

**DATED:**

**2014**



**BLACK COUNTRY COUNCILS' BROADBAND COLLABORATION AGREEMENT**

**BETWEEN**

**(1) THE BOROUGH COUNCIL OF SANDWELL**

**(2) DUDLEY METROPOLITAN BOROUGH COUNCIL**

**(3) WALSALL METROPOLITAN BOROUGH COUNCIL**

**(4) WOLVERHAMPTON CITY COUNCIL**

**- AND -**

**(5) BLACK COUNTRY CONSORTIUM LIMITED**

**THIS AGREEMENT** is dated

2014

**BETWEEN:**

- (1) **THE BOROUGH COUNCIL OF SANDWELL** of Freeth Street, PO Box 2374, Oldbury, B69 3DE;
- (2) **DUDLEY METROPOLITAN BOROUGH COUNCIL** of The Council House, Priory Road, Dudley, West Midlands, DY1 1HF;
- (3) **WALSALL METROPOLITAN BOROUGH COUNCIL** of Civic Centre, Darwall Street, Walsall, WS1 1TP;
- (4) **WOLVERHAMPTON CITY COUNCIL** of Civic Centre, St Peter's Square, Wolverhampton, WV1 1RG; and
- (5) **BLACK COUNTRY CONSORTIUM LIMITED** (Company Registration number 05159791) whose registered office is at The Deckhouse, Waterfront West, Dudley Road, Brierley Hill, DY5 1LW ("**BCC**").

together the "**Parties**"

**1. BACKGROUND**

- 1.1 The Parties have resolved to work together to ensure delivery of Black Country local broadband plan, hereafter referred to as the Project, which aims to promote economic growth and residential benefit through access to faster broadband across their respective areas.
- 1.2 The Parties wish to record the basis by which they will collaborate with each other to achieve the successful delivery of the Project and this Agreement sets out:
  - (a) the key objectives of the Project;
  - (b) the principles of collaboration;
  - (c) the governance structures that the Parties will put in place and
  - (d) the respective roles and responsibilities that the Parties will have during the Project.

**IT IS HEREBY AGREED AS FOLLOWS:-**

## **2. INTERPRETATIONS AND DEFINITIONS**

2.1 In this Agreement unless the Context otherwise requires the following expressions have the following meanings:-

“Accountable Body”	means the Borough Council of Sandwell
“Agreement”	means this agreement comprising of the terms and conditions together with the schedules attached hereto.
“Area”	means the administrative areas of Sandwell Metropolitan Borough Council, Walsall Metropolitan Borough Council, Dudley Metropolitan Borough Council and Wolverhampton City Council.
“Authorities”	means Parties (1) – (4) named at the beginning of this Agreement and “Authority” shall mean any one of the authorities as the context dictates.
“Bidders”	means those economic entities who have been appointed to the Framework Agreement (as defined, below) and who are eligible to bid in that Framework Agreement’s Call Off process.
“BDUK”	means Broadband Delivery UK., the delivery vehicle created with the Department for Culture, Media and Sport for carrying out government policy relating to stimulating private sector investment in broadband infrastructure.
“BDUK Funding”	means a sum in the region of £3,000,000 (three million pounds sterling) awarded by

BDUK to the Authorities towards the delivery of the Project.

“BDUK Funding Agreement”	means the agreement entered into by the Lead Authority with BDUK to secure the BDUK Funding for the Area, which shall be substantially in the form appended to this Agreement at Schedule 2.
“Broadband Agreement”	means the agreements between the Provider and each Authority resulting from the Procurement Phase for the delivery of broadband provision across each of the Authority’s administrative areas.
“CEDR”	means the Centre for Effective Dispute Resolution.
“Change in Law”	means a change in Law which comes into effect from the Commencement Date
“Collaboration Agreement”	means the collaboration agreement in relation to the Black Country Executive Joint Committee (who is defined, below, as the Joint Committee).
“Commencement Date”	means the [REDACTED].
“Delivery and Service Phase”	means the period from the commencement of each Broadband Agreement until its completion.
“Framework Agreement”	means the framework agreement dated 29 June 2012 executed by the Department of Culture, Media and Sport and the broadband service providers (British Telecommunications

	Plc and Fujitsu Telecommunications Europe Ltd) from which the Provider will be selected and with whom each Broadband Agreement will be entered into.
“Growing Places Agreement”	Means the internal agreement made pursuant to clause 11.1 of this Agreement between the Borough Council of Sandwell in its capacity as accountable body for Growing Places and the Borough Council of Sandwell in its capacity as accountable body for BDUK Funding.
“Joint Committee”	means the committee that the Authorities have established known as the Black Country Executive Joint Committee, underpinned by the Collaboration Agreement, as more particularly described in Part 4 of Schedule 3 to this Agreement.
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law.
“Lead Authority”	means Sandwell Metropolitan Borough Council.
“Local Broadband Plan”	means the Black Country Local Broadband Plan submitted by the Lead Authority on behalf of Authorities that has been accepted by BDUK as the basis of the award of BDUK Funding.

“Loss and Losses”	include any loss and liability directly or indirectly suffered by the Authorities or any of them together with any damage expense liability or costs reasonably incurred in contesting any claim to liability and quantifying such loss and liability.
Other Authorities	means Dudley Metropolitan Borough Council, Walsall Metropolitan Borough Council and Wolverhampton City Council.
“Preferred Bidder”	means the bidder selected by the Lead Authority pursuant to the Procurement Phase.
“Procurement Phase”	means that phase of the Project for the selection of the Preferred Bidder.
“Project Board”	means the board that will take overall responsibility for the development, management, monitoring and delivery of the Project and whose responsibilities are set out in Part 3 of Schedule 3.
“Project Manager”	means the person appointed for the overall coordination and effective delivery of The Project and whose responsibilities are set out in Part 1 of Schedule 3.
“Project Team”	means the team responsible for the development, management, monitoring and delivery of the Project and whose responsibilities are set out in Part 2 of Schedule 3.
“Provider”	means the successful bidder appointed in

accordance with the mini-competition run under the terms of the Framework Agreement who shall enter into Broadband Agreements with the Authorities.

“Working Day” means Monday to Friday 8.00 – 4.30 pm excluding Christmas, Good Friday, Easter and Bank Holidays

2.2 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted from time to time.

2.3 In this Agreement:

- (a) the clause headings do not affect its interpretation;
- (b) words in the singular shall include the plural and vice versa;
- (c) unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a paragraph are to a paragraph of that Schedule;
- (d) references to any statute or statutory provision include references to all Acts of Parliament and all other legislation having legal effect in the United Kingdom;
- (e) any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- (f) a person includes a natural person, corporate or unincorporated body or organisation and their successors and permitted assigns;
- (g) ‘including’ means ‘including, without limitation’;
- (h) if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Agreement is to be unaffected.

### **3. TERM**

This Agreement shall come into effect on the Commencement Date and shall continue in force in respect of the Authorities until the expiry of the Delivery and Service Phase unless terminated earlier in accordance with the terms of this agreement.

### **4 GENERAL PRINCIPLES OF COLLABORATION**

4.1 The Agreement has been entered into by the Parties to establish and effect provisions for the performance of the Project and to clarify their responsibilities in respect thereof and to each other.

4.2 The Parties will work together in good faith and in an open and cooperative and collaborative manner for the duration of the Agreement. The Authorities' members and officers will work together in the spirit of mutual trust in order to procure the successful implementation of the Project.

4.3 The Parties shall use all reasonable endeavours to ensure that their respective members and officers who are involved in the Project shall at all times act in the best interests of the Project.

4.4 Each Authority and BCC shall:

- (a) carry out the tasks and contribute sufficient resources and facilities to ensure that the Project objectives are met and commitments under this agreement are met;
- (b) co-operate with each other and do such acts, matters and things as may be necessary or desirable to implement the decisions of the Parties and in order to complete the Project,
- (c) keep the other Parties fully informed of the progress of and of any matters relevant to the Project and make available to the other party all relevant information, data, reports and opinions in relation to the Project,
- (d) immediately notify the other Parties in writing if there is an unexpected problem which is likely to cause a material delay to achievement of any of the objectives of the Project or any particular stage of the



Project or any material increase in the costs of the Project or if any party becomes aware of the action of any third party which threatens to affect adversely the progress of the Project or the reasonable expectations of either party hereunder.

## **5 STATUS OF THE AGREEMENT**

In consideration of the Parties entering into this Agreement and respecting their mutual obligations to each other arising out of this Agreement, the Parties agree that the Agreement shall take the form of a legally binding relationship and the mutual commitments between them created by the Agreement shall from the Commencement Date be construed accordingly.

## **6 OFFICERS**

Where appropriate the Authorities may agree to make such of their officers available as necessary for the purposes of implementing the Project to undertake such duties as are reasonably required by the Project Team and/or Project Board.

## **7 GOVERNANCE**

In order for decisions to be taken for the purposes of delivering the Project and responsibility for the development, management, monitoring and delivery of the Project, the Parties have identified the following five decision making bodies:

- (a) Project Manager – The Project Manager's responsibilities are set out in Part 1 of Schedule 3;
- (b) Project Team – The Project Team's responsibilities are set in out in Part 2 of Schedule 3;
- (c) Project Board – The Project Board' responsibilities set out in Part 3 of Schedule 3;
- (d) Joint Committee – The Joint Committee responsibilities are set in Part 4 of Schedule 3; and

- (e) Lead Authority – The Lead Authority responsibilities are set out in Schedule 1.

## **8 LIABILITIES IMMUNITY AND INDEMNITY**

### **8.1 Member and Officer Liability:**

- 8.1.1 When working as a member of the Project Team or Project Board the members shall be deemed to be representing their own Authority even when the particular matter under consideration relates to or also relates to another Authority;

### **8.2 Indemnities of the Parties to the Lead Authority in respect of the Procurement Process:**

- 8.2.2 The Parties shall indemnify the Lead Authority (in equal shares) against all Losses incurred by the Lead Authority arising out the procurement processes conducted under the Public Contracts Regulations 2006 or otherwise to appoint the Provider;
- 8.2.3 The indemnity provided under clause 8.2.2 shall not extend to Losses incurred by reason of gross misconduct, fraud, persistent breach of law or duty on the Lead Authority's part or any act or omission by the Lead Authority which is contrary to proper local government law or practice.

### **8.3 Indemnities of the Authorities in respect of the BDUK Funding Agreement:**

- 8.3.1 The Lead Authority shall indemnify the Other Authorities for any Losses arising and incurred by them as a result of the Lead Authority's failure in its capacity as the contracting authority to comply with the terms of the BDUK Funding Agreement;
- 8.3.2 The Other Authorities shall use their reasonable endeavours to assist the Lead Authority in complying with its obligations under the BDUK Funding Agreement so as to ensure the delivery of the Project;
- 8.3.3 The Other Authorities shall indemnify the Lead Authority against and/or contribute and pay any Losses (in equal shares) which may arise despite the Lead Authority properly performing or discharging its

role as Lead Authority under this Agreement and the BDUK Funding Agreement, in accordance with the authority given to it by or pursuant to this Agreement, save that the Lead Authority shall not take any decision to incur the burden of additional costs to the other Authorities without seeking their approval first;

8.3.4 The indemnity provided under clause 8.3.3 shall not extend to any Losses incurred by reason of gross negligence, gross misconduct, fraud, persistent breach of duty or law on the Lead Authority's part or any act or omission by the Lead Authority which is contrary to proper local government practice or local government law.

8.4 Indemnities of the Authorities in respect of the Broadband Agreement:

8.4.1 The Lead Authority shall indemnify the Other Authorities for any Losses arising and incurred by them as a result of the Lead Authority's failure in its capacity as the contracting authority to comply with the terms of the Broadband Agreement;

8.4.2 The Other Authorities shall use their reasonable endeavours to assist the Lead Authority in complying with its obligations under the Broadband Agreement so as to ensure the delivery of the Project;

8.4.3 The Other Authorities shall indemnify the Lead Authority against and/or contribute and pay any Losses (in equal shares) which may arise despite the Lead Authority properly performing or discharging its role as Lead Authority under this Agreement and the Broadband Agreement, in accordance with the authority given to it by or pursuant to this Agreement save that the Lead Authority shall not take any decision to incur the burden of additional costs to the Other Authorities without seeking their approval first;

8.4.4 The indemnity provided under clause 8.4.3 shall not extend to any Losses incurred by reason of gross negligence, gross misconduct, fraud, persistent breach of duty or law on the Lead Authority's part or any act or omission by the Lead Authority which is contrary to proper local government practice or local government law;

8.5 General Indemnity of the Authorities:

- 8.5.1 Where a Party has the consent of the Project Team, the Project Board or the Joint Committee to undertake any task in relation to the Project, then the other Authorities (including the Lead Authority) shall indemnify that Authority against and/or contribute and pay any Losses (in equal shares) which may arise despite that Authority properly performing or discharging such tasks as have been allocated to it;
- 8.5.2 The indemnity provided under clause 8.5.1 shall not extend to any losses incurred by reason of gross negligence, gross misconduct, fraud, persistent breach of duty or law on the task-performing Authority's part.
- 8.5.3 Each Authority will indemnify the other Authorities (including the Lead Authority) against any claim, demand for payment, cost or any other liability asserted or made by the Provider that arises out of work or service delivery done in the Authority's administrative area.

## **9. WARRANTIES**

- 9.1 Each Party warrants to each other that:
- 9.1.1 it has the necessary right and authority to enter into this Agreement;
- 9.1.2 its signatories are authorised and fully empowered to execute this Agreement; and
- 9.1.3 it will be bound by the terms of the Broadband Agreement as if it was the "Recipient" as referred to in the BDUK Funding Agreement.

## **10. LEAD AUTHORITY**

- 10.1 The Lead Authority shall act on behalf of the Parties in directing the Project; in particular it shall:
- 10.1.1 Carry out the functions set out in Schedule 1 to this Agreement; and
- 10.1.2 In its capacity either as the contracting party to the BDUK Funding Agreement ensure compliance with their terms and conditions and carry out the obligations under them so as not to jeopardise the Project or the funding of the Project.

## **11. GROWING PLACES**

11.1 The Parties agree that the BDUK match funding shall be funded by the Growing Places Agreement.

11.2 The BCC, in conjunction with the Authorities, shall:

11.2.1 Oversee the use of the Growing Places (capital and revenue) funds allocated to the Project; and

11.2.3 Ensure that the Growing Places funds allocated are recovered according to any repayment schedule.

11.3 The Authorities warrant that they shall not do anything which puts the Accountable Body in breach of the Growing Places Agreement.

## **12 INTELLECTUAL PROPERTY**

12.1 Subject to agreement to the contrary in a Broadband Agreement, all rights to intellectual property in any material created by or on behalf of the Project shall be owned by the Authority that created them save where such rights are created jointly in which case they will be owned jointly between the Authorities.

12.2 Each Authority warrants that any intellectual property created by its officers for the purposes of the Project will not infringe any third party intellectual property rights.

## **13 COST ALLOCATION**

13.1 Subject to the indemnities given in clause 8 the Parties shall contribute towards the costs of the Project as follows:

13.1.1 by way of those contributions set out in Schedule 4 of this Agreement; and

13.1.2 by way of such other contributions as are required and as agreed by the Joint Committee at the appropriate time.

## **14 ESCALATION**

14.1 If any Party has any issues, concerns or complaints about the Project or the Agreement that Authority shall notify all the other Authorities concerned and the matter will be referred to the Project Board. If the matter is unable to be resolved by the Project Board it may be dealt with under the Dispute Resolution Procedure set out in clause 21.

14.2 If any Party receives any formal inquiry, complaint or claim from a third party (including but not limited to, requests for information under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 (EIR)) in relation to the substantive Project, the matter shall be promptly referred to the Project Board (or its nominated representative). No action shall be taken in response to any inquiry, complaint or claim without the prior approval of the Project Board (or its nominated representatives) provided that in seeking that approval, no Authority is prevented from complying with its obligations regarding statutory time limits under the relevant legislation.

14.3 For the avoidance of doubt, approaches (whether written or otherwise) made to an Authority and relating specifically to implementation in that Authority's administrative area (and not substantive Project issues) shall be responded to by that Authority through its own processes and not referred to the Project Board.

## **15 TERMINATION**

15.1 This Agreement shall begin on the Commencement Date and shall expire upon the completion of the Delivery and Service Phase unless terminated earlier in accordance with the terms of this agreement.

- 15.2 An Authority may serve notice on the Project Board to withdraw from the Project as provided for in paragraph 16.4, below.

## **16 WITHDRAWAL**

- 16.1 Each Authority acknowledges that the withdrawal of it from the Project and this Agreement is likely to have consequences for the delivery of the Project and that additional costs may be incurred by other Authorities and that such withdrawal could result in the Project being delivered late or not being delivered at all.

- 16.2 The costs of withdrawal during the Procurement Phase may include but are not limited to:

16.2.1 the cost of undertaking a new procurement exercise;

16.2.2 the cost of the remaining parties seeking additional funding;

16.2.3 the costs arising from the possible breach of the Broadband Agreement or any of them;

16.2.4 claims from Bidders in respect of wasted procurement costs;

16.2.5 costs arising from the delayed rollout of the Project.

- 16.3 The costs of withdrawal during the Delivery and Service Phase of the Project may include but are not limited to:

16.3.1 any claim which the other Parties to the Broadband Agreement may have against the Lead Authority as a result of the Lead Authority being unable to comply with the Broadband Agreement or any of them

16.3.2 the cost arising in the procurement of new contracts or negotiating new contracts with a Provider or other contractors.

- 16.4 Any Authority may withdraw from this Agreement by giving three months written notice to the Project Board during the Procurement Phase and 6 months written notice to the Project Board during the Delivery and Service Phase.

- 16.5 Each Authority agrees that in the event that it gives notice of withdrawal to the others it will indemnify the others against any Losses which the remaining Authorities may suffer as a result of its withdrawal from the Agreement.

## **17 CONSEQUENCES OF WITHDRAWAL OR TERMINATION**

- 17.1 Where this Agreement is terminated under Clause 15.2 or an Authority withdraws under clause 16.4:

17.1.1 The Agreement shall continue in force in respect of any financial liabilities which have or may arise out of the performance of the Agreement or the Project;

17.1.2 The Agreement shall remain in force in respect of any liability of any Authority to indemnify the others under any provision of this Agreement; and

17.1.3 The procedures as set out in clause 15 of the Agreement shall remain in force in respect of any other matters arising from the performance of or withdrawal or termination of any Authority under this agreement.

- 17.2 The following clauses shall survive termination of this Agreement 5, 8, 13, 14, 16, 17, 18, 20, 21 and 25.

## **18 WITHDRAWAL OR REDUCTION OF FUNDING OR CHANGE IN LAW**

- 18.1 The Authorities acknowledge that the arrangements set out in this Agreement are designed to facilitate the delivery of the Project by the application of BDUK Funding and other funding. If such funding proves not to be available or proves to be less than anticipated by the Authorities or as a consequence of any Change in Law, it is no longer possible to complete the Project the Authorities shall work together to develop alternative proposals so as to achieve, as far as possible within the financial or legal constraints, agreed aspects of the Project.

- 18.2 If, following the best endeavours of the Authorities it is not possible to develop alternative proposals all Authorities shall be entitled to withdraw from this agreement without further consequences (save for any existing claims or indemnities arising from this Agreement the Broadband Agreements or otherwise but for the avoidance of doubt excluding claims under clause 16.5)



and this Agreement shall terminate. For the avoidance of doubt any contributions made by any of the Authorities will not be refunded save for those contributions that have been committed but which remain unallocated by the Project Board or Lead Authority, at the date of termination.

## **19 CONFIDENTIAL INFORMATION**

19.1 Subject to clause 20 the Authorities shall at all times use reasonable endeavours to keep confidential (and procure that their respective employees, agents, consultants and sub contractors shall keep confidential) all Confidential Information concerning the Project or the business or affairs of the other Authorities which may now or at any other time be in their possession and shall not disclose it without the consent of the Authority to whom the information relates.

19.2 For the purposes of the Agreement “Confidential Information” means information imparted to any Authority, their employees ,consultants or sub contractors (‘the Receiving Party’) which was imparted to the Receiving Party on the basis that it is to be kept confidential or would by its nature normally be regarded as being confidential or to the knowledge of the Receiving Party was obtained by the other Authorities on the basis that it would be kept confidential or is of commercial value in relation to the Project but shall not include any information which is for the time being in the public domain otherwise than by reason of its wrongful disclosure by the Receiving Party.

19.3 Each Authority shall indemnify and keep indemnified the other Authorities against all Losses incurred by the others in respect of any breach of this Clause by an Authority disclosing Confidential Information. This clause shall survive the termination of this Agreement

## **20 FREEDOM OF INFORMATION ACT 2000 (“FOIA”) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (“EIR”)**

20.1 Each Authority acknowledges that they are all subject to the requirements of FOIA and the EIR and each Authority shall provide reasonable assistance and cooperation (at their own expense) so as to enable each of the other Authorities to comply with these information disclosure obligations.

- 20.2 Where an Authority receives a request for information under FOIA or EIR which relates to this Agreement or the Project it shall circulate it as soon as possible and in any event within five days of receipt to the other Authorities and shall use all reasonable endeavours to consult with the others prior to any disclosure.
- 20.3 Each Authority acknowledges that where an Authority has received a request for information that Authority is responsible for determining in its absolute discretion whether such information is exempt from disclosure under the FOIA or the EIR (the "Receiving Authority") and the Receiving Authority may disclose such information without consulting the other Authorities or following consultation and having taken the other Authorities' views into account.

## **21 DISPUTE RESOLUTION**

- 21.1 If having failed to resolve any dispute under clause 14 the Parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure.
- 21.2 To initiate any mediation any Party may give notice in writing to the other Parties requesting mediation of the dispute and shall send a copy to CEDR. The Parties shall cooperate with any person appointed as mediator and provide him with such information and other assistance as he shall require and will pay his costs as he shall determine.

## **22 SEVERANCE**

If any condition, provision or clause of this Agreement shall become or be declared by any court of competent jurisdiction to be void, invalid, illegal or unenforceable in any way, such invalidity or unenforceability shall not impair or affect any other provision all of which shall remain in full force and effect.

## **23 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement or understanding between the Authorities relating to the subject matter of the Agreement.

## **24 WAIVER**

- 24.1 The failure to exercise or delay the exercising of any right or remedy provided by this Agreement or by law does not constitute a waiver of such right or remedies or a waiver of any other rights or remedies.
- 24.2 A waiver of a breach of any of the terms of the Agreement or of a default under the Agreement does not constitute a waiver of any other breach or default and shall not affect the terms of the Agreement.
- 24.3 A waiver of a breach of any of the terms of the Agreement or of a default under the Agreement will not prevent an Authority from subsequently requiring compliance with the waived obligation.

## **25 GENERAL**

- 25.1 Nothing contained or implied herein shall prejudice or affect the Authorities' rights and power, duties and obligations in the exercise of their functions as local authorities and /or in any other capacity and all rights, powers, discretions, duties and obligations of the Authorities under all Laws may at all times be fully and effectively exercised as if the Authorities were not party to this agreement and as if this Agreement had not been made.
- 25.2 No Party shall represent itself as being an agent, partner or employee of any other Party except to the extent specified by this Agreement.
- 25.3 The Agreement shall be covered by the laws of England and shall be subject to the jurisdiction of the Courts of England and Wales.
- 25.4 This Agreement is personal to the Parties and no Party shall assign, transfer or purport to assign or transfer to any other person any of its rights or sub contract any of its obligations under it.
- 25.5 No person other than the Parties shall be entitled to enforce any of the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 25.6 Any notices required or permitted to be given by one Party to any of the other Parties shall be in writing and addressed to the Chief Executive of the other Party at its principal office.

**IN WITNESS** whereof this Agreement has been executed as a deed the day and year first before written

<p>Executed as a Deed by THE BOROUGH COUNCIL OF <b>SANDWELL</b> by affixing</p> <p>THE COMMON SEAL of THE BOROUGH COUNCIL OF <b>SANDWELL</b> and authenticated by</p> <p>Authorised signatory</p>	
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<p>Executed as a Deed by the <b>WALSALL METROPOLITAN BOROUGH COUNCIL</b> by affixing</p> <p>THE COMMON SEAL of <b>METROPOLITAN BOROUGH COUNCIL</b> and authenticated by</p> <p>Authorised signatory</p>	
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<p>Executed as a Deed by the <b>DUDLEY METROPOLITAN BOROUGH COUNCIL</b> by affixing</p> <p>THE COMMON SEAL of <b>DUDLEY METROPOLITAN BOROUGH COUNCIL</b> and authenticated by</p> <p>Authorised signatory</p>	
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Executed as a Deed by the  
**WOLVERHAMPTON CITY**  
**COUNCIL** by affixing

THE COMMON SEAL of  
**WOLVERHAMPTON CITY**  
**COUNCIL** and authenticated by

Authorised signatory

Executed as a deed by the  
**BLACK COUNTRY LOCAL**  
**ENTERPRISE PARTNERSHIP**  
**LIMITED** acting by 2 Directors  
or a Director and Company  
Secretary:

Director:

Director/Company Secretary:

## **SCHEDULE 1**

### **ROLE OF THE LEAD AUTHORITY**

The Lead Authority in conjunction with the Authorities will:

1.     Oversee the implementation of the Procurement Phase and rollout;
2.     Enter into the BDUK Funding Agreement;
3.     Ensure compliance with the terms of the Broadband Agreement;
4.     If necessary, enforce the terms of the Broadband Agreement;
5.     Agree and comply with the Growing Places Agreement;
6.     Monitor and evaluate the processes and the outcomes of the Procurement Phase;
7.     Carry out project management during all phases of the Project including development, procurement, delivery and operation;
8.     Report as required to BDUK;
9.     Appoint the Project Manager.

## **SCHEDULE 2**

### **BDUK FUNDING AGREEMENT**

**Attached**

## **SCHEDULE 3 - GOVERNANCE**

### **PART 1**

#### **PROJECT MANAGER**

**The Project Manager shall be responsible to:**

- Ensure that project is undertaken in the PRINCE II environment.
- Produce reports for each group including; highlight reports, end of stage reports and financial information.
- Complete plans of activity to be authorised by BDUK.
- Ensure that all minimum requirements are met.
- Ensure that all contractual obligations are met and reported to BDUK.
- Ensure that BDUK procedures are adhered to.
- Work with partners to ensure that roll out programmes are promoted in all areas and across all relevant sectors.
- Ensure that reporting is both fair and transparent.
- Provide feedback and support with regard to unsuccessful locations where appropriate.
- Programme monitoring and reporting of all budgets.
- Reporting to the BCLEP and Black Country Joint Committee as required.
- Ensure that the Project Group and Working Group meet quarterly and are provided with all relevant paperwork in a timely fashion. Ensure any actions from the meetings are undertaken.



**PART 2**  
**PROJECT TEAM**  
**Scope – Project Team**

1. The Project Team will ensure that appropriate arrangements are in place to enable the Project Board to manage, monitor and deliver the Local Broadband Plan and in particular:-
  - a. will ensure that project and risk management plans are effectively monitored and that recommendations are made to the Project Board to address issues arising from that process;
  - b. manage stakeholder and communications strategies and other public consultations.
  - c. Prepare appropriate submissions for funding including Growing Places.
  - d. Develop and manage demand stimulation and benefit realisation plans.
  - e. management procurement processes and specifications.
2. The Project Team will ensure that appropriate reports are provided to the Project Board to enable it to exercise its overall responsibilities in respect of para 3.1 above and that it is able to submit any necessary reports to Government, BDUK, the Local Enterprise Partnership, Joint Committee, the accountable body and other local authorities, partners and stakeholders.
3. The Project Team will support the Project Board in ensuring that due regard is paid to:-
  - Maximising value for money.
  - Investing the resource quickly in compliance with State Aid obligations.
  - Making a demonstrable difference.
  - Developing a responsive programme adapted to align with the evolving roll-out of the market providers.
  - Establishing a commercially viable programme.
  - Maximising benefits for businesses and residents.
4. The Team will make recommendations to the Project Board on the operation of the Project Team and ensuring that it has capacity to implement the Delivery Plan and for commissioning any additional resource or support in accordance with the procedures of the appropriate agency
5. The Project Board will meet every month and when necessary. Representatives must attend each meeting, or send a nominee.

6. Membership

Organisation	Nominee
<b>Black Country Consortium (Local Enterprise Partnership Secretariat)</b>	Sarah Middleton, Chief Executive  Tony Dunn - Interim Project Manager (Policy Review)  Delma Dwight (Benefits Realisation)
<b>Dudley MBC</b>	Rupert Dugdale
<b>Sandwell MBC (Accountable Body)</b>	Paul Mountford Economic Development)  Suzanne Burrell – Legal Lead Philippa Smith – Strategic Planning Lead (Planning and Local geography) Karen Stringer/Judith Wick (Finance)(Procurement)
<b>Walsall MBC</b>	Joel Maybury  Simon Tranter – EZ Lead
<b>Wolverhampton CC</b>	??  Keren Jones – EUSIF Lead Heather Clarke – Demand Stimulation Lead.
<b>Other Lead Advisers (to attend and report as necessary)</b>	Laura Shoaf – Highways Phil Calcutt – Comms Chris Styche – GIS Mapping Sophie Thompson – Growing Places
<b>Technical Support (to attend and report as necessary)</b>	Khooshiram Oodhorah/Ian Adkins, Analysys Mason

## **PART 3**

### **PROJECT BOARD**

#### **Scope – Project Board**

1. The Project Board will take overall responsibility for the development, management, monitoring and delivery of the Local Broadband Plan and in particular:-
  - a. Ensuring that project and risk management plans are in place, that they are effectively monitored and that appropriate reporting arrangements to Government, BDUK, the Local Enterprise Partnership, Joint Committee, the accountable body and other local authorities, partners and stakeholders have been established;.
  - b. Ensuring and taking oversight for the development and overall management of:-
    - i) stakeholder and communications strategies and other public consultations.
    - ii) submissions for funding including Growing Places.
    - iii) demand stimulation and benefit realisation plans.
    - iv) procurement processes and specifications.
2. The Project Board will ensure that due regard is paid to:-
  - Maximising value for money.
  - Investing the resource quickly in compliance with State Aid obligations.
  - Making a demonstrable difference.
  - Developing a responsive programme adapted to align with the evolving roll-out of the market providers.
  - Establishing a commercially viable programme.
  - Maximising benefits for businesses and residents.
3. The Board will have overall responsibility for the operation of the Project Team and ensuring that it has capacity to implement the Delivery Plan and for commissioning any additional resource or support in accordance with the procedures of the appropriate agency
4. The Project Board will meet every month, or as and when necessary. Representatives must attend each meeting, or send a nominee

5. Membership

Organisation	Nominee
<b>Chair - Black Country Local Enterprise Private Sector Board Member</b>	Ninder Johal
<b>BDUK</b>	Alan Srbljanin, BDUK Project Director
<b>BT</b>	Kevin Rutterford
<b>Openreach</b>	
<b>Black Country Consortium (Local Enterprise Partnership Secretariat)</b>	Sarah Middleton, Chief Executive  Tony Dunn, Interim Project Manager
<b>Local Authority Heads of Regeneration</b>	Phil Coyne – Dudley MBC Tim Johnson – W'ton CC Simon Neilson – Walsall MBC
<b>Accountable Body</b>	Nick Bubalo – Sandwell MBC
<b>Technical Support</b> (to attend and report as necessary)	Khooshiram Oodhorah/Ian Adkins, Analysys Mason

## PART 4

### JOINT COMMITTEE

Each of the Four Black Country Councils Executives has agreed to set up a **Black Country Executive Joint Committee**. Under the Local Government Act 1972 and the Local Government Act 2000, as amended by the Localism Act 2012 and regulations issued by the Secretary of State, council executives have the power to set up joint executive committees.

The Black Country Joint Committee Constitution sets out how meetings will be managed, including the election of a Chairperson on an annual basis. It permits the setting up of sub-committees and/or advisory boards, comprising of those members of the appointing councils executives in the case of sub-committees. There is an Advisory Board, membership comprises of Council Cabinet Members for Regeneration, business community representatives of the Black Country LEP, Council Executive Directors for Regeneration, the Black Country Consortium Ltd, Government representatives as appropriate, the Programme Manager and other persons that the Advisory Board consider appropriate will be established.

Copies of the decisions from the Black Country Executive Joint Committee can be found on line at

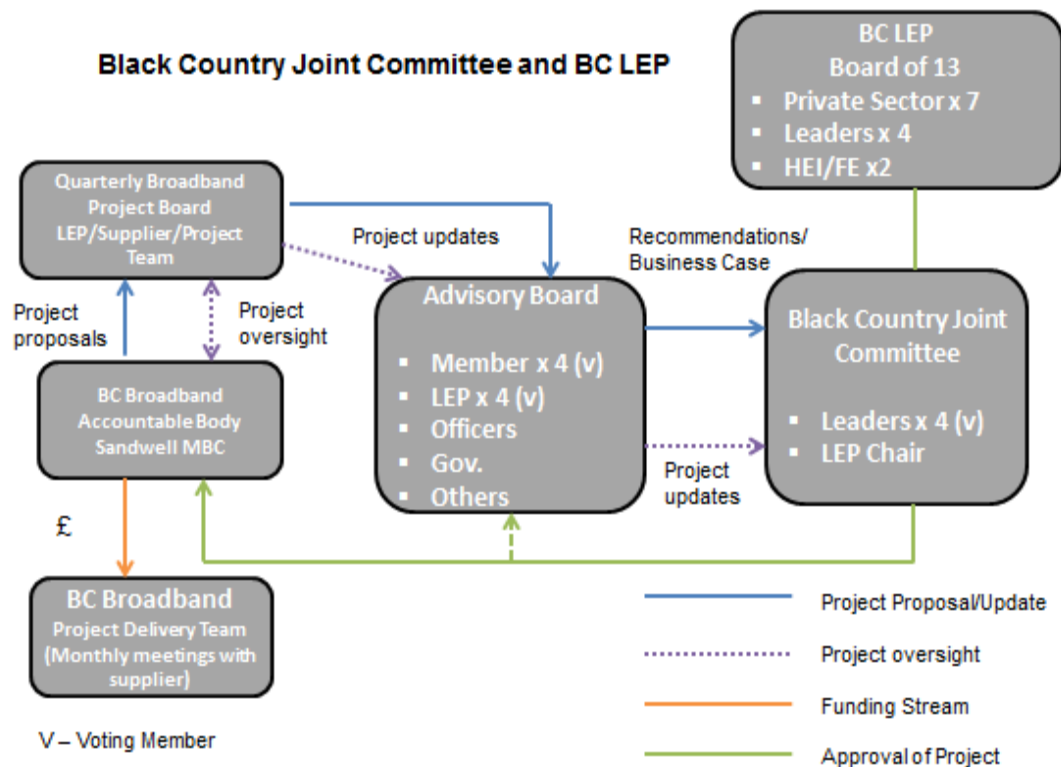
[http://cms.walsall.gov.uk/index/council\\_and\\_democracy/black\\_country\\_joint\\_committee.htm](http://cms.walsall.gov.uk/index/council_and_democracy/black_country_joint_committee.htm)

Documents and papers considered at the inaugural meeting of the Black Country Joint Committee on Wednesday 26 March 2014, including Terms of Reference are available on line via the website above.

The BC Joint Committee has to set out its forward plan of meetings and its future meeting schedule is shown below:

- ❖ Black Country Joint Committee – Wednesday 7 May 2014, 11.15am at Sandwell MBC
- ❖ Black Country Joint Committee – Friday 20 June 2014, 11.15am at Walsall MBC
- ❖ Black Country Joint Committee – Wednesday 17 September 2014, 11.15am at Wolverhampton CC
- ❖ Black Country Joint Committee – Wednesday 3 December 2014, 11.15am at Dudley MBC

An overview of the Governance relationships is shown in the diagram below;



### Decision-making responsibilities of the Joint Committee in relation to the premises cap:

The Project requires a premises cap for investment purposes. Decisions to approve an increase on the values associated with the premises cap will be reserved for the Joint Committee where:

- a. The premises cap would be exceeded to such an extent that the additional costs cannot be absorbed within the overall programme of investment and this could result in additional funding from the Parties to this Agreement being required.

Any decisions required where a request by the Supplier to exceed the premises cap could lead to a decision to take a substantial number of properties out of scope will be delegated by the Joint Committee to the Joint Advisory Group.

## **PROTOCOLS FOR MEETINGS**

### **1. Protocols**

Meetings will be conducted and managed in accordance with the standing orders of the Black Country Local Enterprise Partnership as appropriate.

### **2. Code of Conduct**

Members are required to declare any personal or financial interests in any of the business of the Project Board at the commencement of meetings.

### **3. Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their families or their friends.

### **4. Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **5. Objectivity**

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for awards and benefits, holders of public office should make choices on merit.

### **6. Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to whatever scrutiny is appropriate to their office.

### **7. Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **8. Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

## **9. Leadership**

Holders of public office should promote and support these principles by leadership and example



#### **SCHEDULE 4 COSTS**

1. [Each Authority shall within 30 days of a written request from BCC pay BCC up to a maximum of £7,634 (seven thousand, six hundred and thirty four pounds) towards technical support for the Project.]
2. [The Other Authorities shall within 30 days of a written annual request from the Lead Authority, pay the Lead Authority up to a maximum of £6,000 (six thousand pounds) per annum for the term of this Agreement towards project and contract management costs.]