

<b>Report To:</b>	<b>EXECUTIVE CABINET</b>
<b>Date Of Report:</b>	13 December 2017
<b>Executive Member/Reporting Officer</b>	Councillor Jim Fitzpatrick, First Deputy (Performance and Finance) Tim Rainey, Assistant Director, Digital Services.
<b>Subject</b>	<b>TAMESIDE DIGITAL INFRASTRUCTURE</b>
<b>Report Summary:</b>	<p>This report provides an update on progress with Tameside's new digital infrastructure. It outlines the business case for further £1,725k capital investment in networking equipment, ducting and fibre optic cable, and £840k for a new Data Centre located in Ashton Old Baths, which are all required to provide the services, speeds and connectivity that the Council and our partners will require for the next 5 years.</p> <p>The report also seeks approval to sign and seal the Project Agreement with TfGM for the lease of ducting and operation of fibre optic along the route of the Metrolink for phase 1 (Ashton to Droylsden), and phase 2 (Droylsden to Piccadilly) when complete in early 2018.</p> <p>The report also provides details of a £2.2m grant from the Department of Culture, Media and Sport (DCMS) Local Full Fibre Programme that will help accelerate and expand the Tameside Digital Infrastructure programme.</p> <p>Linked to this investment the report outlines details of the Tameside Digital Infrastructure Cooperative (TDIC) operating vehicle which is being used to commercialize the spare capacity on the network with the aim of supporting and growing the digital and high end engineering economy in the borough.</p> <p>Finally it also seeks approval for an "in principle" agreement to provide financial support to the Cooperative to help with start-up and early running costs, approval to sell spare fibre pairs to the Cooperative and agreement that the Council should become a founder member.</p> <p>It should be noted that whilst this report recommends that Tameside Council should become a founder member of the TDIC it not a prerequisite that the Council does. The Council could choose to allow the Cooperative to be setup by other organisations and simply enter into a commercial agreement with the Cooperative for the use of council ducting and sale of spare fibre pairs.</p>
<b>Recommendations:</b>	<ol style="list-style-type: none"> <li>1) Prospective members of the Tameside Digital Infrastructure Cooperative (TDIC) have been invited to declare their mutual intent in support of the formation of the cooperative on the terms outlined in <b>section 2</b> and <b>Appendices 1, 2 and 3</b> of this report. 4 organisations have now confirmed as founder members and it is therefore recommended that the registration process proceeds and that the Council is one of the Founder Members.</li> </ol>

- 2) That the Council will underwrite start-up funding for the fledgling Cooperative with the guarantee of a share based equity loan of up to £120k over a 5 year period based on 5% interest repayment rate as set out in **paragraph 2.19**.
- 3) That the Council will sell its spare fibre capacity to the Cooperative for £100k and will agree to purchase par value shares in the Cooperative to make this purchase possible as set in **paragraph 2.19**.
- 4) That the Council has discussions with other public sector investors in regard to the sale of their spare fibre capacity to the Cooperative on the same basis as above.
- 5) That approval is given to £1,725K capital investment set out in **section 3** of the report:
  - £1,366k to fund the installation of ducting and fibre optic cable associated with the expansion and development of the Tameside Digital Infrastructure
  - £359k to fund the replacement of network perimeter security equipment and dark fibre switches.

It should be noted that some preliminary costs of £206k have been incurred in advance of full approval for this project due to works that needed to take place alongside other planned works, to minimise disruption.

- 6) That approval is given to £840k capital investment on the construction of a new purpose built Data Centre in Ashton Old Baths as detailed in **section 4**.
- 7) The Borough Solicitor is authorised to sign and seal the Project Agreement with TfGM for use of tram-side ducting to install and light fibre optic cable for phase 1 (Ashton to Droylsden) and phase 2 (Droylsden to Piccadilly) on behalf on the Council as detailed in **section 5 and Appendix 7**.
- 8) That before the project progresses the Director of Finance must satisfied that the proposals and business case for this project have been properly assessed and represent value for money.
- 9) That any further proposals which involve the Council in the setting up or running of the Co-operative as opposed to being a founding member will require further Cabinet approval subject to a business case setting out a cost benefit analysis

**Links To Sustainable Community Strategy:**

The initiative supports the delivery of the Sustainable Community Strategy Prosperous Tameside aim.

**Policy Implications:**

The initiative supports the delivery of the Council's Corporate Plan by supporting economic growth and opportunity.

**Financial Implications:  
(Authorised By Section 151 Officer)**

**Tameside Digital Infrastructure Cooperative (TDIC)**

The Council has already invested in dark fibre and has the infrastructure in place. The financing of the mutual will be done through a loan and sale agreement to the mutual, whereby the Council loan £120k to the new mutual, which then uses £100k of

the loan to buy the Council's fibre cabling. The remaining £20k of the loan remains in the mutual as start up capital. The net cash outlay for the Council is therefore £20k. The full loan of £120k will attract interest of 5% per annum (£6k per annum).

Renting of the ducting to the Co-op would net the Council up to £34k per annum.

The exact terms of this arrangement have yet to be finalised and the loan will only be made as part of the establishment of the mutual.

The hosting of the mutual has yet to be finalised, but this is something that the Council does not have the expertise or capacity to undertake at this stage.

In addition there may be some requirement for working capital of up to £125k from the founder members, which has been based on very prudent assumptions. The exact working capital requirements will be known when the mutual is established and if any further funding input is required from the Council it will be subject to a further report to Cabinet setting out the full details of the proposed arrangement.

### **Capital Investment**

The Council's Three Year Capital Programme for 2017-2020 earmarked capital resources of £1,725k for Digital Infrastructure Investment and £840k for investment in a new Data Centre. It is expected that this investment will be funded from the Council's Capital Investment Reserve.

This report summarises the expected costs for the installation of ducting and cable (£1,366k) and equipment (£359k) for Digital Infrastructure, and £840k for the purpose built Data Centre. These costs are estimates and it is essential that monitoring of actual expenditure is undertaken to ensure the project is contained within the approved sum.

Section 3 of the report identifies the anticipated cost avoidance and savings resulting from the digital infrastructure investment over a five year period. It should be noted that most of these figures are cost avoidance. The investment in Digital Infrastructure is anticipated to deliver revenue budget savings for CCTV of £39k per annum (£195k over five years). The remaining figures quoted are costs that would be incurred if a different approach was taken to invest in Digital Infrastructure.

The proposed investment is not expected to result in any additional revenue costs. The ongoing maintenance of the digital infrastructure and Data Centre will be met from within existing FM and ICT budgets.

Section 5 of the report identifies that the Council has successfully bid for £2.2m of grant funding from the Department of Culture, Media and Sport. Plans are in place to use £1.2m of this grant to fund other additional investment in Digital Infrastructure and £300k for the creation of a Digital Exchange within Ashton Old Baths. The service will need to ensure that the proposals for the use of this grant are consistent with the grant terms and conditions and that any reporting requirements can be met, to ensure all grant funding can be obtained.

**Legal Implications:  
(Authorised By Borough  
Solicitor)**

In order for this project to progress The Director of Finance must be satisfied with the proposals and business case for this project.

Alternative options have not been included in this report which would assist in the assessment of the business case. For example, how could this project develop if the Council was not a founding member of the Cooperative but allowed its land to be leased to the Cooperative.

There is nothing in principle to prevent the Council becoming a founding member of the Cooperative, subject as ever to the detail in the set up documents, and a clear understanding of the financial, legal and reputational risks involved..

The Council does not have currently either the resources, or more importantly the expertise to set up and administer a Cooperative, so this would need to be led by another founding member.

The Council going forward needs to understand precisely what DCMS now expect the Council to deliver and the reputational risk to the Council versus the option the Council should follow.

**Risk Management:**

The risk register for the delivery of the project is attached at Appendix 5.

**Access To Information:**

The background papers relating to this report can be inspected by contacting Tim Rainey, Assistant Director, Digital Services by:



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e-mail: [Tim.rainey@tameside.gov.uk](mailto:Tim.rainey@tameside.gov.uk)

## **1. BACKGROUND AND INTRODUCTION**

- 1.1. The Council has a both a responsibility and a vested interest in the economic wellbeing of the borough and in promoting and supporting digital inclusion, both of residents and local businesses. Digital technologies are becoming more and more vital to all forms of business and in all areas of life. Tameside is fortunate to be part of a city region where the digital sector is strong and growing. The Manchester city region is particularly strong in areas like creative, media and marketing – and Tameside can build on that strength by providing both strategic and practical support, thus nurturing and actively developing a thriving digital economy. .
- 1.2. The Council aims to use digital technology to transform public services, offering new and superior service at lower cost. It also sees digital technology as a driver for economic growth, directly through the development of the digital sector and related businesses, and indirectly through the impact on productivity in the wider economy. Tameside has a strong technical, manufacturing and industrial heritage, and linking in with the Vision Tameside programme, it can develop its own special role as a centre for the industrial application of digital technology in areas such as software, digital networks and high end engineering.
- 1.3. The UK as a whole, let alone Tameside, is not particularly well served with the kind of digital infrastructure that would allow real and rapid progress in pursuit of these objectives. Just 3% of residential and business properties in the UK are currently within economical connection distance from fibre infrastructure. Upgrades to current internet access services from the main suppliers, while welcome, offer only incremental change and create few opportunities for local business to innovate and add value.

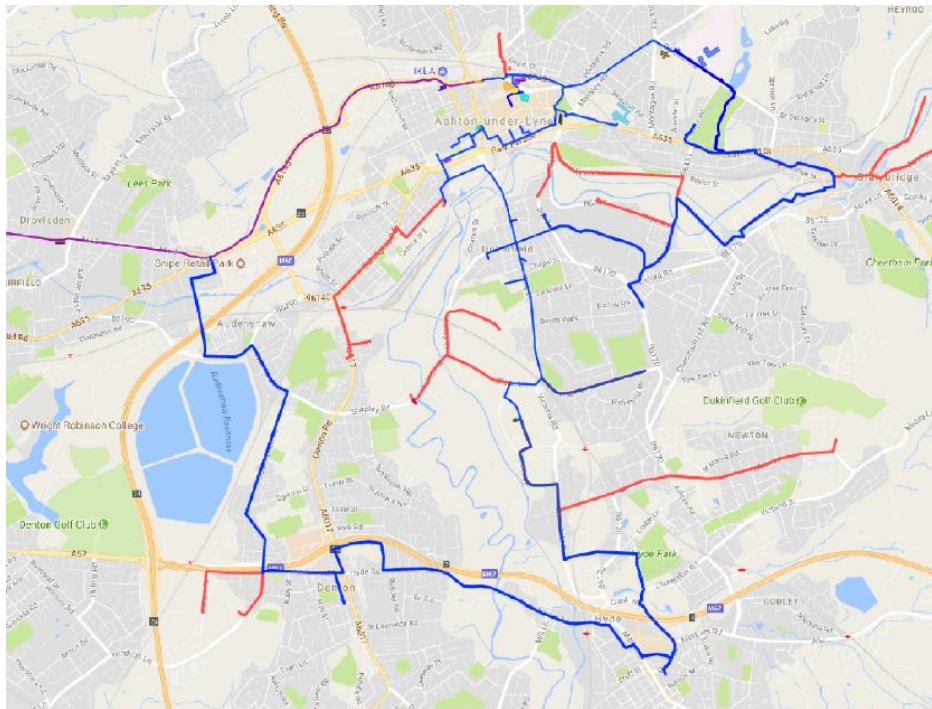
## **2. FIBRE INFRASTRUCTURE EXPANSION AND CORE NETWORK EQUIPMENT REFRESH**

- 2.1. For the last 4 years the Council has been installing a fibre optic digital infrastructure in and around Ashton Town Centre. To date much of the investment in the digital infrastructure has been ad-hoc and opportunistic with new ducting and fibre being installed on an “as and when required” basis. At present this network provides data and telecommunications connectivity to 20 different buildings supporting the Council, Tameside College, Tameside General Hospital, Pennine Care Mental Health Trust services and New Charter Housing Trust with work ongoing to connect Greater Manchester Pension Fund.
- 2.2. There is now an opportunity to be more strategic and to begin to plan and install the infrastructure on a borough wide scale. The Council is in the process of switching providers for its Wide Area and Local Area Network connectivity. The existing supplier has been in place for 5 years and will be replaced in December 17 by a new supplier procured in conjunction with Rochdale, Oldham and Bury MBC.
- 2.3. This switch in suppliers will also coincide with the need for a technical refresh of the networking equipment, which is coming to end of life. This refresh is essential to maintain network security as well as avoid poor network and telephony performance. Failure to replace this equipment would leave the council’s network vulnerable to cyber and virus attacks as equipment suppliers stop providing patches and security updates.
- 2.4. To ensure the Council (and partners) have a fit for purpose network linking the various buildings across Tameside we must refresh the networking equipment for newer faster models and to increase the capacity of the core network link speeds from 1GB per link to at least 10GB. This will then provide the speed and bandwidth that we will need for the next 5 years. This increase in speeds and capacity is required for a number of reasons including:
  - The advent of joint working with Health colleagues means NHS traffic will be securely transferred across our infrastructure.

- Town Centre Wi-Fi will increase the demand for Internet access across the board.
  - CCTV cameras will use the network to connect back to Dukinfield Town Hall.
  - The new MFD printers and scanners now use the network for all printing and scanning.
  - The introduction of new technology such as SKYPE for business and increased scanning and electronic storage and retrieval of documents will increase traffic.
- 2.5. This 10 fold increase in network speed and capacity can be achieved by either renting high speed fibre links from the Council's new network supplier (British Telecom) or alternatively they can be provided by expanding the Council's own existing Dark Fibre Network to cover the key buildings which require high speed connectivity.
- 2.6. This next stage of investment will see the infrastructure extended by a further 23km and in so doing link other main towns across Tameside (using a resilient figure of eight route). This will then mean that the network will provide connectivity to over 100 key council and health buildings and over 80 CCTV camera locations.
- 2.7. In addition, as a result of successful bid to the DCMS Full Fibre Programme Tameside Council has been awarded £2.2m of which part will be used to extend ducting and install fibre in to main economic /employment development zones around the borough.

#### **Expansion of the Tameside Digital Infrastructure (1,366k Capital Investment)**

- 2.8. To replace our existing network links, which are provided by Udata, on a like for like basis albeit with higher speed/capacity links from British Telecom would cost £1,864k over a 5 year period. A list of the Council buildings with their connection speeds is included at **Appendix 5**.
- 2.9. Installing our own links as opposed to renting from BT will cost £1,366k a saving of £498k over the first 5 years of operation. Alongside the cost saving this approach will also bring many additional benefits. When we install fibre we will be installing up to 144 pairs at the same time. The Council will need only a few pairs for its high speed WAN connections and so this creates spare capacity for other partners and commercial use along with future expansion at little or no additional cost.
- 2.10. The majority of the estimated costs (£1,200k) relate to the installation of ducting into the roadway and footpaths which is being undertaken by the Civil Engineering Service. There are up to 5 gangs working on this project at any one time with each able to complete around 100m of ducting per week.
- 2.11. Once each section of ducting is completed the fibre optic cables can be installed, terminated and tested and this element of works will cost £166k. The map below shows the routes for the ducting/fibre. The full details of installation including distances, costs and premises passed are included in **Appendix 6**.



- 2.12. The commercialisation of the spare ducting and fibre capacity is being delivered using the formation of Cooperative operating vehicle and is the subject of other Cabinet reports and decisions but in essence it is expected that the Council will receive income of up to £34k per year.
- 2.13. Once installed there is little or no on-going maintenance or revenue costs. Estimates received for maintaining the fibre network indicate an annual charge of £20k which would be found from within existing ICT budgets.
- 2.14. The Tameside Health Economy and ICFT is also benefiting from the Dark Fibre work. The network already provides connectivity between the council, CCG and hospital networks. Alongside providing the Council with access to NHS systems for things such as CP-IS (Child Protection Information Sharing) and PDS (NHS number matching service) it has also provided the connectivity that has allowed NHS and CCG staff working in Council buildings to securely access NHS systems.
- 2.15. Tameside Hospital have also commissioned and funded £350k of dark fibre connectivity to link an initial 18 Medical Centres and GP practices which are located in close proximity to the original T8 Core route. A further £400k of ICFT Digital Transformation funding is also being invested to extend connectivity to more GP Practices and Medical Centres in 2018/19.
- 2.16. The proposed new fibre infrastructure with increased speed and capacity will also mean that many of the Town Centre CCTV camera's currently operating using BT and Metronet lines can now be moved onto the fibre network. The CCTV control room at Dukinfield is already linked to the fibre network and planning to migrating CCTV cameras from around the borough on to the fibre is underway. Initial estimates indicate annual saving on renting circuits of £39k per year (£195k over 5 years). This work and upgrading the CCTV camera's is the subject of a separate Capital funding bid/project.
- 2.17. The dark fibre network links into Libraries -which means that the CCTV camera's supporting self-service libraries can also be operated and monitored over the fibre network as opposed to renting circuits from BT equates to a cost avoidance of £52k over 5 years.

**Core network equipment replacement (£359k capital investment)**

- 2.18. Regardless of how we provide the high speed core network links (through BT or by installing our own dark fibre) we will need to replace our existing Core Network Switches which are approaching end of life. This equipment sits at the heart of the Council's Wide and Local Area network and is responsible for all the routing and security that enables us to operate

multiple “virtual networks” so Health, telephony, Wi-Fi, CCTV, Video conferencing can all run together over one common infrastructure. This refresh is essential to maintain network security as well as avoid poor network and telephony performance. Failure to replace this equipment would leave the Council’s network vulnerable to cyber and virus attacks as equipment suppliers stop providing security updates.

2.19. The table below details the equipment and services that need to be purchased to maintain our network security and to provide the connectivity that the Council will require for the next 5 years.

Ref	Description	Unit £	Quant	Cost £
1	HP Fibre 40gb Switches for sites listed in Appendix 1	6,800	16	109,000
2	HP Fibre 10gb Switches for sites listed in Appendix 2	2,130	15	32,000
3	Fortinet Security Perimeter Fire Walls and VPN	38,250	4	153,000
4	HP 40gb Core Switch for Data Centre and DR Site	9,250	4	37,000
5	Fortinet Wi-Fi Controller	14,000	2	28,000
	<b>Total</b>			<b>359,000</b>

2.20. The costs of replacing this equipment is £359k, the revenue costs associated with the ongoing maintenance and support will be found from within existing ICT budgets.

### 3. TAMESIDE DIGITAL INFRASTRUCTURE COOPERATIVE (TDIC)

- 3.1. An Executive Decision taken in March 2013 supported the principle of Digital Infrastructure in Tameside being operated and developed by a Cooperative of public and private sector organisations. To identify options for operating the Tameside Digital Infrastructure a soft market testing exercise was undertaken in 2016 via the North West Chest, which sought responses from the Market on potential operation models/vehicles.
- 3.2. The market testing sought proposals from parties interested in creating a collaborative framework that would both enable the linking of separately owned infrastructure assets to create a coherent whole network (providing a mechanism for the ongoing maintenance and technical administration of the fibre and any shared duct assets needed to create the network), and provide a mechanism to administer access to, and use of, the dark fibre by public and private sector partners (for mutual benefit).
- 3.3. Dialogue has since taken place with all three respondents from the soft market testing undertaken in 2016 with the aim of creating an operating model based on a mutual (Cooperative) framework.
- 3.4. A series of meetings and discussions have now been undertaken with both private sector telecommunications companies and public sector stakeholders/investors outlining the proposed operating vehicle structure as detailed later in this report. The table below details the organisations involved in this process. All confirmed that subject to their own internal governance process they were happy with the proposals and keen to become members

Public Sector Investors/Asset Owners	Private Sector Telecommunications Companies
New Charter Housing	ITS Technology Group
Tameside College	Mid-Net (M247)
Ashton 6 <sup>th</sup> Form College	The Loop
Tameside and Glossop Integrated Care NHS Foundation Trust & Tameside and Glossop CCG	SSE Enterprise Telecomms



Manchester City Council	Telecom.io
Ashton Pioneer Homes	SimplyIP
	City Fibre
	HyperOptics

- 3.5. The application to the Financial Conduct Authority (FCA) will be submitted in early New Year. There needs to be a minimum of 4 founding members who will sign up to the application, with each nominating company directors and a company secretary. The intention being that the Cooperative will be operational in April 18.
- 3.6. To date 4 organisations, Tameside College, Telcom.io, SimplyIP and ITS Technology Group have now officially confirmed their intent to become founder members of the Cooperative and have nominated individuals to become directors.
- 3.7. The Internet is based on an agreement in that the owners and operators of many thousands of different networks agree to allow traffic to pass freely between them using a simple shared protocol. This exchange of traffic often happens in neutral exchange points, co-owned by the networks that use them. (e.g. Linx (London Internet Exchange) and IX Manchester (Northern Internet Exchange)).
- 3.8. TDIC is also designed to do something similar with local fibre infrastructure. The owners of valuable assets - principally fibre duct - agree to provide space for shared fibre, so that traffic can pass freely through a shared, integrated passive network. That fibre is owned and maintained by a neutral Cooperative, co-owned by those that use it and those that contribute to it.
- 3.9. What this creates is an infrastructure that, like the Internet, is much more than the sum of its parts. Like the Internet it is not owned by any one of those that contribute or benefit from it. Like the Internet it can simultaneously serve users with many different needs, sometimes competing with each other.
- 3.10. Full details of the principles behind the Cooperative along with details of how it will be governed and operated are included in **Appendix 1**.

### **Cooperative Governance and Legal Form**

- 3.11. TDIC will be incorporated as a Cooperative Society, under the Cooperative and Community Benefit Societies Act 2014. This is broadly equivalent to the form previously known as an Industrial and Provident Society (I&PS). This form is widely used as the legal form for cooperatives in the UK<sup>1</sup> and is also the form used by the London Internet Exchange (LINX).
- 3.12. The society will be constituted as a 'Cooperative consortium'. This form of cooperative has members that are corporate bodies that use the cooperative for mutual trading. The rules will be based on the standard Cooperative consortium rules provided by Cooperatives UK<sup>2</sup>, This legal and governance form will allow:
- A governing board elected by members.
  - One vote for each member making a specified minimum investment.
  - Investment by voting members in par value, withdrawable, non-tradable shares to a maximum of £100,000 per member, but without limit for local authorities and other cooperative societies. Such investments can be made at any time<sup>3</sup>. They can also be withdrawn (bought back by the Cooperative), by approval of the governing board.

<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2014/14/contents/enacted>

<sup>2</sup> [https://www.uk.coop/sites/default/files/uploads/attachments/2014\\_Cooperative\\_consortium\\_0.pdf](https://www.uk.coop/sites/default/files/uploads/attachments/2014_Cooperative_consortium_0.pdf)

<sup>3</sup> Withdrawable shares in Societies are not defined as securities for the purposes of FSMA 2000 and Public Offers of Securities regulations.

- Unlimited investment in tradable, non-withdrawable shares without associated voting rights. Such investments would be subject to stricter rules on issuance.
- Distribution of profits to members, and on dissolution, in proportion to their trade with the Cooperative.
- Payment of limited compensation in the form of interest on investments.

3.13. Under the standard rules (See Appendix 3), the cooperative is required to hold 4 general meetings each year. While membership remains small it makes sense for principal decisions to be taken at general meetings where each member can send a nominated deputy (and other deputies). A board can be elected to take care of any matters arising between general meetings, however the members of the board are named individuals. When the cooperative grows it would make sense to shift more decision making to the board.

### **Startup and early costs for TDIC**

3.14. The costs for setting up the Cooperative are relatively modest. £1000 has already been spent with Cooperative and Mutual Solutions Limited who provided specialist assistance/advice on options for the mutual. There is also a £300 for the Cooperatives UK registration service (This also includes the FCA fee).

3.15. Further time/effort will be needed from the founding members to setup general business processes, open bank accounts and administer things such as the board meetings. There may also some costs associated with brand design and website setup and domain registration. These costs should not exceed £3k.

3.16. There will also be costs associated with legal services which the founding members will commission. This work will include the development of a Duct usage agreement, Fibre rental agreements and 3<sup>rd</sup> party easement/wayleave agreements. This work is estimated at £15k and funding for this is being sought from the DCMS.

### **Requirements for Capital**

3.17. TDIC will have two principal requirements for capital:

- Working capital: Working capital will be needed to help cover fixed operational costs until revenues ramp up to the point where they cover all costs. In TDIC projections (See Appendix 2) the most pessimistic scenarios show a requirement of £125k before break-even point is reached within 5 years. More optimistic (but not unrealistic) scenarios show a requirement of around £66k. The Cooperative could of course out-perform the projections and require less or nothing at all in terms of financial support.
- Fibre capital expenditure: For State Aids reasons TDIC will need to own its own fibre if it's to provide competitive prices for dark fibre to private sector telecommunications companies. It will need a source of capital to pay for this. This could either be used to pay for fibre install, or to buy fibre from public sector organisations that have already installed more than they need. To buy all the spare public sector fibre would cost approximately £120k.

3.18. It is expected that TDIC is likely to need up to £125k working capital and £120k for fibre. TDIC can raise capital in two ways:

- Cooperative equity: This is a special form of equity that is easy to administer under FCA rules. Shares are par value and receive interest at a rate determined by TDIC. This is likely to be around 5% and is unlikely to change unless base rates rise significantly. Cooperative equity can be transferrable (from one member to another) at par value, or 'withdrawable', where TDIC buys the equity back if asked to and if funds allow.
- Loans or bonds: TDIC can borrow money. If it borrows money from a public sector body, it needs to be at a commercial rate to ensure state aid compliance.

3.19. TDIC may look to its private members to source some of this capital. However, it would be helpful if public sector members can assist because it would free up private sector funds to invest in new network capacity. The Council can engage with TDIC on its capital requirements as follows:

- **Working capital:** An investment in shares to fund the working capital requirement of TDIC. Such an investment would be at risk but would attract a good rate of return (5%)
- **Fibre Capital Expenditure:** TMBC has already bought and installed more fibre than it needs. Two options are:
  - a) TDIC pays to install new fibre alongside TMBC fibre using funds it has raised.
  - b) TDIC buys all of the spare fibre from TMBC using funds that TMBC has invested via par value shares. Again, no cash changes hands, but TMBC receives interest on the value of the fibre. Under this arrangement TMBC pays standard TDIC dark fibre rental fees to TDIC and TDIC covers all maintenance costs.

3.20. Option b) is more appropriate as it can be demonstrated that Council is receiving interest on spare capacity and could retain a charge over the fibre asset sold to TDIC so that, should TDIC fail, the fibre would revert to the Council. TDIC would also take over the operational responsibilities for the fibre making ongoing maintenance arrangements simpler.

#### **4. ASHTON OLD BATHS DATA CENTRE**

4.1. In 2013 An Executive Decision was taken which set out the process and costs associated with the temporary move of the Council's Computer Systems from TAC to Rochdale MBC Data Centre. The report detailed a 2 stage approach whereby Rochdale would be used as an interim facility whilst work to identify and construct a new purpose built Data Centre in Tameside was undertaken. The report also acknowledged the requirement for the Council to have a Disaster Recovery facility where key "life and limb" systems could be quickly recovered in the event of a major disaster affecting the main Data Centre.

4.2. With over 100 different systems being used, ICT underpins and supports the strategic objectives of the Council and its partners. The Council's computer systems are currently temporarily hosted in Rochdale MBC's Data Centre, whilst Tameside hospital has 2 Data Centres on its main site, and the Pennine Care NHS Trust have 1 centre in St Petersfield and a second DR Site on Globe Lane Industrial Estate.

4.3. Following an evaluation of sites around Tameside the Ashton Old Baths development has been identified as the most appropriate for the new Data Centre facility. It has excellent connectivity being directly linked to the Tameside Digital Infrastructure. Floor plans and structural surveys indicate that the centre of the Annex building would be large enough, and floors strong enough, for an appropriately sized Data Centre.

4.4. Building a new joint use Data Centre that would house Council, NHS and commercial systems is the most cost effective approach. Continuing with the current hosting arrangements at Rochdale or moving our systems to a commercial data centre would be significantly more expensive in the long run.

#### **Ashton Old Baths Capital Investment (£840k)**

4.5. The council currently pays around £70k a year to Rochdale MBC for hosting its systems. This agreement with Rochdale MBC ended in September 2017 but is currently being rolled forward on a monthly basis. In addition there are 2 high speed data links connecting the Tameside Network to the Rochdale Data Centre. The combined cost of these circuits is £35,330 per year (£16,290 for BT and £19,040 for Virgin).

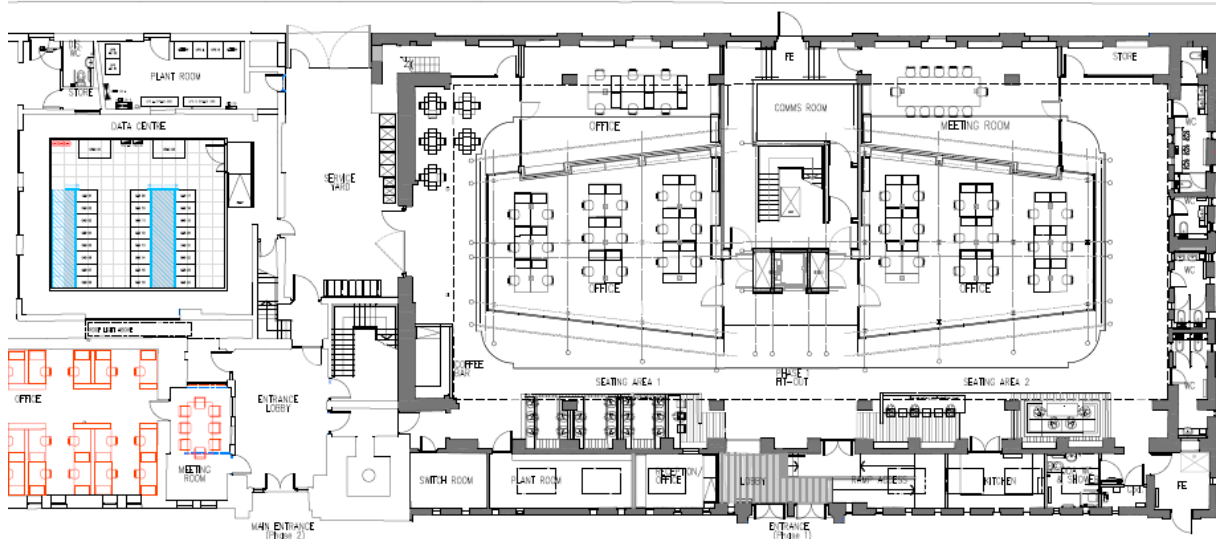
- 4.6. Whilst the interim arrangement with Rochdale has worked relatively well for the last few years the distance from Tameside has caused significant problems in terms of support and maintenance of the systems hosted there. Two separate flooding incidents in Rochdale, which affected their Data Centre operation have highlighted a significant risk to the Council's systems that is beyond our management and control.
- 4.7. Remaining at Rochdale for 5 further years would require significant additional investments, including upgrading the 2 x 1GB resilient data circuits that connect the Rochdale Data Centre to the Tameside Network. These would need replacing with higher speed/higher capacity links matching the rest of the new Tameside wide area network. In addition the Council and Tameside Hospital have agreed a reciprocal arrangement to provide rack space in each other's Data Centre's for Disaster Recovery. This would double the number of racks and electricity usage required in the Rochdale DC.

Location	One Off	Annual	5 year Costs	Link Speed
BT Link Rochdale to Tameside	£19k	£38k	£209k	10gb
Virgin Link Rochdale to Tameside	£24k	£42k	£234k	10gb
Rochdale DC hosting	£0	£70k	£350k	
Rochdale DC DR hosting	£0	£70k	£350k	
	<b>£43k</b>	<b>£220k</b>	<b>£1,143k</b>	

- 4.8. Quotes from commercial Data Centre providers have already been obtained and considered as part of the original Key Decision on the interim Data Centre move. Costs to commercially host our system compared to other options are shown in the table below. This option does not include any DR provision.

Company	Setup costs	5 Year costs	10 year costs
Telecity Group UK Ltd	£103k	£3,100k	£6,100k
Vodafone Group Services Ltd	£179k	£2,204k	£4,230k

- 4.9. In essence the Data Centre would be a separate structure built within the Annex complex. The Data Centre capital funding is in addition to the funding required for the wider refurbishment of the AOB Annex, which is the subject of a separate capital bid and report.



- 4.10. The Data Centre would be a TIER 3 facility. This means it is equipped to provide a high level of resilience with no single point of failure in any of its systems. A new electricity sub-station

would be required to service the Data Centre and phase 2 offices and 2 x generators, 2 x UPS and 2 x Air Conditioning systems would provide resilient operation.

- 4.11. This standard is a requirement for data centres which host government and NHS systems and information. It would be a single storey modular room with capacity for 36 racks. These racks would be used by the Council as its primary Data Centre facility and the NHS as their Disaster Recovery site. The remaining capacity would be used for commercial use by businesses located within AOB and across Tameside, as well as the Tameside Digital Exchange (DX).
- 4.12. This facility has the potential to raise significant income for the council as well as delivering cost benefits based on co-locating computer systems and servers for public sector partners. Bringing together the Councils computer systems into a joint centre, which also hosts the Pennine Care and Hospital systems, will not only save the economy significant amounts in operating costs it will also make the process of sharing information and systems much easier and would represent a significant step in both the development of a single cross economy ICT service.
- 4.13. The Hospital is currently refurbishing 1 of their 2 Data Centres, and once complete have offered to provide hosting space within it for the Council to use as a DR site. The Hospital would then use the AOB facility as their DR site, allowing them to decommission their second Data Centre.
- 4.14. The capital investment required for the new data centre is £840,000. The annual running costs are estimated at £50,000 (£250,000 over 5 years). The running costs for the centre would be found from existing budgets.
- 4.15. As set out in section 3 above, Tameside has successfully bid for £2.2m wave one funding from DCMS to enhance and accelerate the implementation of the Tameside Digital Infrastructure. In addition to the £840k capital investment by the Council a further £300k of DCMS money is to be used to build a Digital Exchange in the Ashton Old Baths Data Centre.

## **5. USE OF TFGM TRAMSIDE DUCTING FROM ASHTON TO PICCADILLY VIA DROYLSDEN**

- 5.1. The route of the Metrolink runs from Ashton Town Centre to Piccadilly via Droylsden Town Centre. Work to extend the Tameside Digital Infrastructure down the track side to Droylsden was approved in Procurement Standing Order Waiver dated 2 October 2015. Once complete, the Pension Fund, Droylsden Library, Concorde Suite and the Council's wide areas Network link between Droylsden BT Exchange and Ashton BT Exchange will be delivered over the new fibre instead of via our current network provider.
- 5.2. At the same time as installing dark fibre cables from Ashton to Droylsden it is also intended to install fibre cables along the entire route of the 3B extension to Piccadilly in the City Centre. From there the Tameside Digital Infrastructure will be linked into the Northern Internet Peering point in Williams House, and in doing so, will provide the Tameside Digital Infrastructure with a direct route onto the internet.
- 5.3. Work to install the fibre optic cable along the entire route is nearing completion and phase one of the installation from Ashton to Droylsden is ready to be lit. All the easement issues along this stretch have been dealt with and the final step before the link can be made live is to sign the Project Agreement with TfGM. The project agreement (Attached as Appendix 7) leases duct access to the Council and allows us to install and operate the fibre optic cable for 20 years. The cost for using this ducting is the same rental figure as the Council will charge the Cooperative for using its ducting and is based on the OFCOM Passive Infrastructure Access (PIA) charges.
- 5.4. Phase 2 of the cable installation, to take the fibre to Piccadilly, should be complete before Christmas 2017. Work to deal with the easement and wayleave issues on this section are underway with Manchester City Council taking the lead on the estates and legal work. The

current Project Agreement with TfGM will need amending at a later date to reflect this additional stretch of connectivity before the fibre can be used.

## **6. DCMS LOCAL FULL FIBRE PROGRAMME**

- 6.1. In August the Council was successful in bidding to become one of the DCMS national exemplar projects. £2.2m funding was requested to help enhance and accelerate the Council's plans to use the public sector investment in fibre infrastructure to attract private sector investment from telecommunications companies, and thereby develop and deliver enhanced digital services to Tameside businesses and homes.
- 6.2. £1.2m will be used to increase capacity on the resilient fibre route and to extend connectivity into key economic/employment Zones around the borough as well as provide fibre to premises for a number of new and existing high density residential housing development including Summers Quay, Longlands Mill and Mosscaire and Cavendish Mill.
- 6.3. £300k will also be used to establish a Digital Exchange. Operated by the Tameside Digital Infrastructure Cooperative (TDIC) the exchange will provide open access to vendor independent rack space in the new Ashton Old Baths Data Centre. This will enable private sector telecommunications companies that are members of the Cooperative to locate equipment at the facility and deliver services to businesses and residents. Eight smaller "Mini Exchanges" will also be installed around the borough to ensure that these new digital services are widely available across the borough.

## **7. RECOMMENDATIONS**

- 7.1. See report front page.

## APPENDIX 1 – TAMESIDE DIGITAL INFRASTRUCTURE COOPERATIVE OPERATING PRINCIPLES.

**The thin layer model:** TDIC is based on a new concept: the ‘thin layer model’. In common with other models the shared infrastructure is passive only. Wholesale access to dark fibre is available to anyone as long as they become a member of the Cooperative. They can then use it to provide retail services, or to create wholesale active services for others to resell.

Unlike other models however, there is no one owner of the shared infrastructure, rather it is made up of separately-owned assets. In general those assets are ducts. The thin layer installs fibre in those ducts, jointly owned and shared by the members of TDIC.

The asset owners retain full rights over their ducts to use as required, but agree to make space available to TDIC for a fee. They may also make duct space (for example a subduct) available to TDIC members that want to install their own fibre. In some cases TDIC will own small sections of duct.

The same principles apply to the nodes and exchange points that provide access to the network and are a vital component of the infrastructure. In general the rooms and facilities where these are located are separately owned. The racks and frames are provided by TDIC. TDIC does not own or operate any active equipment - switches, routers and servers, neither does it provide any active services. This is entirely the responsibility of members.

**A neutral cooperative:** TDIC is a shared endeavour for the mutual interest of its members. That is why it is set up as a cooperative, owned and controlled by the members that contribute assets and use the infrastructure. Membership is open to anyone willing to abide by the rules and pay the fees. Only members can use the infrastructure. Asset holders are also encouraged to become members.

The members of the cooperative each have one vote. This ensures that it remains neutral, serving the interests of all members equally. It collects fees from members that use the infrastructure and it pays fees to the asset holders. Asset holders and investors may also receive a share of any surplus generated by the contribution they have made. Otherwise any surplus is re-invested. The purpose of TDIC is to create a shared infrastructure, not to make a profit.

**How members contribute to and use the infrastructure:** Members can contribute to the infrastructure by providing TDIC with right of access to assets such as ducts and rooms in return for a fee and for a defined period. Members can also invest funds in cooperative<sup>4</sup> equity for an interest-style return.

Members can also rent access to dark fibre, rack space and power for a fee and a defined period<sup>5</sup>. In many cases members will interact with TDIC in more than one way, often both as users and as contributors. The table below summarises the various ways that members can interact with TDIC.

Transaction	Member	Description	Financial	Examples
Duct access for rent	Contributor	TDIC installs cable or subduct	TDIC pays rent to duct owner	TMBC-owned duct Other public duct
Room space for rent	Contributor	TDIC installs racks or frames	TDIC pays rent to room owner	TMBC owns room

<sup>4</sup> Par-value, non-tradable (“withdrawable”), non-voting shares

<sup>5</sup> TDIC may also provide a mechanism for members to rent access to ducting where it is made available by duct owners.

Transaction	Member	Description	Financial	Examples
<b>Invest for return</b>	Investor	Member provides cooperative equity to fund shared infrastructure.	Member earns interest on sum invested	Any member with available funds
<b>Invest for service</b>	Investor	Group of end-users and/or property owner invest to fund new connection through special mechanism	Investors earn interest	Owner and/or tenants of multi-unit building or business park.
<b>Rent dark fibre</b>	User	Member rents dark fibre route from TDIC	Member pays dark fibre rental fee	Public sector IT dept Service provider
<b>Rent rack space</b>	User	Member rents rack space and power from TDIC	Member pays per U and per Amp.	Service provider

**What TDIC will be and do?:** TDIC is a means to an end, not an end in itself. The organisation will be light. To the greatest extent possible, tasks and responsibilities will be delegated to competent members or outsourced. A limited range of products will be made available to members on equal transparent terms and at rates designed to cover costs and ensure sustainability. What is available to one member is available to any member.

Revenues will be used to cover costs, reinvest and to provide rewards designed to attract investment and contribution of assets and effort. TDIC will be incorporated as a cooperative society with limited liability, regulated by the FCA. Members will pay a small membership fee and will each have one vote. The management of the cooperative will be the responsibility of members who will elect a board.

Members investing in the cooperative will receive interest at a rate designed to attract adequate funding and in accordance with FCA rules. Profit may be shared among members according to their trade with the cooperative (as contributors or as members), on terms agreed by the board.

The infrastructure will be transformative, creating new opportunities for members. Thus members should be able to create and provide products and service specifications and terms that are otherwise unavailable, both wholesale and retail. Products will be offered to members on equitable terms and there will be no state aid. We are building a shared infrastructure not a subsidised infrastructure.

**Operations:** The thin layer is so called because the value added by the cooperative is small: its role is to create a whole from parts contributed by members, adding few parts itself. TDIC will make arrangements for its efficient and effective operation following agreed principles:

- Unless a function is best performed at the network level to avoid unnecessary duplication or conflicts, that function will be performed by members. This includes all active service operation and management, and generally all end-user support and billing.
- Functions that are needed to support the whole infrastructure for the mutual benefit of members will be outsourced for an appropriate fee, ideally to a member that has the necessary competence. These include fibre maintenance and repairs, changes, member billing, administration and accounts.
- Functions that are specific to meeting requirements of a particular member should be funded by that member. This might include for example additional security for active equipment, or special SLA on fibre maintenance.



- A competent fibre contractor is engaged to maintain the optical fibre and effect repairs. This will require appropriate access agreements with duct owners.
- Competent contractors are engaged to maintain the DX and DX-PoP infrastructure. The DX maintenance is likely to be shared with other tenants of the Ashton Old Baths data centre. DX-PoP and related maintenance might be performed by the fibre maintainer.
- Finance functions including billing and accounts are outsourced to a competent firm.
- Administrative support functions will be provided by Tameside Council for a fee.
- Agencies are engaged to perform communications and marketing functions as considered necessary.

The cost of all of the above functions will be covered from fees charged to members. Capital funds may be used to fund business and technical development and design when required and TDIC itself will not have any staff of its own.

**Customer relationships, communications and marketing:** TDIC serves the interests of its members and trades only with members. In general members either use the infrastructure to create products and services that are then sold on (retail or wholesale); or members have the resources and competencies to be able to benefit from access to passive infrastructure. TDIC engagement with members and non-members is governed by principles:

All TDIC customers are members. TDIC has no relationship with end users or with the wholesale customers of members (unless they are also members). It is the responsibility of members to market their products and services, and members are free to do so in any way, including in competition with other members. Members are treated equitably, products and services are made available to all members on the same terms and prices.

TDIC shall avoid competing with its own members. Products and prices are designed for members to adapt and resell, including reselling with little or no added value. For example, members may resell dark fibre or colocation.

The terms and prices available to members are known to all members but are not made public. TDIC shall make known the prices it charges members only in response to genuine enquiries from prospective members.

These principles being observed, TDIC:

- May engage in activities aiming to recruit new members, providing information as required.
- May engage in activities designed to raise awareness of the project in the wider business community, including opportunities for members to promote their services.
- Will refer enquiries from interested non-members to members, except when specifically concerning prospective membership.

**Membership:** There are three categories of membership: user members, contributor members and investor members. Many members will be included in more than one category.

#### *User members*

- User members pay to access the TDIC infrastructure. They agree to abide by the rules of TDIC, based on key principles:
- Members agree to act in the mutual interest of the cooperative. New members should not be admitted if there is or is likely to be a major conflict of interest with the aims and objectives of the cooperative. If a conflict of interest arises after a member has been admitted, it may be more appropriate for that member to resign and procure any necessary services from another member.

- Members agree not to use the privilege of membership to act against the interests of other members. Members agree to take care for example, not to interfere with other members' systems, including accidentally.
- Membership is intended for those intending to make significant and sustained use of passive infrastructure, not for small scale or intermittent use. Members are therefore required to pay membership fees and meet minimum requirements set by the cooperative for spend, contribution or investment.

### *Contributor members*

- Asset holders that wish to make assets available for use by the cooperative may do so by joining and becoming contributor members. Contractual relations with contributor members are based on agreed principles:
- Assets are made available to TDIC for a defined minimum period so that user members and investor members can plan ahead.
- Fees paid to contributor members are generally based on standard fees. Contributor members are for example asked to provide duct for a standard fee benchmarked to Ofcom DPA rates. In some circumstances TDIC may agree a different fee to take account of special circumstances.
- TDIC may or may not elect to take up assets made available, however members agree not to withdraw assets once made available for a term.
- Contributor members are expected to grant relevant permissions allowing TDIC maintenance contractors to maintain infrastructure and effect repairs. In special circumstances, contributor members may have their own arrangements for repair of larger assets, and these need to be agreed with TDIC.
- TDIC does not expect exclusive access to assets. Thus for example, duct owners may have their own fibre in duct used by TDIC, or may make space available to others.

### *Investor members*

- Investor members are invited to provide investment funds for a specified return. Investor members will generally also be user members or contributor members.
- Relations with investor members are governed by agreed principles:
  - Investor members can subscribe for “withdrawable” cooperative (non-tradable, par value) equity in return for interest. The interest rate is set by the board.
  - When sufficient funds are available, TDIC will repurchase cooperative equity from members wishing to sell, at the discretion of the board.
  - TDIC will pay a rate of interest sufficient to attract the necessary capital, subject to maximum levels set by FCA. An initial proposed rate is given in Appendix 1.
  - TDIC may also make tradable non-voting shares available to investors at some stage.
- Investor members may provide capital:
  - Enabling TDIC to invest in infrastructure of mutual benefit to members. For example to populate a new spine route with duct.
  - Enabling TDIC to invest in new infrastructure to reach a new market opportunity. For example a new section of access duct to enable a multi tenant building where members could access customers.
  - Enabling TDIC to invest in new infrastructure to meet the needs of the investor. For example where a property owner would benefit from connecting a building.
  - Where investment is made to create new duct infrastructure that is then owned by TDIC, investing members will be able to earn a revenue share. A suggested rate is given in Appendix 1.

### **Products and prices**

The table below summarises the proposed product set to be offered to members with suggested prices and terms. This is provided as an illustration: the final product set will be determined by the board according to a set of limits and principles.

<b>Product</b>	<b>Terms (minimum)</b>	<b>Suggested fee</b>
<b>Tail pair PoP-premises</b>	1 year	£50/month
<b>Spine pair DX-PoP</b>	2 years	£150/month
<b>Spine pair IX-DX</b>	2 years	£400/month
<b>DX Quarter rack</b>	3 months	£150/month
<b>DX-PoP 2U</b>	1 year	£80/month
<b>Power 1 Amp average</b>	1 month	£35/month

### **Contributor and investor member rewards**

The table below gives suggested fees paid to duct contributors, and interest on “withdrawable” shares. This is provided as an illustration.

<b>Contribution</b>	<b>Reward</b>	<b>Term</b>
<b>Subduct</b>	£0.60 - £0.85/m/year	10 years
<b>Equity (par value)</b>	5%	1 year

### **Member fees**

The table below gives suggested member fees and minimum membership requirements. This is provided as an illustration. Members are required to meet at least one of the minimum criteria.

	<b>Amount</b>	<b>Terms</b>
<b>Joining fee</b>	£1,000	Waived for founders
<b>Minimum spend</b>	£500/month	For wholesale users One year delay
<b>Minimum investment</b>	£5,000	For investors
<b>Minimum contribution</b>	50m duct	For asset owners

## APPENDIX 2

### Modelling

The table below gives results from a very simple model for different numbers of tails and providers over a 5-year period.

- Max DX tails: number of pairs direct to the DX at the end of the period (actually 97% - see notes).
- Max DX-POP tails: total number of tail pairs connected to all 6 DX-POPs
- Max providers: number of providers using these tails
- Max DX Providers: total providers including those just in DX

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
<b>Max DX tails</b>	30	20	15	10
<b>Max DXPOP tails</b>	90	60	41	32
<b>Max providers</b>	5	3	3	3
<b>Max providers DX</b>	8	5	5	5
<b>Max popped DXPOPs</b>	13	10	3	0
<b>Duct rent</b>	£0.85	£0.85	£0.85	£0.60
<b>Maintenance</b>	£0.50	£0.50	£0.50	£0.50
<b>Fibre cable install</b>	£16	£16	£16	£16
<b>Interest</b>	6%	6%	6%	6%
<b>Revenue at month 60</b>	£20,690	£12,800	£11,040	£9,400
<b>Net profit at month 60</b>	£5,831	£1,097	£41	£98
<b>Operating B/E at</b>	17	24	31	31
<b>B/E at</b>	21	31	53	58
<b>Capital requirement</b>	£66,772	£104,021	£134,021	£113,547

### Notes

This very simple model uses the following assumptions:

- The number of buildings connected - tails - grows on an s-curve pattern starting at 10% max level on month 1, reach 50% month 24, 90% on month 48. Different max levels are then tested.
- The number of providers using the fibre grows similarly.
- Providers will pop a DX-POP once they have 3 tails or more. The number of tails each provider has in each DX-POP follows a very roughly normal distribution.

- DX providers include additional providers in DX only. Each takes one IX-DX pair and 1 quarter rack.
- Total fibre is 50km
- Half the public sector fibre is purchased at install cost - ie half install cost using the same amount of capital provided by the public sector (ie zero cash transaction) - and interest is then paid on that capital.
- TDIC pays half the maintenance cost.
- Additional direct costs estimated at 20% revenue
- Additional indirect costs estimated at 20% revenue

## APPENDIX 3

### *Rules*

#### Cooperative and Community Benefit Societies Act 2014

#### Rules of

#### TAMESIDE DIGITAL INFRASTRUCTURE COOPERATIVE LIMITED

##### **NAME**

1. The name of the society shall be Tameside Digital Infrastructure Cooperative Limited.

##### **REGISTERED OFFICE**

2. The registered office of the society shall be at.....

##### **INTERPRETATIONS**

3. In these rules:

"**Address**" means a postal address or, for the purposes of electronic communication, a fax number, email address or telephone number for receiving text messages;

"**the Act**" refers to the Cooperative and Community Benefit Societies Act 2014 or any Act or Acts amending or in substitution of it or them for the time being in force;

"**Auditor**" means a person eligible for appointment as a company auditor under Part 42 of the Companies Act 2006;

"**The Board of Directors**" or "**Board**" means all those persons appointed to perform the duties of directors of the society;

"**Board Meeting**" includes, except where inconsistent with any legal obligation a physical meeting, a meeting held by electronic means and a meeting held by telephone;

"**Clear Days**" in relation to the period of notice does not include the day on which the meeting is to be held and the day on which the notice is handed to someone or left at their Address, or the day on which it is sent, is in the process of being sent and is assumed to be delivered;

"**Cooperative**" means the above-named society;

"**Cooperative Principles**" are the principles defined in the International Cooperative Alliance Statement of Cooperative Identity. The principles are those of voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation among Cooperatives and concern for the community;

"**Director**" means a director of the Cooperative and includes any person occupying the position of director, by whatever name called;

"**Document**" includes, unless otherwise stated, any document sent or supplied in electronic form;

"**Electronic Means**" shall include, for example, email, video links and secure authenticated website transactions;

"**Employee**" means anyone over the age of 16 holding a contract of employment with the Cooperative to perform at least eight hours of work per week for the Cooperative;

"**Extraordinary Resolution**" means, unless the context requires otherwise, those decisions requiring an Extraordinary Resolution as detailed under 'Resolutions' in these rules;

"**Founder Member**" means a subscriber to these rules for the purposes of registration;

"**Member**" has the meaning as detailed under 'Membership' in these rules;

"**Office Holder**" means a receiver, administrative receiver, liquidator, provisional liquidator or administrator of a Member of all or substantially all of the Member's assets;

"**Officer**" has the meaning as detailed under 'Officers' in these rules;

"Person" means, unless the context requires otherwise, a natural person, unincorporated body, firm, partnership, corporate body or the nominee of an unincorporated body, firm, partnership or corporate body;

"Registrar" means the Financial Conduct Authority (FCA) or any body that succeeds its function;

"Regulations" has the meaning as detailed under 'Regulations' in these rules;

"Rules" means these Rules;

"Secretary" means any person appointed to perform the duties of the Secretary of the Cooperative;

"Transferable" means shares that are transferable to another Person who also qualifies for membership of the Cooperative in accordance with these Rules;

"User" means those persons admitted into membership under these Rules that wish to use the services of the Cooperative and have agreed to pay any subscription or other sum due in respect of membership for the use of the Cooperative's services for a continuous period as decided by the Board from time to time;

"Withdrawable" means shares with the associated right for the Member to withdraw and receive in return the value of their shares from the Cooperative in accordance with the provisions of these Rules;

"Writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied by Electronic Means or otherwise.

#### **Purpose**

4. The purpose of the Cooperative is to carry out its function as a Cooperative and to abide by the internationally recognised Cooperative values and principles of Cooperative identity as defined by the International Cooperative Alliance. This rule may only be amended by an Extraordinary Resolution.

#### **OBJECTS**

5. The objects of the Cooperative shall be to carry on the business as a Cooperative and to carry on any other trade, business or service and in particular *to enable members to contribute to and use shared digital infrastructure in Tameside and surrounding areas. Digital infrastructure may include optical fibre, server colocation and wireless facilities, and such other equipment that may be required to maintain and operate these effectively*

#### **POWERS**

6. The Cooperative may do all such lawful things as may further the Cooperative's objects and, in particular, may borrow or raise funds for any purpose and on behalf of its Members.

#### **BORROWING**

7. The Cooperative shall have the power to borrow money from its Members and others in order to further its objects providing that the amount outstanding at any one time shall not exceed £10,000,000.
8. The Cooperative shall have the power to mortgage or charge any of its property, including the assets and undertakings of the Cooperative, present and future, and to issue loan stock, debentures and other securities for money borrowed or for the performance of any contracts of the Cooperative or its customers or Persons having dealings with the Cooperative.
9. The rate of interest on money borrowed, except on money borrowed by way of bank loan or overdraft or from a finance house or on mortgage from a building society or local authority, shall not exceed 5% per annum or 2% above the Bank of England base rate at the commencement of the loan, whichever is the greater.
10. The Cooperative may receive from any Person donations or loans free of interest in order to further its objects but shall not receive money on deposit.

#### **Borrowing from Members**

11. In accordance with the Cooperative Principle of member economic participation the interest paid by the Cooperative on money borrowed from Members shall not exceed such rate as is

necessary to attract and retain the capital required to further the Cooperative's objects and purpose.

#### **Financial Services and Markets Act 2000 ACTIVITY**

12. For the avoidance of doubt the Cooperative shall not engage in any activity by virtue of any of these Rules that would require a permission from the Registrar to carry on that activity without first having applied for and obtained such permission.

#### **INVESTMENT OF FUNDS**

13. The Cooperative may invest any part of its funds in the manner set out in Section 27 of the Act.

#### **MEMBERS**

14. The first Members of the Cooperative will be the Founder Members. The Cooperative may admit to membership any individual, corporate body or nominee of an unincorporated body, firm or partnership that wishes to use the services of the Cooperative and has paid or agreed to pay any subscription or other sum due in respect of membership or the use of the Cooperative's services.
15. In accordance with the Cooperative Principle of voluntary and open membership, whilst the Cooperative shall undertake to encourage its users to become Members membership must be voluntary.
16. In accordance with the Cooperative Principle of voluntary and open membership, whilst the Cooperative shall undertake to encourage its stakeholders to become Members, membership must be voluntary and as a result cannot be a condition of employment.

#### **Applications for Membership**

17. No natural person shall be admitted into membership of the Cooperative unless they have attained the age of 16. All those wishing to become a Member must support the objects of the Cooperative and complete an application for membership which shall include an application for at least one share in the Cooperative. Such an application form must be approved by the Directors and the Directors must approve each application for membership.
18. A corporate body which is a Member shall by resolution of its governing body appoint a representative who may during the continuance of her/his appointment be entitled to exercise all such rights and powers as the corporate body would exercise if it were an individual person. Each such corporate body Member shall supply notification in Writing to the Cooperative of its choice of representative.

#### **Member Commitment**

19. All Members agree to attend general meetings and take an active interest in the operation and development of the Cooperative and its business. Members have a duty to respect the confidential nature of the business decisions of the Cooperative.
20. In accordance with the Cooperative Principle of education, training and information, the Cooperative shall provide potential Members with information about what the role of a Member is within the Cooperative and will provide training in the skills required to be a Member and to participate in the operation of the Cooperative.
21. The Cooperative shall provide ongoing education and training in Cooperative values and principles and associated topics. The Cooperative shall support its Members by ensuring that general meetings are accessible and encourage participation.

#### **Termination of Membership**

22. A Member shall cease to be a Member of the Cooperative immediately that they:
  - (a) Are no longer eligible for membership; or
  - (b) Fail to pay the annual subscription (if any) within 3 months of it falling due; or
  - (c) Fail to hold the minimum shareholding; or
  - (d) Resign in Writing to the Secretary; or
  - (e) Are expelled from membership in accordance with these Rules; or
  - (f) Die, are wound up or go into liquidation.

#### **Expulsion from Membership**

23. A Member may be expelled for conduct prejudicial to the Cooperative by an Extraordinary Resolution, provided that the grounds for expulsion have been specified in the notices calling the meeting and that the Member whose expulsion is to be considered shall be given the opportunity to make representations to the meeting or, at the option of the Member, an



individual who is there to represent them (who need not be a Member of the Cooperative) has been allowed to make representations to the general meeting.

24. If on due notice having been served the Member fails to attend the meeting the meeting may proceed in the Member's absence.
- (a) An expelled Member shall be paid the nominal value of shares held by them at the time of expulsion.
  - (b) No Member expelled from membership shall be re-admitted except by an Extraordinary Resolution.

#### **PROCEEDINGS ON DEATH OR BANKRUPTCY OF A MEMBER**

25. Upon a claim being made by:
- (a) The personal representative of a deceased Member; or
  - (b) The trustee in bankruptcy of a Member who is bankrupt; or
  - (c) The Office Holder to any property in the Cooperative belonging to such a Member, the Cooperative shall transfer or pay property to which the Office Holder has become entitled as the Office Holder may direct them.
26. A Member may in accordance with the Act nominate any individual or individuals to whom any of her/his property in the Cooperative at the time of her/his death shall be transferred, but such nomination shall only be valid to the extent of the amount for the time being allowed in the Act. On receiving a satisfactory proof of death of a Member who has made a nomination the Cooperative shall, in accordance with the Act, either transfer or pay the full value of the property comprised in the nomination to the individual or individuals entitled thereunder.

#### **Share Capital**

27. The shares of the Cooperative shall be of the nominal value of £1. The minimum shareholding required of a Member shall be defined as such number of fully paid shares as the Board may determine subject to the Act, or as may be required by a particular offer of shares, or, failing such determination or requirement, shall be one share. *The Society may issue two classes of shares, Class A Shares and Class B Shares.*
28. A Member may apply for shares in tranches of shares which are smaller in number than the minimum shareholding, provided that any Member who does not achieve the minimum shareholding within 12 months of their first payment may, at the discretion of the Board, cease to be a Member. Any person ceasing to be a Member under this rule shall have the value of their shares as at the date on which they ceased to be a Member returned to them and the relevant shares shall be cancelled.
29. Applications for shares shall be made to the Board of the Cooperative who shall allot to Members, upon their admission, the share or shares for which they have applied provided that the total number of shares allotted to any Member shall not exceed the maximum shareholding permitted by law. Shares shall be paid for in full on allotment.
30. If a Member who is required to withdraw from membership under these Rules is unable to transfer their shares and the right to withdraw shares has been suspended, then the nominal value of their share capital shall be converted into loan stock upon such terms as may be agreed between the Board and the Member, or their personal representative or trustee in bankruptcy, or Office Holder provided that such agreement shall require the repayment of the loan within a period not exceeding three years.
31. *Class A shares shall be Withdrawable only in accordance with the provisions of these Rules. Class A shares shall be non-Transferable except:*
- (a) on death or bankruptcy; or
  - (b) (in the case of an unincorporated organisation or partnership), on a change of nominee(s) and only to the new nominee(s).

#### **Withdrawal of share capital**

32. Shares may be withdrawn by Members upon giving three months' notice to the Cooperative (though the Board retain sole discretion to return money paid for them) provided that:
- (a) All withdrawals shall be paid in the order in which the notices were received by the Cooperative.
  - (b) A Member shall not be entitled to withdraw shares which would leave them with less than the minimum shareholding, unless they intend to terminate their membership of the Cooperative.

- (c) The Board may waive the notice required for a withdrawal and may direct payment to be made without notice or on such shorter notice as they consider fit.
  - (d) The Board may, at their sole discretion, suspend the right to withdraw either wholly or partially, and either indefinitely or for a fixed period. The suspension shall extend and apply to all notices of withdrawal which have been received and remain unpaid at the time the Board suspends the right to withdraw. Where the suspension is for a fixed period, such period may be extended from time to time by the Board.
  - (e) During any period when the right of withdrawal has been suspended under the provision immediately above, the shares of deceased Members may, if the Board agree, be withdrawn by their personal representatives upon giving such notice as the Board may require.
  - (f) The amount to be paid to a Member on withdrawal shall be the amount paid up or credited on the shares to be withdrawn, except where the shares are subject to a reduction in their value in accordance with the provisions of these Rules.
  - (g) Interest shall be payable on any share in respect of which a notice of repayment has been given until the date of repayment.
33. Any share withdrawn in accordance with these Rules shall be cancelled.
34. Members may withdraw from the Cooperative by withdrawing all their shares in the Cooperative in accordance with these Rules or, if the right to withdraw has been suspended, by surrendering all their shares to the Cooperative. Upon such surrender the Board may at their discretion pay to the withdrawing Member the amount paid up or credited on the shares surrendered.
35. The Cooperative may deduct such reasonable sum to cover any administrative costs of withdrawal from the monies payable to a Member on the withdrawal of shares in the Cooperative.

#### **Transfer of Share Capital**

36. *Subject to the restrictions imposed by this Rule, any member may transfer all or any of his Class B shares by written instrument in any form approved by the Committee executed by and on behalf of the transferor and the transferee but the transfer shall not be effective until the transferee is entered in the register of members as the holder of the shares transferred.*
37. *The committee at its absolute discretion may decline to register a transfer of shares to a person who is not already a member but if the committee registers the transfer then that person shall be entered into the register of members.*
38. *It shall be possible to convert shares from one class to another class at the absolute discretion of the board.*
39. *Where a member holds shares in more than one class the member shall have one vote*

#### **Reduction in Share Values**

40. If the Cooperative's Auditors (or any independent qualified accountants appointed for this purpose by the Board) certify at any time that the aggregate of the Cooperative's liabilities plus the amount of its issued share capital exceeds its assets, then (unless in the meantime the excess has been removed) the Board may determine that the amount of this excess, or part of it, shall be apportioned among the Members in proportion to (but not beyond) the amount of the nominal value of the shares paid up and held by each Member. This apportionment shall be based on the value of the shares paid up and held by each Member at the close of business on the date of such determination. The value of shares held by each Member shall be reduced accordingly for the purposes of withdrawal of shares, provided that the value of shares held by any Member shall not be reduced below the minimum shareholding as specified in these Rules.

#### **Lien on Shares and Right of Offset**

41. The Cooperative shall have a lien on the shares of a Member for any debt due to it by the Member and may offset any sum standing to the Member's credit with the Cooperative in or towards payment of such debt.

## **GENERAL MEETINGS**

42. The Cooperative shall, within six months of the end of the financial year, hold a general meeting of the Members as its annual general meeting and shall specify the meeting as such in the notices calling it.
43. The business of an annual general meeting shall comprise, where appropriate:
  - (a) The receipt of the accounts and balance sheet and of the reports of the Board and Auditor (if any).
  - (b) The appointment of an Auditor, if required.
  - (c) The election of the Board or the results of the election if held previously by ballot.
  - (d) The application of profits.
  - (e) The transaction of any other business included in the notice convening the meeting.

### **Calling a General Meeting**

44. The Secretary, at the request of the Board of Directors may convene a general meeting of the Cooperative. The purpose of the general meeting shall be stated in the notice of the meeting.
45. The Board of Directors upon an application signed by one-tenth of the total number of Members, or 100 Members, whichever is the lesser, delivered to the registered office of the Cooperative, shall convene a general meeting. The purpose of the general meeting shall be stated in the application for and notice of the meeting. No business other than that stated in the notice of the meeting shall be conducted at the meeting.
46. If within one month from the date of the receipt of the application the Board have not convened a general meeting to be held within six weeks of the application, any three Members of the Cooperative acting on behalf of the signatories to the application may convene a general meeting, and shall be reimbursed by the Cooperative for any costs incurred in convening such a meeting.

### **Notices**

47. The Directors shall call the annual general meeting giving 14 Clear Days' notice to all Members. All other general meetings shall be convened with at least 14 Clear Days' notice but may be held at shorter notice if so agreed in Writing by 90% of the Members.
48. Notices of meetings shall either be given to Members personally or sent to them at their Address or alternatively, if so agreed by the Cooperative in general meeting, notices of general meetings may be displayed conspicuously at the registered office and in all other places of business of the Cooperative to which Members have access. Notices shall specify the date, time and place at which the meeting is to be held, and the business which is to be transacted at that meeting. A general meeting shall not transact any business other than that specified in the notices calling the meeting.
49. A notice sent to a Member's Address shall be deemed to have been duly served 48 hours after its posting. The accidental omission to send any notice to or the non-receipt of any notice by any Person entitled to receive notice shall not invalidate the proceedings at the meeting.
50. All notices shall specify the date, time and place of the meeting along with the general nature of business to be conducted and any proposed resolutions.
51. If the Cooperative has appointed an Auditor in accordance with these Rules they shall be entitled to attend general meetings of the Cooperative and to receive all notices of and communications relating to any general meeting which any Member of the Cooperative is entitled to receive. The Auditor shall be entitled to be heard at any meeting on any part of the business of the meeting which is of proper concern to an Auditor.

### **Quorum**

52. No business shall be transacted at a general meeting unless a quorum of Members is present, including those not present in Person. Unless amended by Extraordinary Resolution, a quorum shall be 3 Members or 25% of the membership, whichever is the greater.

### **Chairing General Meetings**

53. The chairperson of the Cooperative shall facilitate general meetings. If s/he is absent or unwilling to act at the time any meeting proceeds to business then the Members present shall choose one of their number to be the chairperson for that meeting.

### **Attendance and Speaking at General Meetings**

54. A Member is able to exercise the right to speak at a general meeting and is deemed to be in attendance when that Person is in a position to communicate to all those attending the meeting. The Directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it including by Electronic Means. In determining attendance at a general meeting, it is immaterial whether any two or more Members attending are in the same place as each other, provided that they are able to communicate with each other.

55. The chairperson of the meeting may permit other persons who are not Members of the Cooperative to attend and speak at general meetings, without granting any voting rights.

#### **Adjournment**

56. If a quorum is not present within half an hour of the time the general meeting was due to commence, or if during a meeting a quorum ceases to be present, the chairperson must adjourn the meeting. If within half an hour of the time the adjourned meeting was due to commence a quorum is not present, the Members present shall constitute a quorum.

57. The chairperson of a general meeting may adjourn the meeting whilst a quorum is present if:  
(a) The meeting consents to that adjournment; or  
(b) It appears to the chairperson that an adjournment is necessary to protect the safety of any persons attending the meeting or to ensure that the business of the meeting is conducted in an orderly manner.

58. The chairperson must adjourn the meeting if directed to do so by the meeting.

59. When adjourning a meeting the chairperson must specify the date, time and place to which it will stand adjourned or that the meeting is to continue at a date, time and place to be fixed by the Directors.

60. If the meeting is adjourned for 14 days or more, at least 7 Clear Days' notice of the adjourned meeting shall be given in the same manner as the notice of the original meeting.

61. No business shall be transacted at an adjourned meeting other than business which could properly have been transacted at the meeting if the adjournment had not taken place.

#### **Voting**

62. In accordance with the Cooperative Principle of democratic member control, each Member shall have one vote on any question to be decided in general meeting.

63. A resolution put to the vote at a general meeting shall be decided on a show of hands unless a paper ballot is demanded in accordance with these Rules. A declaration by the chair that a resolution has on a show of hands been carried or lost with an entry to that effect recorded in the minutes of the general meeting shall be conclusive evidence of the result. Proportions or numbers of votes in favour for or against need not be recorded.

64. In the case of an equality of votes, whether on a show of hands or a poll, the chairperson shall not have a second or casting vote and the resolution shall be deemed to have been lost.

#### **Paper Ballot**

65. A paper ballot on a resolution may be demanded before or on the declaration of the result of the show of hands by three Members at a general meeting.

66. If a paper ballot is duly demanded it shall be taken in such a manner as the chairperson directs, provided that no Member shall have more than one vote, and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded.

67. The demand for a paper ballot shall not prevent the continuance of a meeting for the transaction of any other business than the question upon which a ballot has been demanded. The demand for a paper ballot may be withdrawn.

#### **Resolutions**

68. Decisions at general meetings shall be made by passing resolutions:

(a) The following decisions must be made by Extraordinary Resolution:

(i) Decisions to expel Members;

(ii) Decisions to dispose of assets of the Cooperative equivalent in value to one-third of the Cooperative's last published balance sheet, as detailed in these Rules;

(iii) Any amendment to the Cooperative's Rules;

(iv) The decision to wind up the Cooperative.

(b) All other decisions shall be made by ordinary resolution.

69. An Extraordinary Resolution is one passed by a majority of not less than 75% of votes cast at a general meeting and an ordinary resolution is one passed by a simple majority (51%) of votes cast.
70. Resolutions may be passed at general meetings or by written resolution. A written resolution may consist of several identical Documents signed by one or more Members.

#### **DIRECTORS**

71. The Cooperative shall have a Board of Directors comprising not less than three Directors.
72. The initial Directors of the Cooperative from registration until the first annual general meeting shall be appointed by the Founder Members.
73. Only Members of the Cooperative who are aged 18 years or more may serve on the Board of Directors.
74. The Board of Directors shall be elected by and from the Cooperative's Members. The maximum number of Directors serving on the Board shall be determined by a general meeting of the Cooperative from time to time.

#### **Retirement Cycle**

75. At the first annual general meeting all Directors shall stand down. At every subsequent annual general meeting one-third of the Board of Directors, or if their number is not a multiple of three then the number nearest to one-third, shall retire from office. The Directors to retire shall be the Directors who have been longest in office since their last election. Where Directors have held office for the same amount of time the Director to retire shall be decided by lot. A retiring Director shall be eligible for re-election.

#### **Co-option of Directors**

76. In addition the Board of Directors may co-opt up to two external independent Directors who need not be Members and are selected for their particular skills and/or experience. Such external independent Directors shall serve a fixed period determined by the Board of Directors at the time of the co-option, subject to a review at least every 12 months. External independent Directors may be removed from office at any time by a resolution of the Board of Directors.
77. The Board of Directors may at any time fill a casual vacancy on the Board by co-option.

Co-opted individuals must be Members of the Cooperative and will hold office as Director only until the next annual general meeting.

#### **Board Education and Training**

78. In accordance with the Cooperative Principle of education, training and information, before accepting a position as Director an individual must agree to undertake training during their first year of office as deemed appropriate by the Cooperative. This training will include information on the roles and responsibilities of being a Director of a society which is also a Cooperative.

#### **Powers and Duties of the Board of Directors**

79. The business of the Cooperative shall be managed by the Board who may exercise all such powers of the Cooperative as may be exercised and done by the Cooperative and as are not by statute or by these Rules required to be exercised or done by the Cooperative in general meeting.
80. All decisions made by a meeting of the Board of Directors or by any person acting as a Director shall remain valid even if it is later discovered that there was some defect in the Director's appointment or that the individual had previously been disqualified from acting as a Director.
81. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for monies paid to the Cooperative shall be signed, drawn, accepted, endorsed, or otherwise executed in such manner as the Board shall from time to time direct.
82. Without prejudice to its general powers, the Board may exercise all the powers of the Cooperative to borrow money and to mortgage or charge its undertaking and property or any part of it and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Cooperative or of any third party.
83. No Regulation made by the Cooperative in general meeting shall invalidate any prior act of the Board which would have been valid had that Regulation not been made.

84. In accordance with the Cooperative Principles of democratic member control and member economic participation, the Board of Directors shall not be entitled to sell or otherwise dispose of assets (in a single transaction or series of transactions) equivalent in value to one-third or more of the total value of the last published balance sheet of the Cooperative without the approval of the Members by Extraordinary Resolution.

#### **Delegation**

85. Subject to these Rules, the Directors may delegate any of the powers which are conferred on them under these Rules to any Person or committee consisting of Members of the Cooperative, by such means, to such an extent, in relation to such matters and on such terms and conditions as they think fit.
86. The Directors may specify that any such delegation may authorise further delegation of the powers by any Person to whom they are delegated.
87. The Directors may revoke any delegation in whole or in part or alter any terms and conditions.

#### **Sub-Committees**

88. A sub-committee to which the Directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of these Rules which govern the taking of decisions by Directors.
89. The Directors may make Regulations for all or any sub-committees, provided that such Regulations are not inconsistent with these Rules.
90. All acts and proceedings of any sub-committee must be fully and promptly reported to the Directors.

### **PROCEEDINGS OF THE BOARD OF DIRECTORS**

#### **Calling a Meeting of the Board of Directors**

91. Any Director may, and the Secretary on the requisition of a Director shall, call a meeting of the Board of Directors by giving reasonable notice of the meeting to all Directors. Notice of any meeting of the Board of Directors must indicate the date, time and place of the meeting and, if the Directors participating in the meeting will not be in the same place, how they will communicate with each other.

#### **Proceedings of a Meeting of the Board of Directors**

92. The Board of Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
93. A Director is able to exercise the right to speak at a meeting of the Board of Directors and is deemed to be in attendance when that person is in a position to communicate to all those attending the meeting. The Directors may make whatever arrangements they consider appropriate to enable those attending a meeting of the Board of Directors to exercise their rights to speak or vote at it including by Electronic Means. In determining attendance at a meeting of the Board of Directors, it is immaterial whether any two or more Directors attending are in the same place as each other.
94. Questions arising at any meetings of the Board shall be decided by a majority of votes. In the case of an equality of votes the status quo shall be maintained and the Board of Directors may choose to refer the matter to a general meeting of the Cooperative.
95. A written resolution, circulated to all Directors and signed by a simple majority (51%) of Directors, shall be valid and effective as if it had been passed at a Board meeting duly convened and held. A written resolution may consist of several identical Documents signed by one or more Directors.
96. The Board of Directors may, at its discretion, invite other persons to attend its meetings with or without speaking rights and without voting rights. Such attendees will not count toward the quorum.

#### **Quorum**

97. The quorum necessary for the transaction of business at a meeting of the Board of Directors shall be 50% of the Directors or 3 Directors, including those not present in person, whichever is the greater.
98. If at any time the total number of Directors in office is less than the quorum required, the Directors are unable to take any decisions other than to appoint further Directors or to call a general meeting so as to enable the Members to appoint further Directors.

#### **Chairing Board Meetings**

99. The chairperson shall facilitate meetings of the Board of Directors. If s/he is absent or unwilling to act at the time any meeting proceeds to business then the Directors present shall choose one of their number to be the chairperson for that meeting.

**Declaration of Interest**

100. A Director shall declare an interest in any contract or matter in which s/he has a personal, material or financial interest, whether directly or indirectly, and shall not vote in respect of such contract or matter, provided that nothing shall prevent a Director voting in respect of her/his terms and conditions of employment or any associated matter.

**Expenses**

101. The Cooperative may pay any reasonable expenses which the Directors properly incur in connection with their attendance at meetings or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the Cooperative.

**Termination of a Director's Appointment**

102. A person ceases to be a Director of the Cooperative as soon as:
- (a) That person ceases to be a Member of the Cooperative (unless they are a co-opted external independent Director);
  - (b) Where the individual is the representative of a Member organisation, that Member organisation removes their endorsement of that representative;
  - (c) Where the person is the representative of a Member organisation that Member organisation ceases to exist;
  - (d) That person resigns from office in Writing to the Secretary of the Cooperative, and such resignation has taken effect in accordance with its terms;
  - (e) That person is removed from office by an ordinary resolution of the Cooperative in general meeting, the notices for which specified that the question of the Director's removal was to be considered;
  - (f) That person is prohibited from being a Director by law;
  - (g) That person is disqualified from acting as a trustee by virtue of sections 178 and 179 of the Charities Act 2011 (or any statutory re-enactment or modification of those provisions);
  - (h) in the written opinion, given to the Society, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a Director and may remain so for more than three months;
  - (i) A bankruptcy order is made against that person;
  - (j) A registered medical practitioner who is treating that person gives a written opinion to the Cooperative stating that the person has become mentally incapable of acting as a Director and may remain so for more than three months;
  - (k) By reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have.

**OFFICERS**

103. The Board shall elect from among their own number a chairperson and Secretary and such other Officers as they may from time to time decide. These Officers shall have such duties and rights as may be bestowed on them by the Board or by law and any Officer appointed may be removed by the Board. A serving Officer who is not re-elected to the Board at the annual general meeting shall nevertheless continue in office until the first Board meeting following the annual general meeting.

**DISPUTES**

104. In the event of a dispute between the Cooperative or its Board and a Member of the Cooperative or a former Member, such dispute shall be referred to an independent arbitrator whose appointment is acceptable to both parties to the dispute or in the absence of agreement to be nominated by the Secretary General of Cooperatives UK (or any role or body that succeeds to its function). The decision of such an arbitrator shall be binding. In the event that a dispute cannot, for whatever reason, be concluded by reference to an arbitrator, the matter may be referred to the county court (or in Scotland, to the sheriff). Any Person bringing a dispute must, if so required, deposit with the Cooperative a reasonable sum (not

exceeding £100) to be determined by the Board. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

#### **REGULATIONS**

105. The Cooperative in a general meeting, or the Board of Directors, may from time to time make, adopt and amend such Regulations in the form of bye-laws, standing orders, secondary rules or otherwise as they think fit for the management, conduct and regulation of the affairs of the Cooperative and the proceedings and powers of the Board of Directors and sub-committees. Such Regulations (if any) shall be made available to all Members. No Regulation shall be made which is inconsistent with these Rules or the Act. All Members of the Cooperative and the Board of Directors shall be bound by such Regulations whether or not they have received a copy of them.

#### **LIABILITY OF MEMBERS**

106. The liability of a Member is limited to the amount of their shareholding.

#### **PAYMENT OF INTEREST ON SHARE CAPITAL**

107. To paying interest on issued share capital at such rate or rates as determined by the Board from time to time, but not exceeding *6 per cent per annum or 2 per cent above the Bank of England base rate, whichever is the greater*,

#### **APPLICATION OF PROFITS**

108. Any profits of the Cooperative shall be applied as follows in such proportions and in such manner as may be decided by the Cooperative at the annual general meeting:
- (a) To a general reserve for the continuation and development of the Cooperative;
  - (b) To paying dividends to Members, either equally or in accordance with some other equitable formula which recognises the relative contribution made by each Member to the business of the Cooperative;
  - (c) In accordance with the Cooperative Principle of concern for community, to make payment for social, Cooperative and community purposes.

#### **AMALGAMATION, TRANSFER OF ENGAGEMENTS AND CONVERSION**

109. The Society may, by special resolution passed in the way required by section 111 of the Act, amalgamate with, or transfer its engagements to another registered society subject to at least the same degree of restriction on the distribution of profits and assets as imposed on this Society by virtue of these Rules. The Society may also accept a transfer of engagements and assets by a resolution of the Board or by general meeting.
110. The Society may, by a special resolution passed in a way required by section 113 of the Act, amalgamate with, or transfer its engagements to, or convert to a company, subject to at least the same degree of restriction on the distribution of profits and assets as imposed on this Society by virtue of these Rules. In relation to calling a general meeting for the purpose of such resolution, the following provisions shall apply:
- (a) The Cooperative shall give to Members not less than two months' notice of the meeting.
  - (b) Notice of the meeting shall be posted in a prominent place at the registered office and at all trading premises of the Cooperative to which Members have access.
  - (c) The notice shall be accompanied by a separate statement setting out for Members:
    - (i) the reasons for the proposal;
    - (ii) whether the proposal has the support of the Board of the Cooperative;
    - (iii) what alternative proposals have been considered, and whether they are viable;
    - (iv) details of the number of shares in the Cooperative held by Members of the Board, and persons connected with them;
    - (v) a recommendation by reputable independent financial advisors that the Members should support the proposal rather than any alternative proposal.
  - (d) Where the separate statement is contained in another Document, information shall be provided in the notice specifying where Members can obtain a copy of the Document.

#### **DISSOLUTION**

111. The Society may be dissolved:
- (a) in accordance with section 119 of the Act by an instrument of dissolution;
  - (b) in accordance with section 123 of the Act in pursuance of a winding up order or by a resolution made or passed as directed in regard to companies by the insolvency Act 1986; or



- (c) in accordance with section 125 of the Act, after administration and administrator issues a notice to dissolve the society without prior winding-up.
112. The Cooperative is a co-ownership enterprise. If on the winding up or dissolution of the Cooperative any of its assets remain to be disposed of after its liabilities are satisfied, these assets may be distributed among the Members and those persons who were Members at any time during the six years prior to the date on which the Cooperative decides to wind up. Such assets shall be distributed either equally or in accordance with some other equitable formula which recognises the relative contribution made by each Member and past Members to the business of the Cooperative during the six years prior to the winding up or dissolution of the Cooperative. If such residual assets cannot be distributed in this manner they shall be transferred to a common ownership Cooperative or to Cooperatives UK (or any body that succeeds to its function).

## **ADMINISTRATIVE ARRANGEMENTS**

### **Means of Communication**

113. A Member may provide their consent to receive communications from the Cooperative by Electronic Means.
114. A notice sent to a Director's Address shall be deemed to have been duly served 48 hours after its posting. A Director may agree with the Cooperative that notices or Documents sent to her/him in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

### **Seal**

115. If the Cooperative has a seal, it shall only be used by the authority of the Board of Directors acting on behalf of the Cooperative. Every instrument to which the seal shall be attached shall be signed by a Director and countersigned by a second Director or the Secretary.

### **Registers**

116. The Board of Directors shall ensure accurate registers are maintained which shall include a register of Members, a register of Directors and a register of Officers.

#### **Register of Members**

117. The Board shall ensure that the register is maintained in accordance with the Act and that the particulars required by the Act are available for inspection and accessible without the need to disclose other particulars contained in the register.

#### **Register of Directors and Officers**

118. The Cooperative shall maintain a register of Directors and Officers which shall include the following particulars:
- (a) Name of the Director;
  - (b) Address of the Director;
  - (c) The date on which they assumed office;
  - (d) The date on which they vacated office; and
  - (e) The position held by a Director if s/he is also an Officer and the date on which the Director assumed and vacated his/her Officer position.

### **Amendments to Rules**

119. Any of these Rules may be rescinded or amended or a new rule made by an Extraordinary Resolution at a general meeting of which 14 Clear Days' notice has been given, such notice to include details of the change(s) to be proposed at that meeting. No amendment of Rules is valid until registered by the Registrar. When submitting the rule amendments for registration the Secretary may at their sole discretion accept any alterations required or suggested by the Registrar without reference back to a further general meeting of the Cooperative.

### **Copies of the Cooperative's Rules**

120. A copy of these Rules and any amendments made to them shall be given free of charge to every Member upon admission to membership and shall be provided to any other person on demand and on payment of the statutory fee chargeable for the time being in force.

### **Minutes**

121. The Cooperative shall ensure that minutes are kept of all:
- (a) Proceedings at general meetings of the Cooperative; and
  - (b) Proceedings at meetings of the Board of Directors and its sub-committees which include names of the Directors present, decisions made and the reasons for those decisions.

### **Annual Return**

122. Every year and within the period prescribed by the Act, the Secretary shall send the annual return in the prescribed form to the Registrar. The annual return shall be accompanied by:
- (a) A copy of the Auditor's report on the Cooperative's accounts for the period covered by the annual return or a copy of such other report (if any) as is required by statute for such a period; and
  - (b) A copy of each balance sheet made during that period and report of the Auditor or other appropriate person as required by statute on that balance sheet.
123. The Cooperative shall on demand supply free of charge to any Member or any person with an interest in the funds of the Cooperative a copy of the latest annual return together with a copy of the Auditor's report on the accounts and balance sheet contained in the annual return and the Auditor's report (if any).
124. The Cooperative shall at all times keep a copy of the latest balance sheet of the Cooperative together with a copy of the corresponding Auditor's report (if any) hung up in a conspicuous place at the registered office and displayed on the Cooperative's website (if any).

### **Audit**

125. Unless the Society meets the criteria set out in section 83(2) of the Act or may disapply the audit requirement in accordance with section 84 of the Act, the Board shall in each financial year appoint an Auditor as required by section 83(1) of the Act, to audit the Society's accounts and balance sheet for the year. This provision also applies if the Society is in its first financial year.
126. The following persons shall not be appointed as Auditor of the Cooperative:
- (a) An Officer or Employee of the Cooperative;
  - (b) A person who is a partner or employee of, or who employs, an Officer of the Cooperative.
127. The Board may appoint an Auditor to fill a casual vacancy occurring between general meetings.
128. An Auditor for the preceding financial year shall be re-appointed as Auditor of the Cooperative for the current financial year unless:
- (a) A decision has been made by the Board to appoint a different Auditor or expressly decided that s/he shall not be re-appointed; or
  - (b) S/he has given notice in writing to the Secretary of her/his unwillingness to be re-appointed; or
  - (c) S/he is ineligible for appointment as Auditor of the Cooperative for the current financial year; or
  - (d) S/he has ceased to act as Auditor of the Cooperative by reason of incapacity.
129. Any ordinary resolution of a general meeting of the Cooperative either to remove an Auditor from office or to appoint another person as Auditor shall not be effective unless notice of the proposed resolution has been given to the Cooperative at least 28 days prior to the meeting at which the resolution is to be considered. At least 14 days' notice of such resolution must then be given to Members of the Cooperative in the manner prescribed in these Rules and in Writing to the Auditor(s).

### **Social Accounting and Reporting**

130. In addition to any financial accounts required by the Act, the Members may resolve to undertake an account of the activities of the Cooperative which will endeavour to measure its Cooperative, social and environmental performance using whatever methodology the Members deem appropriate. Following the completion of such an account the Cooperative shall report any findings to its Members and other stakeholders.

### **Indemnity and Insurance**

131. Subject to the following rule, any Director or former Director of the Cooperative may be indemnified out of the Cooperative's assets against:
- (a) Any liability incurred by that Director in connection with any negligence, default, breach of duty or breach of trust in relation to the Cooperative;
  - (b) Any liability incurred by that Director in connection with the activities of the Cooperative in its capacity as a trustee of an occupational pension scheme;
  - (c) Any other liability incurred by that Director as an Officer of the Cooperative.

132. The above rule does not authorise any indemnity which would be prohibited or rendered void by any provision of law.
133. The Directors may decide to purchase and maintain insurance, at the expense of the Cooperative, for the benefit of any Director or former Director of the Cooperative in respect of any loss or liability which has been or may be incurred by such a Director in connection with their duties or powers in relation to the Cooperative or any pension fund or employees' share scheme of the Cooperative.

<b>Signatures of Founder Members</b>	<b>Full Names of Founder Members in BLOCK CAPITALS (no initials)</b>
1.	
2.	
3.	
<b>Signature of Secretary</b>	<b>Full Name of Secretary in BLOCK CAPITALS (no initials)</b>
1.	

**APPENDIX 4 – RISK REGISTER**

Risk Description	Description of Impact	Controls in Place to Mitigate Risk	Evaluation of Controls	Impact score	Likelihood score	Risk Rating (Impact x Likelihood)	Risk Owner	Proposed Actions - include resulting benefit and costs	Responsible Officer	Target Date for Proposed Action
Fibre installation along Tramside to Droylsden is delayed beyond October 17	Lack of fibre to Droylsden will mean TMBC staff cannot move into the refurbished Concord Suite offices in Jan 18	Fortnightly meetings with TFGM, Telent (TFGM fibre installer), and Tameside legal in place.	<b>effective</b>	3	2	6	Tim Rainey			
Connection to IX Manchester by March 18 is delayed because easement and wayleave issues on fibre route in tramside ducting from Clayton to New Islington are not resolved by Manchester City Council	If the direct fibre connection from the Tameside Digital Infrastructure to IX Manchester is not in place ISP and telco's popping the Tameside network will not be able to access competitive internet transit/back haul services.	Regular meetings with TFGM, Eddie Smith (Strategic Director at Manchester City Council).	<b>Ineffective</b>	5	5	25	Tim Rainey	An alternative option involving road dig and new ducting from Clayton Hall Tram stop to a Loop chamber at the Eithad Stadium has been developed and costed. This will provide a more straight forward road based route which avoids the using tramside ducting around the complex third party land situated around the Veladrome and Eithad area. This additional work would cost circa £120k but would mitigate having to pay easement charges to third party land owners.	TR	11/01/17
Existing ducting across M67 road bridge at Hyde is owned by Open Reach. Delays in identifying an appropriate alternative fibre route across M67	The fibre network ring will not be complete and will not be resilient.	TMBC Engineers discussing options with Highways England.	<b>effective</b>	5	3	15	John Taylor	Options for getting fibre across M67 roadbridge at Hyde using external containment being discussed with Highways England.	TR	12/01/17
A legal challenge is launched on the basis that the fibre investment made by the public sector State is actually state aid which the Cooperative operating vehicle benefits from.	A state aid challenge would delay the commercialisation of the Tameside Digital Infrastructure.	Specialist external advice on state aid implications of the project are being updated and revised to reflect the increased levels of public sector investment.	<b>effective</b>	5	3	15	Tim Rainey	A brief has been issued to PWC to undertake a review of the project with a view to confirming that the project does not contravene State Aid regulations on the MEOP basis. This work once complete will be available to others looking to undertake similar works. The costs of the review are circa £50k	TR	11/01/17
The Cooperative operating vehicle is not a commercially attractive proposition and doesn't attract private sector Telco's and ISP's as members	A lack of buy-in from private sector telco's and ISP's would reduce the both the competitiveness of the services being delivered across the network and would lead to less private sector investment.	Soft Market testing has already been undertaken to test the proposition with the market. A series of meetings with a number of alternative ISP and Telco's has also taken place to ensure the proposed operating vehicle is fit for purpose.	<b>effective</b>	5	2	10	Tim Rainey	DCMS funding is being used to accelerate the delivery of the DX and Mino DX's across the network and to extend ducting and fibre into business areas.	TR	12/01/17
The completion of the ducting and fibre installation for the figure of 8 ring is delayed	A delay in completing the fibre ring beyond March 18 would have significant financial implications in terms of having to extend the existing WAN services being delivered by Updata for a further 6 month minimum period.	Weekly progress meeting with Engineers on progress.	<b>effective</b>	5	2	10	John Taylor	5 teams working on different sections of the network at the same time.	TR	04/01/18
New electricity sub station for Ashton Old Baths Data Centre is delayed	Without a new sub station there is not sufficient power to operate the Data Centre	Tameside Engineers have already met with Electricity North West to request the new sub station.	<b>effective</b>	5	1	5	Roger Greenwood			
Construction of Data Centre at AOB is delayed due to funding delays for the phase 2 office refurbishment.	A bid to the Cultural Regeneration fund has been submitted for complete the refurbishment of the phase 2 office space. A decision on this application will not be known until March 18. If construction of the DC is linked to the office refurbishment scheme it would cause a significant delay to the DC completion date which is Sept 18.	Discussions ongoing with the LEP and Architects to ensure the DC element of the project can be delivered in advance of the office refurbishment.	<b>effective</b>	5	2	10	Roger Greenwood	The phase 2 refurbishment works will be undertaken in 2 phases using the same architects and contractors. This means the DC works can progress ahead of the office refurbishment.	TR	01/01/18

## Appendix 5 Site List

### 40GB Ring Primary Sites

Dukinfield Town Hall	King Street, Dukinfield	SK16 4LA	Tameside Met Boro Council, Town Hall, King St ,Dukinfield
Hyde Town Hall	Market Street, Hyde	SK14 1AL	Town Hall, Market Street ,Hyde
Tame Street Depot	Tame Street, Stalybridge	SK15 1ST	Transport And Cleansing Dept, Tame St ,Stalybridge
Denton Town Hall	Market Street, Denton	M34 2AP	Town Hall, Market Street Denton, Manchester
Tameside Central Library	Ashton Under Lyne	OL6 7SG	Tameside Central Library, Old Street , Ashton Under Lyne
Concorde Suite	Droylsden	M43 6SF	Concord Suite, Manchester Rd Droylsden, Manchester
Tameside General Hospital	Ashton Under Lyne	OL6 9RW	Comms Room, Tameside General Hospital, Fountain St , Ashton
GMPF	Droylsden	M43 6SF	Guardsmen Tony Downes House, 5 Manchester Road, Droylsden
AOB	Ashton Under Lyne	OL6 7TW	Stamford St W, Ashton-under-Lyne OL6 7TW
VT2 (New TMBC Admin Building)	Ashton Under Lyne	OL6 6DL	TBC

### 10GB connections

Clarence Arcade	Stamford Street, Ashton	OL6 7PT	Creative Training Ltd, Clarence Arcade Stamford St , Ashton Under Lyne
Ashton Market Hall	Ashton Under Lyne	OL6 6BZ	Market Hall, Bow Street , Ashton-Under-Lyne
Ryecroft Hall	Manchester Road, Audenshaw	M34 5ZJ	5, Kershaw Grove Audenshaw, Manchester
Hyde Market Hall	Market Hall, Hyde	SK14 2QT	Tameside Mbc, Market Hall, 20, The Mall, Hyde
Dukinfield Crematorium	Hall Green Road, Dukinfield	SK16 4EP	Cemetery House, Hall Green Rd , Dukinfield
MSCP ASHTON	BROOKDALE AVE	OL6 7UD	4, Brookdale Avenue , Ashton Under Lyne
Droylsden Library	Manchester Road, Droylsden	M43 6EP	Droylsden Library, Manchester Road Droylsden, Manchester
Dukinfield Library	Concord Way, Dukinfield	SK16 4DB	Dukinfield Library, Concord Way , Dukinfield
Stalybridge Library	Trinity Street, Stalybridge	SK15 2BN	Stalybridge Public Library, Trinity St , Stalybridge
Denton Library/Festival Hall	Peel Street, Denton	M34 3JX	Festival Hall, Peel Street, Denton, Manchester, Lancashire,
Patterson and Rothwell	Ashton Under Lyne	OL7 0QQ	Margaret Street, Ashton-under-Lyne, Tameside, OL7 0QQ
Ashton Old Town Hall	Ashton Under Lyne	OL6 6DL	Market Place, Ashton-under-Lyne, Tameside OL6 6DL
Denton Centre	Acre Street, Denton	M34 2BW	Services For Children & Young, Acre Street , Manchester
Stalybridge Civic Hall	Trinity Street, Stalybridge	SK15 2BN	Stalybridge Civic Hall, Trinity Street , Stalybridge

## Appendix 6 Dark Fibre Details

Ref	Description	Status	DCMS Funding	TMBC Funding	Metrolink	Total Ducting Available	Fibre Laid	Access Points	Premises Passed on completion =<200m				Completion Date
									Residential	Business	Public & medical	Educ	
		Ongoing	£1,179,000	£1,366,000	£120,000	KMs ducting	Pairs	Number					
1	Pink Route - Tameside General Hospital to Stalybride	Ongoing		£179,839		2320	144	91	2239	199	26	1	Nov-17
2	Blue Route - Ashton Town Centre to TGH	Ongoing		£103,097		1330	144	24	8493	691	67	10	Oct-17
3	Red Route - Stalybride to Dukinfield	Ongoing		£318,594		4110	144	52	3177	253	34	4	Dec-17
4	Light Blue Route - Hyde to Denton	Ongoing		£242,472		3128	144	50	2070	190	18	4	Feb-18
5	Green Route - Dukinfield Globe Lane to Hyde	Ongoing		£240,534		3103	144	139	2343	467	30	3	Dec-17
6	Orange Route - Denton to Audenshaw	Ongoing		£281,463		3631	144	50	3134	50	9	6	Apr-18
7	TMBC funded - Ashton to Droylsden (Metrolink)	Complete			£64,000	4500	96	3	3668	101	17	4	Oct-17
	TMBC funded - Droylsden to Piccadilly	Ongoing			£56,000	5900	48	2	0	0	0	0	Nov-17
8	DCMS funded Park Road	Ongoing	£63,850			628	96	19	181	118	0	0	Dec-17
9	DCMS funded Whitelands Road	Ongoing	£152,597			1700	96	23	568	121	0	1	Dec-17
10	DCMS funded Fifth Ave	Ongoing	£114,097			1300	96	21	106	143	2	1	Jan-18
11	DCMS funded Spur to Shepley	Ongoing	£57,175			523	96	16	54	46	0	0	Mar-18
12	DCMS funded Newton Business Park	Ongoing	£212,228			2277	96	41	2252	271	3	2	Mar-18
13	DCMS funded Northend Road	Ongoing	£98,014			1056	96	24	726	100	0	0	Jan-18
14	DCMS funded St. Pauls Trading Estate	Ongoing	£95,494			1090	96	19	1524	94	15	2	Dec-17
15	DCMS funded Turner Lane	Ongoing	£35,103			340	96	10	567	99	1	0	Jan-18
16	DCMS funded Windmill Lane	Ongoing	£44,789			439	96	14	552	434	0	0	Apr-18
17	DCMS funded Oldham Street	Ongoing	£80,635			786	96	22	139	307	0	0	Jan-18

	DCMS Funded Cavendish Mill	Ongoing	£5,700			35	8	2	52	0	0	0	Jan-18
	DCMS funded Summers Quay	Ongoing	£27,200			270	8	4	67	0	0	0	Dec-17
	DCMS funded MossCare	Ongoing	£9,320			70	8	4	40	0	0	0	Dec-17
18	DCMS Funding Clarendon Trading Estate	Ongoing	£74,715			628	96	23	267	28	1	1	Feb-18
19	DCMS Funding Stockport Road / Guide Bridge	Ongoing	£230,366			2360	96	57	1741	114	9	3	Mar-18
			<b>£1,301,284</b>	<b>£1,366,000</b>	<b>£120,000</b>	<b>41524</b>		<b>710</b>	<b>33960</b>	<b>3826</b>	<b>232</b>	<b>42</b>	

**APPENDIX 7 – TfGM Project Agreement**

Dated November 2017  
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PROJECT AGREEMENT

relating to

Phase 1 of Tameside Digital Infrastructure Project

between

**TRANSPORT FOR GREATER MANCHESTER**

and

**TAMESIDE METROPOLITAN BOROUGH COUNCIL**

**TfGM  
Legal Department  
2 Piccadilly Place  
Manchester  
M1 3BG**



**THIS AGREEMENT** is dated the        day of November 2017

## **PARTIES**

- (1) **TRANSPORT FOR GREATER MANCHESTER** of 2 Piccadilly Place Manchester M1 3BG (**TfGM**).
- (2) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Dukinfield Town Hall King Street Dukinfield Tameside SK16 4LA (**TMBC**).

## **BACKGROUND**

- (A) TfGM is a Transport Executive within the meaning of the Transport Act 1968 and pursuant to The Greater Manchester Combined Authority Order 2011 (S.I. 2011 No.908) is an executive body of the Greater Manchester Combined Authority.
- (B) TfGM is the owner of the light rapid transit system known as Metrolink (**Metrolink**) and owns certain freehold and leasehold property and other interests in land forming part of the Metrolink system.
- (C) TMBC are the metropolitan district council for the local government area of Tameside through which that part of the Metrolink system between Ashton-under-Lyne and Droylsden is situated.
- (D) TMBC are desirous of utilising spare capacity within a Metrolink track side duct in connection with its digital infrastructure project known as the Tameside Digital Infrastructure Project (**Project**).
- (E) TfGM has therefore agreed where possible to grant TMBC a lease of a Metrolink trackside Duct running through its Transport Land on the terms contained in this Agreement. Further where the Metrolink track side ducts runs through the public highway or through land owned by third parties or through the Ashton Moss Easement Area in which TfGM only have the benefit of a freehold easement then TfGM has agreed to grant a licence or a deed of grant for a term of years (as appropriate).
- (F) TMBC have proposed the creation of a co-operative organisation (Tameside Digital Infrastructure Co-operative TDIC) to allow sharing of assets between the TMBC and its partners as part of the Project but for the avoidance of doubt TfGM will not be a part of any such co-operative.
- (G) The parties to this Agreement (**Parties**) have agreed to enter into this Project Agreement to document their respective rights and obligations in relation to the Project the terms of which are set out below.
- (H) In so doing the Parties hereby agree to adhere to the Project Principles.
- (I) The Parties acknowledge that TfGM is in the process of acquiring certain areas of land on which the Metrolink track side ducts are situated and in respect of these plots it will not be possible to grant a lease of a Duct until such point in time as TfGM has acquired these areas.
- (J) Each lease granted by TfGM to TMBC shall contain an agreement between the TfGM and TMBC that the provisions of sections 24-28 of the Landlord and Tenant Act 1954 will be excluded in relation to the tenancy to be created by the lease.
- (K) The obligation on TfGM to grant leases or deeds of grant or licences (as appropriate) is conditional upon TMBC obtaining the Consent in a form satisfactory to TfGM.

## **AGREED TERMS**

### **1. Interpretation**

***The following definitions and rules of interpretation apply in this agreement***

**Act of Insolvency**

- (a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of TMBC or any guarantor;
- (b) the making of an application for an administration order or the making of an administration order in relation to TMBC or any guarantor;
- (c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to TMBC or any guarantor;
- (d) the appointment of a receiver or manager or an administrative receiver in relation to any Transport Land or income of TMBC or any guarantor;
- (e) the commencement of a voluntary winding-up in respect of TMBC or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- (f) the making of a petition for a winding-up order or a winding-up order in respect of TMBC or any guarantor;
- (g) the striking-off of TMBC or any guarantor from the Register of Companies or the making of an application for the Tenant or any guarantor to be struck-off;
- (h) TMBC or any guarantor otherwise ceasing to exist (but excluding where TMBC or any guarantor dies); or
- (i) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against TMBC or any guarantor.

***Ashton Moss Consent: the consent of Stayley to the Project in so far the Project relates to the Ashton Moss Easement Areas***

***Ashton Moss Easement Areas: the two areas over which easements were granted to TfGM by Stayley and being Plots 1001 and Pond 2 dated 1 August 2013 and made between (1) Stayley Developments Limited and (2) Transport for Greater Manchester***

***Assets: all assets and rights to enable the TMBC to own operate and maintain the Digital Infrastructure Network including the Fibre Cable and breakout chambers but excluding the Metrolink and the Metrolink Apparatus***

**Break-Out Chambers: the chambers at Ashton Tram Terminus, New Charter Trust Head Quarters, Droylsden Concorde Suite, Droylsden Greater Manchester Pension Head Quarters all being situate on land owned by TMBC.**

**Cable Installation Fee: £95,000 (ninety five thousand pounds) plus VAT plus any increased costs imposed by Telent in respect of the Cable Installation Fee**

**Cable Plan: a plan showing the Fibre Cable route edged red**

**CDM Regulations:** the Construction (Design and Management) Regulations 2015 (*SI 2015/51*).

**Charge: the base charge exclusive of VAT payable under a Deed of Grant and calculated in accordance with a Deed of Grant.**

**Charge Commencement Date: the Effective Date**

**Commercially Sensitive Information:** the information (if any) listed in schedule 10 comprising the information of a commercially sensitive nature relating to TfGM or TMBC, its intellectual property rights or its business or which the TfGM and TMBC has indicated to the each other that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Conditions:** part 2 of the Standard Commercial Property Conditions (Second Edition).

**Confidential Information:** information that ought to be considered as confidential (however it is conveyed on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998; and Commercially Sensitive Information

**Connection:** a connection of the Fibre Cable within the Duct between a Break-Out Chamber and a Pre-Approved Building

**Connection Point:** the point on the Duct and Fibre Cable at which a Connection is made as agreed between the Parties

**Connection Route:** the route of a Connection

**Core-IS:** TMBC's fibre installation contractor being Core Integrated Solutions of 6 Legrams Terrace Field head Business Centre Bradford BD7 1LN

**Deeds of Grant:** deeds of grant for a term of years in the agreed form annexed to this Agreement at Schedule 7B

**Deeds of Grant Completion Date:** the date of this Agreement

**Deed of Grant Period:** a period of twenty (20) years from and including the Effective Date

**Duct:** the Duct demised by the relevant Lease, and/or Licence Agreement and/or Deed of Grant and shown by a red line on the Plans

**Effective Date:** [ ] October 2017

**Environmental Information Regulations:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

**Expiry Date:** the date being twenty years from and including the Effective Date

**Event of Default:** any of the events set out in clause 11.

**Fibre Cable:** the external 96 fibre optic cable to be laid in the Duct

***FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.***

**Force Majeure Event:** the occurrence after the Effective Date of war, civil war, armed conflict or terrorism, nuclear, chemical or biological contamination unless the source of the contamination is as a result of any act by TMBC or any breach by TMBC of the terms of this Agreement; pressure waves caused by devices travelling at supersonic speeds which directly causes either Party (the Affected Party) to be unable to comply with all or a material part of its obligations under this Agreement

**Future Lease:** A lease to be granted by TfGM to Tameside in respect of any land acquired by TfGM which becomes part of the Transport Land which is currently the subject of a Licence Agreement

**Future Leases Completion Date:** the actual date of completion of the Future Lease

**Highway Land:** the areas of the Metrolink line which run along the publicly adopted highway as identified on the Plans

**Independent Surveyor:** the surveyor appointed under clause 27.

***Information: has the meaning given under section 84 of FOIA.***

**Insurance Term:** any terms and/or conditions required to be in a policy of insurance by clauses 14 to 18 and/or Schedule 5 (Insurances) but excluding any risk

**Leases:** leases in the agreed form annexed to this Agreement at **Schedule 7A**

**Leases Completion Date:** the date of this Agreement

**Lease Period:** a period of twenty (20) years from and including the Effective Date

**Licence Agreements:** the Licence Agreements in the form attached at Schedule 7C of this Agreement

**Licence Agreements Completion Date:** the date of this Agreement

**Licence Agreement Fee:** the annual payment payable under a Licence Agreement and calculated in accordance with a Licence Agreement

**Licence Agreement Period:** a period of twenty (20) years from and including the Effective Date

**Licence Fee Commencement Date:** the Effective Date

**Material:** all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with TMBC's Works and TfGM's Works and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to TMBC's Works and TfGM's Works.

**Metrolink:** The light rapid passenger transit system owned by but operated on behalf of TfGM including without limitation all running tracks stops depots and other associated infrastructure.

**Metrolink Apparatus:** brackets, cables, wires, fixings and other apparatus required for the purpose of operating Metrolink.

**Metrolink Hazard Zone:** the area as illustrated from time to time in the "Working Safely near Metrolink" brochure a copy of the current version of which is attached at **Schedule 2**

**Metrolink Services:** the light rapid transit service operated on behalf of TfGM from Ashton-under-Lyne to Manchester Piccadilly station

**Operator:** a provider of telecommunications or digital network and or a provider of an infrastructure system for the purposes of s.106 of the Telecommunications Act 1984 as modified or amended by the Electronic Communications Code (Conditions and Restrictions) Regulations 2003

**Part 1 Commercial Conditions:** part 1 of the Standard Commercial Property Conditions (Second Edition).

**Phase 1: Phase 1 of Tameside Digital Infrastructure Project meaning the installation of a Fibre Cable within a Duct from point [x] at Ashton Under Lyne to point [y] at Droylsden.**

**Phase 2: Phase 2 of the Tameside Digital Infrastructure Project meaning the Installation of a Fibre Cable within a Duct running alongside the part of the Metrolink alignment running from point [a] at Droylsden to point [b] at Sheffield Street in Manchester City Centre**

**Phase 2 Project Agreement: the Project Agreement substantially in the same form as this Project Agreement containing such amendments as required to give effect to Phase 2**

**Physical Damage Policies:** all insurance proceeds received under any policy referred to in clauses 14 to 18 inclusive and Schedule 5

**Plans:** plans 1- [ ] attached hereto at Schedule 1.

**Pre-approved Building:** the old Greater Manchester Pension Funding building at Concord Suite Manchester Road Droylsden M43 6SF; the new Greater Manchester Pension Fund building at Guardsman Tony Downes House 5 Manchester Road Droylsden M43 6SF New Charter Housing Head Quarters at 249 Cavendish Street, Ashton-under-Lyne OL6 7AT the new Audenshaw Tram Stop and any other building occupied by a Public Sector Body which TMBC wishes to make a Connection to the Fibre Cable and which has been notified to and approved by the TfGM in writing subject to the provisions of clause 10 of this Agreement

**President:** the president for the time being of the RICS.

**Project Liaison Group:** has the meaning ascribed to it in Schedule 8 of this Agreement

**Project Period:** subject to earlier termination in accordance with this Agreement, the period from the Effective Date until the Expiry Date

**Project Principles:** to increase digital connectivity in the borough of Tameside through the use of spare capacity within the ducts which are part of Metrolink by connecting key public buildings to an enhanced digital network service and to explore further opportunities to increase broadband capability and digital connectivity throughout the borough of Tameside

**Project Request:** a request by TMBC that a Pre-approved Building be connected to the Fibre Cable at a Connection Point

**Relevant Training:** the mandatory safety training to be undertaken by a relevant member of TMBC's Project Team prior to the commencement of TMBC's Works

**Rent:** the annual rent exclusive of VAT payable under a Lease and calculated in accordance with a Lease

**Rent Commencement Date:** the Effective Date

***Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.***

**Required Insurances:** the insurances specified in Schedule 5 (Insurances)

**Requisite Consents:** building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person for the carrying out of the TMBC's Works and/or TfGM's Works

**Review Procedure:** means the procedure set out at Schedule 9

**RICS:** Royal Institution of Chartered Surveyors.

**Stayley:** Stayley Developments Limited (registered number 01269120) whose registered office is at Estates Office, Enville near Stourbridge West Midlands BY7 5HD

**Site:** the area edged in red on the Cable Plan

**Site Conditions:** the conditions of the Site including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological

**State Aid:** any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU)

**Telecoms Conditions** means the matters set out in Schedule 3

**Telent:** Telent Technology Services Limited (company number 703317) whose registered office is situate at Point 3 Haywood Road, Warwick, CV34 5AH.

**Telent Contract:** means the call-off contract under the PSN Services Framework Agreement entered into on or about 15 July 2015 between (1) TfGM and (2) Telent

**TfGM's Conveyancer:** The Head of Legal Services for the time being of Transport for Greater Manchester 2 Piccadilly Place Manchester M1 3GB or any other conveyancer whose details may be notified in writing from time to time by TfGM to TMBC.

**TfGM's Works:** the works for the installation by TfGM (but at the expense of TMBC) of the Fibre Cable within a Duct in accordance with the terms of Part 1 of Schedule 4 to the extent (if any) that such Works have not already been completed.

**TMBC's Conveyancer:** the Borough Solicitor of Tameside Metropolitan Borough Council or any other conveyancer whose details may be notified in writing from time to time by the Tameside to the TfGM.

**TMBC's Civils Team:** TMBC's Engineering Services Department of Dukinfield Town Hall, King Street Dukinfield Tameside SK16 4LA

**TMBC's Project Team:** a relevant employee of TMBC and/or any of its contractors or subcontractors engaged in working on the Project including but not limited to TMBC's Civils Team and Core-IS.

**TMBC's Surveyor:** Ian Saxon, Assistant Executive Director Environmental Services Dukinfield Town Hall King Street Dukinfield Tameside SK16 4LA or any other surveyor whose details may be notified in writing from time to time by the Tameside to TfGM.

**TMBC's Works:** the works for making a Connection to be carried out by TMBC's Project Team at its own expense but subject to provisions of clause 2.2 in accordance with the provisions of Part 2 of Schedule 4.

**Transport Land:** those parts of the land comprised in the title numbers listed in Schedule 11 and as are shown coloured pink, yellow and blue on the Plans

**Telecoms Conditions:** the New Code Provisions and the Old Code Provisions set out in Schedule 3 of this Agreement and described when referred to together as the Telecoms Conditions

***Uninsurable: in relation to a risk, either that:***

***(a) insurance is not available to TMBC in respect of the Project in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or***

***(b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;***

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

**Working Day:** A working day is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England and Wales.

**Works Package:** the plans, specifications, drawings and other data in respect of the installation of the Fibre Cable to be carried out on the Transport Land in the form annexed to this Agreement at **Schedule 6**

***Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.***

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax but not email.
- 1.10 References to a document in **agreed form** are to that document in the form agreed by the parties.
- 1.11 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.12 Unless the content otherwise requires, references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.14 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.15 Unless this agreement otherwise expressly provides, a reference to **TfGM's Works** or **TMBC's Works** is to the whole and any part of them.
- 1.16 Any reference to TfGM's consent or approval being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

## 2. **Term of this Agreement**

- 2.1 Subject to clause 4 of this Agreement the Parties agree that their respective rights and obligations of the Parties shall commence on the Effective Date and shall continue until the Expiry Date (subject to the provisions for early termination set out in this Agreement)

## 3. **Collaboration and co-operation**

- 3.1 The parties agree to co-operate with each other to follow the Project Principles and to act in good faith in complying with the terms of this Agreement and the Schedules and giving effect to the spirit and intent of the Project Principles
- 3.2 Each Party agrees to co-operate, at its own expense with the other Party in the fulfilment of the purposes and the intent of this Agreement. Neither Party shall be under any obligation to perform any of the others obligations under this Agreement and the parties agree to comply with the provisions set out in Schedule 8 of this Agreement with regard to collaboration and co-operation in relation to the Project

## 4. **Leases, Licences and Deeds of Grant**

- 4.1 TfGM agrees to grant and TMBC agrees to accept the grant of Leases in accordance with this Agreement on the Leases Completion Date PROVIDED THAT TfGM will not be compelled under any circumstances to grant a Lease except in accordance with the provisions set out at **Schedule 7**
- 4.2 TfGM agrees to grant and TMBC agrees to accept the grant of Deeds of Grant in accordance with this Agreement on the Deed of Grant Completion Date PROVIDED THAT TfGM will not be compelled under any circumstances to grant a Deed of Grant except in accordance with the provisions set out at **Schedule 7**.
- 4.3 TfGM agrees to grant and TMBC agrees to accept the grant of a Licence Agreement in accordance with the Agreement on the Licence Agreements Completion Date PROVIDED THAT TfGM will not be compelled under any circumstances to grant a Licence Agreement except in accordance with the provisions set out at **Schedule 7**

## 5. **No Agreement for lease**

- 5.1 The Parties agree and acknowledge that this Agreement does not take effect or constitute an agreement for lease for the demise of the whole or any part of the Transport Land.
- 5.2 The Parties agree and acknowledge that each tenancy to be created by each Lease or Future Lease will be excluded from the provisions of section 24 to 28 of the Landlord and Tenant Act



1954. The Parties will take all steps necessary to ensure that the procedure set out in paragraph 7 of Schedule 7 has been followed in relation to each Lease.

5.3 The Parties agree and acknowledge that they will comply with the provisions of Schedule 2 and Schedule 7 prior to the grant of each Lease or Future Lease.

6. **Access**

6.1 If at any time TMBC require access to any land adjoining or neighbouring the Transport Land which is not owned by TfGM and does not form part of the Transport Land or requires any additional rights beyond those which TMBC require for the purposes of making any Connection or for any other matter connected with this Project the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of TMBC.

7. **Site Matters**

7.1 Subject to the other terms of this Agreement, the Site Conditions shall be the sole responsibility of TMBC and accordingly (but without prejudice to any other obligation of TMBC under this Agreement) TMBC shall be deemed to have:

7.2 Carried out all ground physical and geophysical investigation and to have inspected and examined the Transport Land

7.3 Satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Transport Land, the load bearing capacity and other relevant properties of the Transport Land the risk of injury or damage to any third party Transport Land, or Metrolink, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of TfGM's Works and TMBC's Works.

7.4 Satisfied itself as to the adequacy of the means and rights of access to and through the Transport Land which it may require for the purposes of fulfilling its obligations under this Agreement such as additional land outside the Transport Land.

7.5 Satisfied itself as to the possibility of interference by persons of any description whatsoever (other than TfGM) with access to or use of, or rights in respect of, the Transport Land, with particular regard to the owners of any land adjacent to the Transport Land.

7.6 Satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private being caused to third parties and to the Metrolink Services and the Metrolink Apparatus and the relevant personnel having undertaken the Relevant Training

8. **Selection of an Operator**

8.1 TMBC will not appoint an Operator in respect of the Fibre Cable without the approval of TfGM whose consent will not be unreasonably withheld or delayed. For the avoidance of doubt consent to appoint an Operator for Phase 1 shall not be granted until the Consent has been obtained and any relevant documentation required to document such Consent having been completed and it will be reasonable for TfGM to refuse consent to the appointment of an Operator where consent to appoint an Operator is requested prior to this date.

8.2 TMBC will not enter into any agreement with an Operator in respect of the Fibre Cable without the approval of TfGM to the form of Agreement whose consent will not be unreasonably withheld or delayed

8.3 Any agreement entered into between TMBC and their selected Operator shall contain the Telecoms Conditions and shall comply with the provisions set out in Schedule 3 of this Agreement.

9. **TMBC Undertakings**

9.1 TMBC undertakes and covenants with TfGM that for so long as this Agreement remains in full force:

9.1.1 It will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or relevant authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Working Days of becoming aware that the same may be threatened or pending or within twenty (20) Working Days where the litigation or arbitration or administrative or adjudication or mediation proceedings is against an Operator give TfGM notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect to an extent which is material in the context of the Project or in any way affects Metrolink and Tameside's ability to perform its obligations under this Agreement

9.1.2 It will perform its obligations under and observe all of the provisions of this Agreement and shall not terminate or agree to the termination of all or part of this Agreement; make or agree any material variation to any ancillary document or enter into or permit entry into by any other person of any agreement replacing all or part of (otherwise materially and adversely affecting the interpretation of) this Agreement unless the proposed course of action (and any relevant documentation) has been submitted to TfGM for review under the Review Procedure and there has been no objection in accordance with paragraph 1.3 of the Review Procedure within 20 Working Days of receipt by TfGM of the submission of the proposed course of action (and any relevant documentation) or such shorter period as may be agreed by the Parties.

9.1.3 It shall not take any action or fail to take any action (in so far as it is reasonably within its power) to permit anything to occur which would cause TfGM and/or Metrolink to be in breach of the Metrolink Contracts;

9.1.4 It shall not take any action or fail to take any action (in so far as it is reasonably within its power) permit anything to occur which would cause Metrolink Services delays or disruption;

9.1.5 It shall have an absolute obligation to comply with TfGM's health and safety requirements and the Working Safely near the Metrolink Guidelines as located on [www.metrolink.co.uk/safety](http://www.metrolink.co.uk/safety) but not to undertake any Works or alterations to the Transport Land within the designated Metrolink Hazard Zone (as illustrated from time to time in the 'Working safely near Metrolink' brochure) without the prior written authorisation of TfGM or its operator from time to time of the Metrolink (such authorisation not to be unreasonably withheld or delayed where such method statements and risk assessments for any such works or alterations comply with and observe at all times any operational and safety requirements of TfGM or its operator from time to time as issued from time to time) and in either case causing no damage disturbance or interference to the Metrolink Apparatus or

Metrolink Operations and to indemnify and to pay compensation for loss and damage to TfGM together with reasonable legal and valuation expenses for any diminution in the value of the Transport Land, business interruption and the cost of re-instatement and to fully indemnify TfGM against all liabilities costs expenses damages and losses including but not limited to any direct indirect or consequential losses loss of profit loss of reputation and all interests penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the indemnified party. This indemnity shall apply whether or not negligence or fault on the part of TMBC has been proved and nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity;

9.1.6 Where TMBC enters into any joint enterprise or third party venture for the purposes of this agreement TMBC will maintain a controlling interest in any such venture or resulting entity;

9.1.7 Upon every anniversary of the date of this Agreement to provide TfGM with the identity of any person with whom TMBC and any Operator shares occupation of the Transport Land

## 10. Termination

10.1 An Event of Default is any of the following:

10.1.1 a subsisting material breach of this Agreement relating to the condition of the Fibre Cable

10.1.2 any Rent, Charge or Licence Agreement Fee (as appropriate) is unpaid 21 days after becoming payable whether it has been formally demanded or not; or

10.1.3 A material breach of the terms of any Lease, Deed of Grant or Licence Agreement granted pursuant to this Agreement

10.2 If an Event of Default occurs, TfGM may, at any time, determine this Agreement by giving four weeks written notice to TMBC.

10.3 If at any time there is any material non-compliance by TMBC with any of its obligations under this Agreement and such default is either:

10.3.1 not capable of being remedied; or

10.3.2 is capable of remedy but TMBC has not remedied the default within 10 Working Days (or such longer or shorter period as may be reasonable in the circumstances) after service on TMBC by TfGM of a notice specifying the default;

TfGM may, at any time determine this Agreement by giving four weeks written notice to TMBC.

10.4 If at any time a Force Majeure Event occurs either TfGM or TMBC may terminate this Agreement at any time by giving four weeks written notice to the other party.

10.5 If at any time an Act of Insolvency occurs either TfGM or TMBC may terminate this Agreement at any time by giving four weeks written notice to the other party.

10.6 if it can be demonstrated at any time that the presence of the Fibre Cable in the Duct is causing interference with the operation of any other equipment of TfGM now or at any time after the date of this Agreement installed on TfGM's Transport Land and the same cannot be rectified within one month of being switched off pursuant to clause 32 of the Lease or clause 1.21 of the Deed of Grant or clause 8 of the Licence (as appropriate) TfGM may terminate this Agreement at any time by giving two weeks written notice to TMBC.

## 11. **Consequences of termination**

11.1 If TfGM or TMBC gives notice to terminate this Agreement under clause 10,

11.2 subject to clause 10 this Agreement shall be terminated with immediate effect from the date stated in the relevant notice to terminate and none of the parties shall have any further rights or obligations under this agreement save for:

11.2.1 the rights of any party in respect of any earlier breach of this agreement;  
and

11.2.2 the obligations in the clauses referred to in clause 11(b) ;

11.3 Paragraph 3 of Schedule 4, Clauses 13 to 17 (Insurance), Clause 26 (Freedom of Information), clause 28 (Disputes), Clause 29 (Confidentiality), Clause 34 (Governing Law), Clause 34 (Jurisdiction), Clause 39 (Tameside's Records), shall continue in force notwithstanding the termination of this Agreement under clause 10 ;

11.4 TMBC shall immediately cancel all entries relating to this agreement registered against TfGM's title; and

11.5 TMBC shall immediately:

11.5.1 vacate the Transport Land ;

11.5.2 remove all of its chattels from the Transport Land;

11.5.3 (to the extent required by the TfGM) remove TMBC's Works or any other fixtures constructed by or for Tameside; and

11.5.4 make good all damage caused by TMBC as a result of such removal.

11.5.5 All leases or licences granted at the date of termination shall also determine forthwith

11.5.6 Make payment of any monies due from it to TfGM

## 12. **TfGM Step-in**

12.1 TfGM may at its absolute discretion but without any obligation so to do step-in and take any action in connection with TMBC's obligations in connection with this Agreement where in its opinion:

12.1.1 a serious risk exists to the health and safety of persons or Transport Land or to the environment; and/or

12.1.2 it believes it is necessary for it to do so in order to discharge a statutory duty; and/or

12.1.3 an emergency has arisen.

12.2 In the event that TfGM exercises its discretion under this clause 12 .1 it shall be entitled to take action in accordance with clauses 13.3 to 13.5 (inclusive).

12.3 If TfGM exercises its discretion to step in under clause12.1 and wishes to take action (save in cases of emergency where no notice shall be given) TfGM shall notify TMBC in writing of the following:

12.3.1 The action it intends to take;

12.3.2 the reason for such action

12.3.3 the date it intends to commence such action

12.3.4 the time period it believes will be necessary for carrying out such action;  
and

12.3.5 (to the extent practicable) the effect of such intended action on TMBC on  
and the TIDC.

12.4 Following service of such notice TfGM shall take such action as notified under clause 12.3 and any consequential additional action which it reasonably believes is necessary (together the Required Action) and TMBC shall give all reasonable assistance to TfGM while it is taking the Required Action. TfGM shall provide TMBC with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

12.5 Where the Required Action has been taken otherwise than as a result of breach by TMBC, TfGM shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify TMBC against all Direct Losses where it fails to do so.

### 13. **Insurance**

13.1 The Parties agree to comply with the provisions set out in Schedule 5 in relation to Insurance.

13.2 Tameside shall take out and maintain or procure the maintenance of third party liability insurance for a limit of indemnity of not less than £20,000,00.00 (twenty million pounds) any one occurrence, in the aggregate for pollution liability and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences and shall include an Indemnity to Principals provision in favour of TfGM.

13.3 With the exception of the insurances required by law the insurances shall provide for thirty (30) days prior written notice of their cancellation, non-renewal or amendment.

### 14. **Evidence of Policies**

14.1 TMBC shall provide to TfGM:

14.1.1 On reasonable written request a written summary of TMBC's insurance policy specifically relating to Phase 1 and evidence the same is in force;

14.1.2 Evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with clause 13 and Schedule 5

14.1.3 On or before the date of expiry of any insurance required by this clause satisfactory evidence that the relevant insurance has been or is being renewed

14.2 Renewal certificates in relation to any insurances required by clause 13 shall be obtained as and when necessary and copies (certified in a manner acceptable to TfGM) shall be forwarded to TfGM as soon as possible but in any event on or before the renewal date.

14.3 If TMBC is in breach of its obligations in clauses 13, 14 and **Schedule 5** TfGM may, subject to prior notification, pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from TMBC on written demand

14.4 TMBC shall give TfGM notification within ten (10) Working Days after becoming aware of any claim in excess of £100,000.00 on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by TfGM) give full details of the incident giving rise to the claim.

14.5 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve TMBC of its other liabilities and obligations under this Agreement

14.6 Save where expressly set out in this Agreement the insurance premiums for the Required Insurances shall at all times be responsibility of TMBC.

14.7 The Required Insurances shall be effected with insurers approved by TfGM, such approval not to be unreasonably withheld or delayed

## 15. **Claims**

15.1 TMBC shall where it is obliged to effect insurance under clauses 13 to and including 16 of this Agreement not bring any claim or action against TfGM in respect of any loss or damage in circumstances where TMBC is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement)

## 16. **Uninsured Risks**

16.1 Nothing in clause 13 or clause 14 or this clause 16 shall oblige TMBC to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk be Uninsurable is any act(s) or omission(s) of TMBC.

16.2 If a risk usually covered by the Required Insurances in each case required under this Agreement, becomes Uninsurable then:

16.2.1 TMBC will notify TfGM within five (5) Working Days of becoming aware of the risk becoming Uninsurable; and

16.2.2 If both Parties agree, or it is determined in accordance with the dispute resolution procedure set out in clause 27, that the risk is Uninsurable and that:

- (a) The risk being Uninsurable is not caused by the actions, breaches, omissions or defaults of TMBC; and
- (b) TMBC has demonstrated to TfGM that it and a prudent board operating the same or substantially similar business in the United Kingdom to that operated by TMBC would in similar circumstances be acting reasonably and in the best interests of the party if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigations against such consequences which may be available to such company

Then the parties shall meet to discuss the means by which the risk should be managed or shared (including the issue of self-insurance by either Party)

- 16.3 If, upon renewal of any insurance which TMBC is required to maintain or to procure the maintenance of pursuant to this Agreement:
- 16.3.1 Any Insurance Term is not available to TMBC in the worldwide insurance market with reputable insurers of good standing; and/or
  - 16.3.2 The insurance premium payable for insurance incorporating such Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by TMBC in the United Kingdom

**(other than, in each case, by reason of one or more actions of TMBC then clause 16.4 shall apply.**

- 16.4 If it is agreed that clause 16.3 applies then TMBC shall waive TMBC's obligations in clause 14 and **Schedule 5** (Insurances) in respect of that particular Insurance Term and TMBC shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in clause 16.3 continue to apply to such Insurance Term.
- 16.5 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the dispute resolution procedure in clause 27 that an alternative or replacement term and/or condition of insurance is available to TMBC in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address TMBC's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which Tenant's in the UK are (at such time) generally prepared to pay, TMBC shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.
- 16.6 TMBC shall notify TfGM as soon as reasonably practicable and in any event within five days of becoming aware that clauses 16.3 and 16.4 are likely to apply or (on expiry of the relevant insurance is then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). TMBC shall provide TfGM with such information as TfGM reasonably requests regarding the unavailability of the Insurance term and the parties shall meet to discuss the means by which such unavailability should be managed as soon as reasonably practicable.

16.7 In the event that clauses 16.3 and 16.4 apply in respect of an Insurance Term (irrespective of the reasons for the same) TMBC shall approach the insurance market at least every 4 months to establish whether clause 16.3 and/or 16.4 remain applicable to the Insurance Term. As soon as TMBC is aware that clauses 16.3 and 16.4 has ceased to apply to the Insurance Term TMBC shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as reasonably practicable) incorporating such Insurance Term in accordance with this Agreement.

17. **TfGM's and TMBC's Works obligations**

17.1 TfGM's Works and TMBC's Works will be carried out in accordance with the provisions set out in Schedule 4 of this Agreement.

17.2 TMBC's obligations in Schedule 4 of this Agreement are personal and binding only on TMBC.

17.3 TMBC shall be released from all liability in respect of its obligations referred to in clause 17.2 after a period of twelve months after the Practical Completion Date, except in relation to any claim made against or notified to it prior to the end of that period.

18. **Development of TfGM's Transport Land**

18.1 TMBC:

18.1.1 acknowledge and accept that TfGM may develop the whole of TfGM's Transport Land and that works at TfGM's Transport Land may continue for the whole of the Project Period; and

18.1.2 waive any right against TfGM under the Lease or otherwise to claim damages, compensation or any other remedy arising from the disturbance, nuisance or inconvenience caused by such continuing works.

19. **VAT**

19.1 Each amount stated to be payable under or pursuant to this agreement is exclusive of VAT (if any).

19.2 If any VAT is chargeable on any supply made by one party to the other party under or pursuant to this agreement, the paying party shall pay to the other party an amount equal to that VAT.

19.3 Condition 1.4 does not apply to this agreement.

20. **Joint and several liability**

20.1 Where TMBC comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the TMBC arising under this agreement. TfGM may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.

20.2 Condition 1.2 does not apply to this agreement.

21. **Notices**

21.1 Any notice or other communication required to be given under this agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out below:



- 21.1.1 TfGM: The Head of Legal Services Transport for Greater Manchester, 2 Piccadilly Place, Manchester M1 3BG
- 21.1.2 TMBC: The Assistant Director Digital Services, Tameside MBC, Ashton Market Hall, Market Street, Ashton-under-Lyne OL6 7JU

or as otherwise specified by the relevant party by notice in writing to each other party.

- 21.2 Any notice or other communication shall be deemed to have been duly received:
  - 21.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;
  - 21.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the [second] working day after posting; or
  - 21.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 21.3 A notice or other communication required to be given under this agreement shall not be validly given if sent by e-mail.
- 21.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 21.5 Condition 1.3 does not apply to this agreement.

## 22. **Indemnity**

- 22.1 TMBC shall indemnify TfGM against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with:
  - 22.1.1 State Aid Matters
  - 22.1.2 Title Matters
  - 22.1.3 Any claim made against TfGM in connection with this Agreement
  - 22.1.4 The presence of the of TMBC's infrastructure and the Fibre Cable in the Duct

### ***This indemnity shall apply whether or not TfGM has been negligent or at fault***

- 22.2 Nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.
- 23. **Anti-bribery**
- 23.1 The Parties shall in relation to this Agreement, the Project and each Project Request:

- 23.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- 23.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 23.1.3 comply with the other party's Ethics, Anti-bribery and Anti-corruption Policies;
- 23.1.4 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, 'the Relevant Policies' and clause 23.1.2, and will enforce them where appropriate;
- 23.1.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this agreement;
- 23.1.6 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of it and warrants that it has no foreign public officials as officers or employees at the Commencement Date);
- 23.1.7 within 3 months of the Commencement Date, and annually thereafter, certify to the other party in writing signed by one of its officers, compliance with this clause 24 by it and all persons associated with it under clause 24.2. Each party shall provide such supporting evidence of compliance as the other party may reasonably request.

23.2 The Parties shall ensure that any person associated with it who is performing obligations in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on that party in this clause 23 (**Relevant Terms**). Such party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the other party for any breach by such persons of any of the Relevant Terms.

23.3 Breach of this clause 23 shall be deemed a material breach under clause 10.3.

23.4 For the purpose of this clause 23 the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 25, a person associated with a party includes but is not limited to any subcontractor of that party.

## 24. **Data protection**

24.1 The Parties shall each ensure that they comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation, the Data Protection Act 1998.

## 25. **Freedom of information**

- 25.1 The Parties acknowledge that they are subject to the requirements of the FOIA and the EIRs. Therefore they shall:
- 25.1.1 provide all necessary assistance and cooperation as reasonably requested by each other to enable each other to comply with their respective obligations under the FOIA and EIRs;
  - 25.1.2 transfer to the each other all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 25.1.3 provide each other with a copy of all Information belonging to the each other requested in the Request For Information which is in its possession or control in the form that the other party requires within 5 Working Days (or such other period as the other party may reasonably specify) of the other parties request for such Information; and
  - 25.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the other party.
- 25.2 Each party acknowledges that the other party may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the other party. Each party shall take reasonable steps to notify the other of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the relevant party shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
26. **Human Rights**
- 26.1 The Parties shall (and shall use their reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.
- 26.2 The Parties shall undertake, or refrain from undertaking, such acts as each other requests so as to enable each other to comply with its respective obligations under the Human Rights Act 1998.
27. **Disputes**
- 27.1 In the event of any dispute arising between TfGM and TMBC in relation to any clause of this Agreement, TfGM and TMBC shall use all reasonable endeavours to seek to settle the dispute as amicably and as quickly as possible. If the dispute has not been settled within a period of 21 Working Days of the dispute arising then it shall be referred to an Independent Surveyor to determine.
- 27.2 An Independent Surveyor shall be appointed by agreement between TfGM and TMBC or, if TfGM and TMBC are unable to agree an appointment, either of them may request the appointment to be made by the President.
- 27.3 An Independent Surveyor must be a Fellow of the RICS, with at least ten years' post qualification experience including experience in projects of the same type as the Project.

- 27.4 If an Independent Surveyor appointed dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause, then:
- 27.4.1 either TfGM or Tameside may apply to the President to discharge the appointed Independent Surveyor and to appoint a replacement Independent Surveyor; and
  - 27.4.2 this clause shall apply in relation to the replacement Independent Surveyor as if the first appointed Independent Surveyor.
  - 27.4.3 The Independent Surveyor shall act as an expert and shall be required to:
  - 27.4.4 Decide on matter of the dispute; and
  - 27.4.5 prepare a written note of the decision and give a copy of the decision to both TfGM and Tameside within 10 Working Days of the date of the Independent Surveyor's appointment.
- 27.5 TfGM and TMBC shall each be entitled to make submissions to the Independent Surveyor and shall provide (or procure that others provide) the Independent Surveyor with the assistance and documents that the Independent Surveyor reasonably requires to reach a decision.
- 27.6 The Independent Surveyor's written decision shall not be final and binding.
- 27.7 The costs of the Independent Surveyor shall be borne equally by TfGM and TMBC or in such different proportion as the Independent Surveyor shall direct.
28. **Confidentiality**
- 28.1 The Parties agree that the terms of this Agreement and each Project document shall, not be treated as Confidential Information and may be disclosed without restriction and the Parties acknowledge that the other Party may wish to publish, the Agreement and some of the Project documents on a website
- 28.2 This Clause 28 shall not apply to the terms of this Agreement a Project document designated as Commercially Sensitive Information and listed in Schedule 10 to this Agreement which shall subject to clause [29.5] be kept confidential for the relevant periods specified in the Schedule
- 28.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement and the Project Documents and Ancillary Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information
- 28.4 Clauses 28.1 and 28.3 shall not apply to:
- 28.4.1 Any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement for the performance of those obligations
  - 28.4.2 Any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than a breach of this clause 28;
  - 28.4.3 Any disclosure to enable a determination to be made under the dispute resolution procedure;

- 28.4.4 Any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned
  - 28.4.5 Any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party
  - 28.4.6 Any provision of information to the Parties' own professional advisers or insurance advisers in connection with carrying out its obligations under this Agreement
  - 28.4.7 any application for registration or recording of the Necessary Consents and Transport Land registration required
  - 28.4.8 Any disclosure of information by the either party to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the relevant party for any purpose related to or ancillary to this Agreement
- 28.5 Where disclosure is permitted under this clause 28 (other than clauses 28.4.2, 28.4.4, 28.4.5, 28.4.7) the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
29. **Public relations and publicity**
- 29.1 TMBC shall not by itself, its employees or agents, and shall procure that its subcontractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement or the Project without the prior written approval of TfGM
30. **Advertisements**
- 30.1 Tameside shall not exhibit or attach to any part of the Transport Land any notice or advertisement without the prior written approval of TfGM, save where otherwise required to comply with Legislation
31. **Third party rights**
- 31.1 A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
32. **Governing law**
- 32.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
33. **Jurisdiction**

33.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

34. **Phase 2 Project Agreement**

34.1 Prior to the commencement of Phase 2 the Parties will enter into the Phase 2 Project Agreement

35. **Reinstatement**

35.1 Unless notified otherwise by TFGM in writing that such obligation is waived the reinstatement obligations imposed on TMBC at the end of the Project Period shall be in accordance with clause 29 of the relevant Lease or Schedule 1 clause 1.8 of the Deed of Grant or clause 4.2 of the Licence.

36. **Severability**

36.1 If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement

37. **Waiver**

37.1 No term or provision of this Agreement shall be considered as waived by any party unless a waiver is given in writing by that Party

37.2 No waiver given under clause 37.1 shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

38. **Records to be kept by TMBC**

38.1 TMBC shall (and shall procure that each sub-contractor shall) at all times:

38.1.1 Maintain a full record of the particulars of the TIDC and the Project including details of any costs involved and any rent, charge or licence fee being paid by a sub-lessee under a lease, a grantee under a deed of grant and a sub-licencee under a licence agreement (as appropriate) in respect of the Duct to demonstrate compliance with State Aid rules and regulations

38.1.2 Upon request by TfGM provide details of any of the costs referred to in including details of any funds held by TMBC specifically to cover such costs, in such form and details as TfGM may require

38.1.3 Provide such facilities as TfGM may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause

38.2 TMBC shall keep books of account in accordance with best accountancy practices with respect to the TIDC and the Project showing in detail

38.2.1 Administrative overheads

38.2.2 Payments to and by Subtenants and Sub-licencees

38.2.3 Capital and revenue expenditure

- 38.2.4 Other items as TfGM may require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure for the purpose of this Agreement
- 38.3 And TMBC shall have the books of account evidencing the items listed in clauses 38.2 1 to 38.2.4 inclusive, available for inspection by TfGM (and its advisers) upon reasonable notice, and shall provide a copy of these to the Authority as and when requested from time to time
- 38.4 TMBC shall maintain or procure that detailed records relating to the performance of the TIDC in each case in accordance with Good Industry Practice and any applicable Legislation.
- 38.5 Without prejudice to clause 38.4 TMBC shall procure that the following are maintained
- 38.5.1 The records required in Schedule 8 and Schedule 9
  - 38.5.2 A full record of all incidents relating to health, safety and security which occur during the term of this Agreement
  - 38.5.3 Full records of all maintenance procedures carried out during the term of this Agreement
- 38.6 And TMBC shall have all of the records referred to in this clause 38 available for inspection by TfGM and its advisers upon reasonable notice and shall provide copies of these to TfGM as and when requested from time to time
- 38.7 The records referred to in this clause 38 shall be retained for a period of at least 5 five years after TMBC's obligations under this Agreement have come to an end
- 38.8 Upon termination or expiry of this Agreement and in the event that TfGM wishes to enter into another Agreement for the operation and management of a project the same as or similar to the Project, TMBC shall comply with all requests of TfGM to provide information relating to TMBC's costs of operating and maintaining the TIDC.
39. **TfGM Right to Audit**
- 39.1 TfGM may either itself or via or in conjunction with its nominated independent auditors, conduct an audit any documentation practices systems and procedures in respect of the Project for the following purposes:
- 39.1.1 To verify the accuracy of any charges (and proposed or actual variations to them) in accordance with this Agreement;
  - 39.1.2 To review and verify TMBC's compliance with its obligations under this Agreement;
  - 39.1.3 To carry out the audit and certification of TfGM's accounts;
  - 39.1.4 to carry out any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which TfGM has used its resources;
  - 39.1.5 for any other purpose required by a regulatory body or pursuant to law
- 39.2 Subject to clause 39.3.2 TfGM shall use its reasonable endeavours to ensure that audits shall be conducted during normal working hours and TfGM shall also use its reasonable endeavours to ensure that the conduct of an audit does not cause material disruption to TMBC. TfGM shall

procure that any third party (other than where the third party is a regulatory party) engaged by TfGM to conduct any audit executes a confidentiality undertaking in favour of the Tameside in such a form as is reasonable.

39.3 TfGM shall not be entitled to exercise its audit rights pursuant to clause 39.1 more frequently than once in any twelve (12) month period save that:

39.3.1 TfGM may exercise its Audit rights pursuant to clause 39.1 notwithstanding that it last exercised such rights within the previous twelve (12) months should TfGM acting reasonably be aware of, or have reasonable grounds to suspect fraud, a material defect in the relevant records or a material Default by TMBC; and

39.3.2 Any audit may be performed at any time and at any frequency where it is required by a Regulatory Body

39.4 Without prejudice to the provisions of clause 39.6 subject to TfGM's obligations of confidentiality, TMBC shall on demand (other than where TMBC can demonstrate that TfGM's demand is unreasonable in all applicable circumstances) provide (and where required by TfGM shall on demand (other than where TMBC can demonstrate that TfGM's demand is unreasonable in all applicable circumstances) and procure that material third parties provide) TfGM (and its nominated independent auditors) with access to the relevant records (or such of them as TfGM shall require) and all reasonable co-operation and assistance in relation to each Audit, including access to TMBC personnel, TMBC's offices and relevant material third party personnel.

39.5 TfGM shall provide at least 10 Working Days' notice of its intention to conduct an audit it being acknowledged and agreed that TfGM shall have the right to exercise its audit rights immediately or on shorter notice where an audit is to be performed by a Regulatory Body (or otherwise pursuant to a direction from a Regulatory) or where TfGM consider acting reasonably that exceptional circumstances apply including those referred to in clause 40.3(a)

39.6 For the purpose of:

39.6.1 The examination of the affairs of TfGM and/or the examination and certification of TfGM's account by any Regulatory Body; or

39.6.2 Any examination pursuant to section 6(1) of the National Audit Act 1983 (as amended) of the economy, efficiency and effectiveness with which TfGM has used its resources,

39.6.3 Then the applicable Regulatory Body may examine such documents, as may be reasonably be required which are owned, held or otherwise within the control of TMBC or any material third party and may require TMBC to produce and/or procure that a material third party produces such oral and/or written explanation as considered necessary by such Regulatory Body for the purposes of that examination or certification.

39.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 39, unless that Audit identifies fraud, a material TMBC Default, a material defect in Relevant Records or a miscalculation by Tameside of any sums due to or from TMBC under this Agreement (other than a miscalculation of an immaterial nature) in which case TMBC shall reimburse TfGM for all TfGM's reasonable costs incurred in the course of the Audit.



- 39.8 Without prejudice to any other rights or remedies available under this Agreement, if an Audit identifies that TfGM has overpaid any sums of money due under the Agreement and/or TMBC has under paid any sums due to TfGM, TMBC shall pay to TfGM the amount overpaid and/or amount underpaid together with interest, calculated within 10 Working Days. TfGM may deduct the relevant amount from the charges if Tameside fails to make this payment together with interest
- 39.9 Without prejudice to any other rights or remedies available under this Agreement, if an audit identifies that TfGM has underpaid any sums of money due under this Agreement and/or TMBC has overpaid any sums due to TfGM, TfGM shall pay to TMBC the amount underpaid by TfGM or overpaid by TMBC within 30 days.
40. **TfGM's Costs**
- 40.1 TMBC agree to indemnify TfGM in respect of all legal and other costs incurred by TfGM in connection with the Project and this Agreement and any other supplemental or associated documentation that the parties are required to enter into for the purposes of the Project.
41. **Fairness Clause**
- 41.1 If any circumstances arise during the term of this Agreement that were not within the contemplation of the Parties at the date of this Agreement and not expressly or impliedly provided for in this Agreement, each Party agrees with the other that such circumstances are to be dealt with and resolved in such a manner as operates between them for fairness and, so far as possible, without detriment to the interests of any of them.
42. **Assignment**
- 42.1 This Agreement shall be binding on the Parties and their statutory successors and assigns
- 42.2 No party to this Agreement may assign, transfer, delegate or otherwise dispose of any of its rights or obligations under this Agreement
43. **Exercise of Powers**
- 43.1 Nothing expressly or impliedly contained in this Agreement shall prejudice, limit all assets, rights, discretions, powers, duties and/or obligations of any of the Parties in the exercise of any of their functions as public bodies including as a local planning authority, highway authority, transport authority or as an authority possessing compulsory purchase powers and each party shall be entitled to exercise its rights, discretions, powers, duties and obligations and other functions as a public body as if it were not a party to this Agreement
- 43.2 Any express or any implied obligations in this Agreement shall be deemed to be expressly subject to clause 43.1
44. **No Agency**
- 44.1 The Parties are not and will not at any time hold themselves or permit themselves to be held out as the agent of any other Party and no Party has authority to bind the other or hold itself out to a Third Party as having such authority
- 44.2 All contracts and agreements entered into by any Party with a Third Party pursuant to this Agreement will be contracts and agreements between the relevant party as principal and the relevant Third Party and the other Parties to this Agreement will have no obligation or liability in respect of such contracts and agreements (save as may be expressly provided in this Agreement)

45. **Personal Obligations**

45.1 The obligations of the Parties in this Agreement are personal to them but without prejudice to the provisions of clause 42 (Assignment) and the liability of any other Person in respect of the obligations under the Agreement from time to time

46. **No Partnership**

46.1 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties or any of them

47. **Non-merger**

47.1 The provisions of this Agreement shall not merge on completion of any Lease, Deed of Grant or Licence so far as they remain to be observed and performed by either Party.

48. **No Set Off**

48.1 Any sum payable by any Party to another Party under this Agreement or to any Third Party shall be paid without any legal or equitable set off, counterclaim or deduction

49. **Counterparts**

49.1 This deed may be executed in any number of counterparts, each of which is an original and all of which together evidence the same deed.

49.2 This deed shall not come into effect until each party has executed a least one counterpart

This Agreement has been executed as a Deed and entered into on the date stated at the beginning of it.

**SCHEDULE 1 PLANS**

**SCHEDULE 2      WORKING SAFELY NEAR METROLINK**

1. Definitions

*The parties agree to comply with their respective obligations in this Schedule and for the purposes of this Schedule 3 the following definitions will have the following meanings:*

***Metrolink Safety Compliant:*** *To have completed and had approved a work request form available from [www.metrolink.co.uk/safety](http://www.metrolink.co.uk/safety) and to be in compliance with the same.*

***New Code Agreement:*** *An agreement entered into with an Operator which is subject to the New Code*

***New Code Provisions:*** *The Telecoms Conditions set out in Part B of this Schedule 3*

***New Code Rights:*** *All those rights and powers given to an Operator pursuant to the Electronic Communication Code 2017*

***OFCOM Notice:*** *a Notice in the OFCOM model form or in compliance with the OFCOM standard notices*

***Old Code Agreement:*** *An agreement entered into with an Operator which is subject to the Old Code*

***Old Code Provisions:*** *The Telecoms Conditions set out in Part A of this Schedule 3*

***Old Code Rights:*** *All those rights and powers given to an Operator pursuant to the Electronic Communication Code 2003*

***Operator:*** *a provider of a telecommunications or digital network and or a provider of an infrastructure system for the purposes of s 106 of the Telecommunications Act 1984 as modified or amended by the Electronic Communications Code (Conditions and Restrictions) Regulations 2003*

2. Part 3A - The Old Code

2.1 Any Old Code Agreement entered into with an Operator shall contain unless otherwise agreed by the parties in writing the Old Code Provisions dealing with the following matters:

- 2.1.1 All correspondence with the Operator prior to any agreement being concluded to be marked subject to contract
- 2.1.2 Any new Code Agreement shall be in writing and approved by TfGM prior to its completion and shall include provisions :
- (a) for the payment of TfGM's reasonable costs and expenses in connection with the preparation of same;
  - (b) imposing an absolute obligation to comply with TfGM's health and safety requirements and the Working Safely near the Metrolink Guidelines as located on [www.metrolink.co.uk/safety](http://www.metrolink.co.uk/safety) but not to undertake any Works or alterations to the Transport Land within the designated Metrolink Hazard Zone (as illustrated from time to time in the 'Working safely near Metrolink' brochure) without the prior written authorisation of TfGM or its operator from time to time of the Metrolink (such authorisation not to be unreasonably withheld or delayed where such method statements and risk assessments for any such works or alterations comply with and observe at all times any operational and safety requirements of TfGM or its operator from time to time as issued from time to time) and in either case causing no damage disturbance or interference to the Metrolink Apparatus or Metrolink Operations;
  - (c) a requirement for 28 days' notice to be given to TfGM and TMBC of any works which are being undertaken except in an emergency when the notice given may be a lesser period;
  - (d) the exclusion of ss 24-28 inclusive of the Landlord and Tenant Act 1954;
  - (e) permitting TMBC's shared use of the Transport Land and Fibre Cable and any ancillary rights granted in respect thereof with an Operator or Operators provided that at least 28 working days before such sharing commences TMBC gives Notice to TfGM of the identity of the proposed Operator and the terms and conditions for the sharing of occupation of the Transport Land and the Fibre Cable are agreed with the Operator;
  - (f) prohibiting any further equipment in addition to Fibre Cable being installed in the Transport Land;
  - (g) ensuring no relationship of Landlord and Tenant is established by that arrangement;
  - (h) the giving of a covenant by TMBC or itself and any Operator not to interfere with Metrolink operations;
  - (i) the provision of lift and shift provisions;
  - (j) that TMBC enters into an agreement not to serve a counter-notice on TfGM upon a Paragraph 20 Notice being served upon TMBC or TMBC itself and an Operator;
  - (k) the provision of Break Rights for the benefit of TfGM;

- (l) requiring reinstatement obligations on the Operator in the event of termination of the Old Code Agreement or earlier removal of equipment by agreement; and
- (m) requiring termination of the Old Code Agreement and the removal of the Fibre Cable in the event that it interferes with Metrolink operations and equipment;
- (kn) requiring automatic termination in the event that this Agreement is terminated or any Leases or Licences granted pursuant to this Agreement are terminated;
- (o) a covenant to pay compensation for any loss and or damage suffered by TfGM where there has been a breach by TMBC or any Operator of any covenant in this paragraph 2 together with reasonable legal and valuation expenses, the cost of business interruption and the cost of any re-instatement and to fully indemnify TfGM as Transport Land owner against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the indemnified party This indemnity shall apply whether or not negligence or fault on the part of the Operator has been proved and nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

### 3. **Part 3B - The New Code**

3.1 Any New Code Agreement entered into with an Operator shall contain unless agreed otherwise by the parties in writing the following provisions:

- 3.1.1 a requirement that all correspondence with the Operator prior to any New Code Agreement being concluded in accordance with this Schedule shall be marked subject to contract;
- 3.1.2 a requirement that OFCOM standard terms from time to time are to be contained in the Code Agreement;
- 3.1.3 a requirement for it to be in writing and approved by the TfGM prior to its completion and with provision for the payment of TfGM's reasonable costs and expenses in connection with the same;
- 3.1.4 an absolute obligation to comply with TfGM's health and safety requirements and the Working Safely near the Metrolink Guidelines as located on [www.metrolink.co.uk/safety](http://www.metrolink.co.uk/safety) but not to undertake any Works or alterations to the Transport Land within the designated Metrolink Hazard Zone (as illustrated from time to time in the 'Working safely near Metrolink' brochure) without the prior written authorisation of TfGM or its operator from time to time of the Metrolink (such authorisation not to be unreasonably withheld or delayed where such method statements and risk assessments for any such works or alterations comply with and observe at all times any operational and safety requirements of TfGM or its operator from time to time as issued from time to time) and in either case causing no damage disturbance or interference to the Metrolink Apparatus;

- 3.1.5 a requirement to give 28 days' notice to TfGM and TMBC of any works which are to be undertaken except in an emergency when the notice given may be a lesser period and any such notice shall be an OFCOM Notice
- 3.1.6 a requirement that it states that the New Code Agreement shall be entered into solely for the creation of Code Rights;
- 3.1.7 a requirement for TMBC to have a guarantee from an assignee of any New Code Agreement and the obligation to enter into an authorised guarantee agreement with the Operator in respect of the Transport Land;
- 3.1.8 a right of termination of the New Code Agreement and a right for the removal of the Fibre Cable pursuant to Parts 5 and Part 6 of the New Code or any other relevant statutory provision from time to time in place in the event that there is material interference with Metrolink Apparatus or Metrolink Operations or in the event of any other material breach of the New Code Agreement;
- 3.1.9 a provision that where a New Code Agreement is imposed by an Operator compensation for diminution in land value at the Transport Land is payable;
- 3.1.10 a requirement for the removal of the Fibre Cable in the event that it interferes with Metrolink operations and equipment and where Fibre Cable or apparatus is removed not to cause any loss or damage to the Transport Land ;
- 3.1.11 a provision for the variation of the terms of a New Code Agreement by way of a break clause for the benefit of TfGM to enable termination of the New Code Agreement and service of Notice of the variation of terms or for a further New Code Agreement ;
- 3.1.12 a covenant from the Operator that it shall not serve a Counter-Notice to Notices served under paragraphs 5 or 6 or paragraph 53 of the New Code;
- 3.1.13 the provision of Break Rights for the benefit of TfGM;
- 3.1.14 requiring reinstatement obligations on the Operator in the event of termination of the Old Code Agreement or earlier removal of equipment by agreement;
- 3.1.15 requiring the removal of the Fibre Cable in the event that it interferes with Metrolink operations and equipment;
- 3.1.15 requiring automatic termination in the event that this Agreement is terminated or any Leases or Licences or Deeds of Grant granted pursuant to this Agreement are terminated;
- 3.1.18 a covenant to pay compensation for any loss and or damage suffered by TfGM Where there has been a breach of any of the clauses in this paragraph 3 by TMBC or any Operator together with reasonable legal and valuation expenses, the cost of business interruption and the cost of any reinstatement and to fully indemnify TfGM as Transport Land owner against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full



indemnity basis) and all other professional costs and expenses) suffered or incurred by the indemnified party This indemnity shall apply whether or not negligence or fault on the part of the Operator has been proved and nothing in this clause shall restrict or limit the indemnified party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity

## SCHEDULE 4 THE WORKS

### Part 1 TfGM's Works

#### 1. Carrying Out of TfGM's Works

1.1 Prior to the date of this Agreement TMBC shall have paid the Cable Installation Fee to TfGM together with any VAT thereon.

1.1.1 .

1.2 TfGM shall use all reasonable endeavours to procure that Telent performs and observes the terms of the Telent Contract.

1.3 TfGM shall not terminate the employment of Telent or treat the Telent Contract as repudiated without first notifying TMBC of its intention to do so and discussing with TMBC the appointment of a suitable substitute contractor approved by TMBC (such approval not to be unreasonably withheld or delayed).

1.4 TfGM shall maintain, or procure that Telent maintains, insurance in respect of injury to or death of any person or loss or damage to any real or personal Transport Land for an indemnity of not less than £5,000,000 (five million) for any one occurrence or series of occurrences arising out of the same event. TfGM shall require Telent, as a condition of its appointment or contract, to maintain professional indemnity insurance cover with a reputable insurer for an amount not less than that stated in this paragraph 1.9. The insurance cover must be maintained for a minimum of 12 years following the date that TfGM's Works are practically completed, provided that the insurance is available at commercially reasonable rates and terms.

### PART 2 TMBC's WORKS

#### 2. Carrying out of TMBC's work

2.1 TMBC shall not commence TMBC's Works until TMBC has:

2.1.1 obtained TfGM's approval to TfGM's Works in accordance with paragraph 1.6 ;

2.1.2 obtained all Requisite Consents and the Ashton Moss Consent required for TMBC's Works;

2.1.3 provided details of TMBC's Works to the insurers of the Transport Land and obtained their consent to carrying out TMBC's Works;

2.1.4 produced all Requisite Consents and the Ashton Moss Consent required for TMBC's Works to TfGM and obtained TfGM's confirmation that they are satisfactory to TfGM;

2.1.5 given TfGM 4 copies of the plans and specifications for TMBC's Works;

2.1.6 notified TfGM and the insurers of the Transport Land of the date on which it intends to start carrying out TMBC's Works; and

2.1.7 (if applicable) complied with paragraph 1.1

2.1.8 Undertaken the Relevant Training.

3. **TMBC shall:**
- 3.1 Carry out TMBC's Works:
- 3.1.1 using good quality, new materials which are fit for the purpose for which they shall be used;
  - 3.1.2 in a good and workmanlike manner; and
  - 3.1.3 to the reasonable satisfaction of TfGM.
  - 3.1.4 in respect of TMBC's Works comply with:
    - (a) all statutory and other legal requirements;
    - (b) the terms of all Requisite Consents and the Ashton Moss Consent;
    - (c) requirements and recommendations of all relevant utility suppliers and the insurers of the Transport Land.
- 3.2 Observe all the requirements and recommendations of Metrolink and TfGM including but not limited to the requirement to only make a Connection. The Connection is to be to the Fibre Cable in the purple Duct and to ensure that no Fibre Cable or part of a Fibre Cable is installed within any orange ducts.
- 3.3 Ensure that the TMBC project team engaged in carrying out TMBC's Works as part of the Project have the following accreditations which are satisfactory to both TfGM and Metrolink: Personal Trackside Safety, Organisation Rail Safety Case, at least one person to have Person In Charge accreditation (PIC) and 2 persons to have Lookout training
- 3.4 Take all proper steps to ensure that carrying out TMBC's Works does not make any of the following unsafe:
- 3.4.1 the structure of the Transport Land; and
  - 3.4.2 any plant or machinery at the Transport Land; and
  - 3.4.3 any neighbouring land or buildings;
- 3.5 In carrying out TMBC's Works cause as little disturbance and inconvenience as possible to TfGM, the Metrolink and the owners and occupiers of TfGM Transport Land and of any neighbouring land and not infringe any of their rights nor the rights of any other person in relation to the Transport Land;
- 3.6 Immediately make good (to the reasonable satisfaction of TfGM) any damage (including decorative damage) to any land or building or any plant and machinery (other than the Transport Land) which is caused by carrying out TMBC's Works;
- 3.7 Allow TfGM and its surveyors access to the Transport Land to inspect the progress and quality of TMBC's Works (both while TMBC's Works are being carried out and afterwards) at reasonable times and on reasonable prior notice;
- 3.8 Give TfGM the information it reasonably requests to establish that TMBC's Works are being and have been carried out in accordance with this Agreement;
- 3.9 Notify TfGM as soon as TMBC's Works have been completed; and

- 3.10 If the CDM Regulations apply to TMBC's Works, TMBC shall:
- 3.10.1 agree in writing with TfGM that TMBC is to be treated as the only client in respect of TMBC's Works for the purposes of the CDM Regulations and the parties agree that this clause is such an agreement;
  - 3.10.2 comply with its obligations as a client for the purposes of the CDM Regulations;
  - 3.10.3 ensure that the principal designer and the principal contractor that it appoints in relation to TMBC's Works comply with their respective obligations under the CDM Regulations completion of the construction phase of TMBC's Works, in accordance with the CDM Regulations, ensure either that:
- 3.11 TMBC's principal designer or principal contractor gives TfGM all documents relating to TMBC's Works that are required under the CDM Regulations to be kept in the health and safety file for the Transport Land and that TMBC's principal designer or principal contractor checks that the documents are kept in the health and safety file; or
- 3.12 that TMBC's principal designer or principal contractor updates the health and safety file for the Transport Land.
- 3.13 and, in either event, TMBC must comply with its obligations in the Lease relating to the documents and the file.
- 3.14 TfGM shall co-operate with TMBC's principal designer or principal contractor to the extent necessary to allow TMBC's principal designer or principal contractor either to check that the documents relating to TMBC's Works are kept in the health and safety file for the Transport Land or to update the health and safety file for the Transport Land.
- 3.15 TfGM shall not be obliged to insure TMBC's Works.
- 3.16 TMBC's Works shall be at the sole risk of the TMBC
- 3.17 Any effect on the rental value of the Transport Land arising in connection with TMBC's Works shall be disregarded on any rent review under a Lease or any charge review under a Deed of Grant or any licence fee review under a Licence Agreement.
- 3.18 TMBC shall:
- 3.18.1 pay all fees, rates, levies and taxes that arise by reason of TMBC's Works (including any arising under any laws applying to TMBC's Works) whether imposed on TfGM or TMBC; and
  - 3.18.2 indemnify TfGM from all liability in relation to such fees, rates, levies and taxes and against all costs and claims arising from any breach of the terms of this paragraph 1.16.
- 3.19 TfGM and TfGM's Surveyor may at any time after the commencement of TMBC's Works, upon reasonable notice to TMBC, inspect progress of TMBC's Works and the materials used. In entering the Transport Land, TfGM and TfGM's Surveyor shall not obstruct progress of TMBC's Works and shall:

3.19.1 not give any instructions or make any representations directly to Telent;  
and

3.19.2 comply with Telent's health and safety and site rules.

3.20 Procure that any instructions or representations made to TMBC by TMBC or TMBC's Surveyor that comply with the terms of this Agreement are promptly dealt with to TMBC's reasonable satisfaction.

3.21 On completion of TMBC's Works produce to TfGM photographic evidence of the connections made by within TfGM's Urban Traffic Control Chambers adjacent to the Break out Chambers.

## **SCHEDULE 5 INSURANCE**

### **1. GENERAL**

- 1.1 The Parties shall comply with their respective insurance obligations in connection with the Works as set out in clauses 14 through to and including 18 of this Agreement and contained in this Schedule 5 of the Agreement and in accordance with the Telent Contract.
- 1.2 The Parties mutually agree not knowingly to do or permit anything to be done that may render any insurance policy void or voidable.
- 1.3 In accordance with its obligations in these paragraphs and its obligations in clause 13.1 of this Agreement TMBC agrees to take out the insurances listed in paragraphs 2 and 3 of this Schedule and on the terms set out in this Schedule and the Agreement.

### **2. Third Party Liability Insurance**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:

- 2.1.1 death, or bodily injury, illness, death, disease contracted by any person;
- 2.1.2 loss or damage to property;
- 2.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, loss of amenities, or any like cause.

happening during the period of insurance and arising out of or in connection with this Agreement.

### **2.2 Limit of Indemnity**

Not less than £20,000,000 (twenty million pounds) in respect of any one occurrence, the number of occurrences being unlimited, but in the annual aggregate in respect of pollution liability.

### **2.3 Territorial Limits**

United Kingdom.

### **2.4 Jurisdiction**

England.

### **2.5 Period of Insurance**

During the term of the Agreement.

### **2.6 Cover Features & Extensions**

- 2.6.1 Contractual liability.
- 2.6.2 Terrorism (in so far as is available).

2.6.3 Indemnity to principals.

**3. Employers Liability Insurance**

To indemnify the Insured for legal liability to employees for death, injury, illness or disease acting out of and in the course of their employment.

3.1 Limit of Indemnity

£10 million for any one occurrence.

3.2 Maximum Deductibles

£NIL

3.3 Territorial Limits

United Kingdom.

3.4 Jurisdiction

England.

3.5 Period of Insurance

During the term of the Agreement.

3.6 Cover Features & Extensions

3.6.1 Contractual Liability.

3.6.2 Indemnity to Principal.

## SCHEDULE 6 WORKS PACKAGE

As per the attached Cable specification and bundle of schematics illustrating TfGM's Metrolink ducting infrastructure.

### SCHEDULE 7

#### PROVISIONS TO APPLY TO THE GRANT OF THE LEASES, THE LICENCE AGREEMENTS, THE DEEDS OF GRANT AND THE FUTURE LEASES

##### 1. **Defined terms**

In this Schedule the following words and expressions have the following meanings:

**Actual Completion** actual completion of the Leases and/or the Deeds of Grant and/or the Licence Agreements by the TfGM to TMBC and for the purposes of this Schedule only the 'Date of Actual Completion' is to be interpreted accordingly

**Commercial Conditions** the Standard Commercial Transport Land Conditions (Second Edition)

**Contract Rate** 4% per annum above the base lending rate from time to time of Barclays bank plc

**Title Matters:** the agreements, covenants, declarations, easements, exceptions, provisions, reservations, stipulations and other matters, if any, set out in paragraph 5 of this Schedule

##### 2. **Conditions**

2.1 The Part 1 Conditions are incorporated in this agreement, in so far as they:

2.1.1 are applicable to the grant of a Lease and/or a Deed of Grant and/or a Licence Agreement;

2.1.2 are not inconsistent with the other clauses in this Agreement; and

2.1.3 have not been modified or excluded by any of the other clauses in this agreement.

2.2 The Part 2 Conditions are not incorporated in this Agreement.

2.3 Condition 1.1.1(d) is amended so that "completion date" means the "Leases Completion Date" "Future Leases Completion Date" or "Deeds of Grant Completion Date"; and/or "Licence Agreements Completion Date" as defined in this Agreement.

2.4 Condition 1.1.1(e) is amended so that reference to the contract rate in Condition 1.1.1(e) refers instead to the Contract Rate as defined in this agreement.

2.5 Commercial Conditions 1.5, 2.2, 3.1.2, 4.2, 5, 6.3.1, 6.4.2, 7, 8.3.6, 8.3.7, 8.3.8, 10.4.2 and 11 are excluded

2.6 Commercial Condition 1.4.1 reads "An obligation to pay any value added tax chargeable in respect of that payment



- 2.7 In Commercial Condition 8.3.1, the words "Subject to Condition 8.3.6" are deleted
- 2.8 Commercial Condition 8.3.2 reads "Apportionment is to be made with effect from the date of actual completion
- 2.9 In consideration of TMBC's obligations under this Agreement, TfGM shall grant to TMBC and TMBC shall accept from TfGM:-
- 2.9.1 a Lease or Leases; or
  - 2.9.2 a Licence Agreement or Licence Agreements; or
  - 2.9.3 a Deed of Grant or Deeds of Grant,
  - 2.9.4 Future Leases

**as appropriate under the circumstances**

- 2.10 Completion of the grant of the Leases and/or the Deeds of Grant and/or the Licence Agreements and/or the Future Leases (as appropriate) is to take place on the Leases Completion Date or the Deeds of Grant Completion Date or the Licence Agreements Completion Date or the Future Leases Completion Date (as appropriate)
- 2.11 On the terms set out in this **Schedule 7**. No purchase price, premium, or deposit is payable.
- 2.12 TMBC cannot require TfGM to grant the Leases and/or the Deeds of Grant and/or the Licence Agreements or the Future Leases to any person other than TMBC
- 2.13 TMBC cannot assign, sublet, charge, or otherwise share or part with the benefit of this Agreement whether in relation to the whole or any part of the Transport Land.
- 2.14 Neither party will be under any obligation to complete the grant of the Leases and/or the Deeds of Grant and/or the Licence Agreements and/or the Future Leases (as appropriate) on a day that is not a working day or before 9.30 am or after 4.00pm on a working day, even where time is of the essence for completion.
- 2.15 The Duct is let with vacant possession

**3. Deducing title**

- 3.1 TfGM is not obliged to provide any evidence of the freehold title to the Transport Land or of TfGM's capacity to grant Leases, and/or Deeds of Grant, and/or Licence Agreements and/or Future Leases (as appropriate) and TMBC will take the Duct in the state and condition it is in as at the date of this Agreement and nothing in this Agreement shall constitute or imply a warranty by or on the part of TfGM as to the fitness and/or suitability of the Duct or any part thereof for TMBC's intended use or for any other purpose
- 3.2 TMBC is not entitled to raise any objection, enquiry or requisition in relation to it.
- 3.3 Commercial Conditions 6.1, 6.2, 10.2.4, 10.2.5, and 10.3 do not apply to this agreement.

**4. Title guarantee**

- 4.1 Subject to the other provisions of this clause, TfGM shall grant the Leases and/or the Deeds of Grant and/or the Future Leases with full title guarantee and the Licence Agreements with no title guarantee

- 4.2 The implied covenants for title are modified so that:
- 4.2.1 the covenant set out in section 2(1)(b) of the Law of Transport Land (Miscellaneous Provisions) Act 1994 (LP(MP)A 1994) shall not extend to costs arising from the Tameside's failure to:
    - (a) make proper searches; or
    - (b) raise requisitions on title or on the results of the Tameside's searches before the date of this agreement (or by completion in the case of searches referred to in paragraph 4.2 (a) (i))
- 4.3 the covenant set out in section 3(3) of the LP(MP)A 1994 shall extend only to charges or encumbrances created by the TfGM.]
- 4.4 Condition 6.6.2 does not apply to this agreement.
5. **Matters affecting the Transport Land**
- 5.1 TfGM shall grant the Leases and/or the Deeds of Grant and/or the Future Leases to TMBC free from encumbrances other than:
- 5.1.1 any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry
  - 5.1.2 all matters contained or referred to in the Lease;
  - 5.1.3 any matters discoverable by inspection of the Transport Land before the date of this agreement;
  - 5.1.4 any matters which TfGM does not and could not reasonably know about;
  - 5.1.5 any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent Tameside would have made before entering into this agreement;
  - 5.1.6 public requirements;
  - 5.1.7 any matters which are, or (where the Lease will not be registered) would be, unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002; and
  - 5.1.8 any Planning Agreement.
- 5.2 TMBC is deemed to have full knowledge of the matters referred to in and shall not raise any enquiry, objection, requisition or claim in respect of any of them.
- 5.3 Conditions 3.1.3, 3.2.1, 3.3 and 6.6.3 do not apply to this agreement.
6. **Exclusion of Security of Tenure**
- 6.1 The parties confirm that:
- 6.1.1 TfGM served a notice on TMBC, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Lease or any

Future Lease, not less than 14 days before this agreement was entered into (a certified copy of which notice is annexed to this agreement); and

6.1.2 who was duly authorised by Tameside to do so, made a statutory declaration in accordance with the requirements of section 38A(3)(b) of the LTA 1954 (a certified copy of which statutory declaration is annexed to this agreement).

**7. Completion of the Grant of the Leases and/or the Deeds of Grant and/or the Licence Agreements and/or the Future Leases**

7.1 Completion of the grant of the Leases and/or the Deeds of Grant and/or the Licence Agreements and/or the Future Leases (as appropriate) shall take place on the Leases Completion Date or the Deeds of Grant Completion Date or the Licence Agreements Completion Date or the Future Leases Completion Date (as appropriate).

7.2 On the Leases Completion Date and/ or the Deeds of Grant Completion Date and/or the Licence Agreements Completion Date (as appropriate), TMBC shall pay to TfGM the Rent and/or the Charge and/or the Licence Agreement Fee (as appropriate) due for the period from the Rent Commencement Date or the Charge Commencement Date or the Licence Agreement Fee Commencement Date (as appropriate) to the day before the next Rent Payment Day (as provided for in the Lease) or the next Charge Payment Date or the next Licence Agreement Fee Payment Date , apportioned as follows at TfGM's discretion:

EITHER:

A x B

365

where:

A is the Rent or the Charge or the Licence Agreement Fee (as appropriate), and

B is the number of days from and including the Rent Commencement Date or the Charge Commencement Date or the Licence Agreement Fee Commencement Date to but excluding the next payment date (as provided for in the Lease or the Deed of Grant or the Licence Agreement).

OR:

A x C

B

where:

A is the amount of the quarterly instalment of the Rent or the Charge or the Licence Agreement Fee (as appropriate) that would have been payable on the quarter day immediately preceding the Rent Commencement Date or the Charge Commencement Date or the Licence Fee Commencement Date, had that quarter day been the Rent Commencement Date or the Charge Commencement Date or the Licence Fee Commencement Date (as appropriate),

B is the number of days from and including that quarter day immediately preceding the Rent Commencement Date or the Charge Commencement Date or the Licence Fee Commencement Date to but excluding the next quarter day, and

C is the number of days from and including the Rent Commencement Date or the Charge Commencement Date or the Licence Fee Commencement Date to but excluding the next quarter day.

7.3 If completion is delayed due to TMBC's default or TMBC fails to pay any sum due under this agreement in full on completion, TMBC shall pay interest in addition to damages for losses incurred by TfGM as a result of the delayed completion. The interest shall be payable at the Contract Rate on any unpaid amount for the period from the Lease Completion Date to the date of actual payment.

7.4 Commercial Condition 8.7 is amended to read: "TMBC is to pay the money due on completion to TfGM's Conveyancer by a method that gives immediately available funds".

7.5 Commercial Condition 9.3 does not apply to this agreement.

## 8. **Title to the Fibre Cable**

8.1 No rights title and interest to the relevant part of the Fibre Cable shall pass from TfGM to Tameside and no energisation of the of the Fibre Cable shall take place until the relevant Lease Completion Date or the Deed of Grant Completion Date or the Licence Agreement Completion Date (as appropriate)

8.2 Subject to any reinstatement obligations having arisen under clause 36 on termination TfGM shall have the option to require Tameside to transfer all of its rights, title and interest in the Fibre Cable to TfGM.

## 9. **Land Registry Applications**

9.1 TMBC will not send this Agreement or a copy of it to the Land Registry and is not to protect the benefit of this Agreement at the Land Registry other than by means of a Unilateral Notice.

9.2 TMBC enters in to this Agreement with notice of the actual state of repair and condition of the Transport Land in its actual physical state

## 10. **Entire Agreement**

10.1 This agreement and the documents annexed to it constitute the whole agreement between the parties and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to their subject matter.

10.2 TMBC acknowledges that:

10.2.1 in entering into this agreement and any documents annexed to it the TMBC does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:

(a) set out in this Agreement or the documents annexed to it; or

(b) contained in any written replies that TfGM's Conveyancer has given to any written enquiries raised by TMBC's Conveyancer before the date of this agreement and

10.2.2 no representation or warranty is given or is to be implied by:

(a) TfGM entering into this agreement; or

(b) any step taken by or on behalf of TfGM in connection with this agreement;

(c) as to the suitability of the Transport Land [or the building of which it forms part] for TfGM's Works.

10.3 For the purposes of paragraph 10.2.1(b) written enquiries and written replies include:

10.4 Any pre-contract enquiries and any replies to pre-contract enquiries that are requested or given by reference to the CPSE 2.1 and

10.5 Nothing in this clause shall limit or exclude any liability for fraud.

10.6 Commercial Condition 9.1.1 is varied to read "If any plan or statement in the agreement or in written replies [which TfGM's Conveyancer has given to any written enquiries raised by TMBC's Conveyancer before the date of the agreement OR to written enquiries given by TfGM's Conveyancer to Tameside's Conveyancer before the date of the agreement] is or was misleading or inaccurate due to an error or omission, the remedies available are as follows."

**SCHEDULE 7A FORM OF LEASE**

**SCHEDULE 7B FORM OF DEED OF GRANT**

**SCHEDULE 7 C FORM OF LICENCE AGREEMENT**



## **SCHEDULE 8A PROJECT COLLABORATION**

### **1. Project Liaison Group**

1.1 Within 2 weeks of the date of this Agreement the parties shall notify each other of their representatives for the purposes of this Agreement and provide contact details for them and thereafter shall provide details of any changes to such representatives. Each party shall provide a minimum of 3 Representatives each for the purposes of this Agreement.

1.2 As soon as reasonably practicable and in any event within 4 weeks of the date of this Agreement unless otherwise agreed in writing by the Parties, the Parties will establish and engage in a liaison group the Project Liaison Group which shall have meetings held no less frequently than monthly, but more frequently if the Parties agree in writing, and which shall (amongst other things but not limited to) deal with the following matters:

1.2.1 The parties keeping each other updated and informed with regard to progress in relation to the obtaining of the Consents

1.2.2 TMBC keeping TfGM informed with regard to the formation and establishment of the TDIC and the subsequent operation of the TDIC

1.2.3 TMBC keeping TfGM informed with regard to potential Connections which TMBC will require are to be made to the Duct and the identity of any potential sub-lessees

1.2.4 TMBC keeping TfGM informed with regard to the appointment of an Operator

1.2.5 TMBC keeping TfGM informed with regard to any repair or maintenance works which need to be carried out to the fibre cable

1.2.6 To provide a means for the joint review of all aspects of the performance of this Agreement

1.2.7 To provide a forum for joint strategic discussion and consideration of all aspects with regard to this Agreement including ensuring dissemination of information and consideration of the views of all stakeholders connected with the Project

1.2.8 The parties shall co-operate within the Scope in relation to Project Requests.

1.2.9 To maintain and monitor a forward plan in respect of Project Requests under paragraph 12

1.2.10 Keeping the parties up to date with the Review Procedure and the progress of any Submitted Items that are in the process of being reviewed as set out in Schedule 9 of this Agreement

### **2. Role**

2.1 The role of the Project Liaison Group is to make recommendations to TfGM and TMBC which TfGM and TMBC may accept or reject at their complete discretion. Neither the Project Liaison Group itself, nor its members acting in that capacity, shall have any authority to vary any of the

provisions of this Agreement or make any decision binding on the Parties. TfGM and TMBC shall not rely on any act or omission of the Project Liaison Group, or any members of the Project Liaison Group acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of TfGM or TMBC under this Agreement. No discussion, review or recommendation by the Project Liaison Group shall relieve TfGM or TMBC of any liability or vary any such liability or any right or benefit.

**3. Representatives**

3.1 TfGM and TMBC may appoint their representatives on the Project Liaison Group and remove those representatives on the Project Liaison Group, by written notice delivered to the other at any time. A representative on the Project Liaison Group may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other Parties' representative may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative

**4. Practices and procedures**

4.1 Subject to the provisions of this Schedule, the members of the Project Liaison Group may adopt such procedures and practices for the conduct of the activities of the Project Liaison Group as they consider appropriate, from time to time, provided that the quorum for a meeting of the Project Liaison Group shall be 4 (four) (with at least two 2 members from TfGM and 2 members from TMBC present).

**5. Recommendations**

5.1 Recommendations and other decisions of the Project Liaison Group must have the affirmative vote of all those voting on the matter, which must include not less than one (1) representative from TfGM and not less than one (1) representative from TMBC

**6. Voting**

6.1 Each member of the Project Liaison Group shall have one (1) vote

**7. Chairman**

7.1 The Chairman of the Project Liaison Group shall be nominated by TfGM and TMBC alternately every six (6) months during the Project Period (commencing with TfGM). The Chairman shall be in addition to each party's representatives on the Project Liaison Group. The Chairman shall not have a vote.

**8. Notices of Meetings**

8.1 Not less than ten (10) Working Days notice (identifying the agenda items to be discussed at the meeting) shall be given to convene a meeting of the Project Liaison Group except that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances

**9. Attendance at meetings**

9.1 Meetings of the Project Liaison Group should normally involve the attendance (in person or by alternative) of the representatives at the meeting. Where the representatives of the Project Liaison Group consider it appropriate (by affirmative vote of all those voting on the matter which must include not less than one (1) representative from TfGM and one (1) representative from

TMBC) meetings may also be held by telephone or another form of telecommunication by which each participant can hear or speak to all other participants at the same time.

10. **Minutes**

10.1 Minutes of all decisions (including those made by telephone or other telecommunication form) and meetings of the Project Liaison Group shall be kept by TMBC and copies circulated promptly to TfGM and TMBC, normally within ten (10) Working Days of making of the decision or the holding of the meeting. A full set of minutes shall be kept by TMBC and shall be open to inspection by TfGM and TMBC at any time, upon request.

11. **Existing arrangements**

11.1 Nothing in this agreement shall restrict either party's right to continue to conduct its business activities or arrangements that existed on the Effective Date or that otherwise come into being outside the scope of this agreement.

12. **Proposals and Projects**

12.1 The parties agree that the terms of this paragraph 12 shall apply when TMBC wishes to make a Project Request within the scope of the Project Principles.

12.2 TMBC may submit a Project Request falling within the scope of the Project Principles to TfGM at any time. A Project Request shall contain:

- 12.2.1 sufficient detail to enable TfGM to evaluate it
- 12.2.2 Specify TMBC's reasons for the Project Request
- 12.2.3 Indicate any implications of the Project Request, including but not limited to its impact on the Duct and the Fibre Cable
- 12.2.4 Indicate whether there are any critical dates by which a decision by TfGM is required
- 12.2.5 Request that TfGM consult with TMBC with a view to deciding whether to agree to the Project Request
- 12.2.6 details of the connection point or points with plans;
- 12.2.7 the connection route with plans;
- 12.2.8 the location of the Break Out Chamber, and the information required as part of a Works Package
- 12.2.9 any other relevant details as requested by TfGM from time to time
- 12.2.10 On receipt of Project Request, TfGM shall consider and evaluate the Project Request in good faith taking into account all relevant issues including but not limited to whether:
- 12.2.11 How and if the Project Request may affect the Metrolink and or the delivery of the Metrolink Services
- 12.2.12 Whether the Project Request will interfere with the relationship of TfGM with third parties

12.2.13 The Project Request materially affects the risks or costs to which TfGM is exposed

- 12.3 As soon as practicable after receiving the Project Request the parties shall meet and discuss the matters referred to in it. During discussions subject to paragraph 12.7 TfGM may propose modifications to, or accept or reject the Project Request.
- 12.4 If TfGM accepts the Project Request (with or without modification) the parties shall consult and agree the remaining details as soon as practicable and upon agreement TfGM shall issue a notice confirming to TMBC the Project Request which will set out the agreed Project Request and the parties shall
- 12.5 Enter into any documents to amend this Agreement or any other relevant document which are necessary to give effect to the Project Request and any such Agreement shall become part of the Project Documents for the purposes of this Projects and any obligations in relation to the Project shall be interpreted accordingly
- 12.6 The Project Request shall be implemented within the period specified by TfGM in its notice of acceptance
- 12.7 All costs in respect of the Project Request shall be borne by TMBC and TfGM's costs in respect of the Project Request shall be reimbursed by TMBC to TfGM within 10 Working Days of such written request made by TfGM
- 12.8 If TfGM rejects the Project Request it shall not be obliged to give its reasons for such a rejection and Tameside shall not be entitled to reimbursement by TfGM in respect of any of its costs involved in the preparation of the Project Request. For the avoidance of doubt TfGM may, in its absolute discretion, decline to agree to formalise a Project Request.
- 12.9 In order to formalise a Project Request TfGM will confirm whether TfGM will require TMBC to enter into one or both of the following:
- 12.9.1 A Lease
  - 12.9.2 A Licence.
  - 12.9.3 A Deed of Grant or another document as agreed between the parties to document the Connection
- 12.10 In making a selection as to the appropriate form of documentation under clause 10.4 TfGM will take into consideration whether the connection route is over land owned by TfGM or a third party and whether the land in question is in the process of being acquired by TfGM

**SCHEDULE 8B PROJECT REQUEST TEMPLATE**

**Part 1. This Project Request is dated [INSERT] and made between:**

- (1) TAMESIDE METROPOLITAN BOROUGH COUNCIL of Town Hall King Street, Dukinfield, SK16 4LA (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ([**DEFINED TERM FOR PARTY**]).

**Part 2. Background**

**Part 3. Project provisions**

Signed by [NAME OF DIRECTOR]	.....
for and on behalf of [NAME OF TFGM]	Director
Signed by [NAME OF DIRECTOR]	.....
for and on behalf of [NAME OF TAMESIDE]	Director

## SCHEDULE 9 REVIEW PROCEDURE

### 1. Review Procedure

- 1.1 Save where a specific procedure is specified the provisions of this Schedule shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure at the request of either party under the terms of this Agreement
- 1.2 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed or a statement of the proposed course of action referred to as **(Submitted Item)**. In relation to each Submitted Item the following procedure shall apply:
- 1.3 Within 10 Working Days of the date of receipt of a submission (or re-submission as the case may be) of the Submitted Item to TfGM (or such other period as the Parties may agree), TfGM shall return one (1) copy of the relevant Submitted Item to TMBC endorsed “no comment” or (subject to and in accordance with paragraph 1.3) ‘comments’ as appropriate; and
- 1.4 If TfGM fails to return a copy of a Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 1.2(a), within ten (10) Working Days (or within such other period as the Parties may agree in writing) or the date of its submission to TfGM, then TfGM shall be deemed to have returned the Submitted Item to the Tameside endorsed “no comment”
- 1.5 If the TfGM raises comments on any Submitted Item in accordance with this paragraph 1.3 he shall state the ground upon which such comments are based and the evidence or such other information necessary to substantiate that ground. To the extent that the TfGM comments on a Submitted Item other than on the basis set out in this Schedule or fails to comply with the provisions of this paragraph, TMBC may in its discretion, either:
  - 1.5.1 Request written clarification of the basis for such comments and, if clarification is not received within five (5) Working Days of such request by TMBC , refer the matter for determination in accordance with the Dispute Resolution Procedure;
- 1.6 TMBC shall submit any further or other information, data and documents that the TfGM reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If the Contractor does not submit any such information, data and documents, the TfGM shall be entitled to:
  - 1.6.1 Comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
  - 1.6.2 Object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable the TfGM to determine whether there is a legitimate basis for commenting or objecting in accordance with this Schedule
- 1.7 The expression ‘raise comments’ in this paragraph shall be construed to mean ‘raise comments or make objections’ unless the contrary appears from the context. TfGM may raise comments in relation to any Submitted Item on the grounds set out in the paragraph above or on the grounds that a Submitted item would (on the balance of probabilities) breach any Legislation or not be in

accordance with any Necessary Consent but otherwise may raise comments in relation to a Submitted Item only as follows:

- 1.7.1 The implementation of the Submitted Item would or may (on the balance of probabilities) have an adverse effect on the running of Metrolink Services or cause disruption to Metrolink Services
  - 1.7.1.1 may affect the TfGM's ability to perform its obligations under this Agreement or under Metrolink Operations
  - 1.7.1.2 may affect TMBC's s ability to perform its obligations under this Agreement
  - 1.7.1.3 The Submitted Item is not in accordance with the Authority's Requirements

## 2. **Effect of review**

- 2.1 Any Submitted Item which is returned or deemed to have been returned by the TfGM endorsed 'no comment' may be complied with or implemented by TMBC
- 2.2 In the case of any Submitted Item, if TfGM returned the Submitted Item to TMBC endorsed 'comments' TMBC shall comply with such Submitted Item after amendment in accordance with the comments unless TMBC disputes that any such comment is on grounds permitted by this Agreement, in which case TMBC and the TfGM may refer the matter for determination in accordance with clause 29 Dispute Resolution
- 2.3 The return or deemed return of any Submitted Item endorsed 'no comment' shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement such return or deemed return of any Submitted Item shall not otherwise relieve the Tameside of its obligations under this Agreement not is it an acknowledgement by the TfGM that TMBC has complied with such obligations

## 3. **Document management**

- 3.1 TMBC shall issue 3 copies of all Submitted Items to TfGM and compile and maintain a register of the date and contents of the submission of all Submitted Items
- 3.2 TMBC shall compile and maintain a register of the date of receipt and content of all Submitted Items that are returned or deemed to be returned by TfGM
- 3.3 No review, comment or approval by the Tameside shall operate to exclude or limit TMBC's obligations or liabilities under this Agreement (or the TfGM's rights under this Agreement).

**SCHEDULE 10    COMMERCIALLY SENSITIVE INFORMATION**

1.     **Part 1**

1.1    Commercially Sensitive Contractual Provisions

<b><i>Column 1 Commercially Sensitive Contractual Provisions</i></b>	<b><i>Column 2 – For period ending on date below:</i></b>
<b><i>None</i></b>	<b><i>None</i></b>

2.     **Part 2**

2.1    Commercially Sensitive Material

<b><i>Column 1 – Commercially Sensitive Material</i></b>	<b><i>Column 2 - For period ending on date below:</i></b>
<b><i>None</i></b>	<b><i>None</i></b>



**SCHEDULE 10  
TRANSPORT LAND**

- MAN9996
- GM452803
- MAN18519
- GM436299
- GM671202
- MAN213477
- GM938088
- GM681986
- GM770387
- GM649192
- LA339281
- GM960416
- GM645875
- GM147731
- GM769329
- GM721855
- GM968655

THE COMMON SEAL OF **TRANSPORT  
FOR GREATER MANCHESTER** was  
hereunto affixed in the presence of:

.....  
Authorised Signatory

.....  
Authorised Signatory

**EXECUTED** as a **DEED** by  
**TAMESIDE METROPOLITAN  
BOROUGH COUNCIL**  
In the presence of:

Assistant Borough Solicitor

