.33	15.00	18.33	21.67	25.00	30.00	35.00
Bargoed	22.57	26.33	30.09	33.85	41.37	48.89	56.42	67.70	78.98
Bedwas, Trethomas & Machen	17.18	20.04	22.91	25.77	31.50	37.22	42.95	51.54	60.13
Blackwood	13.33	15.56	17.78	20.00	24.44	28.89	33.33	40.00	46.67
Caerphilly	10.33	12.06	13.78	15.50	18.94	22.39	25.83	31.00	36.17
Darren Valley	12.04	14.05	16.05	18.06	22.07	26.09	30.10	36.12	42.14
Draethen, Waterloo & Rudry	21.67	25.28	28.89	32.50	39.72	46.94	54.17	65.00	75.83
Gelligaer	14.09	16.43	18.78	21.13	25.83	30.52	35.22	42.26	49.30
Llanbradach & Pwllypant	15.26	17.80	20.35	22.89	27.98	33.06	38.15	45.78	53.41
Maesycwmmmer	13.60	15.87	18.13	20.40	24.93	29.47	34.00	40.80	47.60
Nelson	12.12	14.14	16.16	18.18	22.22	26.26	30.30	36.36	42.42
New Tredegar	8.37	9.77	11.16	12.56	15.35	18.14	20.93	25.12	29.31
Penyrheol, Trecenydd & Energlyn	9.48	11.06	12.64	14.22	17.38	20.54	23.70	28.44	33.18
Rhymney	9.09	10.61	12.12	13.64	16.67	19.70	22.73	27.28	31.83
Risca East	8.00	9.33	10.67	12.00	14.67	17.33	20.00	24.00	28.00
Risca West	18.47	21.54	24.62	27.70	33.86	40.01	46.17	55.40	64.63
Van	11.12	12.97	14.83	16.68	20.39	24.09	27.80	33.36	38.92
Remainder	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

<b><u>Valuation Bands</u></b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>
	<b>£</b>								
<b><u>Totals For Community Council Areas</u></b>									
Aber Valley	833.57	972.50	1,111.43	1,250.36	1,528.22	1,806.08	2,083.93	2,500.72	2,917.51
Argoed	830.38	968.78	1,107.17	1,245.57	1,522.36	1,799.16	2,075.95	2,491.14	2,906.33
Bargoed	842.95	983.44	1,123.93	1,264.42	1,545.40	1,826.38	2,107.37	2,528.84	2,950.31
Bedwas, Trethomas & Machen	837.56	977.15	1,116.75	1,256.34	1,535.53	1,814.71	2,093.90	2,512.68	2,931.46
Blackwood	833.71	972.67	1,111.62	1,250.57	1,528.47	1,806.38	2,084.28	2,501.14	2,918.00
Caerphilly	830.71	969.17	1,107.62	1,246.07	1,522.97	1,799.88	2,076.78	2,492.14	2,907.50
Darren Valley	832.42	971.16	1,109.89	1,248.63	1,526.10	1,803.58	2,081.05	2,497.26	2,913.47
Draethen, Waterloo & Rudry	842.05	982.39	1,122.73	1,263.07	1,543.75	1,824.43	2,105.12	2,526.14	2,947.16
Gelligaer	834.47	973.54	1,112.62	1,251.70	1,529.86	1,808.01	2,086.17	2,503.40	2,920.63
Llanbradach & Pwllypant	835.64	974.91	1,114.19	1,253.46	1,532.01	1,810.55	2,089.10	2,506.92	2,924.74
Maesycwmmmer	833.98	972.98	1,111.97	1,250.97	1,528.96	1,806.96	2,084.95	2,501.94	2,918.93
Nelson	832.50	971.25	1,110.00	1,248.75	1,526.25	1,803.75	2,081.25	2,497.50	2,913.75
New Tredegar	828.75	966.88	1,105.00	1,243.13	1,519.38	1,795.63	2,071.88	2,486.26	2,900.64
Penyrheol, Trecenydd & Energlyn	829.86	968.17	1,106.48	1,244.79	1,521.41	1,798.03	2,074.65	2,489.58	2,904.51
Rhymney	829.47	967.72	1,105.96	1,244.21	1,520.70	1,797.19	2,073.68	2,488.42	2,903.16
Risca East	828.38	966.44	1,104.51	1,242.57	1,518.70	1,794.82	2,070.95	2,485.14	2,899.33
Risca West	838.85	978.65	1,118.46	1,258.27	1,537.89	1,817.50	2,097.12	2,516.54	2,935.96
Van	831.50	970.08	1,108.67	1,247.25	1,524.42	1,801.58	2,078.75	2,494.50	2,910.25
Remainder	820.38	957.11	1,093.84	1,230.57	1,504.03	1,777.49	2,050.95	2,461.14	2,871.33

being the amounts given by multiplying the amounts at (2)(g) and (2)(h) above by the number which, in the proportion set out in Section 5(1) of the Act, is applicable to dwellings listed in a particular valuation band divided by the number which in that proportion is applicable to dwellings listed in a particular valuation band D, calculated by the Council, in accordance with Section 36(1) of the Act, as the amounts to be taken into account for the year in respect of categories of dwellings listed in different valuation bands.

3. That it be noted that for the year 2021/2022 the major precepting authority has stated the following amounts in precepts issued to the Council, in accordance with Section 40 of the Local Government Finance Act 1992, for each of the categories of dwellings shown below:-

<b>Valuation Bands</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>
	<b>£</b>								
<b>Precepting Authority</b>									
Police and Crime Commissioner for Gwent	191.97	223.97	255.96	287.96	351.95	415.94	479.93	575.92	671.91

4. That having calculated the aggregate in each case of the amounts at (2)(i) and (3) above, the Council, in accordance with Section 30(2) of the Local Government Finance Act 1992, hereby sets the following amounts of Council Tax for the year 2021/2022 for each of the categories of dwellings shown below:-

<b>Valuation Bands</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>
	<b>£</b>								
Aber Valley	1,025.54	1,196.47	1,367.39	1,538.32	1,880.17	2,222.02	2,563.86	3,076.64	3,589.42
Argoed	1,022.35	1,192.75	1,363.13	1,533.53	1,874.31	2,215.10	2,555.88	3,067.06	3,578.24
Bargoed	1,034.92	1,207.41	1,379.89	1,552.38	1,897.35	2,242.32	2,587.30	3,104.76	3,622.22
Bedwas, Trethomas & Machen	1,029.53	1,201.12	1,372.71	1,544.30	1,887.48	2,230.65	2,573.83	3,088.60	3,603.37
Blackwood	1,025.68	1,196.64	1,367.58	1,538.53	1,880.42	2,222.32	2,564.21	3,077.06	3,589.91
Caerphilly	1,022.68	1,193.14	1,363.58	1,534.03	1,874.92	2,215.82	2,556.71	3,068.06	3,579.41
Darren Valley	1,024.39	1,195.13	1,365.85	1,536.59	1,878.05	2,219.52	2,560.98	3,073.18	3,585.38
Draethen, Waterloo & Rudry	1,034.02	1,206.36	1,378.69	1,551.03	1,895.70	2,240.37	2,585.05	3,102.06	3,619.07
Gelligaer	1,026.44	1,197.51	1,368.58	1,539.66	1,881.81	2,223.95	2,566.10	3,079.32	3,592.54
Llanbradach & Pwllpant	1,027.61	1,198.88	1,370.15	1,541.42	1,883.96	2,226.49	2,569.03	3,082.84	3,596.65
Maescymmer	1,025.95	1,196.95	1,367.93	1,538.93	1,880.91	2,222.90	2,564.88	3,077.86	3,590.84
Nelson	1,024.47	1,195.22	1,365.96	1,536.71	1,878.20	2,219.69	2,561.18	3,073.42	3,585.66
New Tredegar	1,020.72	1,190.85	1,360.96	1,531.09	1,871.33	2,211.57	2,551.81	3,062.18	3,572.55
Penyrheol, Treceynydd & Energlyn	1,021.83	1,192.14	1,362.44	1,532.75	1,873.36	2,213.97	2,554.58	3,065.50	3,576.42
Rhymney	1,021.44	1,191.69	1,361.92	1,532.17	1,872.65	2,213.13	2,553.61	3,064.34	3,575.07
Risca East	1,020.35	1,190.41	1,360.47	1,530.53	1,870.65	2,210.76	2,550.88	3,061.06	3,571.24
Risca West	1,030.82	1,202.62	1,374.42	1,546.23	1,889.84	2,233.44	2,577.05	3,092.46	3,607.87
Van	1,023.47	1,194.05	1,364.63	1,535.21	1,876.37	2,217.52	2,558.68	3,070.42	3,582.16
Remainder	1,012.35	1,181.08	1,349.80	1,518.53	1,855.98	2,193.43	2,530.88	3,037.06	3,543.24

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## **SPECIAL COUNCIL – 24TH FEBRUARY 2021**

**SUBJECT: BUS EMERGENCY SCHEME (BES) – REQUEST TO ALL COUNCILS TO SIGN UP TO BES 2 SCHEME**

**REPORT BY: CORPORATE DIRECTOR – EDUCATION AND CORPORATE SERVICES**

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- 1.1 The attached report was considered as an urgent item by Cabinet on 27th January 2021.
- 1.2 The Constitution requires that any decision taken as a matter of urgency must be reported to the next available meeting of Council, giving the reasons for its urgency. Therefore, the report is presented to Council for Members' information.
- 1.3 The report provided Cabinet with the wider context, the background to and the reasons for the Bus Emergency Scheme 2 (BES2) and sought the agreement of the authority to sign up to the BES 2 scheme.
- 1.4 The urgency of the item was as a result of the legal agreement providing further financial assistance must be signed by 31st January 2021. If the agreement is not signed this will seriously prejudice the interests of the Council and the public, it serves.
- 1.5 The recommendations of the report were considered and approved by Cabinet.
- 1.6 Members are asked to note the recommendations of the report and Cabinet decision.

Author: C. Evans, Committee Services Officer, Ext. 4210

Appendices:

Appendix Report to Cabinet on 27th January 2021

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## **CABINET – 27TH JANUARY 2021**

**SUBJECT: BUS EMERGENCY SCHEME (BES) – REQUEST TO ALL COUNCILS TO SIGN UP TO BES 2 SCHEME**

**REPORT BY: INTERIM CORPORATE DIRECTOR – COMMUNITIES**

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### **1. PURPOSE OF REPORT**

- 1.1 This report sets out the wider context, the background to and reasons for the Bus Emergency Scheme (BES) and seeks the agreement of this authority to sign up to the BES 2 scheme.

### **2. SUMMARY**

- 2.1 Bus travel has been severely affected by the Covid-19 pandemic, with passenger numbers plummeting, and the requirement for social distancing and additional cleansing requirements adding further burdens and costs on operators. Whilst Welsh Government and local authorities have stepped in to support the sector with substantial financial assistance, the current form of financial support is unsustainable. BES 2 provides a mechanism for managing the recovery and reshaping of bus services to respond to the impact of the COVID 19 pandemic.

### **3. RECOMMENDATIONS**

- 3.1 Cabinet is recommended to:
- i. Agree to the principles of the BES 2 agreement (Appendix 2) to secure (conditional) financial support for the bus sector and to formalise a relationship with Monmouthshire County Council, as signatory and lead Authority for South East Wales.
  - ii. Delegate authority to the Interim Corporate Director for Communities in consultation with the relevant cabinet member to negotiate and agree any further amendments to the agreement that may be required following Cabinet approval.
  - iii. Support a call through the lead authority for a further report on bus reform proposals from Welsh Government (WG) relating to the future management of bus services in Wales.

#### **4. REASONS FOR THE RECOMMENDATIONS**

- 4.1 The need to seek the Council's agreement to the principles of the BES 2 scheme and to the establishment of a relationship with Monmouthshire County Council, as signatory and the lead Authority for South East Wales, that ensures that the ongoing emergency funding meets the authority's priorities and is delivered on its behalf.

#### **5. THE REPORT**

##### **5.1 Wider Context**

- 5.1.1 Bus travel has been severely affected by the Covid-19 pandemic. Passenger numbers have plummeted, whilst social distancing and additional cleansing requirements have placed added burdens and costs on operators.
- 5.1.2 WG and local authorities (LAs) have stepped in to support the sector with substantial financial assistance. There has also been an excellent, ongoing dialogue between all parties to discuss and agree on support arrangements.
- 5.1.3 Prior to the pandemic, WG had consulted on a range of proposed changes to the way bus services are delivered in Wales. A Bus Bill was due to have been brought forward during the current Senedd term. Pressures associated with not only Covid but also the large volume of legal work generated by Brexit and the transition period forced WG to postpone the planned legislation.
- 5.1.4 Due to the large amount of public funding that goes into bus services from WG and LAs, WG would like to see the public sector having greater influence over areas such as the networks of services provided, ticketing and integration with rail services. It also sees a greater role for Transport for Wales (TfW), which is now responsible for rail services in Wales.
- 5.1.5 This raises two issues: (i) short term survival of operators and (ii) longer term reform of the sector. WG believes that these two can be linked. In the short term, the funding being provided to keep operators afloat is therefore being provided with a number of conditions attached. These are to incentivise operators to engage in planned changes that are in line with their longer-term ambitions for reform.
- 5.1.6 The Minister of Economy and Transport and North Wales, Ken Skates MS, has met with Leaders of all 22 LAs, along with his officials, to outline Welsh Government's direction of travel. Further details have been included in the Wales Transport Strategy (WTS) which has been the subject of consultation. More recently, the Deputy Minister, Lee Waters MS, met with all Leaders to discuss the WTS but also to encourage LAs to sign up to the Bus Emergency Scheme 2 (BES 2). This is the latest phase of financial support to help operators through the period of the pandemic (more details on BES 2 below).
- 5.1.7 Leaders have agreed to establish a WLGA Bus Member Group, with a focus on the longer-term proposals to reform the sector's operations. That group includes the WLGA Leader; Cllr Andrew Morgan (who is also the WLGA's Transport Spokesperson), the deputy Transport Spokesperson, the chairs of the four regional

transport bodies and the co-chairs of the WLGA Rural Forum. That Member Group met with Lee Waters on 18th January 2021.

## 5.2 Background

- 5.2.1 The problems facing operators were recognised at an early stage of the pandemic. Looking ahead, to secure their services for the future, local authorities agreed to continue making payments for contracted services even though many services were initially suspended.
- 5.2.2 Alongside this, WG stepped in to help operators deal with reduced income on commercially operated routes and the additional costs being incurred. Initially, WG made £29m available from a Hardship Fund, which operated from April 2020 for three months. This Fund was assembled from monies that would otherwise have been paid via Bus Services Support Grant (BSSG), Mandatory Concessionary Fare reimbursement and the 'My Travel Pass' scheme.
- 5.2.3 The Bus Emergency Scheme was then introduced in July to provide ongoing support. This became known as 'BES 1' and it continued to maintain operators' income at historic levels, based on what was being paid to them under previous grant schemes. In return for this financial support Welsh Government signalled that it expected operators to contribute to a reshaping of bus services in Wales – to include improved regional networks with greater integration with rail services, smart ticketing and timetabling.
- 5.2.4 'BES 1.5' was introduced in August, administered by the lead Authorities, through whom BSSG had been paid since 2013<sup>1</sup>. In the case of south east Wales, Monmouthshire County Council acts as the lead authority. BES 1.5 provided £10m of so-called 'ramp up funding' to support transport to enable the reopening of schools and economic activity. This funding helped to cover the cost of reinstating services suspended when travel restrictions associated with the pandemic were introduced, and which were needed to meet increasing demand, given capacity constraints of social distancing. BES 1.5 was then extended to the end of March 2021 following the announcement of a further support package in September 2020<sup>2</sup>. Operators were once again asked to sign up to a range of terms and conditions to access the BES funding.
- 5.2.5 WG, working with TfW, are now proposing to enter into a longer-term BES 2 agreement with operators and local authorities to protect services. It will operate for an initial maximum term of up to 2 years from the date BES 1.5 commenced (i.e. up until 31

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<sup>1</sup> The lead authority acts as a conduit for BSSG funding from WG to operators. Current lead authorities are Monmouthshire (for South East Wales); Flintshire (for North Wales); Swansea (for South West Wales), Ceredigion and Powys. Within each LA, transport staff play an important role liaising with operators on a range of issues to meet local Members' requirements. The roles include administration of Concessionary Fares reimbursement and provision of support for contracted journeys on non-profitable routes.

<sup>2</sup> Overall, an additional £45m has been provided by WG to support the bus sector this financial year including the £10m ramp up funding an extra £35m from September to the end of the year.

July 2022), unless market conditions recover sufficiently for an operator to no longer require BES support for any of its services whether they be contracted or commercial.

### 5.3 Key Features of BES 2

5.3.1 BES 2 will continue to address the loss of farebox revenue, and the additional costs associated with responding to the pandemic. Under BES 2 the WG funding will sit alongside local authority funding provided through the Concessionary Travel Scheme and via Revenue Support Grant and the BSSG to make up the shortfall.

5.3.2 WG will be a co-signatory to the BES 2 agreement with bus operators, along with TfW<sup>3</sup>. Local authorities retain legal responsibilities for bus services and therefore remain central to determining which local bus services receive this support. They need to sign up to the principle of the agreement and the relationship with their Lead Authority, in ensuring that the ongoing emergency funding meets their priorities and is delivered on their behalf. This will provide the legal basis for WG to make payments to the operators. In this way, WG can use its powers to support operators, whereas the additional funding would breach local authorities' de minimis limits for direct award contracts (further details in the briefing note prepared by TfW and LA representative sub group in Appendix 1, and the full proposed Agreement prepared by TfW is in Appendix 2). Local Authorities will remain responsible for those services which they currently contract directly with bus operators. Local Authorities will need to consider planning for contingencies, such as if the BES 2 agreement is not signed or the level of funding for BES 2 is reduced during the period of the agreement.

5.3.3 Key features of BES 2 will be as follows:

- i. Maximum term until 31st July 2022 or until operators enter into an embedded partnership agreement
- ii. development and delivery of a Reference Network, intended to provide a range of benefits to communities; multi-operator ticketing; and operator sign-up to an Economic Contract at the heart of WG's Economic Action Plan (and its principles of fair work, health, decarbonisation, skills and learning etc)
- iii. long term co-operation and co-ordination across TfW, LAs and operators by entering into partnerships with a clear set of obligations and shared standards
- iv. one agreement per operator in each of the regions that they work in, signed by Welsh Government, TfW, a lead authority and the operator
- v. operators will be allowed to make a (capped) profit on services that has not been possible under emergency funding to date.

### 5.4 Beyond BES 2

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<sup>3</sup> Given that the agreement is under discussion between WG, operators and TfW as well as LAs, and must be approved by all parties, it may be subject to some changes before it is finalised.

- 5.4.1 Discussions are starting to take place in relation to the planning of future networks<sup>4</sup> and the respective roles of WG, TfW, LAs and operators. It is important to note that these are not the prime focus of BES 2 agreement. It will be vitally important for further detailed discussions to take place with Members on these matters. However, this is not a reason to delay the signing of the BES 2 agreement. WG does believe that the BES 2 offer will help to engage operators in the discussions about the future at a time when their income is more dependent than ever on public sector support. In signing up to BES 2, though, LAs are agreeing to financial support being provided to the sector. They are not committing themselves to any specific, future model of bus service management as that will be the subject of further debate.

## **5.5 Legal Implications or Legislation Considered**

- 5.5.1 A legal briefing to accompany the BES 2 agreement was provided by the Welsh Government to assist local authorities in their considerations. This is a specialist area of law and an independent local review will undoubtedly raise issues affecting all local authorities in Wales. It has been suggested that queries relating to the overarching agreement should be dealt with by one single legal adviser (Counsel or an 'expert' from within one of the participating Councils) to which all Councils agree to instruct. Legal questions to date have therefore been channelled to the Welsh Government through the Welsh Local Government Association.
- 5.5.2 As the BES2 contract will be signed by the Lead Authority, and not the constituent local authorities, there will need to be a back to back agreement with the Regional Lead Authority to ensure that our section 63 duties are not compromised, and that the ongoing emergency funding meets this authority's priorities and is delivered on its behalf under any prioritising of routes to which BES 2 is applied.
- 5.5.3 The legal framework is complex and centres on the Transport Act 1985 which effectively deregulated bus services. This agreement seeks to secure greater central coordination and planning of bus services in return for public sector funding. Notwithstanding any future proposals that may be considered in a future Bus Bill, the substantive duties and responsibilities in respect of bus services rest with Local Authorities and not Welsh Government or Transport for Wales.

## **6. ASSUMPTIONS**

- 6.1 No assumptions have been made in the preparation of this report.

## **7. LINKS TO RELEVANT COUNCIL POLICIES**

- 7.1 The following Council policies are relevant to the decision being requested.

### **7.2 Corporate Plan 2018-2023**

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<sup>4</sup> The reference network will need to be designed and agreed collectively by WG, TfW and LAs and discussed with operators. An All-Wales Bus Network officer group has been established to progress the thinking around this.

7.2.1 The ITU service contributes towards the following Corporate Well-being Objectives:

Objective 4 - Promote a modern, integrated and sustainable transport system that increases opportunity, promotes prosperity and minimises the adverse impacts on the environment.

Infrastructure Division Objective: To work towards a safer environment through positive measures to reduce road accidents and particularly by protecting and providing for vulnerable road users.

## **8. WELL-BEING OF FUTURE GENERATIONS**

8.1 This service contributes to the following Well-being Goals:-

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A globally responsible Wales

8.2 This proposal contributes to the Well-being Goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that:

- Long term resourcing of operation and management solutions of this specialised service provision allows for more effective and predictable resource/ financial commitments going forward.
- The service helps to prevent less sustainable travel options being used thus contributing to the well-being of its communities.
- It forms part of an overall strategy for the integration of local and regional transport systems where sustainable public transport, contributing to a low carbon future, is the option of choice.
- Collaboration with other organisations and local authorities enables a more effective and efficient service delivery.

## **9. EQUALITIES IMPLICATIONS**

9.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance. No potential for unlawful discrimination and/or low level or minor negative impact has been identified therefore a full EIA has not been carried out.

## **10. FINANCIAL IMPLICATIONS**

10.1 There are no direct funding implications for the Council arising from this agreement and the additional funding being provided by WG enables services to be maintained. The Council will continue to fund bus services via the contracts that it has with individual bus operators.

## 11. PERSONNEL IMPLICATIONS

11.1 There are no personnel implications arising from this report.

## 12. CONSULTATIONS

12.1 This proposal has involved high level discussions between the principal parties to the agreement; Welsh Government, Transport for Wales, the Local Authorities within Wales and the bus operators, including the Confederation of Passenger Transport.

## 13. STATUTORY POWER

13.1 The following enabling statutory powers apply to the ITU service.

- Transport Act 1985
- Transport Act 2000
- Transport (Wales) Act 2006
- Learner Travel (Wales) Measure 2008

13.2 The legal framework is complex and centres on the Transport Act 1985 which effectively deregulated bus services. This agreement seeks to secure greater central coordination and planning of bus services in return for public sector funding. Notwithstanding any future proposals that may be considered in a future Bus Bill, the substantive duties and responsibilities in respect of bus services rest with Local Authorities and not Welsh Government or Transport for Wales.

## 14. URGENCY

14.1 *The Mayor has agreed that the report should be considered as urgent and not subject to call-in as the legal agreement providing further financial assistance must be signed by 31<sup>st</sup> January 2021. If the agreement is not signed this will seriously prejudice the interests of the council and the public it serves. Any decision taken by the Cabinet will be reported to the next meeting of the Council.*

Author: Geraint Roberts – Team Leader, Integrated Transport Unit

Consultees: Christina Harrhy, Chief Executive  
 Cllr John Ridgewell, Cabinet Member for Environment and Infrastructure  
 Mark S Williams, Interim Corporate Director of Communities  
 Richard Edmund, Corporate Director of Education and Corporate Services  
 Dave Street, Corporate Director of Social Services and Housing  
 Marcus Lloyd, Head of Infrastructure  
 Lynne Donovan, Head of People Services  
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 Steve Harris, Head of Financial Services & S151 Officer  
 Rhian Kyte, Head of Regeneration and Planning  
 Clive Campbell, Transportation Engineering Manager  
 Anwen Cullinane, Senior Policy Officer – Equalities, Welsh Language and Consultation

Appendices:

- Appendix 1 BES 2 Briefing Document for Local Authorities
- Appendix 2 BES 2 Agreement December 2020
- Appendix 3 BES 2 Local Authority Legal Briefing

## **BUS EMERGENCY SCHEME PHASE 2 (BES 2) - BRIEFING NOTE FOR LOCAL AUTHORITIES**

This summary sets out details of the proposed BES 2 arrangements. The proposals, described under the following headings, are subject to ongoing discussions between local authorities, operators, Transport for Wales and Welsh Government:

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What does BES 2 Mean for Local Authorities? .....	1
Why move to BES 2? .....	3
What results are we trying to achieve with BES 2? .....	4
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### **Journey to Date and Plans for BES 2**

Since the start of the COVID 19 pandemic Welsh Government, Local Authorities, TfW and operators have worked together to make bus services available to Welsh citizens in spite of the significant reduction in passenger numbers and associated fare income. Money is still being provided to operators on an emergency basis under the terms and conditions in the BES 1.5 agreement which expires at the end of March 2021.

With the BES 2 agreement the public sector is planning to enter into longer term arrangements with operators, ideally by the end of January 2021, which will replace BES 1.5 from the point of signature.

### **What does BES 2 Mean for Local Authorities?**

#### **Actively managing recovery from the impact of COVID-19 on local bus services**

The BES 2 agreement formalises Welsh Government's commitment to supporting recovery of bus services following the impact of COVID-19. BES 2 funding will be used to address the loss of farebox revenue and the additional costs associated with responding to the COVID 19 pandemic. Welsh Government will be a co-signatory to the proposed BES2 agreement with bus operators

Under the terms of the BES2 agreement, operators will be required to provide bus services that meet local needs under the direction of the Lead Authority for each region, working with and on behalf of its constituent local authorities.

The end date for the BES2 contract is 31 July 2022. This should allow enough time for revenues to recover. The contract may be terminated earlier if market conditions mean that additional Government funding is no longer required to address the impact of COVID-19.

### **Funding responsibilities**

The BES 2 agreement exists to provide a legal basis for funding the costs associated with the impact of COVID 19. These include the loss of farebox, duplication of buses to take account of social distancing or providing alternative services where operators give them up and the services are still needed. This applies to services that were commercial pre-COVID and to tendered services.

The BES2 agreement does not change local authorities' ability to determine where and how they spend the Revenue Services Grant (RSG). The RSG funding is not hypothecated and most local authorities spend an element of this grant on local bus service provision to fill gaps in the commercial network. BSSG (roughly £8m across Wales) is also used to secure the delivery of services to a specified standard.

The BES2 funding for COVID19 related costs sits alongside this local authority funding for local bus services and does not remove or amend local authority powers and responsibilities with regard to local bus services. The two funding streams serve different purposes. Local authorities will still need to prioritise and fund local bus services where they see fit.

Specifically:

- if a local authority chooses to cease to fund a supported contract, BES 2 funding cannot be applied to backfill that loss of funding
- local authorities remain responsible for their existing contracts and may need to vary these contracts to scale back services if BES 2 funding were to cease before fare box takings return to pre-COVID levels, unless additional sources of funding are available.

### **Directing the provision of services**

Working with the Lead Authority in each region, local authorities will need to jointly prioritise the routes that BES 2 funding should be applied to, taking into account the work already undertaken under BES 1.5 and using these priorities for spend:

- supporting learners' journeys to school or college on registered local bus services;
- increasing frequencies where demand exceeds capacity;
- improving accessibility to jobs and services across our regions and communities;
- supporting economic recovery; and
- ensuring social inclusion,

Under the terms of the BES2 contract, subject to the Lead Authority acting reasonably within the bounds of available funding, the bus operators will be required to provide services that meet local priorities as directed by the Lead Authority.

The BES 2 arrangements include the collaborative development of regional Reference Networks by local authorities, operators, Welsh Government and TfW. The Reference Networks will reflect local, regional and national priorities and will help to guide investment in bus services for the future. BES2 ensures local authorities have an influence over the development of a coherent Reference Network which will ultimately be delivered by a mix of tendered and commercial services.

### **Implications for local bus contracts**

The BES 2 agreements do not supersede the existing supported contracts (e.g. section 63 contracts) that are in place between each local authority and bus operators. The BES 2 agreements sit alongside existing contracts and provide a legal basis for the additional funding that operators are receiving in respect of their supported contracts to cover the loss of farebox and additional costs incurred, for example, with respect to complying with social distancing and cleaning requirements. The BES 2 agreements also set out the basis on which operators will exit the BES arrangements and return to the original terms of contract.

The additional funding that is being paid to operators to address the impact of the COVID 19 pandemic would breach local authorities' de minimis limits for direct award contracts. Welsh Government is a signatory to the existing BES 1.5 agreement and to the proposed BES 2 agreement in order to use its powers to support continued provision of the operators' services without breaching the de minimis cap. Welsh Government powers in this regard can be exercised for a two year term and date from the start of the BES 1.5 agreement on 1 August 2020 to 31 July 2022.

BES can impact on local contract procurement. Where a local authority wishes to tender for a new or time expired supported contract the risks associated with predicting farebox revenue, during and immediately after the pandemic, will affect tender prices. In these circumstances, bidders will be required to offer a price that they will charge while BES funding is in place and alternative prices for when BES funding is no longer available, with their tenders covering both before and after the farebox has returned to pre-COVID levels.

### **Regional Working**

BES2 supports the move to improve regional co-ordination and oversight of delivery of local bus services. Under BES 1.5, the funding was distributed to the Lead Authority in each region. Each operator signed one agreement with the Lead Authority in each region where it operates, with Welsh Government and Transport for Wales as co-signatories. The Lead Authority is then responsible for distributing the BES funding to the operators in its region. It is proposed that this model is retained for the BES 2 agreement. The responsibilities of each party will be clearly set out in the grant letter to the Lead Authority and in the BES 2 agreement, and measures are being taken to minimise the risk to the Lead Authority relating to funding and termination of the BES2 agreement.

### **Why move to BES 2?**

The benefit for operators is that they will be able to make a profit under the terms of BES 2. No profit has been allowed in the emergency arrangements up to now.

The benefit for the public sector is that we can jointly better manage the recovery of bus services. The alternative is that, as recovery begins, operators will shrink their networks to the routes and services that are commercially viable for them leaving government to support an even larger subsidised network. The BES 2 arrangements are seeking to ensure that operators are incentivised to support the recovery of the whole network and not just a limited number of commercial routes.

The public sector is taking farebox risk under BES 2 and, as farebox levels rise, this revenue will augment the funding available to work with operators to support the recovery of services. This will benefit us all in the long term by building passenger confidence in a reliable and comprehensive public transport network.

Although recovery from the impact of the COVID 19 on patronage is likely to be slow, we do not expect operators to stay within the BES 2 arrangements forever. As passenger confidence returns and farebox recovers, we expect operators to exit the BES 2 arrangements and work with us under partnership agreements. The partnership agreements will be based on agreed core set of principles and behaviours that will be developed with operators as part of the BES 2 arrangements.

### What results are we trying to achieve with BES 2?

BES 2 provides a mechanism for managing the recovery and reshaping of bus services to respond to the impact of the COVID 19 pandemic. Specifically:

- Address areas of high demand where social distancing has reduced available capacity
- Ensure that communities are not cut off due to low fare box revenues.
- Offer new options for meeting demand such as demand responsive transport which may be more cost effective as patterns of travel change.
- Offer better value for money for passengers by working with operators to rationalise their fare structures and develop multi operator ticketing, to the extent permitted by competition law.
- Build a better working relationship with operators to develop a robust and viable network of services for the future.
- Gain a better understanding of the costs of delivering bus services in Wales to inform future policy and funding decisions
- Reduce pollution by introducing measures to attract people out of their cars and onto public transport and by working with the industry to upgrade their fleet.

## What does BES 2 mean for operators?

Where an operator signs up to the BES arrangements (whether BES 1, 1.5 or BES 2), all the services that the operator runs – whether they are supported or formerly commercial – are included in the contract.

Each operator is expected to continue to operate routes that are largely similar to those which they operated pre-COVID, amended as necessary to respond to the crisis. This helps to maintain stability in the short term and provides a framework for decision making e.g. if an operator chooses not to run services that they used to run before COVID a decision can be made to let a tender for those services if they are still required.

Funding for the regional BES contracts will be a mix of existing sources and additional funding from Welsh Government, with operators being funded to cover all their allowable costs across all their services less their earnings from the fare box, concessionary fares, BSSG and YPT.

## What risks exist with the proposed approach?

Operators choose not to sign the BES 2 agreements and instead shrink their networks to the minimum required and/or reduce the quality of their services to make a commercial return. *Mitigation – working with operators to address their concerns and ensure that all parties see this as a beneficial arrangement.*

The BES 2 arrangements breach competition, state aid or procurement law and are rendered invalid. *Mitigation – working with lawyers to ensure that the terms are compliant with the law.*

Operators challenge the local authority's ability to let new contracts on routes where the operator has registered a commercial service. *Mitigation – the standards that will be specified as part of BES2 provide an objective way to defend the local authority's right to let a supported contract where the service offered by the operator does not meet the specified standard. Legal advice and guidance will be provided to local authorities to support this statement.*

Additional funding from Welsh Government beyond the end of March 2021 is yet to be confirmed. *Mitigation – WG have committed additional funding from September 2020 to support local bus services and officials are working to secure further funding to support these key services beyond the 2020/21 budget horizon.*

Funding operators in this way is not cost effective and/or operators are not incentivised to be efficient. *Mitigation – use the data from operators to assess the cost effectiveness of the spend and shape contract terms to incentivise efficiency.*

## What changes from BES 1.5 to BES 2 and Beyond?

<b>Activity</b>	<b>BES 1.5</b>	<b>BES 2</b>	<b>Beyond BES 2 - Partnership</b>
<b>Services</b>			
Routes and frequencies operated	Operators offer routes of their choice together with ramp up services agreed with the Lead Authority following discussion with local authorities.	All services (supported and formerly commercial) to be formally specified by the Lead Authority, working with and on behalf their constituent local authorities.	Services to return to either being commercially run by operators or under supported contracts subject to the Reference Network commitments below.
Reference Network	Not defined.	Parties to develop a target Reference Network, including routes and service frequencies, that reflects long term local, regional and national ambitions.	All parties to work together to deliver target Reference Network where financially viable Government to use target Reference Network to prioritise capital investment.
Data provision	Operators providing financial and operational data to support passengers, payment and delivery	No change	No change to operational data requirements. Reduced financial data requirements for commercial services.
<b>Finance</b>			
Funding principles	Additional BES funding (over and above historic BSSG, MCF and YPT) was distributed to each Lead Authority as a WG grant.	Any additional BES funding (over and above historic BSSG, MCF and YPT) to be distributed to each Lead Authority as a WG grant.	No additional BES funding. Funding will be required to support investment, e.g. in infrastructure, to meet partnership obligations.
Payments and Reconciliation	BES funding supports the cost of all services – both formerly commercial and tendered – less farebox and other revenue. 0% margin.	One change from BES 1.5 - 2% margin offered. Subject to ongoing review.	Operators earn margin from commercial services and through tendered services.

<b>Activity</b>	<b>BES 1.5</b>	<b>BES 2</b>	<b>Beyond BES 2 - Partnership</b>
<b>Contract</b>			
Signatories	Contracts signed by the operator, the Lead Authority in each region, Welsh Government and TfW.	Same as BES 1.5.	Same as BES 1.5.
Term	Terminate on signature of BES 2 agreement or end March 2021	Contract to be terminated if additional BES funding is not available or upon exit to BES 3 or, at the latest, by 31 July 2022.	Term for partnerships to be agreed.
Existing supported contracts	Operators receive a fixed percentage of original contract price plus BES top up funding via cost reconciliation	Contracts varied as required to reflect actual delivery and receipt or BES payments or terminated if no longer required.	All local contracts return to operating under original terms.
Letting new supported contracts	No action taken	Guidance provided to ensure all bidders are given consistent information about available BES funding and that tenders are structured to manage current farebox risk.	BES no longer a factor in letting new supported contracts
Former commercial services	Contracted as part of the BES 1.5 arrangements using Welsh Government powers.	Same as BES 1.5	Either become commercial or supported services or are no longer required.
Commercial services	Assumption that receipt of BES funding means that the operator's services are not commercial.	Services can start to become commercial under BES 2 but farebox and other revenue continues to be included in overall reconciliation under BES 2.	Commercial services to earn BSSG and MCF in accordance with prevailing regime but no BES payments. Commercial services to meet target Service Standards subject to viability.

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**DATED**

**2020**

**(1) WELSH MINISTERS**

**- and -**

**(2) TRANSPORT FOR WALES**

**- and –**

**(3) [*LEAD REGIONAL TRANSPORT AUTHORITY*]**

**- and –**

**(4) [*OPERATOR*]**

**AGREEMENT**

relating to  
Bus Emergency Scheme 2 in respect of the  
areas of the following [*insert all Local  
Authorities in the Region*]

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**BETWEEN:**

- (1) **WELSH MINISTERS** (“**Welsh Government**”);
- (2) **TRANSPORT FOR WALES** of 5<sup>th</sup> Floor, South Gate House, Wood Street, Cardiff, Wales, CF10 1EW (“**TfW**”);
- (3) [**LEAD REGIONAL TRANSPORT AUTHORITY**] of [*address*] acting for and on behalf of [*List names of Constituent Local Authorities*] (“**Lead Authority**”); and
- (4) [**OPERATOR**] of [*address*] registered in England and Wales with company number [*number*] (“**Operator**”),

(together the “**Parties**”).

**BACKGROUND:**

- A Welsh Government has been taking action to help bus operators in Wales, including the Operator, get through the inevitable uncertainty of the COVID-19 affected operating conditions, and that such action has enabled the Operator to continue provision of services which could not have been provided by the Operator without this financial support since March 2020. The Operator further acknowledges that the provision of this support has enabled the Operator to retain customers and a network of services which may otherwise have been lost or reduced significantly, and that this will support the Operator’s business in recovering following relaxation of rules on social distancing and other factors which affect bus travel at the date of this Agreement.
- B Funding has been provided by the Welsh Government to bus operators in Wales pursuant to the Bus Hardship Funding letter dated 2 April 2020, the Bus Emergency Scheme 1 letter (“**BES 1**”) and Bus Emergency Scheme 1.5 letter (“**BES 1.5**”) which provided money to bus operators (including the Operator) through the Lead Authority on behalf of its Constituent Local Authorities. Those letters set out conditions to the Operator receiving such funding (together the “**Previous BES Funding Arrangements**”).
- C In continuing to provide Bus Emergency Scheme funding, Welsh Government wish to move to a lasting partnership between bus operators and the public sector. Working together will enable a fundamental reshaping of Wales’ local bus services, through a new approach to managing services, sharing data and information and establishing standards for routes, services, fares and tickets to meet the needs of passengers in a world affected by COVID-19, climate change, new transport choices and changes to working patterns.
- D It is intended that funding provided under this new BES 2 agreement (“**Agreement**”) will ensure that support provided to bus operators is more directly aligned with the provision of bus services that meet with the aim of supporting the management and interaction across transport modes including smart ticketing, unified routing, integrated timetabling and will do this both through specifying public service obligations in respect of the services provided by the operators (including both supported and formerly commercial services) and agreeing a framework for long term partnership which will continue to cover both supported and commercial bus services into the future.
- E Welsh Government and Transport for Wales have agreed to: (i) consult with bus operators before making policy changes which affect or are impacted by local bus services and give full

consideration to the views expressed, consistent with their duties under the Well-being of Future Generations (Wales) Act 2015; (ii) ensure funding arrangements are clear, communicated and executed in a timely fashion; (iii) recognise and take account, wherever possible. in designing policy for bus regulation of the real costs of operating services, bus provision and employee matters; and (iv) ensure requests for information to bus operators are targeted, minimise unnecessary burdens on operators and involve no more work than is required to achieve the relevant purposes.

- F This Agreement is intended to provide a step in ensuring that services and funding are aligned, whilst providing a framework for development of future partnership working between the public sector and bus operators, which can be built upon over the coming years, including to secure co-production in the design and delivery of bus transport services. In particular: (i) Welsh Government and TfW shall engage fully and openly with bus operators in the development of the National Transport Delivery Plan, including policies for the delivery of zero carbon bus fleets and for the development of interventions to improve bus journey times through tackling congestion; and (ii) the Constituent Local Authorities shall take action to enhance highways infrastructure, bus facilities and service information, subject to the availability of funding.
- G The Parties acknowledge that the contribution of the Welsh Government, TfW and local government to delivering more reliable and predictable services through traffic and congestion reduction and the introduction and improvement of bus priority is crucial to the successful delivery of bus services.
- H As a result this Agreement includes specific requirements in respect of the continued funding and provision of services including specifying the terms of an umbrella partnership arrangement between the Parties, other bus operators and the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership) to support Welsh Government's wider objectives.
- I It is acknowledged that this Agreement is not intended to amend the basis of payments of BSSG and Concessionary Travel Scheme which shall continue to be paid in accordance with their terms subject to, any future reform of such payments with Welsh Government may undertake.

## **IT IS AGREED:**

### **1. DEFINITIONS AND INTERPRETATION**

In this Agreement:

- 1.1 Unless the context otherwise requires, the following expressions shall have the meanings set out below:

<b>"ADR Notice"</b>	has the meaning given to it in clause 25.2;
<b>"Agreement"</b>	has the meaning given to it in Recital D;
<b>"Alternate Lead Authority"</b>	means Flintshire, Monmouthshire, Swansea, Ceredigion, Powys which has been appointed to assist with disputes in accordance with clause 6.7;
<b>"BES 1"</b>	has the meaning given to it in Recital B;

<b>“BES 1.5”</b>	has the meaning given to it in Recital B;
<b>“BES 2 Funding”</b>	means funding provided by the Welsh Government to the operators in Wales pursuant to the terms of this Agreement;
<b>“BES Funding Period”</b>	means the period of the BES Previous Funding and the BES 2 Funding;
<b>“BES Previous Funding”</b>	means funding provided by the Welsh Government to operators in Wales pursuant to the Previous BES Funding Arrangements;
<b>"BSSG"</b>	means Bus Services Support Grant awarded to a Lead Authority by Welsh Government to support and maintain the core strategic bus network, improve connectivity and quality, provide certain bus and other local transport services, and develop close and effective partnership working;
<b>“Change in Covid-19 Impact Event”</b>	means any new event or circumstances (or change to event or circumstances) which occurs following the Effective Date which arise as a direct result of the COVID-19 Virus and which adversely impacts the Operator’s ability to perform its obligations under this Agreement including but not limited to the introduction of lockdown measures, travel restrictions or amended social distancing measures in the United Kingdom;
<b>"CMA"</b>	means the Competition and Markets Authority of Victoria House, Southampton Row, London WC1B 4AD;
<b>“Commercially Sensitive”</b>	means in relation to a Disclosing Party that the disclosure of such information is either a trade secret or if disclosed would prejudice the commercial interests of that Party, and shall include any Operator Information identified as Commercially Sensitive in Part 4 of Schedule 4;
<b>"Commercial Service"</b>	means a Local Service which a bus operator provides on a commercial basis and not pursuant to any Existing Supported Services Contract or New Supported Services Contract;
<b>"Confidential Information"</b>	means, in relation to a Disclosing Party: <ul style="list-style-type: none"> <li>(a) information of whatever nature concerning the business, assets, liabilities, dealings, transactions, policies or affairs of the Disclosing Party including all trade secrets, financial, marketing and technical information, ideas, concepts, technology, processes, knowledge and know-how, together with all details of a Disclosing Party’s, customers, suppliers, prices, discounts, margins, information relating to research and development, current trading performance and future policy or business strategy and all other information of a like nature; and</li> </ul>

- (b) any information which is expressly indicated to be confidential or commercially sensitive or which, due to the nature and circumstances of its disclosure or its content might reasonably be considered to be confidential (whether or not marked as such),

in each case in whatever form or medium (including written, electronic, visual and oral) such information is recorded or kept and whether or not created for the purpose of entering into this Agreement or otherwise, and shall include, for the avoidance of doubt, any Operator Data identified as Confidential Information in Part 4 of Schedule 4;

<b>"Constituent Local Authorities"</b>	means a group of local authorities in Wales who are working together and are represented by the Lead Authority (and <b>"Constituent Local Authority"</b> shall be interpreted accordingly);
<b>"COVID-19"</b>	means the virus identified and named "COVID-19 virus" by the World Health Organisation which was characterised as a pandemic by the World Health Organisation on 11 March 2020;
<b>"Data Protection Laws"</b>	means the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (" <b>GDPR</b> ") and the Data Protection Act 2018, together with the Privacy and Electronic Communication Regulations 2003 and all codes of practice issued by the Information Commissioner;
<b>"Defaulting Party"</b>	means a Party who commits a material breach of its obligations under this Agreement;
<b>"de minimis contracts"</b>	means Local Services contracts entered into pursuant to section 63 of the Transport Act 1985 which have been procured on a direct award basis to secure the provision of such public transport services as are considered appropriate to meet any public transport requirements which would not otherwise be met, pursuant to the exceptions allowed under section 91 Transport Act 1985 by the Service Subsidy Agreements (Tendering) Regulations 1985 as amended;
<b>"Disclosing Party"</b>	means a Party that discloses Confidential Information to one or more Receiving Parties under this Agreement;
<b>"Dispute"</b>	means a dispute or difference arising out of or in connection with this Agreement or any such matter which a Party deems (acting reasonably) to constitute a dispute;
<b>"Economic Contract"</b>	has the meaning given to it in the Welsh Government "Prosperity for All - Economic Action Plan";
<b>"Effective Date"</b>	means the date of this Agreement;

<b>"EIR"</b>	means the Environmental Information Regulations 2004;
<b>"Existing Supported Services"</b>	means any Local Services operated pursuant to the terms of an Existing Supported Services Contract;
<b>"Existing Supported Services Contracts"</b>	<p>means contracts for the provision of Local Services in Wales by the Operator that were entered into before the Effective Date pursuant to:</p> <ul style="list-style-type: none"> <li>a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;</li> <li>b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or</li> <li>c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;</li> </ul>
<b>"FOIA"</b>	means the Freedom of Information Act 2000;
<b>"Force Majeure Event"</b>	<p>means any event or occurrence (including fire, flood, violent storm, pestilence, explosion, malicious damage, act of terrorism, epidemic, pandemic, any industrial action by the workforce of an affected Party or by the workforce of a critical or key supplier, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made) which:</p> <ul style="list-style-type: none"> <li>a) without prejudice to the operation of clause 11.6, the affected Party could not reasonably have provided against before entering into this Agreement;</li> <li>b) materially adversely affects the ability of a Party to perform its obligations (in whole or in part) under this Agreement;</li> <li>c) which is outside the reasonable control of an affected Party;</li> <li>d) having arisen, could not reasonably be avoided or overcome by the affected Party;</li> <li>e) occurs in the United Kingdom; and</li> <li>f) is not attributable to any act or failure to take reasonable preventative action by an affected Party;</li> </ul>
<b>"Former Commercial Services"</b>	has the meaning given to it in clause 15.1;

<b>“Funding Review(s)”</b>	means the review carried out in accordance with Schedule 5;
<b>“Good and Efficient Operator”</b>	has the meaning given to it in Section 1 to Schedule 3;
<b>“Gross Cost Contract”</b>	means a contract whereby the procuring authority retains the right to receipt of passenger revenue and therefore carries the financial risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>"Intellectual Property Rights"</b>	means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>"Lead Authority"</b>	means a local authority in Wales acting as the Lead Regional Transport Authority for one or more of its Constituent Local Authorities;
<b>"Legislation"</b>	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any Welsh law within the meaning given to it in section 1(3) of the Legislation (Wales) Act 2019, any exercise of the Royal Prerogative, and any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 (as amended), in each case in the United Kingdom;
<b>“Local Service”</b>	has the meaning given to it in the section 2 of the Transport Act 1985 and for the avoidance of doubt, this shall not include: (i) services materially supported by a private sector party; or (ii) rail replacement services;
<b>“Net Cost Contract”</b>	means a contract whereby the operator retains all passenger revenue and takes the risk in respect of the level of passenger revenue received in respect of services provided under such contract;
<b>“New Supported Services”</b>	means any Local Service operated pursuant to the terms of a New Supported Services Contract;
<b>“New Supported Services Contract”</b>	means contracts for the provision of Local Services in Wales by the Operator that were entered into after the Effective Date pursuant to:

- a) terms let by or on behalf of the Welsh Government pursuant to section 7 of the Transport (Wales) Act 2000;
- b) contract terms let by one or more local transport authority pursuant to section 63 of the Transport Act 1985 (including, for the avoidance of doubt, any de minimis contracts); or
- c) any other contract let by one or more local transport authorities in accordance with sections 89 – 92 of the Transport Act 1985;

<b>“New Supported Services Contract Tendering Assumptions”</b>	has the meaning given to it in clause 17.3;
<b>“Operator Data”</b>	means Operator data required to be provided under this Agreement which are confidential or commercially sensitive to the Operator as identified in Part 4 of Schedule 4;
<b>"Operator Companies" Group</b>	means the Operator and any subsidiary, holding company or subsidiary of any holding company of the Operator and "Operator" shall be construed accordingly;
<b>"Part 2 Competition Test"</b>	means the test for certain agreements, decisions and practices as set out in Schedule 10, Part 2 to the Transport Act 2000 as modified;
<b>“Permitted Use”</b>	means the use of data for any purpose specified in Part 3 of Schedule 4;
<b>"Previous BES Funding Arrangements"</b>	has the meaning given to is in Recital B;
<b>"Priorities"</b>	has the meaning given to it in clause 6.2;
<b>“Procurement Programme”</b>	has the meaning given to it in clause 17.2;
<b>"Public Sector Party"</b>	has the meaning given to it in clause 23.1;
<b>"Quality Partnership Schemes" or “QPS”</b>	means a quality partnership scheme as specified in section 114(1) Transport Act 2000;
<b>"Receiving Party"</b>	means a Party which receives Confidential Information from a Disclosing Party;
<b>“Reconciliation Payment”</b>	has the meaning given to it in clause 9.5;
<b>"Reference Network"</b>	means:

- a) from the date of this Agreement a reference bus network for the Region which reflects the Local Services registered by bus operators on [date]; and
- b) once developed in accordance with the terms of clause 8 and the Umbrella Partnership Agreement the developed reference network for [the Region] as it may be varied from time to time in accordance with the terms of the Umbrella Partnership Agreement or any other partnership arrangements developed in accordance with its terms;

<b>“Region”</b>	means the geographical area for which the Lead Authority and its Constituent Local Authorities are responsible;
<b>“Register of Variations”</b>	means a register for each Region, specific to the Operator, detailing each service contract, the agreed variation to the specific service, which has been reviewed and signed by the relevant Constituent Local Authority, the form appended at Schedule 7;
<b>“Regulation 1370/2007”</b>	means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road as amended, including, but not limited to, by the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020;
<b>"Requests for Information"</b>	shall have the meaning set out in the FOIA or any apparent request for information under the FOIA;
<b>“Services”</b>	has the meaning given to it in clause 2.1;
<b>“Service Payment”</b>	has the meaning given to it in clause 9.1;
<b>“Service Specification”</b>	has the meaning given to it in clause 6.1;
<b>“Service Standards”</b>	means the service standards to which the Operator agrees to provide Local Services as determined in accordance with clause 8.6, including but not limited to, compliance with the requirements of Schedule 1;
<b>"State Aid and Procurement Constraints"</b>	has the meaning given to it in clause 19.2;
<b>“Subsidised Network”</b>	has the meaning given to it in clause 8.3;
<b>"Term"</b>	has the meaning given to it in clause 3.1;
<b>“Umbrella Partnership Agreement”</b>	means the framework voluntary partnership agreement agreed in accordance with clause 5;

<b>"VPA"</b>	means a voluntary partnership agreement as described in section 46 of the Local Transport Act 2008, amending section 153(2) of the Transport Act 2000;
<b>"Wales Transport Strategy"</b>	means the draft strategy for the future of transport in Wales, setting out Welsh Government's ambitions for the next 20 years and their priorities for the next 5 years in the form of the consultation document published here: <a href="https://gov.wales/llwybr-newydd">https://gov.wales/llwybr-newydd</a> ;
<b>"Welsh Bus Open Data Agreement"</b>	means the agreement to be entered into between (1) TfW and (2) the Operator in relation to the Operator providing certain data to TfW which will enable TfW to build a consistent data set for all services in Wales to improve services for passengers; and
<b>"Working Days"</b>	means any day of the week other than a Saturday, Sunday or Bank Holiday.

- 1.2 the Schedule(s) form part of this Agreement and will have the same force and effect as if set out in the body of this Agreement and any reference to this Agreement shall include the Schedule(s);
- 1.3 references to clauses or paragraphs appearing in the main body of this Agreement are, except where expressly stated to the contrary, references to clauses and paragraphs of this Agreement;
- 1.4 references to any part or paragraph appearing within a Schedule are, except where expressly stated to the contrary, references to such part or paragraph of that Schedule;
- 1.5 references to this Agreement are references to this Agreement as varied, assigned and/or novated in accordance with the provisions of this Agreement from time to time;
- 1.6 references to any other agreement or document are to such agreement or document as varied, assigned or novated from time to time; and
- 1.7 any reference to any Legislation will include any subordinate legislation made under it and will be construed as a reference to such Legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

**2. SCOPE OF AGREEMENT**

- 2.1 This Agreement shall apply in respect of all Local Services provided by the Operator in the Region, including:
  - 2.1.1 Existing Supported Services; and
  - 2.1.2 Former Commercial Services;
  - 2.1.3 Commercial Services; and
  - 2.1.4 New Supported Services,

(together the “**Services**”).

- 2.2 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Gross Cost Contract, clause 12 shall apply.
- 2.3 Where and to the extent any Existing Supported Services are provided by the Operator pursuant to an Existing Supported Services Contract which is a Net Cost Contract, clause 13 shall apply.
- 2.4 Where and to the extent any Local Service provided by the Operator is a Former Commercial Service the provisions of clause 15 shall apply in respect of Former Commercial Services.
- 2.5 Where and to the extent any Local Service provided by the Operator is a Commercial Service, clause 16 shall apply to the Operator in respect of the provision of those services.
- 2.6 Where and to the extent any Local Service provided by the Operator is provided pursuant to a New Supported Services Contract let by a Lead Authority or one of its Constituent Local Authorities after the date of this Agreement the provisions of clause 17 shall apply.
- 2.7 Where any provision of this Agreement is specified as being carried out by one Public Sector Party pursuant to this Agreement, the Public Sector Parties may agree that a representative of another Public Sector shall be able to exercise such rights or may be required to carry out such function or obligation, provided that prior to such exercise, the Public Sector Parties shall jointly notify the Operator of such change of responsibility, and the party originally subject to such obligation shall notify the Operator of the basis upon which the new Public Sector Party is entitled to exercise the relevant powers. To the extent that this clause relates to the discharge of a statutory duty, the performance of such duty shall not be carried out by another Public Sector Party pursuant to this clause 2.7, save to the extent expressly agreed by such Public Sector Parties or in the event where TfW is performing such duties on behalf on the Welsh Government.
- 2.8 It is acknowledged that the Operator and Operator Group Companies may choose to change the way that they provide Local Services. Notwithstanding this, it is acknowledged by the Operator that this Agreement is entered into in respect of all Local Services provided by the Operator in the Region, and the Operator shall procure that, where there is any change in the operation of such services, that any alternative Operator Group Company providing such Local Services shall enter into an agreement on equivalent terms with the Public Sector Parties, and where and to the extent that they do not the Operator shall indemnify the Public Sector Parties against all costs, losses, expenses and claims arising from the Local Services (including Commercial Services) being provided by an Operator Group Company not subject to the provisions of this Agreement or an agreement on equivalent terms.

### **3. TERM**

- 3.1 This Agreement shall commence on the Effective Date and shall continue in force until the earlier of:
  - 3.1.1 the date agreed as the Expiry Date of this Agreement where this has been specified pursuant to the terms of any Umbrella Partnership Agreement, agreed between the parties; or
  - 3.1.2 31 July 2022 (being the date falling two (2) years after the start date of BES 1.5),unless terminated earlier in accordance with the terms of this Agreement (“**Term**”).

#### **4. WELSH GOVERNMENT REQUIREMENTS**

- 4.1 As a condition of receipt of BES 2 Funding, the Operator shall comply with Welsh Government's minimum funding requirements as specified in Schedule 1.
- 4.2 Where the Operator is in material breach of any condition contained in Schedule 1 and the Operator fails to remedy such material breach (such remedy to include taking all reasonable steps to ensure that such breach is not repeated) within ten (10) days of notification (or such other period of time as is reasonable given the nature of the breach and the steps required to remedy such breach), then the Operator shall pay compensation to the Lead Authority, pursuant to the process and calculated in accordance with Schedule 3.
- 4.3 The Operator shall maintain adequate insurances to cover against the risks which may be expected to arise in connection with any activity undertaken in the delivery of their obligations under this Agreement, including, but not limited to, insuring all property required to perform such obligations. The Operator shall provide Welsh Government with proof of such insurances promptly upon request.

#### **5. PARTNERSHIP**

- 5.1 The Operator shall use reasonable endeavours to agree the terms of an Umbrella Partnership Agreement, within three (3) months from the Effective Date and in the form of the draft agreement included at Section 1 of Schedule 1 with:
- 5.1.1 the Lead Authority (on behalf of Constituent Local Authorities in the Region and other Local Authorities affected by the partnership);
  - 5.1.2 TfW;
  - 5.1.3 Welsh Government; and
  - 5.1.4 other bus operators in the Region.
- 5.2 The Lead Authority, Welsh Government and TfW shall use reasonable endeavours to agree the terms of the Umbrella Partnership Agreement with the Operator and other bus operators in the Region.
- 5.3 The Parties acknowledge that that Umbrella Partnership Agreement shall provide a framework for development of detailed partnerships in the Region including, where appropriate, VPAs and QPS, and shall include as a minimum the following terms:
- 5.3.1 establishment of a partnership board which shall govern the partnership, set strategy and objectives of the partnership, monitor and report on the performance of the partnership and resolve disputes;
  - 5.3.2 define the parties' obligations in respect of the continued delivery of the Wales Transport Strategy which may be in the form of plans which set out implementation dates, or processes to agree such plans, including, but not limited to those matters specified in Schedule 2;
  - 5.3.3 define obligations with respect to the Reference Network in accordance with clause 8;
  - 5.3.4 establish key performance indicators;

- 5.3.5 include processes for investment in provision of Local Services;
- 5.3.6 confirm review processes for the partnership using annual reviews and/or change procedures;
- 5.3.7 rectification process where there is a breach of the terms of the Umbrella Partnership Agreement; and
- 5.3.8 termination rights.

## 6. SERVICE SPECIFICATION

6.1 From the Effective Date, the Operator shall operate its Local Services as it did under the terms of the BES 1.5 (“**Service Specification**”).

6.2 The Operator shall consult and agree with the Lead Authority and each Constituent Local Authority in whose area a Local Service operates within 30 days of the Effective Date, the specification of the services (including routes, frequencies and hours of operation) that the Operator shall provide. In determining the specification of the services the Parties shall have regard to:

- 6.2.1 supporting learners’ journeys to school or college on registered local bus services;
- 6.2.2 increasing frequencies where demand exceeds capacity;
- 6.2.3 improving accessibility to jobs and services across our regions and communities;
- 6.2.4 supporting economic recovery; and
- 6.2.5 ensuring social inclusion,

(together the “**Priorities**”),

provided that the services shall be affordable within the BES 2 Funding allocated to the Operator in accordance with the terms of this Agreement.

6.3 The Operator shall act in good faith to discuss and agree with the Lead Authority and the relevant Constituent Local Authorities any changes in the Local Services required at regular intervals as agreed by the Parties, to ensure that the Local Services continue to meet local needs.

6.4 The Operator shall take all reasonable steps to respond and comply promptly with reasonable requests from the Lead Authority to amend the Local Services operated including:

- 6.4.1 the routes used by those services;
- 6.4.2 the hours of operation;
- 6.4.3 the vehicles used or levels of provision; and
- 6.4.4 the timetables of such services.

6.5 The agreed Service Specification will be recorded in the form appended at Schedule 6 and shall be updated with any changes, agreed from time to time and subject to being deliverable within the BES 2 Funding provided to the Operator pursuant to the terms of this Agreement.

- 6.6 If, in exceptional circumstances, the Operator cannot reach agreement with the Lead Authority any Constituent Local Authority on the Local Services to be operated in accordance with clause 6.3, then the Operator shall seek to agree the reasonable level of services to be provided with the Lead Authority who shall act reasonably to determine an appropriate service requirement in the context of the BES 2 Funding available and the requirements of the Lead Authority and the relevant Constituent Local Authority, and where such agreement is reached, these service requirements shall apply.
- 6.7 Where following discussion with the Lead Authority in accordance with clause 6.5, agreement can still not be reached with the Operator then where the Lead Authority has a reasonable belief that the Operator has not engaged in good faith with any Constituent Local Authority covered by their operations, the Operator and the Lead Authority shall comply with the following process:
- 6.7.1 the Lead Authority shall notify an Alternate Lead Authority (whose identity is to be agreed between the Operator and the Lead Authority or where they cannot agree the identity of the Lead Authority as determined by TfW) in writing, asking for input. Such notice shall provide background information on the issue and reasons why the Lead Authority believes the Operator has not engaged in good faith;
- 6.7.2 upon receipt of such notice, the Alternate Lead Authority shall consider the information provided in the notice and shall promptly request any additional information from the Operator that may be required to consider the dispute;
- 6.7.3 upon receipt of such additional information from the Operator, the Alternate Lead Authority shall consider all responses within [fifteen (15) Working Days]. The Alternate Lead Authority shall notify both the Operator and the Lead Authority of its decision; and
- 6.7.4 in the event that the Alternate Lead Authority agrees that the Operator has not engaged in good faith, then the Lead Authority may suspend or reduce BES 2 Funding paid to the Operator in respect of the disputed service or services or seek compensation in accordance with Schedule 3; or
- 6.7.5 in the event that the Alternate Lead Authority agrees that the Operator has engaged in good faith, the BES 2 Funding paid to the Operator shall continue.

## **7. DATA PROVISION**

- 7.1 The Operator shall provide:
- 7.1.1 the data specified in Part 1 of Schedule 4, in accordance with Part 3 of Schedule 3; and
- 7.1.2 the data specified in Part 2 of Schedule 4, in accordance with Part 3 of Schedule 3.
- 7.2 The data provided pursuant to this Agreement (including, but not limited to that provided pursuant to clause 7.1) may be used by the Welsh Government, TfW, the Lead Authority and Constituent Local Authorities in the Region solely for the Permitted Uses specified in Part 3 (Permitted Uses) of Schedule 4 to the extent that each Public Sector Party is entitled to access such data as specified in Part 4 of Schedule 4.
- 7.3 Where any Public Sector Party wishes to use any data provided pursuant to this Agreement for any use which is not a Permitted Use, or to use any data which they are not entitled to access

pursuant to Part 4 of Schedule 4 they shall only do so having obtained the consent of the Operator, such consent not to be unreasonably withheld.

- 7.4 Where any data is identified as being Commercially Sensitive pursuant to Part 4 of Schedule 4 then each Public Sector Party shall ensure that, even where such data is being utilised in accordance with the Permitted Use that such data is only disclosed in accordance with clauses 21 to 23, and that where the output from the use of such data is disclosed in any manner which could be accessed by any other operator or prospective operator of Local Services which compete with the Local Services, that such data or outputs are aggregated such that no Commercially Sensitive information is published.
- 7.5 The Parties acknowledge and agree that the data provided pursuant to this clause **Error! Reference source not found.** shall not be used by any Party for:
- 7.5.1 the purposes of monitoring and/or reporting to the Traffic Commissioner or the DVSA in respect of the Operator's service performance in respect of reliability and timekeeping for any local services operated by that Operator; or
- 7.5.2 any purpose relating to the potential introduction of a Quality Contract Scheme pursuant to the Transport Act 2000 by any Local Authority or the introduction by any Local Authority of any similar form of franchising arrangement under subsequent legislation,

without the Operator's prior written consent, such consent not to be unreasonably withheld.

- 7.6 Where any Public Sector Party analyses Operator Data for a Permitted Use with the intention to use that analysis for policy or decision making processes which may materially affect the Operator, such Public Sector Party shall use reasonable endeavours to engage with the Operator prior to use, to allow the Operator to inform such analysis. The Operator acknowledges that compliance with this obligation may not always be practicable, and in particular that a Public Sector Party shall not be obliged to comply with this obligation to the extent that it would breach clause 7.4.
- 7.7 The Operator shall keep and maintain full and accurate records and accounts on everything to do with this Agreement throughout and for [seven (7)] years after the date of expiry or termination of this Agreement.
- 7.8 Where a Public Sector Party is required to audit any information provided by the Operator pursuant to this Agreement, including where Welsh Government has reasonable grounds to believe that any information provided is materially incorrect, then they may appoint an auditor. The Operator shall allow such appointed auditor access to their premises, upon reasonable notice, to verify all accounts and records of everything to do with this Agreement (which is relevant to the issue identified) and provide copies for the audit upon request.
- 7.9 The Operator shall provide information to the auditor and reasonable co-operation at their request.
- 7.10 Where any auditor identifies that any information provided by the Operator to any Public Sector Party is materially false or incomplete the relevant Public Sector Party shall be entitled to assess the impact of such false or incomplete information and where this has led to an under-payment to any Public Sector Party or over-payment from any Public Sector Party of the Service Payment, such Party shall be entitled to recover the difference between the amount originally calculated and the amount calculated following correction of the information found to be false

or incomplete, and such amount shall be immediately payable by the Operator to such Public Sector Party.

- 7.11 The Operator agrees to enter into the Welsh Bus Open Data Agreement within three (3) months of signing this Agreement. In the event of a conflict between the terms of the Welsh Bus Open Data Agreement and this Agreement, the Parties agree that this Agreement shall take priority during the Term of this Agreement and upon termination or expiry of this Agreement, the Welsh Bus Open Data Agreement shall take priority.
- 7.12 The Parties acknowledge that TfW use third party suppliers to extract/receive and process data. TfW therefore agree to use reasonable endeavours to hold such third party suppliers to the same requirements as this clause 7, as the Parties to this Agreement

## **8. REFERENCE NETWORK**

8.1 The Parties agree that the initial Reference Network reflects the routes, frequencies and hours of operation of local bus services in Wales prior to COVID-19, specifically as at 29 February 2019 modified by:

8.1.1 any key seasonal variations as demonstrated in the preceding year e.g. a summer tourist timetable; and

8.1.2 any changes to services implemented by agreement with a Local Authority or the Lead Authority prior to the inception of BES 2.

8.2 The Parties agree that for the purposes of continued improvement in the provision of local bus services in Wales, it will be necessary to develop a revised Reference Network which sets out the target requirements for routes and services to be provided across Wales. The Reference Network shall be developed in accordance with this Agreement, including the provision of services in accordance with clauses 12 to 17 below, as well as any changes to services agreed pursuant to Schedule 1. The Parties agree that the Reference Network shall be developed in respect of each Region in line with the local and regional rankings of the Priorities and in support of a coherent Wales wide Reference Network.

8.3 The Parties, together with other operators in the Region, shall work together to develop a revised Reference Network by [31 March 2021]. This network will supersede the initial Reference Network and reflect Regional priorities. As part of developing the revised Reference Network, historical and current passenger demand data will be used to objectively identify the elements of the Reference Network which will require long term Government support. These elements of the Reference Network will be referred to as the “**Subsidised Network**”.

8.4 The development of the Reference Network shall include:

8.4.1 use of data provided by all parties with an interest in provision of bus services within the Region, including operators, Lead Authorities or one of its Constituent Local Authorities, TfW and Welsh Government;

8.4.2 consideration of regional strategic Priorities for the provision of Local Services;

8.4.3 examination of existing routes;

8.4.4 exploration of options for new routes;

8.4.5 the viability and affordability of the proposed routes; and

- 8.4.6 consideration of investment or other measures that may be required to support any revised Reference Network.
- 8.5 The Lead Authority shall manage compliance with the Reference Network in accordance with the requirements set out in Schedule 1.
- 8.6 As part of the development of the Reference Network, the Operator shall use all reasonable endeavours to agree a set of Service Standards pursuant to Schedule 1 with the Lead Authority and TfW which will apply to different classifications of routes across Wales. The Operator, the Lead Authority and TfW shall use all reasonable endeavours to complete this classification by [30 June 2021].

## 9. PAYMENTS AND RECONCILIATION PROCESSES

- 9.1 The Lead Authority shall pay the Operator a service payment calculated in accordance with Part 2 of Schedule 3 (“**Service Payment**”), in relation to the Services provided pursuant to and in accordance with this Agreement. If the Operator disputes the amount of the Service Payment then such dispute shall be resolved in accordance with clause 25.
- 9.2 For the avoidance of doubt, the Operator shall not be entitled to recover more than once in respect of the same amount, including that the Operator shall not be entitled to recover any amount payable pursuant to the Previous BES Funding Arrangements pursuant to this Agreement.
- 9.3 In the event that the Operator is successful in obtaining any other governmental support or support from any Lead Authority or one of its Constituent Local Authorities or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant Service Payment such that the Operator does not benefit from double recovery or double counting.
- 9.4 The Operator shall comply with the reconciliation process detailed in Part 3 of Schedule 3. The Parties acknowledge that Schedule 3 assesses the basis on which the Operator is paid, and includes provisions to ensure that such payments, following reconciliation, do not lead to over-compensation or illegal state aid. Notwithstanding any other remedies that the Lead Authority, TfW or Welsh Government may have pursuant to this Agreement or otherwise for provision by the Operator of false or misleading information, it shall be a material breach of this Agreement for the Operator to fail to accurately provide the information specified in Schedule 3. For the avoidance of doubt, it will be necessary to provide information in respect of all Local Services provided by the Operator, including any Commercial Services to ensure transparency of costs and revenues.
- 9.5 Where following any reconciliation process carried out pursuant to Part 3 of Schedule 3, the Lead Authority identifies that an overpayment or an underpayment has been made, the Lead Authority shall be entitled to require either clawback of such amount or pay such amount (“**Reconciliation Payment**”), calculated in accordance with Part 3 of Schedule 3. The Lead Authority shall provide the Operator with detailed calculations confirming the Reconciliation Payment to be returned to the Lead Authority or paid to the Operator.
- 9.6 The Parties acknowledge and agree that TfW, working with the Lead Authority, may carry out Funding Reviews on behalf of Welsh Government in accordance with the provisions of Schedule 5 and the Parties shall agree, acting reasonably, such amendments to this Agreement, as may be reasonably required to reflect the outcomes of each Funding Review.

## 10. TRANSITION TO BES 3

10.1 The Parties agree and acknowledge that by no later than 1 August 2022, it is all Parties' intention that all of the Operator's Local Services which operate in Wales shall either be:

10.1.1 operated as a Commercial Service; or

10.1.2 operated pursuant to a New Supported Services Contract or the original terms and conditions of an Existing Supported Services Contract (including in each case any such contract which is let as a *de minimis* contract).

10.2 Where all Local Services operated by the Operator in Wales are operated in accordance with clause 10.1 then the Parties acknowledge that:

10.2.1 no further payments shall be made pursuant to this Agreement; and

10.2.2 provided that any Umbrella Partnership Agreement and any associated partnership arrangements shall not be terminated as a result of the termination of this Agreement,

any Party shall otherwise be entitled to terminate this Agreement by agreement with Welsh Government, TfW and the Lead Authority (all acting reasonably).

## 11. TERMINATION

11.1 This Agreement, or a Party's participation in this Agreement, may be terminated in accordance with the provisions of this clause 11.

### **Defaulting Party Material Breach**

11.2 In the event of a material or persistent breach of this Agreement by a Defaulting Party, the non-Defaulting Party may give four (4) weeks' written notice of their intention to terminate this Agreement, setting out in sufficient detail the acts or omission of the relevant Defaulting Party giving rise to such breach or breaches. If the Defaulting Party does not, to the reasonable satisfaction of the non-Defaulting Party, remedy the breach or breaches and the consequences of such breach within such notice period, the non-Defaulting Party may terminate this Agreement. Where, pursuant to Part 4 of Schedule 3 SFP's have been allocated for the same trigger in three (3) consecutive months this shall be deemed to be a material breach which the Operator has been unable to remedy.

### **Insolvency**

11.3 Any non-Defaulting Party may by written notice terminate its participation in this Agreement where another Party ("**Insolvent Party**"):

11.3.1 passes a resolution for its winding up or summons a meeting to pass any such resolution (other than for the purpose of and followed by a solvent reconstruction or amalgamation);

11.3.2 has a petition for a winding-up order presented against it (other than for the purpose of and followed by a solvent reconstruction or amalgamation);

- 11.3.3 has an application made to court, or an order made, for the appointment of an administrator or any step is taken to appoint an administrator in respect of the Insolvent Party;
- 11.3.4 has a receiver, administrative receiver, receiver and manager or similar officer appointed by any person of all or any part of the Insolvent Party's property, assets or undertaking;
- 11.3.5 makes a proposal for a voluntary arrangement as defined in Section 1 of the Insolvency Act 1986;
- 11.3.6 enters into any other arrangement with its creditors or any of them;
- 11.3.7 takes or suffers any other action in consequence of debt including, without limitation, giving notice to its creditors or any of them that it has suspended or is about to suspend payment; or
- 11.3.8 has a proposal or threat to do any of the above acts or things made; or an event analogous to the aforesaid occurs in whatever jurisdiction.

#### **Continuing Force Majeure**

- 11.4 No Party shall be liable to any other Party for any delay in, or failure to perform its obligations under this Agreement arising (in whole or in part) from any Force Majeure Event, provided that the affected Party shall:
  - 11.4.1 as soon as reasonably practicable, send to the other Parties a written notice setting out the circumstances of the event and its anticipated effect; and
  - 11.4.2 use all reasonable endeavours to minimise the effect of any such circumstances.
- 11.5 If the affected Party's ability to perform its obligations under this Agreement is materially adversely affected (in whole or in part) due to a Force Majeure Event continuing for a period of six (6) months or more, any Party may terminate the affected Party's participation in this Agreement with immediate effect by serving written notice to the other Parties, provided that no such notice shall be served until the Parties have met in good faith to discuss and seek to agree whether this Agreement should continue in modified form (agreement to such not to be unreasonably withheld).
- 11.6 Notwithstanding any other provision under this Agreement, the Parties agree that they were aware of COVID-19 and that the existence of COVID-19 in itself shall not constitute a Force Majeure event save that a Change in COVID-19 Impact Event may be deemed to be a Force Majeure Event provided it satisfies the criteria set out in sub-paragraphs (b) to (f) (exclusive) of the definition of Force Majeure.

#### **Termination by agreement of the Parties**

- 11.7 This Agreement may be terminated in respect of all Parties or in respect of any one party at any time with immediate effect by written consent of all Parties that it be so terminated.
- 11.8 This Agreement shall be terminated in respect of any Party, subject to the agreement of the other Parties (all acting reasonably), that disposes of its business in accordance with clause 28.2.

### **BES 3**

11.9 This Agreement may be terminated pursuant to clause 10.2.

#### **Funding Reviews**

11.10 This Agreement may be terminated on notice provided by Welsh Government to the Operator, in accordance with paragraph 1.3.3 of Schedule 5 following a Funding Review.

#### **Operator withdrawal**

11.11 This Agreement may be terminated on notice [ ] weeks' notice from the Operator to the other Parties, in the event where the Operator intends to withdraw from the Welsh bus market.

#### **Effect of Termination**

11.12 The termination of this Agreement for any reason:

11.12.1 shall be without prejudice to any rights or obligations which shall have accrued or become due prior to the date of termination;

11.12.2 shall not prejudice the rights or remedies which any Party may have in respect of any breach of the terms of this Agreement prior to the date of termination; and

11.12.3 shall not impact upon any clawback of BES 2 Funding which is to be made (including any clawback of BES 2 Funding still to be calculated) in accordance with Schedule 3.

11.13 In the event where the Operator intends to withdraw from the Welsh bus market and terminates this Agreement in accordance with clause 11.11, the Operator agrees to provide [ ] days' written notice to Welsh Government where it intends to dispose of any of the assets of its business in the Welsh market, and the Operator shall provide Welsh Government with a reasonable opportunity to purchase those assets on fair terms.

### **12. EXISTING SUPPORTED SERVICES: GROSS COST**

12.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

12.2 Where an Existing Supported Services Contract is let as a Gross Cost Contract:

12.2.1 the Operator acknowledges that the relevant Constituent Local Authority (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006) remains at risk for passenger revenue, and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to additional costs incurred by the Operator in providing services in accordance with the terms of such Gross Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services;

12.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:

12.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and

12.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority and align payment with the revised services.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be;

12.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 12.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the bus operator nor alter the overall nature of the Existing Supported Services Contract;

12.2.4 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Gross Cost Contracts are made pursuant to a valid variation to the Existing Supported Services Contracts between the Constituent Local Authority and the Operator. The Operator agrees to execute such other documents, including to update the Register of Variations at Schedule 7, as may be required to effect such variation, and the Lead Authority undertakes to obtain any variation documents executed by the Constituent Local Authority as may be required to effect such variation; and

12.2.5 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.3.

### **13. EXISTING SUPPORTED SERVICES: NET COST**

13.1 The Parties acknowledge that the Operator operates Existing Supported Services on the date of this Agreement which are contracted in whole, or in part, pursuant to Existing Supported Services Contracts.

13.2 Where such Existing Supported Services Contract is a Net Cost Contract:

13.2.1 the Parties acknowledge that the Operator is at risk for passenger revenue under the terms of the Net Cost Contract with the relevant Lead Authority or one of its Constituent Local Authorities (or Welsh Government where the Existing Supported Services Contract is let pursuant to section 7 Transport (Wales) Act 2006), and that any payments made to the Operator in respect of such Local Services pursuant to this Agreement shall relate solely to:

13.2.1.1 additional costs incurred by the Operator in providing services in accordance with the terms of such Net Cost Contract, as a result of the impact of COVID-19 (and related measures) on the operation of that Existing Supported Services; and

- 13.2.1.2 the impact on passenger revenue beyond that which was foreseeable by the Operator and/or the Lead Authority or one of its Constituent Local Authorities at the time that such Existing Supported Services Contract was let,
- 13.2.2 the Operator (and the Lead Authority on behalf of the relevant Constituent Local Authority) agree that each Existing Supported Services Contract shall be varied to:
  - 13.2.2.1 allow such additional payments to be made by the Lead Authority on behalf of the Constituent Local Authority to the Operator in accordance with the terms of this Agreement; and
  - 13.2.2.2 revise the services provided in agreement with the Constituent Local Authority and the Lead Authority.

It is acknowledged that the variation in such payments shall be limited to those which are required to deal with the impact of COVID-19, and that the modifications in respect of any changes to service provision are not substantial within the meaning of Regulation 88 (1)(f) Utilities Contracts Regulations 2016 or Regulation 72(1)(f) Public Contract Regulations 2015, as the case may be, and that the payments in respect of loss of passenger revenue are made due to the immediate and continuing risk of disruption of passenger services as a result of the loss of that passenger revenue,

- 13.2.3 the Operator agrees that more than one amendment may be made pursuant to clause 13.2.2.2, during the term of this Agreement, provided that those changes shall be made solely for the purposes of reflecting required changes to local bus services to reflect the impact of COVID-19, and that such changes shall not change the economic balance of the contract in favour of the operator nor alter the overall nature of the Existing Supported Services Contract;
- 13.2.4 the Operator agrees that, where payments made relate to the impact of COVID-19 on passenger numbers, the extent to which those payments relate to costs which would have been funded from passenger revenue, save for the effect of COVID-19, that the Lead Authority shall be entitled to limit the payments made in respect of such costs for the period that the risk associated with passenger revenue loss is materially greater than that which was reasonably foreseeable at the date of the relevant agreement;
- 13.2.5 payments made by the Lead Authority to the Operator pursuant to this Agreement in respect of Existing Supported Services pursuant to a Net Cost Contract shall be only made for the period, and to the extent that, the provision of services under the relevant Net Cost Contract are affected by COVID-19;
- 13.2.6 the Operator and the Lead Authority acknowledge that the payments made pursuant to this Agreement in respect of such Net Cost Contracts are made pursuant to a valid variation to the Supported Services Existing Contract between the relevant Constituent Local Authority and the Operator; and
- 13.2.7 on a continuing basis, the Lead Authority may carry out a further review of each Existing Supported Services Contract to assess whether any further variation is needed or determinate whether the service remains necessary to be supported in accordance with the review process under clause 6.2.

#### **14. REVERTING TO ORIGINAL CONTRACT TERMS FOR EXISTING SUPPORTED SERVICES**

14.1 The Parties acknowledge that any Existing Supported Services Contract varied in accordance with clause 12 and 13, shall revert to the terms specified immediately prior to such variation (subject to any other variation to such contract agreed by the Parties to that contract) when the following criteria are achieved:

- 14.1.1 the revenue in respect of that service returning to pre-COVID levels;
- 14.1.2 the service operating to a specification materially the same as that pre-COVID, subject to any other variation of such contract; and
- 14.1.3 the Operator electing to return to the terms of the original Existing Supported Services Contract,

and the Operator acknowledges that in such circumstances they shall cease to receive BES 2 Funding in accordance with clause 10.

#### **15. SUPPORTED SERVICES CONTRACTS FOR FORMER COMMERCIAL SERVICES**

15.1 The Parties acknowledge that the Operator has historically operated Commercial Services, but due to the effects of COVID-19, those Commercial Services were no longer commercially viable and support for the continuation of the services was required from Welsh Government. Such support was received through BES Funding provided pursuant to the Previous BES Funding Arrangements. The Parties further acknowledge that the Previous BES Funding Arrangements were implemented on the basis of payments being made under the following powers:

- 15.1.1 use of grant aid under section 154 Transport Act 2000; or
- 15.1.2 payments made pursuant to section 7 of the Transport (Wales) Act 2006,

(“Former Commercial Services”).

15.2 The Operator acknowledges that in the absence of Service Payments made pursuant to this Agreement the Operator would not be able to continue to operate the relevant Former Commercial Service or would not be able to operate the Former Commercial Services to the Service Standards.

15.3 The Lead Authority acknowledges that it would not have funded such Former Commercial Services to the Service Standards unless provided with financial support by Welsh Government.

15.4 The Lead Authority agrees to support the Former Commercial Services pursuant to the terms of this Agreement through the payment of Service Payments in accordance with Schedule 3, provided that the Operator in operating the Former Commercial Services, shall at all times comply with the prevailing Service Specification.

#### **16. COMMERCIAL SERVICES**

16.1 Where the Operator registers a Commercial Service which does not comply with the applicable Service Standards, then save where the specification of such Commercial Service has been agreed in accordance with clause 16.2.2, the Operator acknowledges and agrees that Welsh Government or any Local Authority in the area in which such service is operated may determine

that notwithstanding the operation of the Commercial Service, that the service in question is not being provided to the applicable Service Standard required, in accordance with section 7(4) Transport (Wales) Act 2006 or section 63(5) Transport Act 1985 and that Welsh Government or the relevant Local Authority may determine that a service that meets the applicable Service Standard may be let in accordance with clause 17.

16.2 Where the Operator registers a Commercial Service which will operate:

16.2.1 in accordance with the applicable Service Standards; or

16.2.2 in accordance with a variation to the Service Standards as agreed by the Operator, Lead Authority and TFW on the grounds that, for example, the specified standard for the hours of operation or frequency of the service are not financially viable or required,

then the Parties acknowledge that such service shall be operated as a Commercial Service for the purposes of this Agreement, but shall or the avoidance of doubt, remain subject to the terms of this Agreement, the Umbrella Partnership Agreement and any future partnership agreement developed pursuant to the terms of the Umbrella Partnership Agreement.

## 17. SERVICES TENDERED AFTER THE DATE OF THIS AGREEMENT

17.1 The Parties agree that the Lead Authority or one of its Constituent Local Authorities or Welsh Government may let New Supported Services Contracts including where:

17.1.1 an Existing Supported Service Contract expires or terminates;

17.1.2 the Operator chooses to cease operation of a Former Commercial Service; or

17.1.3 a new route is identified as part of the Reference Network which is not operated as a Commercial Service or any Commercial Service does not comply with clause 16.2,

in each case where the relevant Local Authority or Welsh Government determine that the provision of such service is appropriate for meeting public transport requirements in the relevant area.

17.2 The Operator acknowledges that, no later than 1 August 2021, the Lead Authority shall set out a programme to tender key services that are otherwise at risk of not meeting the requirements of clause 10.1 prior to 1 August 2022 when this contract shall terminate (“**Procurement Programme**”). The Procurement Programme shall be developed in consultation with the Operator and other operators and plans to tender New Supported Service Contracts within the Procurement Programme shall be prioritised to take account of:

17.2.1 the prevailing bus market conditions including any continued impact of COVID-19 on the performance of the bus market, such as passenger levels and revenues;

17.2.2 the estimated time frame for meeting the requirements of clause 10.1; and

17.2.3 the extent to which each service is required for the purposes of operating the Reference Network and delivering its intended benefits.

The Procurement Programme shall be reviewed by the Lead Authority every month and revised as necessary in consultation with the Operator, other operators and stakeholders to take account of changes which affect the priorities detailed in clauses 17.2.1 to 17.2.3.

- 17.3 Where a Lead Authority, one of its Constituent Local Authorities or Welsh Government tenders a New Supported Services Contract following the date of this Agreement, the tender for such New Supported Services Contract shall specify the assumptions that are to be made by all bidders regarding payments (if any), to be made pursuant to this Agreement to the operator of services under that New Supported Services Contract, and the relevant Public Sector Party shall ensure that the same assumptions are provided to all tenderers for such Contract ("**New Supported Services Contract Tendering Assumptions**"); or
- 17.4 the Parties acknowledge, that where any Public Sector Party, specifies in advance to the requirements for any New Supported Services Contract (including the New Supported Services Contract Tendering Assumptions) and the Operator enters into such New Supported Services Contract, the Lead Authority shall make payments under this Agreement in respect of such New Supported Services Contract in accordance with the New Supported Services Contract Tendering Assumptions, provided that the Operator provides such services in accordance with the Service Standards.

## **18. SURVIVAL**

- 18.1 This clause 18 and the following provisions (and any clauses/Schedules referred to in them/and or necessary in order to give effect to them) shall survive termination of this Agreement:

- 18.1.1 clauses 1 (*Definitions and Interpretation*);
- 18.1.2 clause 20 (*Intellectual Property*),
- 18.1.3 clause 21 (*Confidentiality*),
- 18.1.4 clause 22 (*Data Protection*),
- 18.1.5 clause 23 (*Freedom of Information*),
- 18.1.6 clause 25 (*Dispute Resolution*);
- 18.1.7 clause 36 (*Governing Law and Jurisdiction*); and
- 18.1.8 Schedule 3 (*Compensation*) to the extent required for the purposes of any reconciliation of payments following the date of termination,

which shall continue in force after such termination.

## **19. FUNDING AND CONSTRAINTS**

- 19.1 Each Party shall be responsible for funding their own obligations under this Agreement, save where the funding of any obligation is expressly specified in this Agreement, and otherwise in accordance with this clause 19.
- 19.2 It is acknowledged that funding from (or provisions of works, services or supplies which have been funded by) the Welsh Government is subject to constraints on public spending, including the application of UK and EU rules in respect of state aid and procurement ("**State Aid and Procurement Constraints**"). It is acknowledged that Welsh Government, TFW and the Lead

Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such requirements.

- 19.3 Where any Party is unable to perform an obligation under this Agreement due to State Aid and Procurement Constraints the Parties agree to work together in good faith to determine those changes required to this Agreement whilst not breaching such requirements. It is acknowledged that this may include the Parties working together to identify exemptions which may be applicable and where necessary engaging with third parties including the CMA in order to implement the terms of this Agreement.

## 20. INTELLECTUAL PROPERTY RIGHTS

- 20.1 To the extent that any Intellectual Property Rights are generated pursuant to the terms of this Agreement, the Parties agree that:

20.1.1 such Intellectual Property Rights shall remain the absolute property of the Party which generated such rights; and

20.1.2 such Party shall hereby grant to the other Party a perpetual, irrevocable, non-exclusive, fully paid up and royalty free licence (with the right to sub-licence) to use such Intellectual Property Rights for any purpose relating to this Agreement or any successor agreement.

## 21. CONFIDENTIALITY

### General

- 21.1 The Parties agree that the provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

- 21.2 Each Receiving Party shall:

21.2.1 keep the Disclosing Party's Confidential Information confidential;

21.2.2 use the Confidential Information (or any part thereof) only in connection with performing its obligations under the Agreement; and

21.2.3 subject to clause 21.4 and 23, not disclose the Confidential Information to anyone without the prior written consent of the Disclosing Party.

- 21.3 Data provided by the Operator pursuant to clause **Error! Reference source not found.** or otherwise pursuant to the terms of this Agreement shall be deemed to be Confidential Information where it is identified as such in the table at Part 4 of Schedule 4.

### Exceptions

- 21.4 The consent referred to in clause 21.2.3 shall not be required for the disclosure by a Receiving Party of any Confidential Information which:

21.4.1 is disclosed to:

21.4.1.1 the CMA; or

21.4.1.2 the Department for Transport,

- 21.4.2 at any time comes into the public domain otherwise than as a result of breach of this Agreement by the Receiving Party;
- 21.4.3 is disclosed to the Receiving Party's officers, contractors or agents, in each case to the extent required to enable the Receiving Party to carry out its obligations under this Agreement provided that the Receiving Party makes such person aware of the Receiving Party's obligations under this Agreement and the Receiving Party requires such person to observe the same restrictions on the use of the relevant information as are contained in clause 21.2;
- 21.4.4 is disclosed to the Receiving Party's professional advisers who are bound to such Receiving Party by a duty of confidence which applies to any information disclosed;
- 21.4.5 is received from a third party who is not in breach of any relevant duty of confidence whether express or implied;
- 21.4.6 is independently developed without access to the Confidential Information; or
- 21.4.7 is required to be disclosed by any applicable law or regulatory requirement to which the Receiving Party is subject or pursuant to any order of the court or other competent regulatory authority or tribunal.
- 21.5 These restrictions and prohibition on use, exploitation, communication and disclosure set out in this clause 21 shall continue to apply after the expiration or termination of the Agreement in respect of any Confidential Information for such period of time as such information remains Confidential Information..

#### **Required Disclosure**

- 21.6 If the Receiving Party becomes required, in circumstances contemplated by clause 21.4.7 to disclose any Confidential Information, the Receiving Party shall (save to the extent prohibited by law) give to the Disclosing Party such notice as is practical in the circumstances of such disclosure and shall co-operate with the Disclosing Party, having due regard to the Disclosing Parties' views, and take such steps as the Disclosing Party may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.

#### **Remedy**

- 21.7 The Public Sector Parties acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of this clause 21 and that a breach by any Public Sector Partner of this clause 21 may result in immediate and irreparable competitive injury. The Public Sector Parties therefore agree that in addition to any other remedies that may be available, by law or otherwise, the Operator shall be entitled to seek injunctive relief against any breach or threatened breach of this clause 21 by the Public Sector Parties.

## **22. DATA PROTECTION**

- 22.1 In this clause 22, the expressions "**Process/Processing**", "**Controller**", "**Processor**" "**Data Subject**", "**Personal Data Breach**" and "**Supervisory Authority**" shall have the same meaning as in the Data Protection Laws.
- 22.2 Each Party shall Process Personal Data under this Agreement as a separate Controller, and shall comply at all times with its respective obligations under Data Protection Laws.

- 22.3 In respect of any disclosures of Personal Data by one Party ("**Personal Data Disclosing Party**") to another Party ("**Personal Data Receiving Party**"), the Personal Data Receiving Party shall:
- 22.3.1 only Process the disclosed Personal Data where reasonably necessary for the purposes of performing its obligations, or exercising its rights, under this Agreement (including in respect of any onward disclosures to third parties);
  - 22.3.2 not transfer Personal Data outside the EEA without the prior written consent of the Personal Data Disclosing Party; and
  - 22.3.3 notify the Personal Data Disclosing Party without undue delay upon becoming aware of any Personal Data Breach involving the Personal Data.
- 22.4 Each Party shall co-operate with the other, to the extent reasonably requested, in relation to:
- 22.4.1 any requests from Data Subjects to exercise rights under the Data Protection Laws;
  - 22.4.2 any other communication from a Data Subject concerning the Processing of their Personal Data; and
  - 22.4.3 any communication from a Supervisory Authority concerning the Processing of Personal Data, or compliance with the Data Protection Laws.

## **23. FREEDOM OF INFORMATION**

- 23.1 The Operator shall cooperate to facilitate Welsh Government, Tfw and each Lead Authority acting for its Constituent Local Authorities (together the "**Public Sector Parties**" and each a "**Public Sector Party**") in complying with their respective obligations under the FOIA and the EIR, together with any guidance and/or codes of practice issued from time to time by the Information Commissioner or the Secretary of State, in the manner provided for in this clause 23, which shall apply whenever any Public Sector Party receives a Request for Information which in that Public Sector Party's reasonable opinion is likely to involve the disclosure of Confidential Information.
- 23.2 Where the relevant Public Sector Party receives a Request for Information in relation to Operator Confidential Information it shall notify the Operator in writing of the Request for Information as soon as practicable after receipt and in any event within five (5) Working Days of receiving a Request for Information and shall consult in good faith with the Operator to ascertain whether disclosure of the requested information would be likely to prejudice the commercial interests of the Operator for the purposes of section 43(2) of FOIA or regulation 12(5)(e) of EIR.
- 23.3 Where the relevant Public Sector Party receives a Request for Information relating Operator Confidential Information, the relevant Public Sector Party shall keep the Operator fully informed and the Operator shall provide all necessary assistance reasonably requested by the relevant Public Sector Party to enable the Welsh Government or Tfw to respond to a Request for Information in accordance with Section 1 and Section 10 of the FOIA or regulation 5 of the EIR.
- 23.4 The relevant Public Sector Party agrees that (and shall procure that the Constituent Local Authorities agree that) Operator Data shall, for the purposes of the FOIA, constitute:

- 23.4.1 exempt information pursuant to Part 2 of the FOIA which is provided to the Welsh Government and TfW in confidence and that disclosure of the Operator Data would constitute a breach of confidence actionable by the Operator; and/or
- 23.4.2 exempt information pursuant to Part 2 of the FOIA in that it constitutes either a trade secret of the Operator and/or information which if disclosed to the public would prejudice the commercial interests of the Operator and the Welsh Government and TfW will therefore treat all Operator Data as exempt for the purposes of the FOIA.
- 23.5 In the event that notwithstanding the provisions of clause 23.4, any Public Sector Party is bound by the FOIA to disclose any Operator Data to the public, the relevant Public Sector Party shall nonetheless provide the Operator with a minimum of 24 hours written notice prior to the disclosure of any such data.

## **24. COMPETITION AND PROCUREMENT LAW**

- 24.1 The Parties have considered the application of competition law to this Agreement, and are satisfied that this Agreement complies with competition law at the date of this Agreement.
- 24.2 The Parties acknowledge that the development of partnership arrangements pursuant to clause 5 of this Agreement will be subject to the application of competition law, and in particular the parties may need to apply the Part 2 Competition Test, and be satisfied (acting reasonably and by reference to the prevailing law at the time of such consideration) that any Umbrella Partnership Agreement meets the Part 2 Competition Test;
- 24.3 The Parties have considered the application of procurement law to this Agreement, and are satisfied that:
- 24.3.1 this Agreement does not breach the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 or Regulation 1370/2007;
- 24.3.2 that payments in respect of, and the provision of, services by the Operator pursuant to the terms of this Agreement are consistent with the requirements of article 5 of Regulation 1370/2007.
- 24.4 Notwithstanding clause 24.1 to 24.3, if:
- 24.4.1 statements by, advice from, or decisions by competent authorities (including, but not limited to, the CMA) provides additional detail or guidance in relation to the applicability of competition law to this Agreement which may impact on the position of this Agreement or in respect of the negotiation of the Umbrella Partnership Agreement;
- 24.4.2 statements by, advice form, or decisions by competent authorities impact on the position of this Agreement under procurement law,
- the Parties agree to:
- 24.4.3 meet in good faith and review the impact of such change or other developments on this Agreement; and

- 24.4.4 make any amendment necessary to ensure that this Agreement complies with applicable competition law or procurement law then in force in the light of such development, whilst taking account of the Parties' commercial intentions as expressed in this Agreement.
- 24.5 In the event that the Parties are unable to agree as to the extent and nature of such amendments within one month, any party shall be entitled to refer the decision to the Dispute process in accordance with clause 25.

## **25. DISPUTE RESOLUTION**

- 25.1 Where any Dispute arises between the Parties in connection with this Agreement, the Parties shall attempt to resolve the Dispute in good faith. During the period of the Dispute, the Parties shall continue to comply with their respective obligations under this Agreement.
- 25.2 Where the Parties are unable to resolve the Dispute in good faith, the dispute may be escalated to the relevant Parties' senior representatives (being a senior executive of the relevant Party with sufficient authority to bind the relevant Party in any agreement reached in respect of the Dispute) in order to try and resolve the Dispute. If the Parties' senior representatives are unable to resolve the Dispute within [fifteen (15) Working Days] of referral, the Dispute shall be referred to meditation in accordance with clause 25.2.
- 25.3 If the Parties are unable to resolve a Dispute within two (2) months, the Parties shall attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Within ten (10) Working Days of service of referral to mediation, the mediator shall be nominated by CEDR. To initiate the mediation, one Party must serve notice in writing ("**ADR Notice**") to the other Party(s) requesting mediation. A copy of the ADR Notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation shall start no later than ten (10) Working Days after the date of the ADR Notice.
- 25.4 If the Dispute is not resolved within ten (10) Working Days after service of the ADR Notice, any Party fails to participate or ceases to participate in the mediation before the expiry of that ten (10) Working Day period, or the mediation terminates before the expiry of that ten (10) Working Day period, the Dispute shall be finally resolved by the courts of England and Wales.
- 25.5 The Parties may by written agreement, agree to vary the time periods set out in this clause 25 to resolve a Dispute.
- 25.6 Any decision, judgement or settlement resulting from a Dispute determined in accordance with clause 25.1 shall be recorded in writing, signed by all the Parties involved, and shall be binding on the Parties. Where the Parties have submitted the Dispute to the Courts of England and Wales, the decision of the Courts of England and Wales shall be binding on the Parties.

## **26. CHANGE PROCEDURE**

- 26.1 The Parties acknowledge and agree that from time to time during the Term, any Party may request a change to this Agreement. A Party may present its proposal for change to the other Parties who shall consider and discuss the proposal.
- 26.2 Where the Parties agree to amend the Agreement to reflect the proposal, they shall as soon as reasonably practicable (and in any event within [20] Working Days), evaluate the proposal to determine whether it remains in accordance with the Wales Transport Strategy and propose and agree the amendments required to the Agreement.

26.3 The Parties shall take all reasonable steps to implement those amendments to the Agreement as soon as reasonably practicable. The Parties acknowledge that any changes agreed pursuant to this clause, are not subject to the general amendment clause at clause 29.

## **27. LIMITATION OF LIABILITY**

27.1 References to liability in this clause 27 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. No Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

27.2 Nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

27.2.1 death or personal injury caused by negligence; or

27.2.2 fraud or fraudulent misrepresentation.

27.3 Subject to clause 27.1 and 27.2:

27.3.1 the Public Sector Parties' total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator up to the date that this Agreement is terminated; and

27.3.2 the Operator's total liability under and in connection to this Agreement shall in no event exceed an amount equal to the total amounts payable to the Operator under the terms of this Agreement.

## **28. ASSIGNMENT**

28.1 This Agreement is personal to the Parties and may not be assigned (whether absolutely or by way of security and whether in whole or in part), sub-contracted, transferred, mortgaged, charged, declared in trust for a third party, or otherwise disposed of in any manner whatsoever to any third party without the prior written consent of the other Parties and any such purported dealing in contravention of this clause shall be ineffective.

28.2 In the event that the Operator disposes of its business, the Operator shall:

28.2.1 novate its rights and obligations under this Agreement to the party to which its business is transferred (including, where agreed the rights and obligations in respect of the Umbrella Partnership Agreement or any other agreement entered into to further the intent of this Agreement); and

28.2.2 terminate its participation under this Agreement in accordance with clause 11.8.

## **29. AMENDMENT**

29.1 This Agreement may only be amended, modified, varied or supplemented in writing signed by or on behalf of all of the Parties to this Agreement.

29.2 The Parties shall, as soon as reasonably practicable following the coming into force of any legislation, regulations or statutory instruments (or any amendments to existing legislation,

regulations or statutory instruments) which impacts the terms of this Agreement, review and, if necessary, amend the terms of this Agreement to account for such changes.

### **30. WAIVER**

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

### **31. NOTICES**

31.1 Any notice (including any approval, consent or other communication) in connection with this Agreement shall be given in writing and shall either be personally left at the address of the addressee or sent by pre-paid first class post or be sent by electronic mail. The address for service of a Party shall be its address as stated in clause 31.2 or any other address or electronic mail address notified to the other Parties in accordance with this clause 31.1.

31.2 The addresses for service of notices are:

#### **The Operator**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

#### **Welsh Ministers**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

#### **Transport for Wales**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

#### **Lead Authority**

- a) Address: [ADDRESS]
- b) For the attention of: [POSITION OF CONTACT]
- c) Email address: [EMAIL ADDRESS]

31.3 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with clause 31.4.

31.4 A notice is deemed to be received:

31.4.1 in the case of a notice personally left at the address of the addressee during normal working hours, upon delivery at that address or if not during normal working hours the next Working Day; or

31.4.2 in the case of a first class posted letter (within the United Kingdom), on the third Working Day after posting; or

31.4.3 in the case of an email, in the absence of a delivery error message, at the time of sending to the relevant addressee,

and for the purpose of deemed receipt under this clause 31.4, it shall be sufficient to prove that personal delivery was made or that the envelope containing the posted notice was properly addressed or the email contained the correct email address.

## **32. SEVERABILITY**

If any term of this Agreement is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from this Agreement and this will not affect the remainder of this Agreement which will continue in full force and effect.

## **33. THIRD PARTY RIGHTS**

33.1 Save as otherwise expressly provided for in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

33.2 Where a Lead Authority and/or Constituent Local Authority is stated as having a right pursuant to this Agreement the Lead Authority and/or Constituent Local Authority shall be entitled to exercise that right pursuant to the terms of this Agreement, notwithstanding that it is a third party.

33.3 The rights of the Parties to terminate, rescind or agree any variation to this Agreement are not subject to the consent of any other person.

## **34. ENTIRE AGREEMENT**

34.1 Subject to clause 34.2, with the Previous BES Funding Arrangements, this Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and:

34.1.1 no Party has entered into this Agreement in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement (whether made by any other Party or any other person and whether made to the first Party or any other person) which is not expressly set out in this Agreement; and

- 34.1.2 the only remedies available for any misrepresentation or breach of any representation or statement which was made prior to entry into this Agreement and which is expressly set out in this Agreement will be for breach of contract.
- 34.2 Nothing in this clause 34 shall be taken to affect the terms of any Existing Supported Services Contract or New Supported Services Contract between any of the parties to this Agreement, including any amendments to such contracts effected by the terms of this Agreement.
- 34.3 For the avoidance of doubt, nothing in this clause 34 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

**35. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

**36. GOVERNING LAW AND JURISDICTION**

- 36.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with Welsh law.
- 36.2 Subject to the Dispute Resolution Procedure, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement including (without limitation) in relation to any non-contractual obligations.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

Signed for and on behalf of **WELSH** ) Signature  
**MINISTERS** by: )

Name (block capitals)

**Director/authorised  
signatory**

Signed for and on behalf of **TRANSPORT** ) Signature  
**FOR WALES** by: )

Name (block capitals)

**Director/authorised  
signatory**

Signed for and on behalf of **[LEAD** ) Signature  
**AUTHORITY]** by: )

Name (block capitals)

**Director/authorised  
signatory**

Signed for and on behalf of **[OPERATOR]** by: ) Signature  
)

Name (block capitals)

**Director/authorised  
signatory**

## SCHEDULE 1: WELSH GOVERNMENT REQUIREMENTS

The Parties acknowledge and agree that in consideration of the Welsh Government providing the BES 2 Funding and other payments pursuant to this Agreement, the Operator shall comply with the following obligations. Failure to comply with these obligations will constitute a material breach under the terms of this Agreement:

### 1. Safety of passengers and staff is paramount

1.1 In providing Local Services the Operator shall comply with the Welsh Government's "Restarting public transport: guidance for operators" (<https://gov.wales/restarting-public-transport-guidance-operators-html>) and any updated guidance provided in response to emerging requirements to respond to the public health impact of the COVID 19 pandemic.

### 2. Reforming Service Delivery

2.1 The Operator shall support the introduction of new and emerging institutional arrangements between the Public Sector Parties that Welsh Government believe are reasonably required to more effectively support the management of bus services in Wales in the future.

2.2 The Operator shall, in good faith, engage with TfW, Welsh Government and the Lead Authorities on behalf of their Constituent Local Authorities to reform funding mechanisms such as BSSG and the Concessionary Travel Scheme to improve the quality and viability of the local services available to passengers in Wales.

2.3 The Operator shall work with TfW and Welsh Government and other operators to develop a vehicle replacement strategy which will help to inform Welsh Government's plans for a sustainable public transport fleet. Subject to the availability of funding and compliance with state aid rules, Welsh Government may fund measures to bring the national fleet up to the required minimum standard.

2.4 Welsh Government is in the process of updating the requirements for the Economic Contract Plan with which all bus operators in receipt of Government funding will be required to sign up to. Once the updated guidance has been published, the Operator shall produce an Economic Contract for approval by TfW, acting reasonably and on behalf of Welsh Government, within (6) six months of publication of the guidance.

2.5 Following the issue of the updated requirements for the Economic Contract Plan, pursuant to paragraph 2.4, TfW shall set out a timetable and process for the development, review, approval and monitoring of the Operator's Economic Contract.

2.6 The Parties acknowledge that, at the time of signing this Agreement, the Operator will not have had sight of the requirements for the Economic Contract Plan. TfW and Welsh Government shall work with the Operator and representatives of the bus industry to reach agreement on sustainable options for implementing such requirements.

2.7 In advance of the development of the new requirements for the Economic Contract Plan, the Operator shall commit to complying with the principles of the current Economic Contract (found here), specifically with respect to:

2.7.1 growth potential;

2.7.2 fair work;

- 2.7.3 promotion of health, including a special emphasis on mental health, skills and learning in the workplace; and
  - 2.7.4 progress in reducing carbon footprint.
- 2.8 The Operator acknowledges that Welsh Government intends that the Operator's Economic Contract and delivery against the same may form a key part of:
- 2.8.1 the evidence for the scoring of future competitions for grant funding or other contracts which make use of Welsh Government funding; and
  - 2.8.2 the conditions for other statutory and non-statutory schemes relating to the funding of the bus industry in Wales which Welsh Government may introduce in the future.

### 3. **Improving the Passenger Experience**

The Operator shall use reasonable endeavours to work with the Lead Authority and Tfw to increase patronage and social inclusion on bus services and the wider public transport network in Wales.

#### 3.1 **Routes**

- 3.1.1 To the extent that reinstatement of the pre-COVID 19 network meets the Priorities and can be provided within the funding available, the Operator shall, by agreement with the Lead Authority, progressively re-instate the network of services that the Operator provided prior to the impact of COVID 19.
- 3.1.2 The Lead Authority shall work with the Operator and the Constituent Local Authorities to determine what changes may be required to the network of services provided by the Operator in response to changing passenger demand and patterns of travel and shall authorise such changes, including the use of alternative delivery modes, in line with the Reference Network. Such changes may include adjustments to the Operator's timetables and routes, where these are necessary to integrate the Operator's services, other bus services and modes of transport to provide passengers with improved journey times and a better experience of public transport.
- 3.1.3 The Operator must seek permission from the Lead Authority prior to registering any new service. Such permission is not to be unreasonably withheld subject to the Operator demonstrating compatibility with the Reference Network or justifying a change to the Reference Network based on passenger need and positive impact on value for money for the Lead Authority.

#### 3.2 **Fares and Ticketing**

- 3.2.1 The Operator shall demonstrate that it has sought to improve value for money for passengers by confirming that it has considered options for capping and rationalising fares. No increase in fares will be allowed during the Term of this Agreement unless it is part of a proposal, approved by the Lead Authority, to improve overall value for money for passengers.
- 3.2.2 The Parties shall work together to develop and implement ticketing schemes for the benefit of passengers and the Operator, whether proposed on a statutory or non-statutory basis subject to compliance with competition law.

#### 4. **Negative Conditions**

For the Term of this Agreement the Operator shall not:

- 4.1 act in a way which is primarily intended or expected to make cost effective delivery of the Reference Network more difficult;
- 4.2 carry out their business in a manner which can be shown to, overall, have the intent or expectation of reducing passenger benefits from the bus network in Wales; and
- 4.3 register Local Services which have the primary effect of undermining the value for money of the Subsidised Network (provided that nothing in this paragraph 4 shall prohibit the Operator from replacing an Existing Supported Service or New Supported Service with a Commercial Service which provides the same or better service throughout the day.

#### 5. **Transition to BES 3**

Where clause 10.2 applies, the Operator acknowledges that it is a condition of the payments made under this Agreement that the Operator will work with the Lead Authority, TfW and other operators to develop a set of partnership obligations which will preserve and improve the benefits to passengers embodied in the Welsh Government requirements set out in this Schedule, recognising the fact that such obligations must be compliant with competition law.

## SCHEDULE 2: PARTNERSHIP THEMES

The Parties acknowledge the following matters shall be taken into consideration when agreeing the Umbrella Partnership Agreement and may either be included within the terms of that agreement or may be included as provisions to consider in the implementation of VPAs or other partnership arrangements at a local level.

The Parties shall use the draft form of VPA appended to this Schedule at Section 1 as a template when producing the Umbrella Partnership Agreement.

In developing the Umbrella Partnership Agreement, the Parties agree to build on the Welsh Government requirements as set out in Schedule 1 and to agree a shared, enforceable set of partnership obligations to govern the partnership. Examples of such obligations include the Operators working with TfW and the Lead Authority to develop and, where agreed, implement proposals to:

1. register routes and timetables that support the journey times and interchange opportunities identified in the Reference Network;
2. consolidate core routes, including determining how passengers can benefit from services on core routes irrespective of bus operator, to the extent enabled by competition law;
3. de-duplicate and harmonise route numbering;
4. identify unserved markets and routes that could serve those markets;
5. develop and implement a code of practice on employment terms and driver standards to offer a safe and high quality service to passengers;
6. facilitate the introduction of demand responsive or other approaches to service delivery, e.g. by deregistering the existing Local Services, where it is identified that routes may be more effectively served by other means;
7. align new routes within the Reference Network where appropriate whilst allowing the Operator innovation in respect of new routes and bus services;
8. improve value and/or convenience for passengers. This shall, to the extent enabled by competition law, include working with TfW and the Constituent Local Authorities on the introduction of ticketing schemes (whether statutory or voluntary) which may:
  - 8.1 introduce pay as you go capped fares;
  - 8.2 rationalise fares; and/or
  - 8.3 introduce day and/or weekly tickets,
9. establish multi-operator ticketing schemes;
10. provide information to support passengers, including the prompt communication of changes to bus timetables through Traveline Cymru, Constituent Local Authorities and TfW; and
11. invest in bus services alongside the Welsh Government's and Constituent Local Authorities' investment in infrastructure with the aim of improving customer experience.

**Section 1: FORM OF UMBRELLA PARTNERSHIP AGREEMENT**

## **SCHEDULE 3: COMPENSATION, PAYMENT AND RECONCILIATION**

### **Part 1: General and information provision**

The Operator shall provide such information to TFW and the Lead Authority as they may reasonably require in order to calculate support payments, reconciliation payments and compensation to be paid pursuant to this Schedule 3.

### **Part 2: Payment**

1. The Service Payment (SP) shall be calculated as follows:

$$SP = PC + AM - PR + RP - CP$$

Where:

- 1.1 Service Payment (SP): shall be calculated monthly and in accordance with the following:
  - 1.1.1 the first Service Payment under this Agreement, shall be calculated for a part month to take account of the Effective Date and on the same basis as the monthly payment for BES 1.5. Any adjustments to allow for actual costs, margin and revenue during this first period shall be taken into account as part of the reconciliation process set out in Part 3 of this Schedule;
  - 1.1.2 the Lead Authority shall on a monthly basis by no later than the [15]th day of each month, notify the Operator of the proposed Service Payment providing reasonable detail as to how it has been calculated in accordance with this Schedule;
  - 1.1.3 the Service Payment shall be paid by the Lead Authority within [ ] days of the Operator issuing an invoice following receipt of the notice in paragraph 1.1.2 in respect of a month, in respect of provision of services for that month; and
  - 1.1.4 where this Agreement terminates or expires, other than at the end of a month, the Lead Authority shall, acting reasonably, determine the date and calculation of payment to ensure that the Operator is paid for provision of Services throughout the term of this Agreement.
- 1.2 Period Costs (PC): shall be such value as the Lead Authority may calculate in accordance with paragraph 1 of Section 1, noting that Inadmissible Costs, as set out in Section 2 to this Schedule, shall not be included in the calculation of PC;
- 1.3 Assumed Margin (AM): shall be the assumed margin payable to the Operator for provision of the Services and shall be a percentage applied to these elements of the Period Costs (PC) for the relevant period i.e. direct costs, variable costs and overhead costs. The AM shall be initially set at 2% of the value of the Periodic Cost. The Parties agree that during the Term, this assumed margin set at 2% shall be subject to ongoing review by Transport for Wales and Welsh Government to ensure that it remains an appropriate percentage to pay Operators as a margin in addition to their costs in accordance with Schedule 5;
- 1.4 Periodic Revenue (PR): shall be all revenue received by the Operator in respect of the relevant period as the Lead Authority may calculate in accordance with paragraph 1 of Section 1;

- 1.5 RP: is any reconciliation payment in accordance with Part 3, and shall be a positive figure where the Reconciliation Payment is to be made to the Operator and a negative figure where a Reconciliation Payment is to be made to the Lead Authority; and
- 1.6 CP: is any compensation payment payable pursuant to Part 4.
- 2. Where:
  - 2.1 SP is a positive figure then this amount shall be paid by the Lead Authority to the Operator, provided that the value of SP shall always be capped at a maximum at the level calculated in accordance with Section 1 (which may vary each month in line with the calculation); and
  - 2.2 SP is a negative figure then this amount shall be paid to the Lead Authority by the Operator, in each case in accordance with clause 9 and this Schedule.
- 3. The Operator shall participate in an open book reconciliation process with TfW and the Lead Authority in accordance with Part 3 to allow assessment of costs to ensure that the Operator has not been overcompensated and that payments reflect the reasonable cost of providing the Services with no more than a reasonable profit earned. Where the reconciliation process determines that the Operator has been over-compensated in any month, the value of the Monthly Costs payable in following months shall be adjusted, at the discretion of the Lead Authority (acting reasonably), such that, the Monthly Service Payment made by the Lead Authority reflects the Lead Authority's expectation of the Operator's costs in future months.
- 4. The Operator acknowledges and agrees that where it fail to provide information in accordance with Section 1 of Schedule 3, this may result in a reduction in the Service Payment to:
  - 4.1 50% in the following month; and
  - 4.2 no payment in the month following the 50% reduction.

### **Part 3: Reconciliation**

- 1. The Operator shall participate in an open book reconciliation exercise with TfW and the Lead Authority to enable them to assess compliance by the Operator with the terms of this Agreement and ensure that the Operator has not been over-compensated or under-compensated for provision of services pursuant to the terms of this Agreement. The Operator acknowledges that the support provided to the Operator pursuant to the terms of this Agreement cannot lead to:
  - 1.1 over-compensation of the Operator, and that where it is determined that the Operator has been over-compensated for provision of any Local Service that the Lead Authority shall be entitled, on behalf of Welsh Government, to recover the amount of any over-compensation, in accordance with this Part 3 of Schedule 3; or
  - 1.2 under-compensation of the Operator, and that where it is determined that the Operator has been under-compensated for provision of any Local Service that the Lead Authority shall be entitled, on behalf of Welsh Government, to add the amount of any under-compensation to the next Service Payment provided in aggregated the total Service Payments made to the Operator, including any such payments shall not exceed the maximum levels calculated in accordance with Section 1.
- 2. The reconciliation process shall be carried out in accordance with paragraph 2 of Section 1 to this Schedule 3.

3. TfW may determine materiality thresholds for the carrying out of the reconciliation process, and determine that it would be disproportionate to carry out a reconciliation process in respect of the Operator. Such decision shall be solely at TfW's discretion, and where TfW makes any such decision, the Operator acknowledges that this shall be without prejudice to any future requirement to examine payments made to the Operator, including where this is required for the purposes of state aid, procurement or competition assessment. It is acknowledged that TfW may determine materiality thresholds by reference to level of payments made to the Operator, or such other criteria as TfW may determine are appropriate.
4. The Operator shall provide any information reasonably required by TfW or the Lead Authority on an open book basis, including, but not limited to, information specified in Part 1 to Schedule 4.
5. Information provided for this purpose may be shared with contractors that are engaged by TfW to undertake any reconciliation exercise or other analysis of the BES 2 Funding.

## Part 4: Compensation

1. Where pursuant to the terms of this Agreement, the Lead Authority or Welsh Government are entitled to be paid compensation by the Operator for breach of the terms of this Agreement, the provisions of this Part 4 shall apply, including:
  - 1.1 where the Operator is in material breach of this Agreement;
  - 1.2 where the Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1;
  - 1.3 where the Operator fails to comply with the Welsh Government’s “Restarting public transport: guidance for operators” in accordance with paragraph 1.1 of Schedule 1;
  - 1.4 where the Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8; and
  - 1.5 where the Operators fails to provide data in accordance with clause 7,

and the Lead Authority shall allocate service failure points (“SFP”) in respect of each such breach on the following basis: **[Note: Table included, consider how these triggers are measured and triggered e.g. in the case of failure to comply with the Reference Network, does the Operator have to have breached this to many times in a month to trigger this? In the case of failure to agree the terms of the UPA, is this a one-off deduction or does this ratchet over time, and does this apply even where the operator has complied with its obligations in respect of the UPA?]**

Trigger	Service Failure Points
Operator fails to agree the terms of the Umbrella Partnership Agreement, in accordance with clause 5.1.	1 SFP for each day following the date on which the Umbrella Partnership Agreement remains unagreed in accordance with clause 5.1.
Operator fails to comply with the Welsh Government’s “Restarting public transport: guidance for operators” in accordance with paragraph 1.1 of Schedule 1.	20
Operator fails to comply with the Reference Network and associated Service Standards in accordance with clause 8.	30
Operators fails to provide data in accordance with clause 7	20
<b>Total:</b>	<b>100</b>

Compensation Payments shall be calculated on the following basis:

$$CP = AM \times \frac{SFP}{MSFP}$$

Where:

- 1.5.1 AM means the Assumed Margin for the relevant period as calculated in Part 2 above.
  - 1.5.2 SFP means the total number of Service Failure Points allocated in respect of the relevant period.
  - 1.5.3 MSFP means the maximum number of Service Failure Points which may be allocated in respect of the relevant period, which shall be 100.
- 1.6 Where SFP's have been allocated for the same trigger in three (3) consecutive months or more, the Lead Authority or Welsh Government shall be entitled to terminate this Agreement in accordance with clause 11.2.

## Section 1: INFORMATION TO BE PROVIDED BY THE OPERATOR

### Definitions

**“Good and Efficient Operator”** means in the context of all other relevant provisions of this Agreement a notional bus operator, having the same commercial, regulatory and operational arrangements as the Operator and being subject to the same operational circumstances (which, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of this Agreement and the requirement for operators to act in the national interest in response to COVID-19) as other bus operators, which complies with its legal obligations, including pursuant to this Agreement and in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced bus operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable;

**“Forecast Template”** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture forecast revenue and costs for the purpose of calculating the Service Payment;

**“Inadmissible Costs”** means those costs which are listed in Section 2 to Schedule 3;

**“Management Accounts”** means the periodic management accounts which cover the relevant Quarter;

**“Month”** means a calendar month;

**“Operator Specific Reporting Period”** means a four-weekly, five weekly, monthly or similar cycle on which the Operator posts its accounts];

**“Quarter”** means a period of 3 months (April to June, July to September, October to December and January to March), or such other 3 month period as TfW may reasonably specify;

**“Reconciliation Period”** means the closest multiple of the Operator Specific Reporting Period to the Quarter, to be agreed with the Operator;] and

**“Reconciliation Template”** means the Excel spreadsheet issued by TfW, as updated from time to time, to capture the actual revenue and income generated and costs incurred by the Operator for the relevant Quarter.

#### 1. Information to be provided Monthly

1.1 In order for PC and PR to be calculated in accordance with paragraph 1 of Schedule 3, for each Month, the Operator shall complete the Forecast Template which provides high level details on the forecast revenue and costs for that Month;

1.2 TfW will provide the Forecast Template for the Operator to complete and return to TfW within [14 days] of the Operator issuing an invoicing following receipt of the notice from the Lead Authority notifying the Operator in reasonable detail of the proposed Service Payment or on such other date as may be agreed with TfW.

1.3 The Operator shall be required to populate the following items in the Forecast Template in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services:

1.3.1 Forecast farebox revenue: based on the current month’s predicted outturn plus adjustment for seasonal factors, including, but not limited to Christmas, Easter and school holidays;

1.3.2 Forecast funding: This shall reflect all funding received by the Operator, including but not limited to BSSG, Mandatory Concessionary Fare reimbursement, Young

Persons Travel payments, CJRS, Job Retention Bonus and Job Support Scheme (as amended or replaced from time to time);

- 1.3.3 Other income: This shall reflect all other income received by the Operator arising from the provision of Local Services, including but not limited to income received from advertising, maintenance and sales; and
  - 1.3.4 Forecast Cost: These shall be broken down by headings, e.g. Staff Costs, Fuel/Maintenance Costs, Overhead Costs, Interest, Depreciation etc.
- 1.4 The Forecast Template will use the information provided in line with paragraph 1.3 to calculate the value of Assumed Margin in accordance with the principles set out in paragraph 2 of Schedule 3.

## **2. Information to be provided for each Reconciliation Period**

- 2.1 In order for RP to be calculated in accordance with paragraph 1 of Schedule 3, at the end of each Reconciliation Period the Operator shall complete the Reconciliation Template which provides details on the actual revenue and income generated and costs incurred in the relevant Reconciliation Period.
- 2.2 TfW will provide the Reconciliation Template for the Operator to complete and return to TfW within fifteen (15) Working Days of the end of the relevant Reconciliation Period.
- 2.3 The Operator shall be required to populate the Reconciliation Template, which TfW may reasonably update from time to time, in respect of all Local Services that they provide, including Commercial Services, Existing Supported Services, Former Commercial Services and New Supported Services. Such information to be provided for each Month in the Reconciliation Period in question plus the figures for the same three (3) Months in the prior year (only required for submissions up to the date when the Operator has provided a full prior years' data to TfW, being data up to [31 March 2021] for most operators).
- 2.4 In the event where any of the Operator's Local Services operate across the Welsh border, the Operator shall assist with any further examination and analysis of the information provided in paragraph 2.3 above to ensure that the BES 2 Funding it receives, does not relate to the section of such Local Service which is outside of Wales.
- 2.5 Once the Operator has submitted the Reconciliation Template, this shall be evaluated by TfW to ascertain whether a Reconciliation Payment adjustment will be made to the next Service Payment following the completion of the reconciliation process in this Schedule 3.
- 2.6 In determining the level of Reconciliation Payment, TfW may request further information or evidence from the Operator as it reasonably requires, such as, but not limited to Management Accounts or receipts relating to certain transactions.
- 2.7 TfW shall use the Reconciliation Template and additional information to check whether any costs included in the template are Inadmissible Costs and may amend the Reconciliation Template to adjust the Reconciliation Payment accordingly where any costs are Inadmissible Costs.
- 2.8 Where Inadmissible Costs are identified and the Period Costs (as defined in Part 2 of this Schedule) are re-calculated, the reconciliation exercise shall include consequential adjustments and reconciliation of the Assumed Margin to reflect the change in Period Costs.

## **Section 2: INADMISSABLE COSTS**

The following costs shall be Inadmissible Costs for the purposes of this Agreement:

1. The Operator agrees and acknowledges that: (i) only reasonable costs incurred and evidenced as ongoing and repeat transactions shall be taken into account; and (ii) it shall operate efficiently during the Term.
2. The Operator shall seek approval from the Lead Authority prior to incurring any material costs which are not ongoing and repeat transactions and agree the basis upon which such transactions will be considered for the purposes of this Schedule 3. Material costs may include investment in vehicles, information technology, costs of depot purchase or refurbishment or major items of plant and equipment. The Lead Authority shall take the following considerations into account when determining the eligibility for BES 2 Funding such costs:
  - 2.1 evidence from the Operator to confirm that such expenditure was in their business plans and/or is required in the current COVID affected circumstances and cannot be deferred until patronage and farebox return to pre-COVID levels;
  - 2.2 confirmation from the Operator that they have explored all other routes for grants and funding such expenditure;
  - 2.3 a forecast of the net impact of the additional expense on their claims under this Agreement; and
  - 2.4 confirmation from the Operator that they will be able to sustain any ongoing payments for this following the cessation of the BES 2 Funding.
3. For the avoidance of doubt, the reconciliation process will not take into account any capital expenditure, exceptional (non-operating) payments or dividend payments in determining whether the Operator has generated a profit before tax, or a loss at the end of each Reconciliation Period. The Lead Authority shall determine whether any capital expenditure will be reimbursed in accordance with paragraph 2 above and will be paid in addition to the Service Payment as calculated pursuant to paragraph 1.1, of Part 2 of Schedule 3.
4. Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator including but not limited to:
  - 4.1 staff, director or officer costs in excess of that set out in the Forecast Template (except where evidenced by the Operator as appropriate to the satisfaction of the Lead Authority);
  - 4.2 costs that do not reflect the contracted position under Existing Supported Services Contracts unless such change has been agreed by the Lead Authority;
  - 4.3 new contracts entered in to by the Operator which have not been procured in compliance with the Operator's usual procurement procedures; and
  - 4.4 variations to existing contracts which have not been made in accordance with the Operator's usual procurement procedures or practice.
5. Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the TfW (in their absolute discretion) in writing.

6. Any expenses, disbursements or equivalent costs (to which the Operator's expenses policy would apply) which are incurred other than in compliance with the Operator's expenses policy.
7. Any cost that the Operator may incur as a result of it failing to comply with any applicable laws, to the extent this gives rise to a criminal liability.
8. Any payments, costs or other liabilities owed to affiliates save in respect of such payments costs or other liabilities which have been incurred by the Operator acting as a Good and Efficient Operator.
9. Costs of developing and protecting any Intellectual Property Rights which are not owned by the Operator or are so owned, but where the costs are not ancillary to an activity included in the Forecast Template.
10. Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of bus services.
11. Fines from government or regulatory bodies.
12. Any costs (including any legal costs and expenses) incurred by the Operator in pursuing any claim against or defending any claim from TfW or Welsh Government in respect of or in connection with the grant offer letter or otherwise.
13. Any costs incurred in relation to the period prior to the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period prior to the BES Funding Period.
14. Any costs incurred in relation to the period prior to the expiry of the term of the BES Funding Period which a Good and Efficient Operator would usually have discharged in the period following the expiry of the BES Funding Period.
15. Interest paid on payable on any loan from any lender which is not a fixed term loan.
16. Except with the prior agreement of the Lead Authority or TfW (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Operator may incur as a result of the termination of any contract or other arrangement.
17. Except with the prior agreement of the Lead Authority or TfW, losses on disposals of fixed or non-current assets.
18. Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the BES Funding Period or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the [BES Funding Period].
19. Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by third party.
20. Costs of complying with any audit by TfW or its agents pursuant to any grant offer letter or this Agreement.
21. Reasonable costs for external assistance to complete this proforma up to £1,500 are not Inadmissible Costs. Any amount in excess of £1,500 plus legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of this Agreement are Inadmissible Costs.

22. Legal, accountancy and other costs and expenses incurred in connection with any future arrangements between the Lead Authority or TfW and the Operator following the [BES Funding Period].
23. Travel costs (including flight travel) of the Operator primarily relating to the business of their group, noting that TfW would expect the group to cover the cost of any such travel.
- 23.1 Any costs which relate to that part of a Local Service which operates outside of Wales which shall be calculated on a pro rata basis to the length of the Local Service or as otherwise more accurately evidenced by the Operator.

## SCHEDULE 4: DATA REQUIREMENTS

### Part 1: Financial Data Requirements

The Operator shall provide the following data in accordance with templates provided by TfW and updated from time to time, in respect of Commercial Services, Former Commercial Services and Local Services provided pursuant to Existing Supported Services Contracts and New Supported Services Contracts:

1. Operational costs and revenue from the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter scheme as well as costs and revenues covering a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter schemes. Where intra-group costs are shown, you must be able to show evidence that these are properly incurred costs of providing the services. These figures shall be disaggregated to show major cost and revenue sources, and shall include any payments received from local authorities and central Government such as:
  - 1.1 payments made under the Coronavirus Jobs Retention Scheme, Job Retention Bonus, Job Support Scheme and any replacement schemes;
  - 1.2 payments (and any reconciliation payments) made under BES including Service Payments received;
  - 1.3 payments pursuant to the terms of any Existing Supported Services Contract or New Supported Services Contract;
  - 1.4 payments under existing bus support arrangements including BSSG, Mandatory Concessionary Fare reimbursement and Young Persons travel payments and shall include any costs associated with the operation of such Local Services, including:
    - 1.4.1 direct costs, such as the costs of drivers, parts and fuel (fuel costs shall include the amounts payable or receivable on fuel related financial derivatives in respect of the relevant period, but exclude any "mark to market" gains or losses on financial derivatives);
    - 1.4.2 semi-direct costs, including but not limited to: the costs of engineering, maintenance, traffic pay, vehicle related costs and marketing;
    - 1.4.3 costs of additional holidays accrued by employees in the relevant claim period;
    - 1.4.4 overhead costs, including but not limited to: the costs of administration, pensions, fixed operating costs, insurance and claims;
    - 1.4.5 pensions expenses on the basis of the ongoing contributions payable for the relevant period, without adjustment to comply with accounting standards;
    - 1.4.6 operating lease costs on the basis of the lease rentals payable during the Term;
    - 1.4.7 depreciation and amortisation of property, plant, equipment, software and other applicable assets on a basis consistent with the Term; and
    - 1.4.8 reasonable PPE and safe operating costs.

2. Revenue sources to also include farebox revenue generated and all other income received by the Operator, including but not limited to income received from advertising, maintenance and sales.
3. Commercial service kilometres covered by the operator's services per 4-week period during the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
4. Commercial services run and patronage data per 4 week period for the period covered by BES (including this Agreement and BES 1.5), the Bus Hardship Fund and the 20 March Letter Scheme and that for a similar period prior to the commencement of the BES, the Bus Hardship Fund and the 20 March Letter Scheme.
5. Evidence of the process that the Operator has undertaken with Constituent Local Authorities to agree services, including pursuant to the terms of this Agreement and that service changes have been properly communicated to the general public.
6. Evidence of the Operator's cost implications of removing staff from the furlough system early, reasonable costs to bring vehicles back into service, cost of screens around the driver's cab on buses, on bus capacity signage.
7. The same information as above for the equivalent period in the previous financial year.
8. Additional information (e.g. management accounts) to corroborate any submissions.

## **Part 2: Operational Data Requirements**

Where the data is available to the Operator or from its Electronic Ticket Machines, the following data shall be provided by it to support the prioritisation, co-ordination and design of services and to support the provision of information to passengers. The data may be provided direct from the Operator's Electronic Ticket Machine supplier with its permission, not to be unreasonably withheld, or direct from the Operator. The data shall be provided to TfW (or its nominated agent which may be Traveline Cymru or a local authority):

<b>Data</b>	<b>Format</b>	<b>Source</b>	<b>Scope</b>
Timetable	TransXchange 2.4 to include all stop level detail and full geographic routing information	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	Current timetable and any updates
Patronage Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation of routes
Passenger Counting/Capacity	SIRI VM feed as amended to include occupancy and bus capacity information or report from ETMs	Direct from ETM/Operator	Historic and current to support passenger information and prioritisation of routes

Origin and Destination Data	Report from ETMs	Direct from ETM/Operator	Historic and current to support prioritisation and design of routes
Fares	Spreadsheet Files for Adult and child fares, zone or rider tickets, m-tickets and multi operator tickets. Move to NeTEx format from January 2021	Direct from ETM/Operator	Historic and current to support passenger information and development of ticketing schemes
Real Time Information	SIRI SM (where currently available)	Direct from ETM/Operator	Every 5-30 seconds
	SIRI VM	Direct from ETM/Operator	Every 5-30 seconds
	<p>TransXchange 2.1 (as a minimum standard) to include Service number, journey code and crew/duty number information for each track/leg for each service</p> <p>Note that this will move to TransXChange 2.4 once the Department for Transport profile is finalised and adopted</p>	Scheduling software or entry into an online portal for conversion to TransXchange 2.4	5 days where systems permit

### **Part 3: Permitted Use**

1. Permitted Uses of the Operator Data shall be the following purposes:
  - 1.1 calculation of payments to be made in accordance with Part 2 of Schedule 3;
  - 1.2 periodic reconciliation in accordance with Part 3 of Schedule 3;
  - 1.3 calculation of any additional payments to be made in respect of provision of any additional services to be provided pursuant to clauses 12 (Existing Supported Services: Gross Cost), 13 (Existing Supported Services: Net Cost) or 15 (Supported Services Contracts for Former Commercial Services).
  - 1.4 to support the calculation and payment of BSSG, Mandatory Concessionary Fare Reimbursement or My Travel Pass reimbursement;
  - 1.5 identification of any anomalous Operator costs and for the purposes of any audit of operator data or otherwise pursuant to clauses 7.7 to 7.10 of this Agreement;
  - 1.6 the assessment the viability of routes to support return to commerciality and determine the scope of the Subsidised Network in accordance with clause 8;
  - 1.7 to allow review of the BES 2 Funding mechanism specified in this Agreement by Welsh Government and Transport for Wales, including, but not limited to, pursuant to Schedule 5;
  - 1.8 to inform the reform of funding mechanisms (including BSSG and Mandatory Concessionary Fares) by Welsh Government and Transport for Wales including assessing the impact (or potential impact) of such funding mechanisms (and changes to such funding mechanisms) on the operators of local services in the Welsh bus market;
  - 1.9 to support the management of contracts (including Existing Supported Service Contracts as varied in accordance with the terms of this Agreement) that are being managed under this Agreement including in respect of the delivery of local services in accordance with the Service Specification or to the Service Standards;
  - 1.10 development of the Reference Network in accordance with clause 8;
  - 1.11 provide of public information about the Operator's Local Services and other Local Services operated in Wales;
  - 1.12 provision of a support service to the Traffic Commissioner, including a registration service (subject always to clause 7.5.1);
  - 1.13 inform investment decisions by Welsh Government, TfW and Local Authorities (including the Lead Authority); and
  - 1.14 inform the broader Welsh Government response to the COVID-19 outbreak.

#### Part 4: Public Sector Data Access and Confidentiality

Note: a table is to be developed on the following basis specifying for each data element that is provided pursuant to this Schedule 4 which Public Sector Party shall have access to that data and any specific restrictions on use.

##### Public Sector Party with access to the Data

Data provided	Welsh Government	TfW	Lead Authority	Local Authority	Confidential or Commercially Sensitive
[Note: to be completed with reference to each Operator Data element]	[Note, for each party state: <ul style="list-style-type: none"> <li>• No access</li> <li>• Full access</li> <li>• Any access restrictions]</li> </ul>				[Note: For each data to be identified where Confidential or Commercially Sensitive and for what timescale]

## SCHEDULE 5: FUNDING REVIEW

### 1. Funding Review

- 1.1 Welsh Government shall review the implementation of BES Funding on a periodic basis (“**Funding Review**”), at frequencies to be determined by Welsh Ministers at their sole discretion.
- 1.2 It is acknowledged that BES Funding has been provided on a discretionary basis by Welsh Government and that Welsh Government shall therefore be entitled to apply its own criteria to determine whether to continue the provision of BES 2 Funding, but such criteria may include:
  - 1.2.1 Performance of the Bus Emergency Scheme (including this Agreement) against the available Funding in meeting the Priorities; and
  - 1.2.2 The levels of Funding available.
- 1.3 The outcome of any Funding Review may include, but not be limited to, the following:
  - 1.3.1 continuation of the BES 2 Funding on its existing terms;
  - 1.3.2 changes to the BES 2 Funding terms, in which case the Agreement shall be varied in accordance with clause 29 to reflect the requirements of such change.

The Parties agree and acknowledge that the Operator may propose a reduced Service Standard to take account of any reduction in BES 2 Funding, save for where either:

    - 1.3.2.1 BES 2 Funding is removed or reduced due to the removal of social distancing measures that previously impacted on transport capacity; or
    - 1.3.2.2 Welsh Government provide an alternative grant or funding scheme in place of BES 2 Funding which is designed to provide continuity of service; or
  - 1.3.3 ending the BES 2 Funding, in which case the Welsh Government shall use reasonable endeavours to provide the Lead Authority and the Operator with notice of such change (which at a minimum shall be one (1) months’ notice) prior to ending the BES 2 Funding.
- 1.4 Where BES 2 Funding is terminated pursuant to paragraph 1.3 above, no further payments shall be made pursuant to this Agreement, following such notice period, provided that nothing in this Schedule 5 shall be taken to remove the right of Welsh Government to recover monies paid to the Operator or the entitlement of the Operator to any additional payments calculated, in each case, pursuant to the reconciliation and compensation process specified in Schedule 3.
- 1.5 The Parties agree and acknowledge that as part of a Funding Review, Welsh Government may review the level of AM (as set out in Schedule 3) and make such adjustments as are reasonable and necessary to ensure the continued viability of services.

**SCHEDULE 6: FORM OF SERVICE SPECIFICATION**

	<b>Consideration</b>	<b>Specification</b>
1.	Route number, service description and operator details	
2.	Number of service stops within and outside of the Region	
3.	Days of operation per week	
4.	Number of departures on different days and time windows	
5.	First outward and last return departures	
6.	Peak daytime frequency	

**SCHEDULE 7: TEMPLATE REGISTER OF VARIATIONS**

[Region and Operator Name]

No.	Contracting Authority	Contract Reference	Variation	Approved by and date
1.				
2.				
3.				
4.				
5.				
6.				
7.				

## **BES 2 Agreements: Local Authority legal briefing**

The BES 2 Agreement provides continued funding to support the bus industry during recovery from the impact of COVID-19. It reflects continued provision of funding from Welsh Government to support the bus industry, and has been drafted to support continued provision of services on a basis which provides a more structured, long-term arrangement. This note summarises the key legal issues that may affect local authorities.

### 1. Parties

#### 1.1 The agreement has the following parties:

- Welsh Government – responsible for provision of funding and contracting with the operator for the provision of any additional services or standards that would not be provided in the absence of that funding.
- Operator – there is a separate agreement for each operator of local bus services in each region
- Transport for Wales – as for previous BES agreements, Transport for Wales is responsible for certain elements of the administration of the agreement.
- Lead Authority – as with BES 1.5 it is expected that a lead authority for each region will be a signatory to the agreement, managing the operator on behalf of the local authorities in their region, and coordinate some of the future activities proposed under the arrangements.

1.2 Note that it is not intended that each local authority will be a party to every agreement with every operator, but that this will be managed by the Lead Authority for the region. As with previous BES arrangements it will therefore be important that arrangements are made at regional level to agree how the contracts will be managed, including ensuring that there is sufficient local input into the exercise of Lead Authority obligations.

### 2. Approach to contract

2.1 The previous BES arrangements relied primarily on grant funding arrangements, including funding provided under COVID-19 specific frameworks for aid. However, the current BES 1.5 arrangements recognised that the approach taken in Wales to focus funding on necessary services meant that the arrangements may be viewed as a public service obligation contract (PSO), which provides greater flexibility for input by local authorities into the services that their local bus operators provide.

2.2 The BES 2 arrangements further reflect this, and are drafted primarily as a PSO directly awarded to each operator by Welsh Government. These are applied both to allow for the continuation of services which were formally commercial services, prior to the impact of COVID-19, and also to cover the additional costs relating to the continued provision of secured services as a result of COVID-19 (including both additional costs incurred as a result of e.g. social distancing, as well as covering the costs associated with lost revenue). The contracts are awarded by Welsh Government after careful consideration as to whether local authority powers could be relied upon – powers are available to Welsh Government because it is not possible to consistently make use of local authority powers for these temporary measures.

2.3 Local authorities already let PSOs through their section 63 powers. Consideration was given to whether section 63 powers could be used for this contract, and the decision was taken that this would not be appropriate because:

- Direct award of section 63 contracts is limited – local authorities would typically directly award service contracts through *de minimis* provisions, which have a limit of 40% of tendered service budgets. Seeking to provide funding through this route would not be possible where the *de minimis* cap was already, or would reach the *de minimis* cap, and therefore does not seem a viable way to fund services during the COVID-19 emergency. In any event, it is expected that local authorities will require these powers to award service contracts to meet specific local needs as operators exit BES 2. Whilst there are also emergency powers that can be used to direct award such contracts, they can only be used on a temporary basis and must be followed by a competition, and therefore are unsuitable for the current purposes.
- a competitive procurement of section 63 contracts is unlikely to be practicable, and does not provide the flexibility required to ensure that operators are providing the services needed during the COVID-19 crisis. Once services have been stabilised, the expectation is that local authorities would then use competitive procurement to procure continued services where they remain unviable commercially.

2.4 The contract is therefore based on use of Welsh Government powers under section 7 Transport (Wales) Act 2006, which mirrors the section 63 powers, but would only be expected to be utilised where local authorities cannot exercise their section 63 powers. This provides for a clear division between:

- Temporary BES support for services – provided by Welsh Government under section 7 powers.
- Changes in underlying procured service contracts to reflect the long-term requirement for services in absence of COVID-19 – provided by local authorities under their section 63 powers.

2.5 The approach taken is therefore to layer the PSOs under the BES2 arrangements on top of existing arrangements e.g. they act as a temporary variation to any existing section 63 contract or commercial service, in each case providing funding to allow the operator to continue to operate those services, during the impact of COVID-19, with the provisions of BES2 falling away once that service becomes commercial again, or the BES2 arrangements come to an end. The exercise of Welsh Government powers under a direct award approach is limited to a maximum of 2 years (which would include the period from the start of BES 1.5, due to the possibility of payments under BES 1.5 also relying upon these powers), but could end sooner, if the market recovers.

3. Effect on existing section 63 contracts

3.1 Rather than letting new contracts in respect of provision of services that are currently provided under section 63 contracts, the BES2 arrangements aim to leave those arrangements in place and layer the additional support required to continue providing those services on top of the existing section 63 contracts.

3.2 Under the BES2 arrangements the Lead Authority therefore acknowledges on behalf of local authorities that, to the extent required, section 63 contracts are amended to allow for any additional payments required to the operators to allow continued provision of the services and to make any service alterations agreed with the local transport authority for the period of the BES2 arrangements. These amendments will reflect agreed service changes agreed at the local and regional level as being required during the impact of COVID-19

3.3 These amendments apply whether contracts are let on a net cost or gross cost basis. In each case the BES 2 contract sets out the implications of those amendments from a procurement

perspective, and sets them within the appropriate procurement regime, setting out an approach to minimise procurement challenge risk associated with the short term amendment.

- 3.4 To the extent that the form of section 63 contract has any contractual processes that are required to be followed to allow for such amendment, the BES 2 agreements require the local transport authority to comply with such processes, so that changes can be effected.
- 3.5 Where BES2 arrangements come to an end, the variations effected also come to an end, and the section 63 contracts should continue as before for any remaining term.
4. Effect on future section 63 contracts
  - 4.1 There is a risk that the effects of COVID-19 could impact on the letting of future service contracts, including the renewal of existing section 63 contracts.
  - 4.2 To avoid this, the BES 2 arrangements make specific provision for the letting by local transport authorities of new section 63 contracts, with agreement of a set of assumptions in respect of BES2 funding that will apply to all bidders for a new contract. These assumptions will reflect the agreed level of funding to be provided to support those services whilst COVID-19 still impacts services. This will allow local transport authorities to set this as an assumption in their tender documents, so that bidders can tender on a level playing field in respect of the impact of COVID-19, removing this as a concern for bidders, and allowing for more competitive bidding, reflecting a post-COVID world.
  - 4.3 This therefore allows local authorities to continue to let section 63 contracts during the term of BES2, but will require engagement with Lead Authorities, TfW and Welsh Government to ensure that appropriate assumptions are agreed and included in tenders.
5. Partnership
  - 5.1 In recognition of the level of public sector funding being provided to support the bus industry, the BES 2 arrangements also require the operators to agree to a framework (umbrella) voluntary partnership agreement at a regional level.
  - 5.2 The BES 2 arrangements therefore include a template for such an agreement which will then need to be agreed with local transport authorities in the region. The agreement provides a framework for more localised and specific voluntary partnership agreements at local level to support improved standards of bus services and partnership working at a regional level. The agreement is structured as a voluntary partnership agreement (VPA) within the meaning set out in the Transport Act 2000, and therefore is intended to provide a competition law compliant framework for future engagement with operators.
6. Standards of service
  - 6.1 The BES 2 Agreement sets out standards of service that apply to operators who are receiving funding. Whilst it is possible for operators to move away from the BES 2 Agreement and start providing services to a lower standard (and therefore does not place an express restriction on operators choosing to move to commercial service and away from BES funding, as the market recovers, so does not act as a restraint on trade). However, it also makes clear that should operators move to operate at a standard below that agreed through the BES 2 arrangements (e.g. by offering lower frequencies or timings) then it is clearly recognised that, in turn, that means that they are offering services other than to the standard required – this aligns with the test that applies for exercise of section 63 powers, so provides express justification for a future tender of services to the appropriate standard in accordance with local government powers, if the operator continues to provide services only to a lower standard. It should be noted that this

does not provide the local transport authority with the unfettered right to let such services in parallel with the commercial services, as it would also be necessary to apply the Part 1 Competition Test under Schedule 10 Transport Act 2000 to the exercise of such powers, but it does ensure that there is a clear acknowledgment from such an operator that the registration of a lower quality service does not place an express bar on the local transport authority procuring a higher quality service on the same route.

7. Level of compensation

7.1 The powers being utilised by Welsh Government to let this contract are also subject to Regulation 1370/2007 EU (which will continue in effect in 2021 with minor amendments as UK law). This regulation deals with both the relevant procurement procedure (and allows for direct award) and also sets out the appropriate state aid framework to ensure that funding provided under agreements awarded directly in this way do not amount to state aid.

7.2 As a result, the compensation mechanism used in the contract draws on the reconciliation procedures already put in place under BES 1.5 and earlier to ensure that operators are not over-compensated. Unlike BES1.5, the agreement recognises that only covering operators costs without any margin available is unlikely to be a sustainable mechanism for public transport. The agreement therefore allows operators to earn a margin of (initially) 2% whilst operating services under BES 2. This reflects the requirement under Regulation 1370/2007 that operators are entitled to earn a reasonable profit margin in providing public service obligations. In determining that margin, the rate of return can be no greater than that which is normal for the sector, taking into account the risk, or absence of risk incurred by the operator.

7.3 The impact of COVID-19 has been to materially impact the revenue received by operators, and also to change their costs. The impact of the BES arrangements has been to de-risk that process for all operators. As the impact of BES arrangement has been to, in the short term, change that risk profile by managing the risk associated with lowered patronage, there is a risk that whatever level any margin was set this could be seen as benefitting one operator over another – operators who were previously making greater profits (or losses) as a result of taking revenue risk, for example, both benefit in different ways from the provision of BES funding, but that reflects the fact that, in many cases, the BES support has also removed the risk that they were taking, and the impact of COVID-19 may have changed their costs. Therefore, as all operators have been moved to a similar risk profile and being protected in a similar way for impacts on operating costs, it therefore seems appropriate to set a consistent margin, which is the default position taken in the BES 2 agreement. It is, however, open to the public sector parties to seek to agree a different approach to margin during the term of BES 2.

7.4 It should also be noted that when the BES 2 agreements fall away, and the operator returns to the original terms of their contracts (or to commercial operation) they will continue to take the same risks, and have the same potential for profit (or loss) as they had prior to introduction of BES.