

**REPORT TO:** EXECUTIVE CABINET

**DATE OF REPORT:** 24 July 2019

**REPORT OF:** Councillor Brenda Warrington, Executive Leader  
Cllr George Newton Assistant Executive Member  
Tim Rainey, Assistant Director, Digital Services.

**SUBJECT** **GREATER MANCHESTER COMBINED AUTHORITY FULL FIBRE NETWORK PROGRAMME**

**REPORT SUMMARY:** This report details the Greater Manchester Combined Authority (GMCA) Local Full Fibre (Local Full Fibre ) programme and in particular the procurement process that is currently underway for the installation and operation of ducting and dark fibre cables for 8 local authorities, GMCA and Greater Manchester Fire and Rescue Service.

The arrangements for Manchester City Council and Tameside are different than the other 8 GM Councils. As part of the overall £23.8m funding awarded by the Department of Digital, Media, Culture and Sport (DDCMS) to Greater Manchester, £2.5m is being passported to Tameside for us to continue developing our existing dark fibre infrastructure and £835k for Manchester City Council to upgrade existing building connections to fibre.

Timescales for the GMCA Local Full Fibre procurement process are very tight. The Supplier Questionnaire was issued in Mid-April with a closing date on 13 May 2019. The Supplier Questionnaire process required potential suppliers to have a least 3 years financial records. This prevented the Tameside Cooperative, which was formed in February 2018, from applying in its own right. In view of this a consortium led by Tameside MBC with Cooperative Network Infrastructure Ltd (CNI), formerly known as the Tameside Digital Infrastructure Cooperative, and additional contributions from other consortium members completed and submitted a Supplier Questionnaire. The consortium name is the "Greater Manchester Open Fibre Alliance"

Greater Manchester Open Fibre Alliance consortium is not a legal construct, it's a nexus of CNI member who are willing to pool assets, skills and resources to develop the final bid document and if successful deliver and operate the new digital infrastructure for Greater Manchester .

The Greater Manchester Open Fibre Alliance was successful in getting through the Supplier Questionnaire phase of the process and now a full response to the tender must be submitted by 24 July 2019. Once the contract(s) are awarded by GMCA it is envisaged work to construct the new network(s) will commenced in October 2019.

The basic contract for connecting all the 1250 mandatory public sector sites is estimated to be worth £32m in total - £11.5m contributed by 8 authorities, CA and Greater

Manchester Fire & Rescue Services and £20.5m from DCMS. (The DCMS grant funding must be spent by the end of March 2021). In addition bidders are being asked to proposed how they might add value to the bid by extending the network to a further 697 optional group of public sites and assets and/or add value in others ways at cost to themselves.

Alongside the consortium developing the bid, the internal governance process for the Council must be completed, the financial and commercial risk and issues need to be addressed and a workable solution as to how the consortium will operate in a way, which will enable the free procurement/commissioning of services between each other must be agreed.

#### **RECOMMENDATIONS:**

1. That Executive Cabinet approves the Council, joining in, as part of the Greater Manchester Open Fibre Alliance (Greater Manchester Open Fibre Alliance) Consortium, a bid for the Greater Manchester Combined Authority Local Full Fibre Network (Local Full Fibre ) Project, on the basis that further key decisions will follow on funding should the Greater Manchester Open Fibre Alliance Consortium be successful in the bid.
2. That Executive Cabinet authorises the Assistant Director of Digital Services to enter into the Greater Manchester Open Fibre Alliance (Greater Manchester Open Fibre Alliance) Consortium Memorandum of Understanding attached at **Appendix 2** noting that other than confidentiality clauses it is not a legally binding.
3. A further report will be produced for the next meeting updating members on the bid together with an update on the further due diligence and in particular state aid matters, which has taken place.

#### **FINANCIAL IMPLICATIONS:**

**(Authorised By Borough Treasurer)**

No financial commitment is required until the contract is signed, so at this bidding stage of the process the Council is not committing itself to any financial investment.

If the bid is successful, the funding model would require the Council to invest up to £5m of capital resources into the Cooperative Network Infrastructure (CNI), alongside other members of the consortium, in return it will receive a fixed return of 5% per annum. In addition the CNI will pay the Council up to £190k per annum for rental of the Council owned ducting that the fibre cable runs through. These returns are not guaranteed and will be dependent upon the commercial success of CNI.

The proposed funding model is sufficient to allow this capital investment to be funded from prudential borrowing and repaid over the life of the asset.

The final investment requirement is also subject to the successful delivery of the capital scheme and may vary, it is intended that the Council invest a maximum of £5m.

There remain a number of risks with the proposal which are outlined in detail in Section 10. If the consortium is successful

in the bid a full and final business case (in line with the Council's capital programme prioritisation scheme) will have to be drawn up alongside the appropriate due diligence around the legal, financial and procurement structures to be adopted before final governance is received, and the investment made.

#### **LEGAL IMPLICATIONS:**

**(Authorised By Borough Solicitor)**

The full extent of legal implications cannot be weighed at this moment in time as bid documentation has not been shared, nor have the risks been fully understood or analysed. The financial concerns highlighted above are endorsed.

The procurement risks at given stages of the project require full exploration, and any advice sought and given by STAR and STAR Legal (Trafford) documented.

There may also be an issue in terms of state aid. It is proposed that £15m will go into the ducting, which will be owned by the Co-operative, £5m by the Council and £5m each from two others, all of whom will get return on this investment. The amount charged for usage should be in line with what the Council already charges for its infrastructure, which for example I understand Openreach would charge.

The main question is whether the other investors or members of the co-op are in receipt of an economic advantage, which could not have been obtained under normal market conditions - would a private investor in comparable circumstances have provided such sums or support if it were operating under normal market economy conditions. A full state aid test will therefore be required in the first instance.

A full understanding of the potential conflicts, which exist between the various parties is required as some members of the Co-operative, may be bidding for their project in its own right.

The complexity of the project, which also requires proper project management, will require specialist legal advice in order to protect the Council's interests, which the Council does not currently have the capacity in terms of expertise to resource. This needs to be resourced and procured.

The memorandum of understanding at **Appendix 2** should be entered into in good faith, but is not intended to bind the Council in respect of the future project, as further governance is required. Only the clauses around confidentiality and the law generally will do so to the extent they would apply in any event.

#### **ACCESS TO INFORMATION:**

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



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## 1 BACKGROUND

- 1.1 In March 2018, Greater Manchester secured 25% of the total UK Local Full Fibre wave 2 funding pot to be used to connect over 1300 public sector sites across GM. The Local Full Fibre Programme will have a transformational impact on digital infrastructure in GM - leading to an increase of full fibre coverage from 2% now to around 25% within three years. Greater Manchester would then have the best high-speed digital infrastructure coverage of any city-region in the UK.
- 1.2 This still only compares to almost 90% coverage in the leading EU countries, and an average of around 40% across Europe as a whole. Much of the new private sector investment and fibre infrastructure is also being made into high density urban areas such city centres where the best commercial returns on the investment can be made. This means many outlying and rural areas could miss out on fibre connectivity.
- 1.3 In Tameside the work we have done to date with our public sector partners, and with financial support from DDCMS Local Full Fibre to construct our own digital infrastructure, and which is then commercialised via the Digital Infrastructure Cooperative, means that 33% of all residential properties and 52% of all businesses in Tameside are now within economical connection distance of a fibre to the premise internet connection.
- 1.4 As part of the GMCA Local Full Fibre bid during the coming year a further £2.5m of ducting and fibre installation works will be undertaken. This will extend the reach of our fibre network into other more rural areas of Tameside including Mossely, Hattersley and Broadbottom (as well as Hadfield and Glossop). Once complete it will mean that fibre coverage in Tameside will increase to 41% for residential properties and 59% for businesses.

## 2 GREATER MANCHESTER COMBINED AUTHORITY LOCAL FULL FIBRE NETWORK PROGRAMME

- 2.1 The GMCA's Local Full Fibre project is currently going through the procurement phase. Timescales for undertaking are very tight. The Supplier Questionnaire (Supplier Questionnaire) was issued in Mid-April with a closing date on 13 May 2019.
- 2.2 A consortium led by Tameside MBC with Cooperative Network Infrastructure Ltd (CNI), formerly known as the Tameside Digital Infrastructure Cooperative, and additional contributions from other consortium members completed and submitted this Supplier Questionnaire. The consortium name is the "Greater Manchester Open Fibre Alliance" (Greater Manchester Open Fibre Alliance).
- 2.3 Under this proposed arrangement TMBC would be the contracting party with GMCA and will have a memorandum of agreement with CNI and other named consortium members. CNI is itself structured as a Cooperative Consortium with model rules developed by Cooperatives UK and overseen by the FCA. A full list of CNI members is attached at **Appendix 1** and these members have agreed to combine assets, skills and resources to support the bid. These members include:
  - Virgin Media Ltd
  - The Loop (Gamma Telecom)
  - Network Connect Ltd
  - Concept Solutions People
  - The Networking People (TNP)

2.4 In addition the Cooperative members listed below have specifically been named as consortium members in the bid. These companies are playing a strong and active role in both the bid development and then the delivery and operation of the network if we are successful.

- ITS Technology Group Ltd
- Telkom Infrastructure Ltd
- Core Integrated Solutions Ltd

2.5 Financial management, risk management, commercials and legal will be the responsibility of TMBC as consortium lead. Consortium and CNI members will make contributions in particular on technical design, project management, supplier management, construction and fibre install.

### **3 INVITATION TO TENDER (ITT)**

3.1 The Greater Manchester Open Fibre Alliance consortium successfully passed through the Supplier Questionnaire process and the full ITT was issued to on 9 June 2019. GMCA's Local Full Fibre project is based on 'Public Sector Anchor Tenancy' model. This is different to the method used in Tameside (which DCMS calls 'Public Sector Asset Reuse'). Both methods aim to save money for the public sector. The Tameside method uses public money to build a publicly-owned network that connects public sector sites, and can be shared with the private sector using the cooperative. The GMCA project will use public money to pay a single private sector provider to connect public buildings using a private network but providing a long lease to the public sector for use of the connections.

3.2 GMCA has started the procurement contract which is worth £32m - roughly £11.5m contribution from 8 authorities, the CA and Greater Manchester Fire & Rescue Services and £20.5m grant funding from DCMS. The DCMS grant funding must be spent by the end of March 2021.

3.3 In the normal course of events the winning private sector bidder(s) would use the money to extend their own private networks and build some amount of new network and then provide the participating public sector bodies with 'dark fibre' connections on a long lease (20 years +).

3.4 In essence the public sector is pre-paying for 20+ years' worth of connectivity and will save money. However the main part of the new network including the ducting (the valuable bit) will belong to the winning bidder who will then be able to use this exclusively for their normal commercial activities.

3.5 However, if the Greater Manchester Open Fibre Alliance consortium bid was to win, funding would be offered to each of the 8 councils involved, to build their own ducting network using their own Civils Team or sub-contractors. Just as in Tameside all public sector partners would be able to use this new pan-Manchester network. The CNI cooperative would then provide access to this new network for its private sector Telecommunications Sector members so they can deliver internet based services to businesses and residents across the sub-region.

3.6 Two key risks for the GMCA Local Full Fibre project are the tight timescale for completing the works and private sector capacity to undertake the required civil engineering works across 8 boroughs simultaneously. The DCMS grant must be spent by 31 March 2021 and so construction of the infrastructure must begin as soon as possible and be completed within a short time frame. This causes significant challenges for the private sector in terms of the scale and availability of civil engineering resources that would need to be deployed

across 8 different boroughs at the same time. In addition there would be significant wayleave and easement issues that the private sector supplier would need to resolve before work could even commence.

- 3.7 It is the intention of the consortium to offer the 8 local authorities the option to build their own ducting infrastructure in their own boroughs using their own in-house Civils teams or their chosen sub-contractors. In doing this it would avoid many of the issues associated with permissions and wayleaves. It also deals with the Civil Engineering capacity issue and would provide significant income back to each Council. The fibre cables would be installed by the Greater Manchester Open Fibre Alliance consortium to complete the network.

#### **4 Greater Manchester Open Fibre Alliance KEY BID THEMES**

##### **4.1 A consortium of GM-based organisations, embedded in the local tech/digital ecosystem, creating a Fibre Network for GM by GM**

- Led by Tameside Borough Council, bringing well-established networks with each Local Authority
- Comprehensive stakeholder networks in GM with public sector asset holders that are supporting our bid
- A Consortium membership consisting of GM based SMEs routed in the local economy
- Long term resilience and competitiveness of the Consortium model, flexing and responding to GM needs,

##### **4.2 A cost efficient technical solution that creates open access and competition in the best connected city region in the UK**

- Enabling the Fibre Network assets to stay in public ownership - a Network owned by GM for GM
- an Irrefutable Right to Use (IRU) based on 20 years
- design incorporates a combination of new dig and existing infrastructure (from either Co-operative members, Local Authorities, TfGM, UTC or 3rd parties) to generate maximum value for the public sector

##### **4.3 In-depth experience and insight of operating similar services in other localities**

- Operating a cooperative model in Tameside and Brighton – practical lessons learnt that can be scaled up for GM
- Experience and expertise of implementing large scale fibre networks in other localities.
- a Consortium bringing together partners with complementary skills, resources and capacity that is unique in the market place

##### **4.4 A resilient delivery structure with the capacity and capability to deliver within stretching timescales**

- building on the combined resources of the Consortium members, with local leadership and delivery resources in place
- investment in a specialist Project Management to oversee contract delivery via 4OC, with direct experience of programme managing large dark fibre networks.
- robust governance, scrutiny and accountability through Tameside MBC – accountable to local stakeholders

#### **4.5 A delivery model that has social value, economic growth and public service reform at its heart**

- The delivery model creates long term public sector ownership of the Fibre asset – a GM network built by GM organisations for GM
- A solution supported by GMCVO, designing the Network to benefit the largest number places including not for profit, charity and social housing in GM. (No other provider can bring this)
- It will recruit and source locally (including Apprenticeships) as GM organisations, ensuring maximum benefit to the local economies of GM
- The cooperative ethos and business model will generate long term growth in the tech/digital eco-system in GM

4.6 To maximise the reach of this new network, wherever possible we would want local authorities and TfGM to make available existing duct assets for re-use. This means the funding could be used to extend connectivity into other areas not identified in the original specification adding further value to local area. We would also use existing Cooperative members infrastructures such as Virgin and The Loop to avoid over build wherever possible.

4.7 TMBC and/or consortium members will deliver the construction works for those authorities that can't/don't want to build their own. Either way the final duct network would be owned by TMBC on behalf of the public sector. The duct rental income stream for this network would be in the region of £190k per year.

4.8 Once in place this network would cover all 10 GM districts including Tameside and the City Council who are themselves in the process of applying for membership of the Cooperative. This opens up the possibility of ubiquitous fibre connectivity for Health Sector, Councils, Schools, businesses and residents on a scale not seen before in the UK.

4.9 In essence what is being proposed by the consortium is:  
Public sector money, being paid to public sector organisations to build a public sector network that is then open to for any supplier (public or private) to use and which is ultimately owned by the public sector.

Compared to public sector money being paid to a private sector company who construct a closed infrastructure, which they own, and which the public sector gets a limited long term rental agreements to use.

### **5 Greater Manchester Open Fibre Alliance CONSORTIUM PRINCIPLES AND MEMORANDUM OF UNDERSTANDING**

5.1 The Greater Manchester Open Fibre Alliance has setup a programme board to oversee the development of the bid, and then if successful to oversee the successful delivery of the programme of works and subsequent operation. All partners of the consortium are represented on the board and each have an equal say, however Tameside MBC is the lead and as such has an effective veto and its consent is required for major decisions.

5.2 The exact legal form of Greater Manchester Open Fibre Alliance and contracting relationships are not yet finalised. However, the general principles agreed are:

- Tameside MBC is the lead and its consent is required for major decisions.
- Otherwise Greater Manchester Open Fibre Alliance members have an equal say.

- Greater Manchester Open Fibre Alliance members are expected to contribute resources to the bidding process.
- New members may be admitted to Greater Manchester Open Fibre Alliance providing that existing members consent. All Greater Manchester Open Fibre Alliance members must be members of CNI.
- All members of Greater Manchester Open Fibre Alliance agree to keep confidential information that is shared with them by other members.
- Greater Manchester Open Fibre Alliance members that are also bidding separately for the GMCA contract shall conduct the two bids separately and should be ready to demonstrate that the conduct of each bid is independent of the other.

5.3 These principles are contained in a Memorandum of Understanding (MoU), attached as **Appendix 2**, that all consortium members will need to agree and sign up to.

## 6 DEVELOPING THE RESPONSE TO THE ITT

- 6.1 To help coordinate and write the final ITT response and pull together the contributions from the consortium members, external support from “50 Degrees” a specialist bid writing firm with a track record of successfully working on tender responses for other GMCA projects has been secured. This work will cost around £40k and will be funded through contributions from consortium members including the Council.
- 6.2 The final design solution is based on an agreed set of priorities set out in the table below. First the solution will meet the criteria and requirements of GMCA ITT, so that the solution is within budget and that the maximum scope is delivered. Thereafter the following hierarchy of benefits will be used:

<i>Priority</i>	<i>Benefit</i>	<i>Context</i>
1	The benefit of GM	The wider public good - VfM for the authorities. Public service transformation. Economic development.
2	Mutual benefit of Coop members	Open access and competition for GM digital-tech sector
3	Individual Coop member benefit	Enabling investment by members and growth



6.3 The following set of priorities have guided the design decisions:

<i>Objective</i>	<i>Rationale</i>
Reuse assets where sensible	Better VfM for public and private investment - more for less
Create resilient solutions	Increase scope for sharing and so competition
Focus on carrier neutral aggregation points rather than Openreach	Open access and competition, with benefit for GM sector
Create opportunities to address Fibre to the Premise markets	Enabling investment by members and growth; Digital inclusion
Take account of needs of 5G	Faster 5G roll-out; attract investment in GM
Enable 'smart city' applications	Transform public services; savings for public sector

## 7 GMCA PROCUREMENT APPROACH

- 7.1 TfGM is undertaking the procurement and programme management on behalf of the Local Full Fibre Stakeholders (GM Local Authorities, GMCA and Greater Manchester Fire & Rescue Services). This role includes Procurement of the delivery contracts; oversight of the installation of the fibre network by the suppliers; working closely with the participating LAs and the GMCA; management of overall supplier performance and progress tracking.
- 7.2 The Local Full Fibre Programme will see over 1250 public sector assets connected with full fibre. This includes over 600 local authority sites and 33 Fire and Rescue Service sites. The GMCA also owns traffic light assets across over 700 site locations as part of a wider Intelligent Transport System (ITS), which is managed by TfGM. It connects highway infrastructure including traffic signals, pedestrian crossings, variable message signing and CCTV cameras. All assets are connected back to the TfGM Control Centre and monitored 24/7.
- 7.3 The procurement process seeks tenders for the delivery of two main single supplier contract areas – a Northern Framework and a Southern Framework, grouped geographically. A single Northern Provider will be appointed to install full fibre connections to all the sites in the ownership of Bolton, Bury, Oldham, Rochdale and Wigan Councils. These LAs have identified sites for inclusion in the GM Local Full Fibre Programme together with all of the sites in the ownership of the GMCA which are within these 5 LA areas.

7.4 A single Southern Provider will also be appointed to install full fibre connections to all the sites in the ownership of Salford, Stockport and Trafford Councils these LAs have identified for inclusion in the GM Local Full Fibre Programme as well as all of the sites in the ownership of the GMCA which are within these 3 LA areas. The Southern Provider will also enter into a Contract with the GMCA to install full fibre connections to sites in the ownership of the GMCA within Manchester District. The procurement approach allows tenderers to bid for either or both the Northern and Southern contracts.

<b>NORTHERN ARC LOCALITIES</b>					
<i>Northern Arc maximum available funding (£18,905,677)</i>					
<b>DCMS Grant Contribution £ 12,952,046</b>					
<b>Bolton</b>	<b>Wigan</b>	<b>Bury</b>	<b>Rochdale</b>	<b>Oldham</b>	<b>GMCA</b>
£456,186	£547,671	£468,501	£926,160	£1,524,905	£2,030,208
<b>Mandatory Site Numbers</b>					
<b>68</b>	<b>76</b>	<b>74</b>	<b>67</b>	<b>63</b>	<b>297</b>
<b>Additional Site Numbers</b>					
<b>30</b>	<b>43</b>	<b>59</b>	<b>32</b>	<b>36</b>	<b>21</b>

<b>SOUTHERN ARC LOCALITIES</b>			
<i>Southern Arc maximum available funding (£12,991,616)</i>			
<b>DCMS Grant Contribution £7,512,954</b>			
<b>Stockport</b>	<b>Salford</b>	<b>Trafford</b>	<b>GMCA</b>
£743,694	£1,272,144	£705,090	£2,757,734
<b>Mandatory Site Numbers</b>			
<b>45</b>	<b>103</b>	<b>34</b>	<b>423</b>
<b>Additional Site Numbers</b>			
<b>96</b>	<b>185</b>	<b>45</b>	<b>132</b>

7.5 The Greater Manchester Open Fibre Alliance (Greater Manchester Open Fibre Alliance) consortium intends to bid for both the Northern and Southern areas. In addition to the 1250 mandatory sites that must be connected there are also an additional 679 optional sites that if connected will add value to the overall tender score. Furthermore it is intended to install twin duct around the entire network (Double the required capacity) as this will not only provide increased capacity for more fibre in the future but this ducting can also be used to provide power cables for electric vehicle charging points – avoiding the need to dig up road and pavements again in the future.

7.6 Working with a specialist network design company the consortium has now designed and mapped a 500km+ network which will connect all mandatory and optional sites across

Greater Manchester. The total construction costs for this work are estimated to be £42m, with a further £5m for the fibre cable installation, Project Management and other costs such as Legal Services.

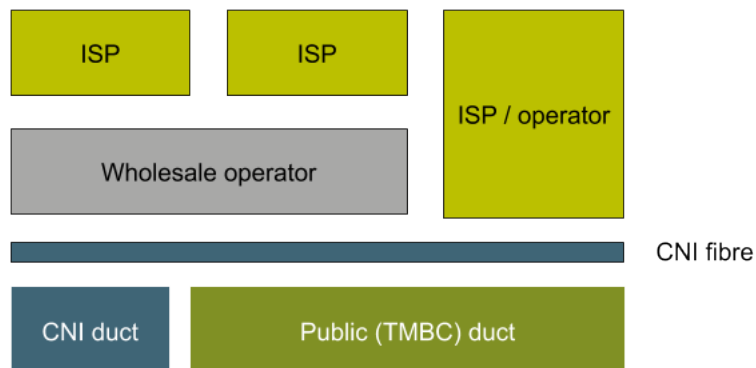
7.7 The total DCMS grant and local authority contributions is £32m which leaving a potential funding shortfall of £15m. There are a number of options for how this funding gap can be bridged, but it is likely that this additional investment will be made through CNI. This is likely to provide a better return than investing in duct and then taking duct rental fees.

7.8 Funding summary table is below:

<b>Bid Total cost £47m</b>	<b>GMCA funded £32m</b>	<b>DCMS funding £20.5m</b>	<b>Cost to reach mandatory sites</b>
		<b>8 Local authorities £11.5m</b>	
	<b>Consortium must fund £15m</b>	<b>TMBC investment £5m?</b>	<b>Cost to reach additional sites</b>
		<b>Consortium member A investment £5m?</b>	
		<b>Consortium member B investment £5m?</b>	

7.9 The preferred model for this is that investors fund the creation of defined sections of infrastructure that CNI will build and own. This takes advantage of the Tameside model where different infrastructure owners collaborate through CNI to create an integrated infrastructure without transferring ownership.

7.10 This is shown in the diagram below.



7.11 CNI will offer two mechanisms for investors:

- Share capital in CNI earning a defined rate of return, currently 5%.

- “Revenue share asset purchase”, earning a return depending on the revenues raised by CNI using the assets that the investment funds. This return is dependent on the size of the market that can be addressed but is likely to exceed 6%.

7.12 In these cases, ownership of the ducting financed this way will be with CNI and it will not pay duct rental fees on these sections.

7.13 The table below gives some indicative figures on the potential return on an investment of £5m made through CNI.

	Share capital	Revenue share
<b>Investment</b>	£5m	£5m
<b>NPV 25 years at 5%</b>	£238k	£551k
<b>IRR 25 years</b>	5.38%	6.09%
<b>Cashflow 25 years</b>	£1.25m	£4.96m
<b>Asset remaining after 25 years</b>	£5m shares	£0

## 8 TAMESIDE AND CONSORTIUM PROCUREMENT APPROACH

8.1 If the Greater Manchester Open Fibre Alliance Consortium bid is successful with Tameside Council as lead and accountable body a mechanism to ensure that work can be easily commissioned by the Council to consortium members must be found.

8.2 Depending on how many councils decide to carry out their own duct installation works it’s likely that only a small percentage - if any - of these works will need to be procured from the private sector. The only major element of works that will be undertaken outside of the public sector is the fibre installation, Project Management and other services such as external Legal support. These works are estimated at £5m and where possible will be undertaken by consortium or Coop members.

8.3 These costs are summarised in the diagram below:

<b>Civil works Total cost £42m+</b>	<b>Local authorities build their own</b>
	<b>TMBC builds for them</b>
	<b>TMBC contractors</b>
	<b>Consortium contractors</b>
<b>Other costs &lt;£5m</b>	<b>Fibre deployment</b>
	<b>Project management</b>
	<b>Legal etc</b>

- 8.3 Options for dealing with the commissioning of work between consortium members could include using the LEP/Robertson's or "passporting" grant monies from the Council to consortium members. Work is underway with STAR, Legal and Finance to identify to most appropriate solution.

## 9 ASSET OWNERSHIP

- 9.1 The Council will take ownership of the infrastructure that has been constructed using funds from DCMS and the 8 local authorities. The Council will earn duct rental fees on this infrastructure from CNI and any other operators deploying fibre in that duct. CNI will own infrastructure that has been constructed using funds invested in CNI. **In essence the Council would own £32m of ducting assets for a £5m investment.**
- 9.2 Ownership of the fibre deployed for use by the local authorities may be transferred to them in perpetuity – the contract requires that they get free use for at least 20 years. Where CNI chooses to deploy fibre in Tameside owned duct it will pay a duct rental fee of 60p per metre per year. The CNI fibre would sit alongside public sector fibre.
- 9.3 Assuming that the grant funded part of the network is approx. 320km, and assuming that CNI agrees to deploy fibre in all of this network (it is not under an obligation to do so), this would generate approximately £190k per year for the Council.
- 9.4 The Council may be able to sell duct access to other operators and so increase this revenue.

## 10 RISKS

- 10.1 There a number of significant risks in delivering a project of this scale and complexity. 4OC are a specialist project management company who are also members of the Cooperative and they will be engaged to oversee the project management side of things. Key risk include:
- 10.2 **Timescales:** The timescales for claiming the DCMS grant monies mean that much of the construction works must be completed and claimed for before 31 March 2021. With works not expected to commence until October 2019 at the earliest this only gives 17 months window to build much of the ducting infrastructure. The consortium plans to offer each individual council the opportunity to undertake the ducting works using their own in-house Civil Engineering Teams or sub-contractors. By doing this work can be undertaken simultaneously across all 8 boroughs.
- 10.3 **Financial:** As with any construction project of this scale there is a risk of costing overruns. The consortium has based its build costs and project finances on Tameside own experience of installing over 50km of ducting and fibre network. The costs also assume that the consortium will have to install new ducting across the board, when in reality in many cases it will be possible to re-use existing ducting owned by the public sector or Cooperative member. Not only does this avoid unnecessary overbuild, it also saves money and reduces disruptive road and street works.
- 10.4 **Commercial:** Once complete there is a risk that the infrastructure isn't commercially attractive to the telecoms sector and this leads to lower than envisaged take-up of services from the Cooperative. Key to the success and sustainability of the infrastructure is buy-in from private sector and public sector organisations. The Coop's pricing model as used in Tameside is already proving to be competitive and this along with the intellectual

and capital investment from consortium (and other Coop) members will ensure the commercialisation element of the project will have the focus and drive required. The emerging 5G networks will also require significant fibre infrastructures to support the roll out of small cell technologies in coming years and this will be a prime focus for the Coop.

- 10.5 **Procurement:** The final delivery mechanism needs to be agreed to ensure compliance. It is desirable if possible for the capital works to be delivered through the CNI.
- 10.6 Engaging with other public sector partners, over and above other Councils, will also be key. Hospitals, GP's, Medical Centres, Schools, Colleges, Universities and well as Social Landlords could all be potential customer once the fibre is in place. Using Tameside's officer and political contacts with these sectors we can begin to build the business cases for connectivity.
- 10.7 A full risk register has been developed and will be maintained as part of the Project
- 10.8 Management and project governance.

## 11 **RECOMMEDATIONS**

- 11.1 See front sheet.

## APPENDIX 1

	<b>Greater Manchester Open Fibre Alliance consortium</b>	<b>CNI cooperative</b>	<b>Description</b>
<b>Tameside Metropolitan Borough Council</b>	Lead member	Member	Unitary authority
<b>Cooperative Network Infrastructure (CNI)</b>	Member		Cooperative consortium
<b>Core Integrated Solutions</b>	Named member	Member	Fibre deployment specialist
<b>ITS Technology Group</b>	Named member	Member	Telecoms operator/ISP
<b>Telcom</b>	Named member	Member	Telecoms operator/ISP
<b>Ashton Sixth Form College</b>		Member	Public sector contributor
<b>Blackpool Council</b>		Member	Unitary authority
<b>CBN</b>		Member	Expert adviser
<b>Concept Solutions People</b>	Named supplier	Member	Fibre network builder and operator
<b>Jigsaw Group</b>		Member	Housing association
<b>LinkIPnetworks</b>		Member	ISP
<b>Midcounties Cooperatives</b>		Member	Consumer cooperative (retail, telecoms, energy)
<b>Network Connect</b>		Member	ICT solutions
<b>NHS Tameside and Glossop CCG</b>		Member	Public sector contributor
<b>Pennine Care NHS Foundation Trust</b>		Member	Public sector contributor
<b>Tameside and Glossop Integrated Care NHS Foundation Trust</b>		Member	Public sector contributor
<b>Tameside College</b>		Member	Public sector contributor
<b>The 4OC Ltd</b>	Named supplier	Member	Project managers
<b>The Loop</b>		Member	Fibre network operator
<b>TNP</b>		Member	Telecoms operator/ISP
<b>Virgin Media</b>	Named supplier	Member	Telecoms operator/ISP
<b>Wood ITC</b>		Member	ICT solutions

# APPENDIX 2 - MEMORANDUM OF UNDERSTANDING

Dated  July 2019

## MEMORANDUM OF UNDERSTANDING

Between

(1) Tameside Metropolitan Borough Council

and

(2) Telcom Infrastructure Limited

and

(3) ITS Technology Group Limited

and

(4) Core Integrated Solutions Limited

and

(5) Cooperative Network Infrastructure Limited

and collectively known as the Greater Manchester Open Fibre Alliance (Greater Manchester Open Fibre Alliance) Consortium relating to an agreement to collaborate in relation to a bid for the Greater Manchester Combined Authority Local Full Fibre Network Programme.



**THIS Memorandum of Understanding** is dated [x] July 2019

## **PARTIES**

(1) The Parties to this MOU are as detailed in the header of this document.

## **BACKGROUND**

- A. The Parties are entering into this Memorandum of Understanding (MoU) in order to collaborate in relation to a bid for the Greater Manchester Combined Authority Local Full Fibre Network Programme (the “Opportunity”).
- B. This MoU sets out the principles and the Parties’ intentions, responsibilities and mutual understanding in relation to their collaboration on the Opportunity.
- C. Upon the award of a contract by the Greater Manchester Combined Authority (GMCA) following a successful Tender submission by the Parties, the Parties agree to enter in to contractual terms with each other as required, as well as with the GMCA, in order to deliver the Project.

## **AGREED TERMS**

### **1 INTERPRETATION**

The following definitions and rules of interpretation apply in this MoU.

#### **1.1 Definitions:**

**Allocated Work:** [xxxxxxx]

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 08:00 to 18:00 on any Business Day.

**Commencement Date:** the date when the MoU has been signed by the Parties.

**Control:** shall be defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control:** shall be construed accordingly

**Group:** in relation to a company, that company, any subsidiary or holding company, from time to time.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Invitation to Tender:** the invitation to tender issued by the GMCA, including any amendment to that invitation to tender issued by the GMCA from time to time.

**Main Contract:** [xxxxxx]

**Operational Requirements:** [xxxxxx]

**Programme Management Office:** the structure established for the effective, efficient and successful planning and execution of the Project during the bid and post contract award.

**Project:** As detailed in the Invitation to Tender.

**Proposal:** the formal proposal to be prepared by the Parties and submitted to the GMCA by the Parties, in response to any appropriate stage of a Tender process.

**Submission Date:** the date for submission of the Tender stated in the Invitation to Tender, or any other date for any part of the Tender process stipulated by the GMCA.

**Technical Design Authority:** the structure established for the effective, efficient and successful design and configuration and integrity network designed to deliver the Project during the bid and post contract award.

**Tender:** the formal tender to be prepared by the Parties and submitted to the GMCA by the Parties in response to any appropriate stage of a Tender process.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this MoU.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee) by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this MoU.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made at the date of this MoU under that statute or statutory provision.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this MoU and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 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.

## 2 INTENDED ROLES OF PARTIES

- 2.1 For the purposes of contribution to the bid, each Party to the MoU intends to adopt the following roles:
- 2.1.1 **Tameside Metropolitan Borough Council** will adopt the role of lead consortium member and intends to act as the governance structure; coordinate with other GM Local Authorities; invest in the Project; provide financial underpinning where necessary.
- 2.1.2 **Telcom Infrastructure Ltd** intends to provide design capability as part of the Technical Design Authority; field engineering resources; develop the network to include commercial use; operate a retail sales capability over the commercial elements of the network; invest in the Project.
- 2.1.3 **ITS** intends to provide design capability as part of the Technical Design Authority; programme management support to the Programme Management Office; develop the network to include commercial use; establish the active network layer as an overlay and enable wholesale network provision; pro-active monitoring of the core network serving the public sector sites and commercial services; invest in the Project.
- 2.1.4 **Core Integrated Solutions Ltd** intends to provide design capability as part of the Technical Design Authority; programme management support to the Programme Management Office; contracted resources to build the network; reactive engineering resources for maintenance.
- 2.1.5 **Cooperative Network Infrastructures** intends to provide the Programme Management Office via 4OC, contractors to the consortium; the legal structure by which asset owners (including Local Authorities) can contribute their assets and investment to create a comprehensive and contiguous network; provide passive network connections to providers.
- 2.2 The Parties currently intend that these roles will be assumed during the Tender process and adopted in delivery of the Project if their bid is successful. However, the Parties acknowledge that at the time of signing the MOU, the consortium collaboration is very much in the early stages and that each Party's role may need to change and adapt as appropriate in response to the developing requirements of the Tender process and/or delivery of the Project. The Parties will, as part of working closely and collaboratively together, keep their roles under review and will meet regularly to discuss and revise their respective roles and responsibilities as required.

### 3 **COMMENCEMENT AND DURATION**

3.1 This MoU shall commence on the Commencement Date.

3.2 This MoU shall continue until whichever of the following occurs first:

- 3.2.1 receipt by any Party of written confirmation from the GMCA that it no longer intends to proceed with the Project;
- 3.2.2 a contract award for the Project to a party other than the Parties or receipt by the Parties of written notice from the GMCA that their submission has not been selected for the Project or is disqualified from tendering for it;
- 3.2.3 the failure of the GMCA to award the contract for the Project to the Parties within ninety days of the expiry of the validity period of the Tender;
- 3.2.4 the agreement of the Parties not to proceed with the Tender together;
- 3.2.5 the entry into the Main Contract by the GMCA and the associated contractual arrangements between the Parties and the GMCA; or
- 3.2.6 this MoU is terminated in accordance with clause 13 (Termination).

### 4 **PREPARATION AND SUBMISSION OF THE TENDER**

4.1 The Parties agree to work together in good faith to prepare the Tender for submission by the Parties to the GMCA by the Submission Date.

4.2 Each Party shall appoint a representative (together the **Parties' Representatives**) to co-ordinate the Parties' activities in connection with the preparation of the Tender.

4.3 All Parties shall play a role in the preparation and submission of the Tender and specified Parties shall have primary responsibility for managing the relationship with the GMCA and other sub-contractors or partners in relation to the Tender.

4.4 Each Party shall:

- 4.4.1 have sole responsibility for ensuring the accuracy and adequacy of the information contained in its part of the Tender;
- 4.4.2 keep the other Parties informed about its own progress in relation to the preparation of those parts of the Tender for which it is primarily responsible, including in relation to:
  - 4.4.2.1 issues of concern in relation to the Project;
  - 4.4.2.2 new developments and resource requirements; and
  - 4.4.2.3 compliance with deadlines;
- 4.4.3 supply to any other Party information and assistance reasonably requested by it to enable the other Party to prepare those parts of the Tender for which it is primarily responsible; and
- 4.4.4 review documentation in respect of the Tender as soon as reasonably practicable at the request of the other Party, and notify that other Party of

any errors or incorrect assumptions made in any of those documents of which it is aware.

Nothing in this clause **Error! Reference source not found.** shall require any Party to disclose to the others details of its proprietary cost or pricing data, including but not limited to wages and salaries, overheads and profits, such information not to be unreasonably withheld if it materially compromises the competitiveness of the Tender.

## 5 SUBMISSION OF TENDER

- 5.1 The Parties' Representatives shall jointly review a final draft of the Tender before its submission to the GMCA. Before submission of the Tender, all Parties shall confirm in writing its agreement to the content of the Tender and its commitment to fulfil those of its terms which concern the Allocated Work.
- 5.2 All Parties shall respond in a proper and timely manner to requests for assistance from the other Parties to enable them to respond to questions raised by the GMCA in its evaluation of the Tender. If required, the Parties shall procure the availability of suitable management and technical personnel to assist in presentations or briefings or other communications necessary to support the Tender and in any discussions and negotiations with the GMCA.
- 5.3 The Tender submitted to the GMCA shall contain the contribution of all Parties to the Tender and, where and if appropriate, shall declare the existence of this MoU agreed between the Parties.
- 5.4 No Party shall be liable to the other for the consequences of the GMCA's refusal of the Tender or any part of it or for the consequences of any withdrawal pursuant to clause 13.

## 6 AWARD AND AGREEMENT OF MAIN CONTRACT

- 6.1 The Parties will ensure each is notified:
  - 6.1.1 of any response to the Tender, of any award (whether or not in favour) and, if the award is in favour, when the Main Contract becomes legally effective; and
  - 6.1.2 of any change the GMCA makes to the Operational Requirements after submission of the Tender.
- 6.2 The Parties will agree with the GMCA the final form of the Main Contract and each Party will provide assistance as required in a constructive and timely manner. Such assistance may include resourcing for legal input and funding for legal support. The resourcing (including for legal support) in relation to negotiating the contract and contractual arrangements in the Tender process and the settling of the terms and documents thereafter, and any ancillary contractual arrangements, including between the Parties, will remain under review by the Parties and in particular, the funding of the required legal support.
- 6.3 The Parties shall agree in due course which of the Parties shall enter into the Main Contract with GMCA. This shall remain under review and further, may be subject to change during the Tender process or thereafter.

## 7 PARTICIPATION IN COMPETING TENDERS

- 7.1 Participation or co-operation with other parties is permissible providing such support does not compromise the integrity or competitiveness of this Opportunity and appropriate firewalls are respected.
- 7.2 Each Party shall procure that its officers, employees, agents, advisers and other representatives, and each member of its Group and their respective officers, employees, agents, advisers and other representatives, comply with clause **Error! Reference source not found.** as if they were a party to this MoU.
- 7.3 Nothing in this clause 7 shall restrict any Party's right to continue to conduct its business activities or arrangements that existed on the Commencement Date or that otherwise come into being outside the scope of this MoU. In particular but without limitation, nothing in this clause 7 shall prevent any Party from dealing in the ordinary course of their business with third parties who may be involved in the submission of a proposal competitive with the Tender or from soliciting for or tendering for business for projects similar to the Project.

## 8 CONFIDENTIALITY

- 8.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives (as defined below) to another Party and that Party's Representatives whether before or after the date of this MoU in connection with the Project, including but not limited to:

- 8.1.1 the existence and terms of this MoU;
- 8.1.2 the existence and terms of the Tender, the Main Contract and any subsequent contractual arrangements;
- 8.1.3 any information developed by the Parties in the course of the preparation and submission of the Tender; and
- 8.1.4 any information that would be regarded as confidential by a reasonable business person, relating to:
- 8.1.4.1 the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the Group of companies to which the disclosing party belongs); and
  - 8.1.4.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the Group to which the disclosing party belongs).

**Representatives** means, in relation to a Party, its employees, officers, representatives and advisers.

- 8.2 The provisions of this clause 8 shall not apply to any Confidential Information that:
- 8.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);

- 8.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 8.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
  - 8.2.4 the Parties agree in writing is not confidential or may be disclosed; or
  - 8.2.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 8.3 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 8.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this MoU (**Permitted Purpose**); or
  - 8.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 8.
- 8.4 A Party may disclose the other Party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 8.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
  - 8.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.
- 8.5 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause **Error! Reference source not found.**, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure. The Parties acknowledge the applicability of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to Tameside Metropolitan Borough Council.
- 8.6 A Party may, provided that it has reasonable grounds to believe that the another Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing that Party or the other Parties of such disclosure.
- 8.7 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this MoU are granted to the other party, or to be implied from this MoU.
- 8.8 Subject to clause **Error! Reference source not found.**, on termination or expiry of this MoU, each Party shall:

- 8.8.1 return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - 8.8.2 erase all the other Party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically practicable); and
  - 8.8.3 certify in writing to the other Party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause **Error! Reference source not found.** (Termination).
- 8.9 If the GMCA awards the contract for the Project to the Parties, they shall negotiate in good faith to agree terms on which:
- 8.9.1 each Party may continue to use the other party's Confidential Information; and
  - 8.9.2 each Party may retain and use documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information,
- for the purpose of performing their respective obligations in respect of the Project.
- 8.10 Except as expressly stated in this MoU, no Party makes any express or implied warranty or representation concerning its Confidential Information.

## 9 INTELLECTUAL PROPERTY

- 9.1 This MoU does not transfer any interest in Intellectual Property Rights. All Intellectual Property Rights developed or created by a Party in the preparation of the Tender (**Created IPR**) shall be owned by that Party. Any Intellectual Property Rights developed or created by a Party in relation to the Project, the Main Contract or any subsequent contractual arrangements shall be dealt with in separate subsequent agreements.
- 9.2 Each Party grants to the other Parties an irrevocable, perpetual, non-exclusive, personal, royalty-free licence to use its Created IPR to the extent necessary for the other Parties to carry out their obligations under this MoU and in relation to the Tender, the Project, the Main Contract and any other related contractual arrangements.
- 9.3 Each Party shall immediately give written notice to the other Party of any actual, threatened or suspected infringement of the other Party's Intellectual Property Rights (including Created IPR) of which it becomes aware.

## 10 EMPLOYEES AND NON-SOLICITATION

- 10.1 Each Party shall allocate:



- 10.1.1 to the preparation of the Tender and the performance of work to be performed under any contract resulting from the GMCA's acceptance of the Tender only such personnel who have the skills and experience necessary to enable them to perform effectively the tasks assigned to them; and
  - 10.1.2 a sufficient number of such personnel to enable it to fulfil effectively its obligations under this MoU and any contract resulting from the GMCA's acceptance of the Tender.
- 10.2 A Party shall not, without the prior written consent of the other relevant Party, at any time from the Commencement Date to the expiry of six months after the date of termination or expiry of this MoU, solicit or entice away from that Party or employ or attempt to employ any person who is, or has been, engaged as an employee of that Party in relation to the preparation or submission of the Tender.

## 11 ANTI-BRIBERY

- 11.1 All Parties shall in relation to this MoU:
- 11.1.1 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**);
  - 11.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, **Error! Reference source not found.** or **Error! Reference source not found.** of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 11.1.3 comply with the other Party's Ethics, Anti-bribery and Anti-corruption Policies, in each case as that Party or the relevant industry body may update them from time to time (**Relevant Policies**);
  - 11.1.4 have and shall maintain in place throughout the term of this MoU 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 **Error! Reference source not found.**), and will enforce them where appropriate;
  - 11.1.5 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 MoU; and
  - 11.1.6 immediately notify the other Party (in writing) if a foreign public official becomes an officer or employee of it or acquires a direct or indirect interest in it and warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date);
- 11.2 All Parties shall ensure that any person associated with it who is performing obligations in connection with this MoU 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 11 (**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.

11.3 For the purpose of this clause **Error! Reference source not found.**, 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 11, a person associated with a Party includes but is not limited to any subcontractor of that Party.

## 12 INDEMNITY

12.1 Each Party (**indemnifying party**) shall indemnify the other Parties (**indemnified party**) 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 reasonable professional costs and expenses or incurred by the indemnified party arising out of or in connection with a breach or negligent performance or non-performance of this MOU.

## 13 TERMINATION

13.1 Any Party may terminate their participation in this MoU by giving one month's written notice to the other Parties:

13.1.1 before submission of the final Tender to the GMCA; or

13.1.2 following any material change to the Operational Requirements after submission of the Tender to the GMCA,

and in each case the terminating Party shall co-operate with the other Parties to the extent reasonably necessary to enable its role under this MoU to be taken over by another Party or by a third party.

13.2 Clause 13.1 is without prejudice to the Parties' right to agree between themselves that any one Party may exit the consortium and participation in this MOU (and the terms of such exit) at any time or that the MOU should terminate in full for all of the Parties.

## 14 DISPUTE RESOLUTION

In the event of any issue arising between any of the Parties, such issue will be notified to the other Parties and escalated to senior officials within the Parties for resolution.

## 15 ASSIGNMENT AND OTHER DEALINGS

No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this MoU.

## 16 VARIATION

No variation of this MoU shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## 17 NOTICES

17.1 A notice given to a party under or in connection with this MoU shall be in writing and sent to the party at the address in this MoU.

17.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt or at the time the notice is left at the address
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of delivery.	At the time recorded by the delivery service].

17.3 A notice given under this MoU is valid if sent by email, providing it is also copied to the Parties Representatives.

## 18 NO PARTNERSHIP OR AGENCY

18.1 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of any other Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. In the event of a contract award to the Parties, the relationships between the Parties shall be governed and determined by separate contractual arrangements between the Parties.

18.2 Nothing in this MoU shall be construed as providing for the sharing of profits or losses arising out of the effort of any of the Parties.

18.3 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

## 19 COUNTERPARTS

This MoU may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 20 THIRD PARTY RIGHTS

This MoU is not intended to give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this MoU.

## 21 COSTS

Each Party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this MoU and in connection with the preparation and submission of the Tender and any documents referred to in it and no Party shall be liable for the costs and expenses incurred by any other Party.

22 **GOVERNING LAW AND JURISDICTION**

This MOU shall be construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

Except for this Paragraph and clauses 8, 9, 12 and 20 to 22 which shall be legally binding, this MOU is no legally binding and the Parties acknowledge this MOU does not place them under any obligation to enter into any subsequent agreement or arrangement.

Signed by: )  
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Signature of Director  
\_\_\_\_\_  
Name of Director (PRINT)

Signed by: )  
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