



Telford & Wrekin
C O U N C I L

Addenbrooke House Ironmasters Way Telford TF3 4NT

CABINET

Date	Thursday, 2 February 2017	Time 5.00pm
Venue	Meeting Rooms G3/4, Addenbrooke House, Ironmasters Way, Telford, TF3 4NT	

Enquiries Regarding this Agenda:

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Cabinet Members:

Councillor S Davies	Leader of the Council
Councillor R A Overton	Deputy Leader and Cabinet Member for Housing, Leisure & Health
Councillor L D Carter	Council Finance, Partnerships & Commercial Services
Councillor E A Clare	Culture, Sports, Parks & Green Spaces
Councillor A R H England	Adult Social Care & Older People
Councillor A D McClements	Transport, Customer & Neighbourhood Services
Councillor G C W Reynolds	Education, Employment & Regeneration
Councillor H Rhodes	Public Protection, Safety & Enforcement
Councillor P R Watling	Children, Young People & Communities

Invitees

Councillor A J Eade	Conservative
Councillor W L Tomlinson	Liberal Democrat/Independent

AGENDA

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K	Key Decision	<u>Key</u>	
NK	Non-Key Decision	C	Item reserved for Council
		Orange	Exempt Item

CABINET

Decision Notices and Minutes of a meeting of the Cabinet held on Thursday, 2 February 2017 at 5.00pm at Addenbrooke House, Ironmasters Way, Telford

PUBLISHED ON WEDNESDAY, 8 FEBRUARY 2017

(DEADLINE FOR CALL-IN: MONDAY, 13 FEBRUARY 2017)

Present: Councillors S Davies (Leader and Chair), L D Carter, E A Clare, A R H England, A D McClements, R A Overton, G C W Reynolds, H Rhodes and P R Watling.

Also Present: Councillors A J Eade (Conservative Group Leader) and W L Tomlinson (Liberal Democrat/Independent Group Leader).

CB-057 Apologies for Absence

None.

CB-058 Declarations of Interest

None.

CB-059 Minutes

RESOLVED – that the minutes of the meeting held on 5 January 2017 be confirmed and signed by the Chair.

CB-060 Modern Slavery Act – Anti Slavery Policy and Statement for 2017/18

Non Key Decision

Councillor P R Watling, Cabinet Member: Children, Young People & Communities, presented the joint report of the Assistant Director: Governance, Procurement and Commissioning and the Assistant Director: Customer and Neighbourhood Services.

The Modern Slavery Act 2015 stated that any commercial organisation with a minimum turnover of £36m was required to produce a Modern Slavery Act Annual Statement and have an Anti-Slavery Policy. It was recognised as good practice for all Councils to also follow this requirement and both documents were attached to the report for consideration. Modern Slavery could present itself in a variety of ways, eg a supplier offering a very cheap cost for services which may be because they are not paying their staff appropriately so that they can afford a low price.

In addition to its responsibility as an employer, the Cabinet also acknowledged the Council's duty to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015.

The prevention, detection and reporting of modern slavery in any part of the Council's business or supply chains was the responsibility all employees. Any concerns or suspicions should be notified by employees to their line manager and Family Connect in the first instance. Family Connect would then ensure the Council's duty was met to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015 in Safeguarding vulnerable adults and children, especially around child exploitation and human trafficking.

A number of comments were made by the Cabinet noting that exploitation took many forms; awareness raising among employees and the wider public, coupled with a clear and transparent reporting process was essential to safeguard the most vulnerable in society.

RESOLVED –

- (a) that the contents of the report be noted and the Anti-Slavery Policy and Modern Slavery Act Annual Transparency Statement for 2017/18 be approved; and**
- (b) that the Modern Slavery Act and Annual Statement for 2017/18 be agreed and signed by the Managing Director and Leader.**

CB-061 Procurement Update

Key Decision identified as **Procurement Update** in the Notice of Key Decisions published on 18 January 2017. In accordance with Regulation 10, the relevant Scrutiny Chair has been informed of the reasons why compliance with regulation 9 (28 days notice of key decisions) was impracticable.

Councillor L D Carter, Cabinet Member: Council Finance, Partnerships & Commercial Services presented the report of the Assistant Director: Governance, Procurement and Commissioning, which provided an update on the Council's Procurement Intentions Document and the latest information regarding effective procurement and contract management.

It was noted that council wide procurement continued to drive savings through robust competitive tendering and real time negotiation when brokering services. Savings derived from effective procurement had contributed to the Cost Improvement Plans in place across the council.

The Contract Procedure Rules had been updated to reflect latest legislation and most recently this had been the need for all officers to be aware of the potential for a breach of the Modern Slavery Act in the supply chain. Officers were asked to consider a number of indicators as part of a check list in the procurement plan in order to help them consider whether there was the potential for a breach of the Modern Slavery Act and how to manage situations of concern during contract management.

The Cabinet asked how the regulations would be affected by Brexit and were informed that the Procurement Contract Regulations were English Law with an ethos of openness and transparency and it would be a backward step if these regulations were overturned.

RESOLVED – that

- (a) the procurement updates in the report be noted; and**
- (b) the Procurement Intentions Document (Appendix 1 to the report) be noted and, where indicated, authority be delegated to appropriate officers (as per the Contract Procedure Rules) to progress new procurements through the tender process to contract award.**

CB-062 Telford & Wrekin Energy Support Service

Non Key Decision

Councillor L D Carter, Cabinet Member: Council Finance, Partnerships & Commercial Services, presented the report of the Assistant Director: Commercial Services, which set out a proposal to develop a new energy support service to help local residents reduce their energy costs.

There were two elements to the proposed service:

A Telford & Wrekin Council branded energy price comparison website; and Targeted advice and support for vulnerable residents who were likely to be in fuel poverty as part of a national Local Energy Advice Programme (LEAP) pilot.

The success of the new service would depend on the degree to which the Council was able to promote and encourage local residents to utilise the service as well as the success in finding better energy deals for them to switch to. The report included an overview of some of the marketing channels that could be used, including the role of key frontline services to raise awareness of the service.

A range of options had been investigated to assist residents in receiving a better deal on energy and generate additional income for the Council. These were:

- Collective switching: where a large group of people used their collective buying power to negotiate a better deal from energy suppliers.
- Comparison site: working with an external provider to develop a Telford & Wrekin Council branded energy comparison switching service.
- Partnering with an existing energy company: where the Council would operate under licence or as a partner of a municipal energy supplier.
- Become an Energy Supply Company: where the Council would register as an energy supplier with OFGEM and as a Limited Company (or SPV) to procure and sell energy.

A summary of the risks and benefits of each option was detailed in Appendix 1 to the report.

The second element of the proposed service was to work in partnership with a provider to set up a Telford & Wrekin Council branded energy price comparison and switching site. A procurement exercise had been conducted to test the market and options available and AgilityEco Limited, who worked in partnership with UK Power Ltd, had been identified as the preferred supplier. An added benefit of working in partnership with AgilityEco Ltd and UK Power Ltd was that they were able to offer the opportunity to participate in the Local Energy Advice Programme (LEAP) pilot. At no direct cost to the Council, this service would provide important advice, support and energy saving measures to fuel poor and vulnerable households. Details of the pilot were set out in the report.

RESOLVED – that

- (a) the implementation of a Telford & Wrekin Council branded energy price comparison website be approved;**
- (b) the Council’s participation in the LEAP pilot be approved; and**
- (c) authority be delegated to the Assistant Director: Commercial Services in consultation with the Lead Cabinet Member: Finance, Partnerships and Commercial Services to make any arrangements and enter into any agreements on behalf of the Council to implement the above resolutions.**

CB-063 West Midlands Rail Collaboration Agreement

Non Key Decision

Councillor A D McClements, Cabinet Member: Transport, Customer & Neighbourhood Services presented the report of the Assistant Director: Customer & Neighbourhood Services which advised Cabinet of a change to the drafting of the Collaboration Agreement between West Midlands Rail Limited and the Department for Transport since its approval by Cabinet on 21 July 2016. The change resulted from a change of opinion by the new Secretary of State for Transport who had concerns about the benefits of full devolution of rail responsibilities across the United Kingdom. This had resulted in the Collaboration Agreement draft which had been approved by all West Midlands Rail member authorities being amended to remove reference to full devolution.

Confirmation was received that the local service to London would be unaffected by the change.

RESOLVED that

- (a) the change of position to rail devolution being adopted by the new Secretary of State for Transport be noted; and**
- (b) authority be delegated to the Cabinet Member for Transport, Customer & Neighbourhood Services on behalf of Telford & Wrekin Council to cast**

its vote in favour of the special resolution that is necessary under Article 8.3 of West Midlands Rail Limited Articles of Association to authorise the signing of the amended Collaboration Agreement (included at Appendix 1 to the report), whether that resolution is passed in writing or at a general meeting of the Company.

The meeting ended at 5.20pm

Signed for the purposes of the Decision Notices

Jonathan Eatough
Assistant Director: Governance, Procurement & Commissioning
Date: 8 February 2017

Signed:

Date:

CABINET

Decision Notices and Minutes of a meeting of the Cabinet held on Thursday, 5 January 2017 at 5.00pm at Addenbrooke House, Ironmasters Way, Telford

PUBLISHED ON WEDNESDAY, 11 JANUARY 2017

(DEADLINE FOR CALL-IN: MONDAY, 16 JANUARY 2017)

Present: Councillors S Davies (Leader and Chair), L D Carter, E A Clare, A R H England, A D McClements, R A Overton, G C W Reynolds, H Rhodes and P R Watling.

CB-049 Apologies for Absence

Councillors A J Eade (Conservative Group Leader) and W L Tomlinson (Liberal Democrat/Independent Group Leader)

CB-050 Declarations of Interest

None.

CB-051 Minutes

RESOLVED – that the minutes of the meeting held on 17 November 2016 be confirmed and signed by the Chair.

CB-052 2016/17 Financial Management Report

Key Decision identified as **Financial Management Report** in the Notice of Key Decisions published on 9 November 2016.

Reserved for Council

Councillor L D Carter, Cabinet Member: Council Finance, Partnerships & Commercial Services, presented the report of the Assistant Director: Finance and Human Resources, which provided Members with the latest financial monitoring information for 2016/17.

The net projected outturn position for 2016/17 for all service budgets showed an improvement of £0.86m on the position reported to Cabinet on 13 October 2016. Councillor Carter thanked the Assistant Director and his team for the work they did in exercising very effective financial management in an extremely challenging financial climate. The aim was that Senior managers would sustain the position and look to make further improvements where possible by year end.

Children's Safeguarding and Early Help & Support continued to be key areas of pressure and both had cost improvement plans in place to reduce costs and deliver

savings. These plans were monitored on a regular basis both by senior managers and Cabinet Members.

There were a number of variations from the approved budget, including some beneficial variances. The key areas included: a benefit of £3.2m relating to Treasury Management activities; a one off benefit of £0.6m following the final winding-up of Transforming Telford Ltd; a one off benefit of £0.7m from updating sinking fund requirements for Private Finance Initiative commitments; Early Help & Support were projecting an overspend of £4.1m, mainly relating to the cost of care packages; Children's Safeguarding also continued to be a key pressure with an overspend of £3.8m being reported, the majority relating to the cost of Children in Care placements.

Central Government had now confirmed that the Council was eligible for a Four Year Settlement however the funding outlook for the medium term was still uncertain due to the number of changes in the pipeline, such as changes to business rates and New Homes Bonus, which sat outside the Revenue Support Grant process. The Autumn Statement on 23 November gave an indication that the Government was committed to maintaining departmental spending plans at the levels announced in SR 2015; disappointingly there was no recognition of Adult Social Care pressures nor any mention of New Homes Bonus.

The capital programme totalled £86.9m, which included all approvals since the budget was set. Spend was projected at around 94% of the budget allocation. The report detailed a number of new approvals, virements and slippage.

The collection levels for Council Tax and Sales Ledger were slightly behind target, and NDR collection was ahead of target. Compared to the same period last year, around £2.8m more had been collected.

RESOLVED –

- (a) that it be noted that 2016/17 revenue spending is currently projected to be within budget and that work will continue with SMT to sustain this position;**
- (b) that the use of the central contingency detailed in section 5 of the report be approved;**
- (c) that the position in relation to capital spend be noted, and TO RECOMMEND TO COUNCIL that the new allocations and slippage detailed in Appendix 3 of the report be approved; and**
- (d) that the collection rates for NDR, council tax and sales ledger be noted.**

CB-053 Service & Financial Planning Strategy – Proposals for Consultation

Key Decision identified as **Service & Financial Planning Strategy 2016/17 to 2019/20** in the Notice of Key Decisions published on 7 December 2016.

Council decision – not subject to Call-in

Councillor L D Carter, Cabinet Member: Council Finance & Service Delivery, presented the report of the Managing Director and the Chief Financial Officer, which set out the proposed service and financial planning strategy for the period 2017/18 to 2018/19, and the proposed engagement and consultation activities with the community. He thanked the Chief Financial Officer, his team and officers from across the Council for all their hard work in managing the finances and preparing the draft budget. He also paid tribute to all officers and unpaid volunteers working in public service and expressed his determination that they should be valued for their efforts.

Over £96m of savings would have been delivered by April 2017 - equivalent to nearly £1,300 for every household in the Borough. The Council had sought to do this in ways that protected front line services as far as possible and, where services to the public were affected, to do this in as compassionate a way as possible. The Administration was committed to protect the most essential services for vulnerable children and adults and to investing in Telford's future and in promoting jobs and growth for the Borough. In order to do this, the Council would continue to seek innovative ways to generate income to fund key frontline services.

In March 2016, the Council had set a medium term budget strategy with specific proposals for 2016/17 and 2017/18, the key features of which were set out in the report. Key proposals for 2017/18, in line with this medium term strategy, included:-

- Dealing with a reduction in the Council's Revenue Support Grant from Government whilst maintaining the Council's commitment to continue its existing policy of transferring grant to Town & Parish Councils in respect of Local Council Tax Support;
- A Council tax increase for 2017/18 of 1.2% in line with the medium term strategy agreed last year and to again implement the Government's assumed "Adult Social Care Precept" in line with the Government's original plans, this is equivalent to a further council tax increase of 2%.
- To continue implementing the package of savings and efficiency measures agreed in March 2016 but with the additional savings and efficiency measures for 2017/18 set out in Appendix 3 to the report and to develop detailed savings proposals for 2018/19 and 2019/20 to cover the expected budget shortfall of £15 - £20m over this two year period.
- Investment in Capital Projects, including:-
 - Pride Programme- Funding for a further major investment in improvements to local roads and associated infrastructure of £20m as part of the Council's continuing Pride Programme of environmental improvements.
 - Funding for further investment in NuPlace, the Council's wholly owned housing company of £13.4m.

- A doubling of the ICT capital programme from £1m to £2m pa for the three year period 2017/18 to 2019/20. This will enable investment to be made resulting in increased efficiencies and ongoing cost savings as well as ensuring that the Council's ICT network is robust.
- To use funding from a rigorous review of one-off resources to fund some one-off investments of a revenue nature, including
 - Investment of £1.4m one-off resources over the 2 year period 2017/18 – 2018/19 to improve across the Borough which is a further extension of the Council's comprehensive Pride Programme of environmental improvements.
 - Making available additional funding of £4.459m for Children's safeguarding in 2017/18 compared to what was originally planned and setting aside funds to provide a £2.5m "draw-down budget" for Early Help and Support services in 2017/18 through to 2019/20 to protect and support vulnerable adults. A further £1.344m more funding would be available in 2017/18 than originally planned for Early Help & Support services to help phase in the cuts that the Council was being forced to make.
 - Investment of £275,000 one-off resources over 2 years starting in 2017/18 in Destination Telford initiatives to promote Telford as a place to visit for leisure or to do business, for businesses to invest in and for people to come to live.
 - £500k of one-off resources would be added to £195k previously identified to create a new £695k Partnership Capacity Fund to support the extension of new approaches to joint working with voluntary sector and other community groups aligned to the achievement of ongoing savings.
 - In addition £1.5m of one-off resources would be transferred to supplement the Invest to Save/Capacity fund.
 - £250k of one-off resources would be earmarked to fund organisation development initiatives.
 - The Council contribution to the Food Bank was budgeted on an ongoing basis rather than from time limited funding in recognition of the critical support that this organisation provided to many local people. This represented a total commitment by the Council of more than £130,000 over the period 2016/17 to 2019/20.

Attached to the report were a number of appendices, including savings proposals, Impact Assessments of the savings proposals, the Capital Investment Programme, details of Reserves and Balances and details of education related Section 106 Agreements. A programme of community engagement and consultation on the budget proposals would be undertaken over the next few weeks. As the Council had already agreed and consulted on its Service & Financial Planning strategy for the two year period 2016/17 to 2017/18, the Council aimed to build more in depth engagement during 2017/18 involving residents and partners in developing solutions, and, therefore, an important part of the communication and engagement plan appended to the report was to identify those who were willing and able to be part of this process. Final proposals would be considered by the Cabinet on 23 February 2017 for recommendation to full Council on 2 March 2017.

The Cabinet noted that the report was tabled due to incomplete information being provided as part of the local government finance settlement which was finally announced on 15 December. Details remained outstanding regarding funding totalling over £3m. and the strategy therefore incorporated estimates based on best available data.

RESOLVED – that

- (a) the service and financial planning strategy as set out in the report be approved for consultation with the community between 6 January and 5 February 2017;
- (b) the creation of a One-off Partnership Capacity Fund totalling £695,000 as set out in section 6.3 be approved with authority to approve allocation of the fund delegated to the Managing Director after consultation with the Cabinet Member for Council Finance, Partnerships and Commercial Services;
- (c) the transfer of £1.5m of one-off resources in to the Invest to Save/Capacity Fund, £0.25m to the Organisational Development Fund, £275k to the Destination Telford Fund and £1.4m to fund investment in Pavements be approved;
- (d) authority to respond to the provisional settlement and all future local government finance consultation documents be delegated to the Assistant Director: Finance & H.R. after consultation with the Cabinet Member for Council Finance, Partnerships and Commercial Services;
- (e) it be approved that the £233k that was previously set aside to support new facilities at AFC Telford pending receipt of an acceptable business case be de-committed and used to part fund a new 3G pitch in Madeley;
- (f) it be approved that Business Rates deals may, in future, have a maximum 5 year life subject to the agreement of an appropriate business case – as set out in Section 5.3; and
- (g) the transfer of the remaining £6.9m of available one-off resources to a one-off contingency fund to cover pressures such as costs arising from severe weather, demand for safeguarding services etc be approved with authority to approve allocation of the fund delegated to the Managing Director after consultation with the Cabinet Member for Council Finance, Partnerships and Commercial Services.

CB-054 **Council Tax Support Scheme 2017/18**

Key Decision identified as **Council Tax Support Policy Review 2017/18** in the Notice of Key Decisions published on 7 December 2016.

Reserved for Council

Councillor L D Carter, Cabinet Member: Council Finance, Partnerships & Commercial Services, presented the report of the Assistant Director: Neighbourhood & Customer Services, which set out the proposed policies for 2016/17 in relation to Council Tax Support and the Council Tax Hardship Fund.

The Council Tax Support (CTS) Scheme was introduced in April 2013 to award council tax discounts to customers who were on low incomes, based on a series of principles and eligibility criteria. A review of the 2016/17 scheme had taken place, and it was recommended that some changes be made to the scheme that would result in some savings to the overall annual cost, as well as reflecting some technical and legislative amendments that were necessitated each year by Government.

The main proposed change to the Policy was to further reduce the amount of support awarded to all working age claimants, by increasing the percentage reduction amount from 21% to 25%. It was further proposed to replicate changes that the Government were making to the Housing Benefit scheme by introducing a cap on the number of children who were included in the assessment of entitlement, reducing the temporary absence rule to four weeks. It was also proposed that this scheme would remain in place until March 2020, unless Government Policy changed significantly.

A full public consultation on the proposed changes to the Scheme had been undertaken, which included writing directly to the 6446 customers who it was believed would be directly affected by the proposals. Copies of the consultation document and summary of responses were appended to the report. 404 responses were received, and there was support for the recommended options/changes.

The Hardship Fund had been invaluable over the last three years in providing additional support to the most financially vulnerable customers, and it was proposed to fund the Scheme for a further 12 months. It was proposed to engage with specific customers affected by the changes to the Support Scheme to make them aware of the Hardship Fund.

RESOLVED TO RECOMMEND TO COUNCIL

- (a) that the Council Tax Support Scheme Policy for 2017/18, as shown at Appendix A of the report, be approved;**
- (b) that the Council Tax Hardship Policy and accompanying funding continues in 2017/18.**

CB-055 School Funding Formula 2017/18

Key Decision identified as **T&W School Funding Formula 2017/18** in the Notice of Key Decisions published on 7 December 2016.

Councillor G C W Reynolds, Cabinet Member: Education, Employment & Regeneration, presented the report of the Assistant Director: Education & Corporate Parenting which sought approval for the proposed 2017/18 funding formula to be applied for mainstream schools in the Borough.

This was an annual process in the context of revisions to Department for Education (DfE) regulations or any other relevant developments. For mainstream school funding in 2016/17, the DfE had made only minor changes to the funding regulations. Following consultation with schools and the Telford & Wrekin Schools Forum, for 2017/18, it was proposed to retain the principles of the existing funding formula, in the context that the Government was planning to introduce a national funding formula in 2018/19, which would replace local arrangements.

A new pressure for schools and the local authority was the proposed removal of the Education Services Grant (ESG) from September 2017. Just over £2m of ESG was allocated to T&W in 2016/17. This grant currently funded many of the local authority's statutory duties for schools, including those relating to academies. The local authority would be requesting schools forum permission to retain Dedicated Schools Grant (DSG) funds to pay for these duties. Any such retentions would reduce the amount available to be allocated to schools via the funding formula.

The local authority was able to move funds between the 3 different DSG blocks – Schools, Early Years and High Needs. If required, following the DfE's announcement of the allocation of high needs funding for 2017/18, sufficient funds would need to be moved from the schools block to meet projected high needs expenditure in 2017/18. The increase in the number of pupils in special schools in recent years was likely to continue in 2017/18, which was likely to increase high needs expenditure.

RESOLVED that the funding formula for Telford & Wrekin mainstream schools be approved.

CB-056 Local Development Order – Householder Extensions and Alterations

Key Decision identified as **Local Development Order** in the Notice of Key Decisions published on 7 December 2016.

Councillor R A Overton, Cabinet Member: Housing, Leisure & Health, presented the report of the Assistant Director: Business, Development & Employment which sought delegated authority to make a Local Development Order (LDO) removing the need to seek planning permission for a number of types of change to residential properties, across the Borough. The introduction of the LDO was agreed as part of the budget strategy approved by Full Council on 3 March 2016, and the consultation documents were considered by Cabinet on 15 September 2016.

The Local Development Order (LDO) would approve a number of general types of changes for two storey and single storey extensions, in addition to other minor alterations to residential properties that were deemed to be non-controversial. It would mean that such changes would not require an application for planning consent. Instead householders would simply apply to the LPA for a Certificate of Compliance under the LDO which would be a much more straight forward and faster process.

The LDO would last for a period of 3 years, and some exclusions would apply where a full planning application is required, for example applications within the World Heritage Site, Conservation Areas, Listed Buildings and Houses in Multiple Occupation which were excluded from the LDO.

A period of statutory consultation had been carried out and in light of comments received, a number of minor amendments had been made to the document. This included a minor alteration to the boundary of the Newport exclusion area at the request of the Parish Council, which had been marginally extended, and the addition of further technical guidance.

RESOLVED that delegated authority be granted to the Assistant Director: Business, Development & Employment and any other officer authorised by that Assistant Director in writing, to make the Borough of Telford & Wrekin Extensions and Alterations LDO, for a period of 3 years.

The meeting ended at 5.22pm

Signed for the purposes of the Decision Notices

Jonathan Eatough
Assistant Director: Governance, Procurement & Commissioning
Date: 11 January 2017

Signed:

Date:

TELFORD & WREKIN COUNCIL

CABINET - 2 FEBRUARY 2017

MODERN SLAVERY ACT – ANTI SLAVERY POLICY AND STATEMENT FOR 2017/18

REPORT OF ASSISTANT DIRECTOR OF GOVERNANCE, PROCUREMENT AND COMMISSIONING & ASSISTANT DIRECTOR OF CUSTOMER AND NEIGHBOURHOOD SERVICES

LEAD CABINET MEMBER – CLLR PAUL WATLING

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

The Council recognises that it has a responsibility to take a robust approach to slavery and human trafficking. The Modern Slavery Act 2015 states that any commercial organisation with a minimum turnover of £36 M is required to produce a Modern Slavery Act Annual Statement and have an Anti-Slavery Policy. It is recognised as good practice for all Councils to also follow this requirement. This report presents both documents for consideration by Members.

In addition to the Council’s responsibility as an employer, it also acknowledges its duty as a Council to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015.

2. RECOMMENDATION

- 2.1 Cabinet to note the contents of this report and approve the Anti-Slavery Policy and the Modern Slavery Act Annual Transparency Statement for 2017/18**
- 2.2 Managing Director and Leader to agree and sign the Modern Slavery Act Annual Statement for 2017/18**

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	Protecting our vulnerable adults and children and ensuring the borough is a safe place to live.
	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/DELIVERY DATE	To be ready for publication by April 2017	
FINANCIAL/VALUE FOR MONEY IMPACT	The costs associated with developing the Anti Slavery Policy and any training required for Council Officers to raise awareness of the Policy will be met from within existing budgets. There are no further financial implications arising from this report MB 12 01 17	

LEGAL ISSUES	Yes	<p>It is a legal requirement under s.54 of the Modern Slavery Act 2016 for certain commercial organisations whose annual turnover is £36m or above, to prepare a slavery and human trafficking statement for each financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any parts of its own business.</p> <p>The anti-slavery statement will need to be reviewed and approved every financial year. A failure to do so will constitute an offence and the Secretary of State may seek an injunction in the High Court requiring an organisation to comply.</p> <p>There will be ongoing obligations as set out in the proposed anti-slavery statement to ensure training, prevention and detection measures are in place to avoid breach of the statement.</p> <p>Public Authorities including local authorities will also be required under the Modern Slavery Act to notify the government where they have reasonable grounds to believe that a person may be a victim of slavery or human trafficking. The Council should conduct due diligence on businesses before allowing them to become or continue to be our suppliers. For example, as part of the supplier selection procurement process, the Council has provided in its standard Selection Questionnaire, a modern slavery section which requires our potential supplier to confirm whether it is compliant with the annual reporting requirements within the Modern Slavery Act, if applicable.</p> <p>VK 12 01 17</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	<p>As part of Local Government, the Council has a responsibility to take a robust approach to slavery and human trafficking. In addition to the Council's responsibility as an employer, it also has a duty as a Council to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015 in Safeguarding vulnerable adults and children, especially around child exploitation and human trafficking.</p>
IMPACT ON SPECIFIC WARDS	No	Borough-wide impact

PART B) – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 Slavery is not traditionally associated with our modern age however, Modern Slavery is now a major crime affecting a significant amount of people in the UK. We know from our Independent Modern Slavery Commissioner that modern day victims are in situations of exploitation which can be hidden in car washes, nail bars, fields, factories, the private care sector and private homes.

- 4.2 The Modern slavery Act 2015 states that organisations with a turnover in excess of £36 M should have an anti-slavery policy and produce annual a statement showing how they are recognising and helping prevent modern slavery. Attached at Appendix 1 is the proposed Anti-Slavery Policy and Appendix 2 is the proposed Annual Statement for the Council for 2017/18.
- 4.3 The Council has a duty in its professional capacity to ensure officers are able to recognise the indicators of modern slavery, know the signs to look out for and within the supply chain, the potential for modern slavery linked to the services or goods being provided. It's also key that officers know how to respond if modern slavery is suspected.
- 4.4 By February 2017 there will be short Ollie course available to all officers to make them aware of modern slavery, there will also be quarterly 'pop up' with multi choice questions to remind teams what to look for and how to report any concerns. Officers will also share the policy and statement with both the Adults and Children's Safeguarding board.
- 4.5 A designated web page will be placed on the Open Council section of our website which will hold the statement, our policy and provide useful links to other relevant legislation and duties such as the Prevent Duty and to our obligation regarding child employment.
- 4.6 The Procurement Planning document has been amended to add in a specific check list to ensure the procuring officer has considered any potential for modern slavery. At tender evaluation stage there is also the option for officers to investigate further should an Abnormally Low Tender be received which could be an indication of modern slavery in service delivery or the wider supply chain.
- 4.7 The prevention, detection and reporting of modern slavery in any part of the Council's business or supply chains is the responsibility all employees. If there are any concerns or suspicions, employees should notify their line manager and inform Family Connect in the first instance. Family Connect will then ensure we meet our duty to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015 in Safeguarding vulnerable adults and children, especially around child exploitation and human trafficking.

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

This statement sets out Telford & Wrekin's Council's actions to understand all potential modern slavery risks related to its business and to put in place steps that are aimed at ensuring that there is no slavery or human trafficking in its own business, and its supply chains. This statement relates to actions and activities during the financial year 1 April 2017 to 31 March 2018

As part of Local Government, the Council recognises that it has a responsibility to take a robust approach to slavery and human trafficking. In addition to the Council's responsibility as an employer, it also acknowledges its duty as a Council to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015.

The Council is committed to preventing slavery and human trafficking in its corporate activities and to ensuring that its supply chains are free from slavery and human trafficking. This is managed by officers being made aware of the potential for modern slavery risks through awareness training and when procuring goods or services, officers will ensure that as part of tender evaluation and ongoing contract

management they will consider the potential and likelihood of modern slavery through a clear understanding of the supplier's:

- Structure, business and supply chains;
- Policies in relation to slavery and human trafficking;
- Due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- Business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps that it has taken to assess and manage that risk;
- Effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- Training about slavery and human trafficking available to its staff.

6. **PREVIOUS MINUTES**

7. **BACKGROUND PAPERS**

Report prepared by Sarah Bass Strategic Procurement & Jas Bedesha Community Safety, Cohesion & Environmental Enforcement.

Anti-slavery and human trafficking policy.

1. POLICY STATEMENT

- 1.1 Modern slavery is a crime and a violation of fundamental human rights. It takes various forms, such as slavery, servitude, forced and compulsory labour and human trafficking, all of which have in common the deprivation of a person's liberty by another in order to exploit them for personal or commercial gain. We have a zero-tolerance approach to modern slavery and we are committed to acting ethically and with integrity in all our business dealings and relationships and to implementing and enforcing effective systems and controls to ensure modern slavery is not taking place anywhere in our own business or in any of our supply chains.
- 1.2 We are also committed to ensuring there is transparency in our own business and in our approach to tackling modern slavery throughout our supply chains, consistent with our disclosure obligations under the Modern Slavery Act 2015. We expect the same high standards from all of our contractors, suppliers and other business partners, and as part of our contracting processes, we include specific prohibitions against the use of forced, compulsory or trafficked labour, or anyone held in slavery or servitude, whether adults or children, and we expect that our suppliers will hold their own suppliers to the same high standards.
- 1.3 This policy applies to all persons working for us or on our behalf in any capacity, including employees at all levels, directors, officers, agency workers, seconded workers, volunteers, interns, agents, contractors, external consultants, third-party representatives and business partners.
- 1.4 This policy does not form part of any employee's contract of employment and we may amend it at any time.

2. RESPONSIBILITY FOR THE POLICY

- 2.1 The **Council's Members and Senior Management Team** have overall responsibility for ensuring this policy complies with our legal and ethical obligations, and that all those under our control comply with it.
- 2.2 The **Council's Service Delivery Managers** have primary and day-to-day responsibility for implementing this policy, monitoring its use and effectiveness, dealing with any queries about it, and auditing internal control systems and procedures to ensure they are effective in countering modern slavery.

2.3 Management at all levels are responsible for ensuring those reporting to them understand and comply with this policy and are given adequate and regular training on it and the issue of modern slavery in supply chains.

2.4 Council employees are invited to comment on this policy and suggest ways in which it might be improved. Comments, suggestions and queries are encouraged and should be addressed to the compliance manager.

3. COMPLIANCE WITH THE POLICY

3.1 All employees must read, understand and comply with this policy.

3.2 The prevention, detection and reporting of modern slavery in any part of the Council's business or supply chains is the responsibility of all those working for the Council or under its control. Employees are required to avoid any activity that might lead to, or suggest, a breach of this policy.

3.3 Employees must notify their manager and Family Connect or call the confidential whistle blowing helpline 01952 383115 as soon as possible if they believe or suspect that a conflict with this policy has occurred, or may occur in the future.

3.4 Employees are encouraged to raise concerns about any issue or suspicion of modern slavery in any parts of our business or supply chains of any supplier tier at the earliest possible stage.

3.5 Employees should note that where appropriate, and with the welfare and safety of local workers as a priority, the Council will give support and guidance to our suppliers to help them address coercive, abusive and exploitative work practices in their own business and supply chains.

3.6 If an employee is unsure about whether a particular act, the treatment of workers more generally, or their working conditions within any tier of our supply chains constitutes any of the various forms of modern slavery, raise it with your manager or through the whistle blowing helpline.

3.7 The Council aims to encourage openness and will support anyone who raises genuine concerns in good faith under this policy, even if they turn out to be mistaken. The Council are committed to ensuring no one suffers any detrimental treatment as a result of reporting in good faith

their suspicion that modern slavery of whatever form is or may be taking place in any part of our own business or in any of our supply chains. Detrimental treatment includes dismissal, disciplinary action, threats or other unfavourable treatment connected with raising a concern. If an employee believes that they have suffered any such treatment, they should report this immediately via the whistle blowing helpline immediately.

4. COMMUNICATION AND AWARENESS OF THIS POLICY

4.1 Training on this policy, and on the risk our business faces from modern slavery in its supply chains, is available via Ollie and will form part of the induction process for all individuals who work for the Council, and regular training will be provided as necessary.

4.2 The Council's zero-tolerance approach to modern slavery must be communicated to all suppliers, contractors and business partners at the outset of the business relationship with them and reinforced as appropriate thereafter.

5. BREACHES OF THIS POLICY

5.1 Any employee who breaches this policy will face disciplinary action, which could result in dismissal for misconduct or gross misconduct.

5.2 The Council may terminate its relationship with other individuals and organisations working on our behalf if they breach this policy.

Modern Slavery Act 2015 – Telford & Wrekin Transparency Statement 2017/18

This statement sets out Telford & Wrekin's Council's actions to understand all potential modern slavery risks related to its business and to put in place steps that are aimed at ensuring that there is no slavery or human trafficking in its own business, and its supply chains. This statement relates to actions and activities during the financial year 1 April 2017 to 31 March 2018

As part of Local Government, the Council recognises that it has a responsibility to take a robust approach to slavery and human trafficking. In addition to the Council's responsibility as an employer, it also acknowledges its duty as a Council to notify the Secretary of State of suspected victims of slavery or human trafficking as introduced by section 52 of the Modern Slavery Act 2015.

The Council is committed to preventing slavery and human trafficking in its corporate activities and to ensuring that its supply chains are free from slavery and human trafficking. This is managed by officers being made aware of the potential for modern slavery risks through awareness training. When procuring goods or services, officers will ensure that as part of tender evaluation and ongoing contract management they will consider the potential and likelihood of modern slavery through a clear understanding of the supplier's:

- Structure, business and supply chains;
- Policies in relation to slavery and human trafficking;
- Due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- Business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps that it has taken to assess and manage that risk;
- Effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- Training about slavery and human trafficking available to its staff.

The Council's Slavery and Human Trafficking Statement has been approved by the Council's Senior Management Team and by the Cabinet Member for Children, Young People & Communities. It should be read in conjunction with the Modern slavery Act 2015¹ and the National Referral Mechanism². This Statement will be reviewed and updated annually. The Statement is reported to the Council's Cabinet each year for monitoring and assurance purposes.

We also have a web page being built which will link to all below and be a tab on our open council page

Signed

Signed

Date

Date

¹ <https://www.gov.uk/government/collections/modern-slavery>

² <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

TELFORD & WREKIN COUNCIL

CABINET – 2 FEBRUARY 2017

PROCUREMENT UPDATE

REPORT OF ASSISTANT DIRECTOR OF GOVERNANCE, PROCUREMENT AND COMMISSIONING

LEAD CABINET MEMBER – CLLR LEE CARTER

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

A regular report for Members to consider the update of the Council’s Procurement Intentions Document and update them on the latest information regarding effective procurement and contract management

2. RECOMMENDATION

- 2.1 Cabinet to note the procurement updates in this report**
- 2.2 Cabinet to note the Procurement Intentions Document (Appendix 1) and where indicated, approve delegation to the appropriate officers (as per the Contract Procedure Rules) to progress new procurements through the tender process to contract award**

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	Best value procurement in line with the Contract Procedure Rules promote engagement of local suppliers and stakeholders
	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/DELIVERY DATE	The Procurement Intentions Document is a live document regularly updated by SDMs throughout the year with updates to Cabinet every 4 to 6 months dependant upon activity.	
FINANCIAL/VALUE FOR MONEY IMPACT	Yes	The Council has made ongoing savings of £96m since 2009/10. Further savings of £12m will be delivered in 2017/18 and an estimated £15m - £20m will be required in the following two years. The delivery of future cuts will become increasingly challenging as local government continues to face Government funding reductions. Delivering savings through effective procurement is therefore an important feature of the budget strategy with over £11m being identified since 2009/10. Active contract management also ensures continued value for money is achieved through the life of contracts.

		Improving social outcomes through the procurement process could also lead to reduced demand on services and potentially lower costs. TAS 12.01.17
LEGAL ISSUES	Yes	<p>The procurement intentions document, Appendix 1, is both transparent for all businesses to be able to see and prepare for forthcoming procurements that the Council will be undertaking but also is a transparent process to evidence appropriate delegations to officers. The delegations sought in this report are for officers to be able to commence and complete the procurement activity detailed in Appendix 1 and for contracts to be executed, depending upon their value, either under seal or under hand and as such the decisions sought may be key decisions or electronically if part of the trial referred to in the report.</p> <p>All contracts must comply with relevant EU requirements as well as provisions contained within the Council's Contract Procedure Rules. In addition, service contracts must comply with the provisions contained in the Public Services (Social Value) Act 2012. Each procurement will need to follow due process in accordance with the Council's constitutional internal and legislative requirements, with advice from Strategic Procurement Team and Legal Services, if appropriate.</p> <p>In respect of the proposed trial of the electronic signatures Cabinet can agree a waiver of the Contract Procedure Rules if it would be in the interests of the efficient management of the service</p> <p>The Council will utilise resources for permitted purposes as set out in the Procurement Plan and will construe its behaviour against Constitutional standards of financial probity and stringent financial planning and financial risk management as well as risk and equality impact assessments and procurement requirements, which may impact delivery of outcomes.</p>
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	The Procurement Intentions Document is be published externally. This helps the Council's supply chain prepare for up and coming tender opportunities.
IMPACT ON SPECIFIC WARDS	No	

PART B) – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 Council wide procurement continues to drive savings through robust competitive tendering and real time negotiation when brokering services. Savings derived from effective procurement contribute to the Cost Improvement Plans in place across the council. Teams are readily using the procurement support documents

on the intranet to ensure they achieve best value whilst also promoting social value and local economy growth.

- 4.2 The Contract Procedure Rules are updated to reflect latest legislation and most recently this had been the need for all officers to be aware of the potential for a breach of the Modern Slavery Act in our supply chain. Modern Slavery can present itself in a variety of ways for example, a supplier offering a very cheap cost for services. This may be because they are not paying their staff appropriately so they can afford a low price. Where suppliers refuse open book accounting and sharing of structure charts that may also be an indication that more staff are being employed that account for the costs rather than pure Commercial sensitivity. There are many other indications that Officers are asked to consider as part of a check list in the procurement plan. This will help them consider if there is a potential for a breach of the Modern Slavery Act and during contract management, if a situation arises which causes concern, how to manage it.
- 4.3 Appendix 1 to this report is the regular Procurement Intentions Document which presents to Cabinet up and coming procurements for the next few months. This is a live document so will also provide an update on procurement already approved. This document is also published on the Council's website to encourage local supplier engagement,

5. IMPACT ASSESSMENT – ADDITIONAL INFORMATION

6. PREVIOUS MINUTES

Procurement Update CB-038 19th October 2016

7. BACKGROUND PAPERS

Report prepared by Sarah Bass, Strategic Procurement Ext 82470

Service Area	Key Commissioning /Procurement Intentions	Major contract < £500k /Minor >£500k	Indicative Value of final Contract	Cabinet Approval to Proceed > £500k	Officer Approval to proceed <£500k	Comments	Contract Award Due Date	Lead Officer
Commercial Services	ICT Cabling	Minor	£150k		Agreed MJ 07/16	Re tender of an expired cabling contract. Chosen route is a DPS to enable mini competitions under call off so ensure VFM for each requirement.	Apr-17	Karen Stevens
Commercial Services	Schools MIS	Minor	£150k			Procurement of the School Management Information System - will be funded by schools	Feb-17	Kirsty King
Development, Business & Employment	Management of Lightmoor Wildlife Site	Major	approx. £577K	Agreed CB 58 10/12/15		Lightmoor Wildlife site is currently leased to Shropshire Wildlife Trust to manage on a fixed term of 5 years, following transfer from HCA to TWC. The Council pay the Trust to manage the site on its behalf. As part of the re-tendering of services, we proposed to extend the lease to 25 years. This will enable the successful bidder to then apply for additional external funding, (e.g. from the National Lottery) which would not be available if only let on a short lease. The funding stream to manage the site will therefore grow, further enhancing the Wildlife site and its facilities for the benefit of the residents of Telford.	Apr-17	David Scrimgeour
Development, Business & Employment	Consultant for Severn Gorge Construction work	Minor	Approx £15k grant funded		Agreed 15/08/15	Grant funded - The Severn Gorge Conservation Area (also Iron bridge Gorge World Heritage Site) currently has no Conservation Area Management Plan. The aim of the document is to produce a CAMP which will help with the forthcoming World Heritage Site Supplementary Planning Document to be undertaken by the Council as part of the new Local Plan.	Oct-16	Phoebe Farrell
Early Help & Support	Community Connectors Support Planning	Major	TBC - value may not exceed 'Major' values but the community impact is Major and therefore considered Major in this context	Agreed CB-92 24/3/16		We require an 'organisation'/'Community Interest Company' to assist T&W to develop the Community Connector workforce and peers/volunteers from within the community to deliver the service referred to above, within one year and thereafter for the model to be self-sustainable.	Oct-17	Clare Hall Slater
Finance & Human Resources	External Audit Contract	Major	Approx £300k for 3 years plus £200k for 2 year extension	Agreed CB-92 24/3/16		To seek External audit provision through a Sector led Body's framework. PSAA have been approved as a Sector led Body. September Audit Committee recommended to Council this option and it was agreed by full Council 24th November. Further report following procurement process during 2017 with final approval by Council by 31/12/17.	Dec-17	Jenny Marriott
Finance & Human Resources	New Franking machine	Minor	Approx £10k		Agreed 29/2/16	A new franking machine will lead to postage savings for all corporate postage for the Council. Final stages of tender	Mar-17	Sophie Lane
Finance & Human Resources	Review of Best Value Print Options	Minor	Approx £400k		Agreed 29/2/16	The Council will be reviewing it's print requirements over the coming months and this may result in the need to tender for the service	May-17	Sophie Lane
Health & Wellbeing	Supply of Alcohol and soft drinks for the theatre	Minor	£40K		Agreed CB038 13/10/16	Current contract Molson Coors. Contract expires in Feb so will commence re procurement through competitive tender in Nov 16	Feb-17	Debbie King
Health & Wellbeing	ice Cream vendor, borough parks	Minor	£5k			new contract	Mar-17	Nicola Allen
Health & Wellbeing	infrastructure items for Events 2018 e.g. security, toilets, fencing, marquees	minor	£50- 80k approx			new events programme 2018 - putting annual contracts in for provision of infrastructure products	Jan-18	Psyche Hudson
Health & Wellbeing	Design and delivery of a training and development programme for workers across the continuum of need to deliver improved outcomes for emotional health and wellbeing	Minor	£99K		Agreed 01/12/2015	This funding has been received into the Council from the CCG to deliver one work stream of the Children and Young People's Emotional Health and Wellbeing (EHWB) Transformation Plan. The plan was endorsed by NHS England on 1/12/2015 and the funding and the delivery of this work stream will be tracked by the CCG and NHS England. Currently working with stakeholders to scope the procurement activity. Tender to be issues Sept 16	Mar-17	Louise Mills
Governance, Procurement & Commissioning	Intermediate Beds Nursing (Hospital step down and avoidance)	Major	c£622k	Agreed CB-92 24/3/16		Intermediate Care Bed provider has given notice on their current contract. Negotiations are underway with CCG (BCF funding) and Provider to agree a proposal under which contract extension may be possible. Failing agreement on extension, the provision (IC nursing beds) may need to go out to tender	Mar-18	Laura Thorogood
Governance, Procurement & Commissioning	Personalisation	Minor	TBA		Agreed CB-8 25/06/2015	Review, recommendations & implementation of Personalisation for individuals & Carers (e.g. DPs & ISFs as) - may need market growth and management to ensure provision available	Mar-18	Laura Thorogood
Governance, Procurement & Commissioning	Help at Home (Assistive Discharge)	Minor	TBA		Agreed CB-8 25/06/2015	Reviewing service together with T&W-CCG to assess any remaining service gaps in provision. May result in procurement where gaps are found	Mar-18	Laura Thorogood
Governance, Procurement & Commissioning	High Cost Placement Solutions (Residential/Nursing-EMI/Extra care to include Shared Lives)	Major	TBA	Agreed CB-8 25/06/2015		Demand and Supply of Residential/Nursing/Extra care to assist alternative solutions - innovated commissioning and procurement required to meet outcomes and achieve best value	Mar-17	Laura Thorogood

Governance, Procurement & Commissioning	Extra care Schemes	Major	TBA	Agreed CB-8 25/06/2015		To ensure alignment and extension of contracts, as part of remodelling of an Extra care under the Long Term Supported Accommodation project	Nov-18	Laura Thorogood
Governance, Procurement & Commissioning	Long Term Supported Accommodation	Major	over £500k	Agreed CB-8 25/06/2015		To review all Long Term Supported Accommodation services to ensure the most effective and efficient service and re procure where required. Project will commence in Nov 15 with a plan to implement any new services by Nov 16 to include Better Care Fund and Community Capacity Building projects (including Reduction of Social Isolation) . The project will incorporate the review of Sheltered Housing Services and a number of Supported Accommodation services including ALD services and Floating Support.	Mar-18	Laura Thorogood
Governance, Procurement & Commissioning	Community Capacity	Major	£TBC	Agreed CB038 13/10/16		Updated: Community Capacity Building projects. The TWC and CCG have jointly reviewed all providers and agreed priorities for funding, future utilisation and development and support of community resilience. Council contribution of £355,600 & CCG contribution of £466,549 to develop joint Frameworks to be developed: 2 x tenders £ of Grants and £ of Contracts to be procured annually from 1 April 2017.	Mar-17	Laura Thorogood
Governance, Procurement & Commissioning	Community Resilience	Minor	TBC		Agreed CB038 13/10/16	Updated: To reduce social isolation in older people. Minimum of 15 social hubs are required across the locality. A Grant of £35k pa to be offered under 3 quotes procurement process. Initial period of 2yrs plus option to extend for further 2yrs subject to performance.	Apr-17	Laura Thorogood
Governance, Procurement & Commissioning	Healthwatch	Minor	300k		Agreed CB-8 25/06/2015	Updated - The contract for Healthwatch was novated from Parkwood to Healthwatch Telford and Wrekin Ltd on 1st October 2015. Consequently the contract has been extended until March 2017. A decision has been taken with the budget holders approval to extend until March 2018. A review and retender of the service will need to commence in June 2017.	Mar-17	Laura Thorogood
Governance, Procurement & Commissioning	Residential & Nursing - Bed Purchasing	Major	TBA	Agreed CB-8 25/06/2015		Due to increasing demand on supply of residential & nursing provision potential block purchasing may be required	Mar-18	Laura Thorogood

PART A – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSAL

1.1 This report sets out a proposal to develop a new energy support service to help local residents reduce their energy costs. There are two elements to the proposed service:

- A Telford & Wrekin Council branded energy price comparison website.
- Targeted advice and support for vulnerable residents who are likely to be in fuel poverty as part of a national Local Energy Advice Programme (LEAP) pilot.

1.2 The success of this new service will depend on the degree to which we are able to promote and encourage local residents to utilise the service as well as the success in finding better energy deals for them to switch to. The report includes an overview of some of the marketing channels that could be used, including the role of key frontline services to raise awareness of the service.

2. RECOMMENDATIONS

2.1 That Cabinet approve the implementation of a Telford & Wrekin Council branded energy price comparison website.

2.2 That Cabinet approve the Council’s participation in the LEAP pilot.

2.3 That delegated authority is given to the Assistant Director: Commercial Services in consultation with the Lead Cabinet Member: Finance, Partnerships and Commercial Services to make any arrangements and enter into any agreements on behalf of the Council to implement the above recommendations.

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Council priorities	
	Yes	<ul style="list-style-type: none"> • Protect and support our vulnerable children and adults, in particular, participation in the LEAP pilot would enable targeted advice and support to be provided to those most likely to be affected by fuel poverty. • Regenerate those neighbourhoods in need and work to ensure that local people have access to suitable housing. • As a Co-operative Council, we are committed to working together with our residents, partners and local organisations to collectively deliver the best we can for Telford and Wrekin. • Through our co-operative values, we aim to empower people so they can take action and responsibility for

		themselves.
		Will the proposals impact on specific groups of people?
	No	The energy price comparison service is available to all local residents. However, if we are able to attract additional funding or support through the LEAP pilot this will have a positive outcome to those most vulnerable and suffering fuel poverty.
TARGET DELIVERY DATE		February 2017
FINANCIAL/ VALUE FOR MONEY IMPACT	Yes	The energy price comparison website will generate income for the Council for every energy switch that is successfully processed. Marketing will be undertaken by the Council with assistance from the preferred bidder. A budget of £3,000 has been included in year 1 for this marketing work. Any marketing work from year 2 onwards will be provided through marketing channels such as social media. It is assumed all legal work will be undertaken from within existing resources. A breakeven number of switches of 249 is required in year 1 to cover the initial marketing costs, additional switches thereafter will provide the Council with a small net income stream. Financial support will be provided as the project progresses. DR 15/12/16
LEGAL ISSUES	Yes	The Council conducted an open, fair transparent procurement exercise and will enter into a legal agreement in accordance with the Authority's Contract Procedure Rules. The project officer would have conducted all appropriate impact and risk assessments relative to the project and will be satisfied that there is no undue exposure to financial or reputational damage to the Authority or public at large. There is an added layer of independent regulatory safeguards offered, as to the quality of the providers and associated partners who are accredited organisations under the industry quality assurance schemes operating in this sector.
OTHER IMPACTS, RISKS & OPPORTUNITIES	Yes	This proposed new service will enable the Council to raise awareness of the benefits of switching energy providers and as the preferred bidder offers the full range of UK tariffs, users of this service will benefit from the best available energy deals.
IMPACT ON SPECIFIC WARDS	No	Borough wide

PART B - ADDITIONAL INFORMATION

4. INFORMATION

4.1 BACKGROUND

This proposal is part of a wider energy strategy which currently includes:

- the production of renewable energy from our solar farm
- the Energy Centre which enables the distribution of power and heat to the Southwater development to reduce fuel consumption, carbon emissions and energy costs.

The Council is committed to exploring how it can assist and encourage residents to receive a better deal on energy and in particular to help vulnerable household to reduce their energy costs.

Energy bills are a significant cost for many local residents with some households in the borough suffering from fuel poverty caused by a number of issues including low incomes, harder to heat properties and properties being off the main grid that use high cost heat sources such as electric storage heaters.

10.1% (6,824) of households in Telford and Wrekin are fuel poor compared with a national rate of 10.6%. However, there is wide variation across the Borough with households who are fuel poor ranging from 3.1% in parts of Apley to 21.0% in parts of Ercall Magna. UK estimates indicated that illnesses caused by cold homes cost the NHS £1.3 billion a year.

In addition, many people who are fuel poor are on pre-payment meters, as a result of existing debt, poor credit ratings or are living in rented accommodation. These people can switch suppliers but many people are not aware of this. Recent Government data estimates indicate that 5.9 million people have these and on average pay £65 more than direct debit customers. Therefore there is a real need to raise awareness of the benefits of switching for these residents.

The recent price falls in the energy market, from both the Big Six suppliers and smaller providers, and with more new suppliers entering the market (20 more than in 2014), mean that there is more competition and better deals to be had. This means that some householders could now save hundreds of pounds by switching suppliers. Ofgem research suggests that 13.5 million people could save more than £200 and 9.5 million people could save more than £300 by switching suppliers, mainly because they are on standard variable tariffs and not getting the best deals.

The process of switching energy providers has been improved in recent years, with switching now taking 17 days compared with 5 weeks in 2014. More people are switching energy providers, with Ofgem reporting that more people are switching each year (15% increase in 2015 compared with 2014). As a result of all these factors, it is now both convenient and beneficial for many residents to switch suppliers and therefore a good time to promote this in the Borough.

4.2 OPTIONS

A range of options were investigated to assist residents in receiving a better deal on energy and generate additional income for the Council. These were:

- **Collective switching:** where a large group of people use their collective buying power to negotiate a better deal from energy suppliers.
- **Comparison site:** working with an external provider to develop a Telford & Wrekin Council branded energy comparison switching service.
- **Partnering with an existing energy company:** where the Council would operate under licence or as a partner of a municipal energy supplier.

- **Become an Energy Supply Company:** where the Council would register as an energy supplier with OFGEM and as a Limited Company (or SPV) to procure and sell energy.

A summary of the risks and benefits of each option is detailed in Appendix 1.

4.3 PREFERRED OPTION

4.3.1 Price comparison Service

The preferred option is to work in partnership with a provider to set up a Telford & Wrekin Council branded energy price comparison and switching site. The main benefits of this option are:

- The comparison site will provide 100% coverage of energy deals available at any one time to provide the best deals to local residents.
- A Telford & Wrekin Council branded site will give added assurance to residents.
- It provides a good balance in terms of risk and return and it is relatively quick and straightforward to set up and operate.
- This new service could also benefit people on pre-payment meters.
- Access to the comparison website service is not limited to Telford & Wrekin residents and can also be used by people outside the borough.

A procurement exercise has been conducted to test the market and options available and a preferred supplier has been identified; AgilityEco Limited who work in partnership with UK Power Limited. These providers already work with other Local Authorities and have recently launched a similar service for [Portsmouth City Council](#). They also work in partnership with some of the leading UK price comparison sites such as Go Compare, MoneySuperMarket and uSwitch

The preferred provider has received industry recognition being judged Consumer Champions and Most Trusted at the inaugural TELCA industry awards in 2013, picking up the Consumer Champions Award again in 2014, Best Customer Service award in 2015 and Super Consultancy award in June 2016.

4.3.2 LEAP Pilot

An added benefit of working in partnership with AgilityEco Ltd and UK Power Ltd is that they are able to offer us the opportunity to participate in the Local Energy Advice Programme (LEAP) pilot. This service will provide important advice, support and energy saving measures to fuel poor and vulnerable households including:

- **Energy Efficiency Advice and Measures:** Access to energy efficiency measures and advice including insulation and boiler replacements.
- **Income Maximisation:** providing benefits assessments and debt advice, a review as to whether there is eligibility for wider warm home discount measures.
- **Vulnerability:** a review of hazards and health problems and of other vulnerability to review access to measures

This Ofgem approved programme is provided by AgilityEco along with a number of partner organisations and is funded by energy suppliers as part of the Warm Home Discount Industry Initiatives fund. The national pilot is funded until May 2017, at which point the scheme is expected to attract more funding year on year until at least 2020. At present, no other Local Authority within the West Midlands is included within the pilot.

During the pilot the Council will only be able to make a small number of referrals (possibly 20); however, once further funding becomes available the Council will be able to make significantly more local resident referrals.

There is no direct cost to the Council to be involved in this pilot. The Council's commitment would be to promote the scheme and refer vulnerable clients into the scheme. The eligibility criteria is very broad and includes anyone who is financially vulnerable or who is suffering with certain health problem e.g. mental health, bronchial issues, diabetes, higher risk of falls, heart problems.

5. FINANCIAL SUMMARY

5.1 Price Comparison Service

The financial model is based on national Ofgem switching data and assumes that over a 12 month period: 3% (2,205) of households in the borough will register an interest in switching; 37% (808) of households will switch, of which, 50% will switch one fuel and 50% will switch both fuels, giving a total of 1,212 switches.

Gross commission per switch is detailed in the table below based on 606 switches per year (50% of Ofgem switching estimates) and 1,212 switches per year. Under the terms of the proposed arrangement, the Council will receive a monthly commission payment from UK Power Limited. The rate at which the Council accrues commission is based upon the monthly aggregate number of switches achieved by all UK Power partners. Hence the more partners in the UK Power arrangement the higher the potential fee that can be achieved by the Council.

Gross Commission – comparison website			
Switches per month	Web based	Voice	Average
	£	£	£
0-250	13.13	7.88	12.08
251-500	13.56	8.31	12.51
501-750	14.00	8.75	12.95
751-1000	14.44	9.19	13.39
1001-1250	14.88	9.63	13.83
1251-1500	15.31	10.06	14.26
1501+	15.75	10.50	14.70

The estimated net commission for the Council is:

	Year 1	Year 2	Year 3
606 switches pa	£4,134	£7,134	£7,134
1,212 switches pa	£11,275	£14,275	£14,275

There is no income associated with the LEAP pilot. This service is being provided by the partner at no direct cost to the Council. The officer time involved in making the referrals is

considered to be worthwhile on the basis that it will enable some of our most vulnerable residents to reduce their energy costs and benefit from targeted advice and support around their energy usage. This could contribute to reduced demand on our services from these residents as they will be in a more financially sustainable position.

6. DELIVERY AND PROMOTION

6.1 Energy price comparison and switching service

Role of the provider

UK Power Ltd will create a Telford & Wrekin Council branded energy comparison website. The service will also be assigned a dedicated 0800 number to identify customers coming through the Council's route. Therefore residents without internet access will still be able to use the service.

Once an enquiry is received via the website or by telephone, the provider will work with local residents to find energy deals and manage the switching process.

Role of the Council

We will;

- Market and signpost the service to local residents, through services and Corporate Communications.
- Monitor performance via a pricing portal suite which will provide real time information about our switches, including the tariffs customers have switched to and how much each customer has saved by switching energy contracts.
- raise invoices for commission payments, be the point of contact for the partnership. We will also undertake a review after 12 months to assess the success of the scheme.

6.2 National Local Energy Advice Programme (LEAP) pilot

Role of the provider

Once the LEAP central office receives a referral from the Council they screen it and book an appointment with the customer. The LEAP trained workers will carry out a home energy visit and assess need, installing easy measures during the visit as needed and where appropriate they will refer on to other partners/agencies.

Role of the Council

Under the scheme, a resident must be eligible (see Appendix 2) and referred by a partner (the Council). Given the small number of referrals required for the pilot, it is proposed that the Housing and Nuplace teams will be responsible for referring customers to LEAP. This will give the Council an opportunity to test out the scheme's success up to May 2017, when the pilot ends.

Once further funding becomes available the Council will be able to make significantly more local resident referrals.

6.3 Promotion

The energy price comparison site website and LEAP pilot will be promoted to local residents through all available channels including:

- Front-line services in contact with local residents.
- Promotion to organisations and partners.
- Members and Town & Parish Councils – target wards with high % of fuel poverty

- Council website.
- Social Media channels including Facebook and Twitter.
- 'Your Voice' magazine.
- 'Gov Delivery' – database of residents to proactively engage with in different ways including email and SMS.
- Physical promotion such as posters in key buildings and leaflet distribution.
- Promotion to staff through Staff News

7. NEXT STEPS

If the proposal is approved the next steps to implement during February 2017 will be:

- Award contract and formalise partnership arrangements.
- Create and launch Telford & Wrekin Council branded energy comparison site
- Brief/train Housing and Nuplace teams to refer residents into the LEAP scheme.
- Develop and implement a marketing plan, including briefing frontline staff about the new service and how to signpost. .

Report prepared by Debbie Byle, Project Officer 01952 380146.

Appendix 1 – Option Appraisal

The most significant risks and benefits of each option are listed below:

Options	Risks	Benefits	Finance
Collective Switching	<ul style="list-style-type: none"> • Not always the cheapest deal for residents • Take-up has been low in other areas (majority of people switch via price comparison sites) 	<ul style="list-style-type: none"> • Quick set-up (4-6 weeks) • Established model – the main provider Ichoosr has experience of working with local authorities • Website developed and hosted by provider 	<ul style="list-style-type: none"> • Lowest commission of all options and income limited to 3 points in the year • Minimal set-up costs – marketing only • Would still result in a net loss for the Council based on assumptions in Section 5.1 of the report (net commission per switch £-1.36)
Energy Price Comparison and Switching Website	<ul style="list-style-type: none"> • Competition from existing comparison sites could affect take-up 	<ul style="list-style-type: none"> • The preferred supplier's comparison site would offer 100% of tariffs available meaning that at the time of switching the customer would benefit from the cheapest deal • TWC branded to give added assurance to residents • Quick set-up (4-6 weeks) • Preferred supplier has experience of working with other local authorities and would provide marketing support • Website developed and hosted by provider 	<ul style="list-style-type: none"> • Year round and recurring commission • Minimal set-up costs – marketing only • Net commission per switch based on assumptions in Section 5.1 is £9.30
Partnership with existing Energy Company	<ul style="list-style-type: none"> • Single supplier means residents may not get the best deal – recent negative publicity associated with similar schemes (Age UK) • Competition from other suppliers could limit take-up (and majority of people switch via 	<ul style="list-style-type: none"> • TWC branded to give added assurance to residents • Scope to work with a municipal supplier that links to our values 	<ul style="list-style-type: none"> • Year round and higher commission • Higher-set up costs – marketing, Website development • Net commission per switch based on assumptions in Section 5.1 is £16.75 – whilst this generates more income for TWC to

Options	Risks	Benefits	Finance
	price comparison sites) <ul style="list-style-type: none"> • Longer-set up (6-8 months) • TWC would be responsible for Website development and hosting 		protect front-line services, residents would not always benefit from the best deal
Energy Supply Company	<ul style="list-style-type: none"> • Set up time is 18 months plus – Nottingham Council’s Robin Hood Energy took 5 years • Competition from the ‘Big 6’ and other municipal suppliers • Not always the cheapest deal for residents 	<ul style="list-style-type: none"> • Full control of the service with the ability to set energy prices 	<ul style="list-style-type: none"> • Higher earning potential (although recent entrants reporting significant Year 1 losses) • Large financial commitment (£500k to £750k) to launch and then cash flow impact of buying energy in bulk upfront

Appendix 2 - LEAP Pilot - Eligibility Criteria

INCOME CRITERIA– anyone with one or more of the following:

- Income Support
- Income-related Jobseeker's Allowance
- Income-related Employment & Support Allowance
- Pension Credit
- Child Tax Credit
- Working Tax Credit with an income **below** £16,190
- Universal Credit with an income **below** £16,190
- Income **below** £16,190

PHYSICAL HEALTH CRITERIA – anyone with one or more of the following:

- Cardiovascular condition (incl. coronary heart disease, stroke, hypertension, transient ischemic attack)
- Respiratory condition (COPD, childhood asthma)
- Neurological condition (incl dementia, Parkinson's disease, multiple sclerosis, epilepsy)
- Musculoskeletal conditions (incl. osteoarthritis, rheumatoid arthritis etc)
- Blood conditions (incl. Sickle cell disease, thalassemia)
- Cancer
- Physical or sensory disability
- Other illness exacerbated by cold (confirmed by GP)

MENTAL HEALTH CRITERIA, such as:

- Schizophrenia
- Bipolar disorder
- Serious depression (receiving regular treatment)

VULNERABILITY CRITERIA – anyone with one or more of the following:

- Carers in receipt of carers allowance
- Housing Benefit
- Council Tax Reduction
- Disability benefit e.g. Disability Living Allowance, Personal Independence Payment, Attendance Allowance, Industrial Injuries Disablement Benefit
- Contribution-based ESA or JSA
- Vulnerable family situation such as victim of domestic violence or recent bereavement
- Household with maternity/ child under 5 or particularly large family.

TELFORD & WREKIN COUNCIL

CABINET – 2 FEBRUARY 2017

WEST MIDLANDS RAIL COLLABORATION AGREEMENT

REPORT OF: ASSISTANT DIRECTOR, CUSTOMER & NEIGHBOURHOOD SERVICES

LEAD CABINET MEMBER – COUNCILLOR ANGELA McCLEMENTS

PART A) – SUMMARY REPORT

1. SUMMARY OF MAIN PROPOSALS

- 1.1 The purpose of this report is to advise Cabinet of a change to the drafting of the Collaboration Agreement between West Midlands Rail Limited and the Department for Transport since being approved by the Council on July 21st 2016. The change has come about because of a change of opinion by the new Secretary of State for Transport.
- 1.2 The change of thinking by the Secretary of State for Transport reflects his concern about the benefits of full devolution of rail responsibilities across the United Kingdom and has resulted in the Collaboration Agreement draft that has been approved by all West Midlands Rail member authorities being amended to remove reference to full devolution.

2. RECOMMENDATIONS

- 2.1 **That Cabinet note the change of position to rail devolution being adopted by the new Secretary of State for Transport.**
- 2.2 **To delegate authority to the Cabinet Member for Transport, Customer & Neighbourhood Services on behalf of Telford & Wrekin Council to cast its vote in favour of the special resolution that is necessary under Article 8.3 of West Midlands Rail Limited Articles of Association to authorise the signing of the amended Collaboration Agreement (included with this report as Appendix 1), whether that resolution is passed in writing or at a general meeting of the Company.**

3. SUMMARY IMPACT ASSESSMENT

COMMUNITY IMPACT	Do these proposals contribute to specific Co-Operative Council priority objective(s)?	
	Yes	Contributes to all by improving access within the Borough but specifically: “Protect and create jobs as a Business Supporting, Business Winning Council”

	Will the proposals impact on specific groups of people?	
	No	
TARGET COMPLETION/ DELIVERY DATE	Contract Award - June 2017 Commence Service - October 2017	
FINANCIAL/ VALUE FOR MONEY IMPACT	No	There are no additional financial implications arising from the amendment to the Collaboration Agreement between WMR and DfT. The authority's contribution to support this agreement is £5,000 per year which is met from transport budgets. MB 01.12.16
LEGAL ISSUES	No	None directly arising from this report. DR 01.12.16
OTHER IMPACTS, RISKS & OPPORTUNITIES	No	
IMPACT ON SPECIFIC WARDS	No	

PART B) – ADDITIONAL INFORMATION

4. INFORMATION

- 4.1 On July 21st 2016 Telford & Wrekin Council approved that West Midlands Rail Limited should sign the draft Collaboration Agreement with the Department for Transport. Since that time there have been changes at National Government level and a new Secretary of State for Transport, Chris Grayling MP, has indicated a change of policy with regards to future devolution of rail franchising.
- 4.2 The change of thinking by the Secretary of State for Transport reflects his concern about the benefits of full devolution of rail responsibilities across the United Kingdom and has resulted in the Collaboration Agreement draft that has been approved by all West Midlands Rail member authorities being amended to remove reference to full devolution.
- 4.3 The new Secretary of State for Transport has confirmed his full support for the collaborative approach that West Midlands Rail has developed with the Department for Transport and is keen to highlight this as best practice for other partnerships that the Department for Transport may enter into in future.
- 4.4 This change of approach raises a number of challenges for West Midlands Rail, not least that the premise of the current Collaboration Agreement was based on the members being on a journey to full devolution. However, it is considered that the change of approach is manageable, and in practical and legal terms it changes nothing with regard to involvement in franchise bid evaluation, the management of the franchise after award and West Midlands Rail's role in the

competitions for other franchises, meaning that the level of influence will remain the same. The Collaboration Agreement did not commit the Secretary of State or West Midlands Rail to full devolution and as that decision is not required until the early 2020s, there is plenty of time to build confidence with the ministerial team now and in the future.

- 4.5 Included with this report at Appendix 1 is the revised drafting of the Collaboration Agreement. This revised draft removes reference to longer term full devolution to which there were no firm commitments on either party.
- 4.6 In accordance with the West Midlands Rail Limited Articles of Association, paragraph 8.3, any change to the West Midlands Rail Limited relationship with the Department for Transport or substantial changes to that agreement must gain the prior approval of West Midlands Rail 'Member' authorities by special resolution. As such, the change to the Collaboration Agreement drafting must be endorsed by a minimum of 75% of member authorities.
- 4.7 The financial implications remain unchanged from the paper submitted to Telford & Wrekin Council Cabinet during July 2016. The commitment from Department for Transport to fund West Midlands Rail Limited for franchise management costs (£500,000 per year) remains in force.
- 4.8 There are no changes to the risk implications associated with the Collaboration Agreement.
- 4.9 There are no additional legal implications arising from the change to the Collaboration Agreement drafting.
- 4.10 There are no further implications affecting equality, environment, corporate landlord or human resources arising directly from this report.

5. PREVIOUS MINUTES

15th October 2015 – Telford & Wrekin Cabinet – West Midlands Rail Governance

26th November 2015 – Telford & Wrekin Full Council – West Midlands Rail Governance

21st July 2016 – Telford & Wrekin Cabinet – West Midlands Rail Collaboration Agreement

6. BACKGROUND PAPERS

Appendix 1 – Amended Collaboration Agreement

Cabinet Report – WMR Collaboration Agreement – 21st July 2016

Report prepared by David Balme, Senior Transport Planner, Neighbourhood & Customer Services, Telephone: 01952 384806



Dated

2016

**SECRETARY OF STATE FOR TRANSPORT
WEST MIDLANDS RAIL LIMITED**

**COLLABORATION AGREEMENT
relating to rail operation in the
West Midlands**

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Between

- (1) **The Secretary Of State For Transport** whose principal place of business is at Great Minster House, 33 Horseferry Road, London, SW1P 4DR (**Secretary of State**); and
- (2) **West Midlands Rail Limited** (No. 08991160) whose registered office is at 16 Summer Lane, Birmingham B19 3SD (**WMR**).

Whereas

- (A) The Secretary of State has confirmed his support for working together with WMR to develop proposals for how, by adopting a collaborative approach, local decision making could play a central role in defining future rail services in the West Midlands (**Agreed Position**).
- (B) The Parties have been working together in furtherance of the Agreed Position and are now working together to determine further arrangements which will govern their relationship going forward.
- (C) This Agreement sets out the terms under which the Parties agree to collaborate in order to achieve the Objectives set out in this Agreement.

It is agreed

1 Definitions

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

2017 WM Franchise means the franchise which is currently being re-let by the Secretary of State in relation to the West Midlands franchise services, being the services designated by the Secretary of State pursuant to Section 23 of the Act as franchise services and currently operated by the Franchisee under the Franchise Agreement

2017 WM Franchise Agreement means the franchise agreement to be entered into, pursuant to which the 2017 WM Franchise will be operated

Act means Railways Act 1993 (as amended from time to time)

Commencement Date means the date of this Agreement

Control Period means a railway investment period (currently a five year period from 2014 to 2019 for Control Period 5)

CEDR means the Centre for Effective Dispute Resolution

Confidential Information has the meaning given in clause 15.1

Coventry Corridor and Stafford Corridor means the route coloured green and titled West Coast Separable Business Unit (WMR area) on the plan set out in part 1 of Schedule 4

DfT or **Department for Transport** means the Department for Transport which is the organisation that discharges the duties of the Secretary of State

DfT Annual Funding Amount means:

- (a) in respect of each Franchisee Year containing 13 Reporting Periods, an aggregate amount of £500,000 (five hundred thousand pounds sterling) and
- (b) in respect of any Franchisee Year containing less than 13 Reporting Periods (which for the avoidance of doubt, shall apply to the first Franchisee Year being the period from the Start Date until the end of the last Reporting Period in the first Franchisee Year) an aggregate amount of not less than:

A x (B/13) where:

A means £500,000 (five hundred thousand pounds sterling) and

B means the number of Reporting Periods in the relevant Franchisee Year

Dispute has the meaning given in clause 17.1

Dispute Resolution Procedure means the procedure set out in clause 17

Environmental Information Regulations means the Environmental Information Regulations 2004 and any subordinate legislation made under them together with any guidance and/or codes of practice issued by relevant Government Department in relation to such legislation

Franchise Agreement means the West Midlands franchise agreement dated 2 December 2015 between (1) the Secretary of State and (2) London and Birmingham Railway Limited

Franchisee means the company known as at the date of this Agreement as London and Birmingham Railway Limited

Franchisee Year means any period of twelve (12) months, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years under a franchise agreement may be for a period of less than twelve (12) months

Freedom of Information Act means the Freedom of Information Act 2000 and any subordinate legislation made under this Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation

Funding Outputs means the outputs set out in schedule 5 of this Agreement

Initial Dispute Board has the meaning given in clause 17.3

Insolvency Event means one of the following events:

- (a) a court makes an order that WMR be wound up or a resolution for a voluntary winding-up of WMR is passed
- (b) a receiver or manager in respect of WMR is appointed
- (c) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of WMR or
- (d) an administration order is made or an administrator is appointed in respect of WMR

Joint Funding Account has the meaning given to it in clause 9.1

Joint Savings Account has the meaning given to it in clause 10.3

Law includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act 2000, the Transport Safety Act 2003 and the Railways Act 2005)

Management Team means the management team to be established as described in clause 8.1

Notice of Mediation has the meaning given in clause 17.6

Objectives means the joint objectives of the Parties as defined in clause 3

ORR means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act

Network Rail means Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at 1 Eversholt Street, London, NW1 2DN and any successor in title to the network or any relevant railway facility

Parties means WMR and the Secretary of State

Phase 1 means the period from commencement of this Agreement and expiring on the first anniversary of the Start Date, or earlier if agreed between the Parties

Phase 2 means the period commencing from the first anniversary of the Start Date (or earlier if agreed between the Parties) and expiring at the end of the 2017 WM Franchise or on earlier termination of this Agreement

Purpose means the purpose defined in clause 4.1

Rail Investment Strategy or **HLOS** means the railway investment strategy or high level output specification produced by the Department for Transport which defines the strategy for railway investment for each Control Period

Reporting Period has the meaning given in the 2017 WM Franchise Agreement;

Request for Information means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations

Reserved Matters means the following matters reserved to the Secretary of State:

- (a) decisions increasing net costs or net future costs to the Secretary of State
- (b) determination of events of default under the 2017 WM Franchise
- (c) the content of the Rail Investment Strategy and Statement of Funds Available
- (d) any action required to comply with the Secretary of State's duty under Section 30 of the Act and

- (e) enforcement against the franchisee under the 2017 WM Franchise pursuant to Section 55 of the Act.

Secretary of State Duties has the meaning given in clause 5.1(a)

Separable Business Units or **SBU** means:

- (a) the West Midlands Separable Business Unit (WMSBU) and
- (b) the West Coast Separable Business Unit (WCSBU)

and **Separable** in this context means that the SBUs are to be designed and set up with distinct passenger facing offers and separately identifiable revenues, costs (to the extent possible and appropriately allocated where costs cannot be separately identified), customer and performance metrics and on the basis that they could be re-let separately after the expiry of the 2017 WM Franchise. The WMSBU will have its own brand identity (which shall include a name, logo and colour palette) that reflects the market that it serves as specified by WMR and is capable of having longevity beyond the term of the 2017 WM Franchise

Statement of Funds Available means the statement issued by the Department for Transport in relation to the public funds that are or are likely to be available for delivery of the Rail Investment Strategy

Start Date means the start date to be specified in the 2017 WM Franchise Agreement

Strategic Board means the joint board to be established as provided for in clause 7

WCSBU means the passenger services and station services in the remainder of the 2017 WM Franchise excluding the WMSBU, as identified in part 1 of schedule 4

WMR Annual Funding Amount means:

- (a) in respect of each Franchisee Year containing 13 Reporting Periods, an aggregate amount of £140,000 (one hundred and forty thousand pounds sterling) and
- (b) in respect of any Franchisee Year containing less than 13 Reporting Periods (which for the avoidance of doubt, applies to the first Franchisee Year being the period from the Start Date until the end of the last Reporting Period in the first Franchisee Year) an aggregate amount of not less than:

$A \times (B/13)$ where:

A means £140,000 (one hundred and forty thousand pounds sterling)

B means the number of Reporting Periods in the relevant Franchisee Year

WMR Area means the West Midlands Rail area shown on the map set out in part 2 of schedule 4

WMR Change has the meaning given in clause 10.1

WMR Fare Change has the meaning given in clause 10.2

WMSBU means the passenger services and station services in the West Midlands Separable Business Unit (including station services at 2017 WM Franchise stations to the west of the West Coast Main Line), as identified in part 1 of schedule 4

Working Day means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London

1.2 Interpretation

Unless the context otherwise requires:

- (a) references to clauses and schedules are to clauses of, and schedules to, this Agreement;
- (b) use of any gender includes the other genders;
- (c) references to a "**company**" shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established;
- (d) references to a "**person**" shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (e) "**body corporate**" shall have the meaning given in section 1173 Companies Act 2006 and "**wholly-owned subsidiary**" shall have the meaning given in section 1159 Companies Act 2006;
- (f) a person is deemed associated with another person or an associated person if the person is an associate of the other person within the meaning of section 435 Insolvency Act 1986
- (g) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (h) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated at any time;
- (i) headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- (j) the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "**other**" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (k) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

2 Commencement and Term

- 2.1 This Agreement shall come into full force and effect on the Commencement Date, save that the terms set out in clauses 10.2 and **Error! Reference source not found.** of this Agreement shall only become effective on and from commencement of Phase 2.
- 2.2 This Agreement shall remain in full force and effect unless terminated by either Party in accordance with clause 13 of this Agreement.

3 Collaboration Objectives

The Parties shall collaborate with a view to achieving the objectives set out in schedule 1 (**Objectives**) for the duration of the 2017 WM Franchise.

4 Purpose of the Agreement

- 4.1 The Parties intend to collaborate on the running of rail services in the West Midlands area for the benefit of passengers (**Purpose**) and the Parties shall each use their respective reasonable endeavours to give effect to the Purpose through the operation of this Agreement.
- 4.2 The Parties shall carry out their obligations, and exercise their rights, under this Agreement with a view to achieving the Objectives and the Purpose.

5 Secretary of State Duties and Reserved Matters

- 5.1 The Parties acknowledge and agree that:
- (a) the Secretary of State has responsibilities and duties deriving by reason of statutory or regulatory requirements under Law including without limitation pursuant to the Act and in relation to the proper expenditure of public monies (**Secretary of State Duties**);
 - (b) such Secretary of State Duties must be discharged by the Secretary of State and cannot be delegated to any other persons.
 - (c) the role of WMR in respect of such Secretary of State Duties can only be advisory.
- 5.2 Nothing in this Agreement shall fetter the discretion of the Secretary of State when carrying out the Secretary of State Duties and / or the Reserved Matters.
- 5.3 The Reserved Matters are a definitive list of matters in respect of which decisions are reserved to the Secretary of State. The Secretary of State shall be entitled to update the Reserved Matters by notifying WMR in writing of the amendments required.

6 Phase 1

During Phase 1, WMR shall:

- (a) collaborate with the Secretary of State to develop the franchise specification and Invitation to Tender for the 2017 WM Franchise;
- (b) arrange for the secondment of appropriate staff to the West Midlands Franchise Competition Team within the Department for Transport to assist with public consultation, specification and evaluation of the 2017 WM Franchise;

- (c) work with the franchisee under the 2017 WM Franchise Agreement and the Department for Transport on mobilisation for the 2017 WM Franchise;
- (d) establish the Strategic Board with the Department for Transport;
- (e) develop the structure of the Management Team;
- (f) arrange for the provision of all reasonably required support to the Management Team in respect of its management of the WMSBU;
- (g) work with the Department for Transport and the Franchisee during the first year of the 2017 WM Franchise to establish the Separable Business Units; and
- (h) do anything else which the Parties jointly decide they require.

7 Strategic Board

- 7.1 The Parties shall endeavour to establish a joint board (**Strategic Board**) by no later than 31 October 2016.
- 7.2 The Strategic Board shall be the primary formal mechanism for the collaboration between the Parties in relation to rail matters in the WMR Area and in so doing shall:
- (a) aim to further the Objectives and the Purpose;
 - (b) oversee the creation and operation of the WMSBU and the WCSBU; and
 - (c) be responsible for the matters set out in schedule 2.
- 7.3 The Strategic Board shall comprise two (2) senior representatives from each of the Parties and may include an independent chairperson appointed by the Strategic Board in accordance with clause 7.4. Upon establishment of the Strategic Board, both the Secretary of State and WMR shall appoint such representatives as board members of the Strategic Board. Either Party shall be entitled to replace its own board members on giving the other Party notice of the replacement board member, provided that any replacement shall be at least a deputy director or equivalent within the relevant organisation.

Meetings of the Strategic Board

- 7.4 The Parties shall arrange a meeting of the Strategic Board as soon as practicable after the Commencement Date. At the first meeting of the Strategic Board, the Strategic Board shall appoint a chairperson for the Strategic Board. The appointment of the chairperson shall be by mutual agreement by the board members of the Secretary of State and WMR and shall either be (i) a board member of the Secretary of State or WMR or (ii) an independent chairperson to be considered at the discretion of the Strategic Board as deemed to be necessary or desirable. In circumstances where an independent chairperson is appointed, the board members shall also decide by majority decision whether or not the independent chairperson shall have a vote in matters of the Strategic Board. The Strategic Board shall be entitled to replace the chairperson on the basis of a majority decision (and for the avoidance of doubt, on such decisions the chairperson shall not have a casting vote).
- 7.5 The Strategic Board shall meet at least quarterly commencing after the first meeting convened in compliance with clause 7.4 or more frequently:

- (a) as may be determined by the chairperson of the Strategic Board; or
 - (b) at the request of either Party.
- 7.6 Subject to clauses 7.7 and 7.9, the Parties agree that the Strategic Board is required to reach decisions by majority having regard to the Purpose and Objectives which shall be subject to:
- (a) the Secretary of State Duties; and
 - (b) the Reserved Matters.
- 7.7 The Strategic Board shall be quorate for the purposes of making any decision by majority only when at least one Secretary of State board member and at least one WMR board member is present at the Strategic Board meeting. For the avoidance of doubt, a Strategic Board meeting shall be quorate whether attendance is in person or via telephone or video conferencing. Where a quorum is not present, the meeting shall be adjourned until such other time as a quorum can be present.
- 7.8 Either Party shall be entitled to appoint an alternate board member to attend meetings of the Strategic Board where a board member is unable to attend provided that the alternate is at least a deputy director or equivalent within the relevant organisation and the other Party is given notice in writing of the alternate.
- 7.9 Where the Strategic Board reaches a decision in accordance with clauses 7.6 and 7.7, such decision shall not be valid unless it was reached with the agreement of both a Secretary of State board member and a WMR board member. In the event that not all Secretary of State board members or WMR board members are present at a meeting where a decision is taken, the Secretary of State board members who are present shall be entitled to act on behalf of absent Secretary of State board members and the WMR board members who are present shall be entitled to act on behalf of absent WMR board members (including, in each case, by casting votes on behalf of such absent board members).
- 7.10 Any decision of the Strategic Board pursuant to this Agreement in respect of the exercise of the Secretary of State Duties or decisions to be taken by the Secretary of State on Reserved Matters shall be treated by the Secretary of State only as an informed recommendation to the Secretary of State in relation to the exercise of the Secretary of State Duties and those decisions and the Secretary of State shall have due regard to such recommendation but without fettering the Secretary of State's discretion in exercising such Secretary of State Duties and making those decisions.
- 7.11 The Strategic Board shall develop a policy regarding the use of Confidential Information by the Parties as soon as possible following the date of this Agreement (**Confidentiality Policy**). Until the agreement of the Confidentiality Policy, the Parties shall comply with clause 15 and the business and decisions of the Strategic Board shall be kept confidential and not disclosed to third parties except to the extent the Strategic Board by agreement discloses such information by release of a press announcement or other such means.

8 Franchise Management

- 8.1 The Parties shall endeavour to establish a management team (**Management Team**) by no later than 31 March 2017 for the 2017 WM Franchise which shall perform on behalf of the Secretary of State (in respect of the WCSBU) and the Strategic Board and the Secretary of State (in respect of the WMSBU) the Management Team Responsibilities set out in schedule 3.

- 8.2 The initial composition and reporting structure of the Management Team shall be as set out in the diagram in the Appendix to schedule 3
- 8.3 Each Party shall contribute available and relevant expertise (legal, finance, media/press/communications etc) to support the Management Team
- 8.4 The WMR members of the Strategic Board and/or the WMSBU Manager are the primary conduits of information relating to any matters which may arise pursuant to the operation of the 2017 WM Franchise Agreement relating directly or indirectly to the WMR Area and they shall inform WMR as soon as reasonably practicable on becoming aware of any such issues or matters which need to be brought to the attention of WMR, and liaise with WMR as necessary in relation to those matters. The Secretary of State members of the Strategic Board will support appropriate engagement with WMR on the matters referred to in this clause 8.4.

9 Funding

- 9.1 WMR shall set up and maintain a bank account in the joint names of WMR and the Secretary of State into which (subject to compliance by WMR with the notification provisions of this clause 9.1) the Secretary of State shall pay the DfT Annual Funding Amount and WMR shall pay the WMR Annual Funding Amount the **Joint Funding Account**. WMR shall notify the Secretary of State of the details of the Joint Funding Account promptly after opening it and each Party shall provide notice to the other Party as soon as reasonably possible after a payment has been made by them of the amount and date of such payment. Payments shall be made:
- (a) in respect of the first Franchisee Year of the 2017 WM Franchise, on the Start Date; and
 - (b) in respect of each subsequent Franchisee Year of the 2017 WM Franchise, on or before the first day of the relevant Franchisee Year.
- 9.2 The DfT Annual Funding Amount and the WMR Funding Amount shall be used solely in relation to the Funding Outputs and WMR shall use all reasonable endeavours to achieve such Funding Outputs:
- (a) by the end of the first 12 months of the 2017 WM Franchise in the case of the “Year 1” funding outputs; and
 - (b) throughout (and repeatedly during where appropriate) the remainder of the 2017 WM Franchise in the case of the “Year 2 and future years” outputs.
- As soon as becoming aware that the DfT Annual Funding Amount has not been paid, or is not reasonably likely to be paid, in accordance with clause 9.1 of this Agreement, the Secretary of State shall notify WMR.
- 9.3 As soon as becoming aware that the WMR Annual Funding Amount has not been paid, or is not reasonably likely to be paid, in accordance with clause 9.1 of this Agreement, WMR shall notify the Secretary of State.
- 9.4 Where notification is served under either clause 9.2 or 9.3, the Secretary of State and WMR shall meet as soon as reasonably practicable to discuss how the deficit in funding can be best resolved between the Parties.

- 9.5 The Secretary of State and WMR shall monitor and review the funding requirements under this Agreement and may reasonably amend the funding requirements under this Agreement by mutual agreement in writing. Neither Party shall be liable to the other Party to provide any funding under this Agreement beyond its respective funding commitments under clause 9.1 except where amended pursuant to this clause 9.5.
- 9.6 Where a Party fails to make payment on the due date in accordance with clause 9.1 (unless non-payment is due to the default of the other Party) interest shall accrue at the rate of 2% above the base rate of Royal Bank of Scotland plc from the due date until the date payment is received in full.
- 9.7 WMR shall maintain the Joint Funding Account until 3 months following termination of this Agreement by whatever means and this clause 9.7 (and any other provisions necessary to give effect to it) shall survive the termination of the Agreement, irrespective of the reason for termination.

10 Changes Proposed by WMR

- 10.1 WMR may propose and require the implementation of cost reducing, WMR-funded or third party funded changes to the passenger services and station services provided by the WMSBU pursuant to the 2017 WM Franchise Agreement (**WMR Change**) provided always that:
- (a) where the agreement of the franchisee is required under the 2017 WM Franchise Agreement, the WMR Change shall be subject to such agreement of the franchisee;
 - (b) subject to clause 10.1(c), the Secretary of State has a right to object to any WMR Change that he reasonably considers is likely to have an adverse financial consequence to the Secretary of State;
 - (c) the Strategic Board shall decide if WMR Change is likely to have an adverse financial consequence to the Secretary of State provided that it shall take into account any information or evidence provided by the Secretary of State in relation to such financial consequences of the WMR Change; and
 - (d) either Party may refer such decision of the Strategic Board to the Dispute Resolution Procedure if it does not agree with the decision.
- 10.2 WMR may propose and require the implementation of changes to fares within the West Midlands Commuter Fares Basket (as defined in the 2017 WM Franchise Agreement) (including without limitation by requesting the use of the "flex" or changing the value of "k" in the 2017 WM Franchise in relation to the fare controls applicable to those passenger services) (**WMR Fare Change**) where such WMR Fare Change does not:
- (a) have adverse consequences for the Secretary of State (including without limitation by increasing costs under the 2017 WM Franchise or any other franchise, causing significant adverse changes to the Secretary of State's risk profile and by exposing the Secretary of State to the risk of successful legal challenges relating to breach of applicable public procurement legislation); or
 - (b) conflict with any Secretary of State Duties.

provided always that:

- (i) where the agreement of the franchisee is required under the 2017 WM Franchise Agreement, the WMR Change shall be subject to such agreement of such franchisee;
- (ii) subject to clause 10.2(b)(iii) the Secretary of State has a right to object to any WMR Fare Change that he reasonably considers is likely to have an adverse financial consequence to the Secretary of State; and
- (iii) the Strategic Board shall decide if WMR Fare Change is likely to have an adverse financial consequence to the Secretary of State or conflict with any Secretary of State Duties provided that it shall take into account any information or evidence provided by the Secretary of State in relation to such financial consequences of the WMR Change or conflict with his Statutory Duty (as the case may be); and
- (iv) either Party may refer such decision of the Strategic Board to the Dispute Resolution Procedure if it does not agree with the decision.

- 10.3 WMR shall set up and maintain a bank account in the joint names of WMR and the Secretary of State into which (subject to compliance by WMR with the notification provisions contained in this clause 10.3) all net savings generated by either WMR Changes or WMR Fares Changes proposed by WMR as referred to in clause 10.1 and 10.2 (after any required payments have been made to the franchisee by the Secretary of State pursuant to the 2017 WM Franchise Agreement) shall be paid by the Secretary of State (the **Joint Savings Account**). WMR shall notify the Secretary of State of the details of the Joint Savings Account promptly after opening it and shall notify the Secretary of State of the value of any savings generated pursuant to this clause 10, accompanied by details of how those savings have been calculated, as and when it requires payment into the Joint Savings Account (but not more frequently than once every three months and not in respect of trivial amounts), and following receipt of a valid notification of savings, the Secretary of State shall have a period of 14 days in which to make payment.
- 10.4 WMR may use the monies held in the Joint Savings Account to fund WMR Changes or WMR Fare Changes as referred to in clauses 10.1 and 10.2 respectively and may also, with the prior written consent of the Secretary of State, transfer approved amounts out of the Joint Savings Account to the West Midlands Combined Authority (**WMCA**) or another local authority member of WMR designated by WMR on the basis that those monies shall be used to improve rail passenger services and/or associated rail facilities in the WMR Area.
- 10.5 Where the Strategic Board have not decided that the WMR Change or WMR Fare Change is likely to have an adverse financial consequence to the Secretary of State, the Secretary of State shall consent to the transfer of approved amounts out of the Joint Savings Account to the WMCA or another local authority member of WMR designated by WMR as set out in clause 10.4.
- 10.6 WMR shall be solely responsible for, and shall keep a full and accurate record of, any monies paid into and out of the Joint Savings Account and shall be liable for any deficiencies identified in the Joint Savings Account (save where such deficiencies are as a consequence of the Secretary of State failing to pay net savings generated pursuant to clause 10.3 into the Joint Savings Account). A deficiency shall be taken to have arisen where monies in the Joint

Savings Account are applied other than in accordance with this Agreement or as otherwise agreed by the Parties in writing.

- 10.7 WMR shall maintain the Joint Savings Account until 3 months following termination of this Agreement by whatever means and this clause 10.7 (and any provisions necessary to give effect to it) shall survive the termination of the Agreement, irrespective of the reason for termination.

11 Ongoing Engagement

The Parties intend that during Phase 2 the Secretary of State (or Minister) shall meet with the WMR Board Chair and Vice Chair on an annual basis to discuss the progress in achieving the Objectives and the Purpose.

12 Assignment, Transfer and Novation

- 12.1 Unless required by law, neither party shall be entitled to assign or transfer its rights and/or obligations under this Agreement without the written consent of the other Party except that the Secretary of State shall be entitled to transfer his rights and/or obligations under this Agreement to any person having the same legal capacity, power and authority of the Secretary of State.
- 12.2 WMR may with the Secretary of State's consent assign, transfer or novate all of its rights and obligations under this Agreement to another suitable body assuming the responsibility of WMR in respect of the delivery of rail services in the WMR Area.

13 Termination

- 13.1 Either Party shall be entitled to terminate this Agreement with immediate effect in the event of material breach of the Agreement or fraud or gross negligence by the other Party.
- 13.2 The Secretary of State shall be entitled to terminate this Agreement with immediate effect:
- (a) where WMR suffers an Insolvency Event;
 - (b) in the event that WMR ceases to be substantially representative of the local transport authorities within the WM Area; or
 - (c) before the award of the 2017 WM Franchise if he decides, acting reasonably, that the arrangements set out therein are no longer consistent with current Government policy.
- 13.3 The Parties shall be entitled to agree to terminate this Agreement where the Parties intend to enter into a new collaboration agreement which shall supersede this Agreement in which case the Parties shall consider whether it will be appropriate to enter into a new Licence of Intellectual Property Rights in respect of the branding developed by WMR and which the Parties anticipate will be made available to the Secretary of State and the franchisee of the 2017 WM Franchise.
- 13.4 This Agreement shall expire on the expiry of the 2017 WM Franchise.

13.5 Notwithstanding termination of this Agreement, the provisions of this clause and of clauses 9.7 (duration of the Joint Funding Account), 10.7 (duration of the Joint Savings Account), 14 (Consequences of Termination), 15 (Confidentiality) 16 (Freedom of Information), 28 (Governing Law), 17 (Dispute Resolution Procedure), 22 (Rights of Third Parties) and 25 (No Partnership) shall expressly survive such termination and continue in full force and effect along with any other clauses of and any schedules to this Agreement necessary to give full and proper effect to those clauses.

14 Consequences of Termination

14.1 If this Agreement is terminated or expires pursuant to clause 13, the Joint Funding Account and the Joint Savings Account shall be closed by WMR after all monies standing to the credit of the Joint Funding Account and the Joint Savings have been returned by WMR to the Parties in accordance with clause 14.2.

14.2 Any monies standing to the credit of the Joint Funding Account shall be distributed by WMR within 3 months following termination of the Agreement to the Parties in proportion to their respective funding contributions as set out under Clause 9 of this Agreement. Subject to clause 14.3, any monies standing to the credit of the Joint Savings Account shall be distributed by WMR within 3 months following termination of the Agreement to the Secretary of State. Promptly following notice by WMR of any monies owing to the Secretary of State pursuant to this clause 14, the Secretary of State shall provide WMR with details of the bank account to which such monies should be paid.

14.3 Prior to distributing any monies left to the credit of the Joint Savings Account, WMR shall be entitled to deduct sums that it can demonstrate to the Secretary of State (acting reasonably) are required to discharge any financial commitments to third parties reasonably and properly made in pursuance of the objectives of this Agreement, provided that WMR shall apply such sums by discharging those commitments and shall account to the Secretary of State in respect of the same.

15 Confidentiality

15.1 The provisions of this clause 15 shall apply until the Parties agree the Confidentiality Policy pursuant to clause 7.10. Thereafter, the Parties shall comply with the provisions of the Confidentiality Policy.

15.2 Subject to the provisions of the Act, the Transport Act 2000, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and clauses 15.3 to 15.9 inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (all together the **Confidential Information**) and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

15.3 Each Party may disclose any data or information acquired by it under or pursuant to the Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in clause 15.1;
- (b) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or the rules of any dispute resolution procedures to which a Dispute is referred in accordance with the Agreement; or
- (c) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Agreement or to protect or enforce its rights under the Agreement;

15.4 The Secretary of State may disclose the Confidential Information of WMR:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis for the purpose of the exercise of its rights under this Agreement;
- (e) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this clause 15.4.

15.5 For the purposes of clause 15.4, the following defined term shall have the following meaning:

Central Government Body means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal)
- (c) Non-Ministerial Department or
- (d) Executive Agency.

15.6 Nothing in this clause 15 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, Network Rail, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any

department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

- 15.7 WMR hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to this Agreement.
- 15.8 The Parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to this Agreement would not be able to disclose otherwise than under this clause 15.
- 15.9 This clause 15 (and any other provisions necessary to give effect hereto) shall survive the termination of the Agreement, irrespective of the reason for termination.

16 Freedom of Information

- 16.1 The Parties acknowledge and shall procure that their agents and subcontractors acknowledge that the Parties are each subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the parties shall, and shall procure that their agents and subcontractors shall, assist and co-operate with the other Party to enable that Party to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations (save if prevented by law or by contractual obligations or in circumstances where the Assisting Party (as defined below) would be able to withhold such information legitimately were the same Request for Information to be made to such Party directly).
- 16.2 Where a Party receives a Request for Information (**Requested Party**) and the Requested Party is unable to respond to such Request for Information without the assistance of the other party (**Assisting Party**), the Requested Party shall notify the Assisting Party that assistance is required and the Assisting Party (save if prevented by law or by contractual obligations or in circumstances where the Assisting Party would be able to withhold such information legitimately were the same Request for Information to be made to such Party directly) shall and shall procure that its agents and subcontractors shall:
- (a) provide the Requested Party with a copy of all information in its (or their) possession or power in the form that the Requested Party requires within five Working Days of the Requested Party's request (or within such other period as he may specify); and
 - (b) provide all necessary assistance as reasonably requested by the Requested Party to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.
- 16.3 The Requested Party shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- 16.4 Each Party acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in this Agreement each Party may be obliged under the Freedom of Information Act and/or the Environmental Information

Regulations and any related Code of Practice or other guidance to disclose information concerning each Party and/or their respective agents and subcontractors:

- (a) in certain circumstances without consulting the other Party (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the other and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Requested Party shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the other Party advance notice or failing that to draw the disclosure to the other Party's attention after any such disclosure.

17 Dispute Resolution Procedure

- 17.1 The Parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute or difference of whatever nature between them arising under, out of, or in connection with this Agreement (each such dispute or difference a **Dispute**).
- 17.2 Following any referral of a Dispute to the Dispute Resolution Procedure in accordance with the terms of this Agreement, the provisions set out in this clause 17 shall apply.
- 17.3 The Dispute shall initially be referred for resolution to the Managing Director, Passenger Services and the Chief Executive (or equivalent until appointed) of WMR (**Initial Dispute Board**) who shall seek to resolve the matter as soon as reasonably possible and in any event within twenty (20) Working Days of escalation, or such other period as may be reasonable given the nature of the Dispute, and the urgency of resolution. The Initial Dispute Board shall be entitled to request such additional information as may be reasonably requested from either WMR or the Secretary of State in respect of the Dispute, including, but not limited to, any information to be provided pursuant to the relevant provisions of this Agreement.
- 17.4 Both Parties shall be entitled to make oral and/or written representations to the Initial Dispute Board prior to the Initial Dispute Board making its final determination.
- 17.5 Where the Initial Dispute Board are not able to resolve the Dispute within twenty (20) Working Days of escalation pursuant to clause 17.3, the Initial Dispute Board shall refer the Dispute for resolution by the Director General, DfT Rail Executive and the chairperson of WMR who shall seek to resolve the Dispute within twenty (20) Working Days of escalation to them, or such other period as may be reasonable given the nature of the Dispute
- 17.6 If the Parties cannot resolve a Dispute in accordance with the above escalation procedure, either Party may at any time refer the Dispute for mediation by serving a written notice on the other Party to that effect (**Notice of Mediation**).
- 17.7 If a Notice of Mediation is given, then the Dispute shall be referred to the CEDR for mediation in accordance with the CEDR's model mediation procedure. If the Parties are unable to agree on the appointment of a mediator, or any other matter relating to the referral or conduct of the mediation, it shall be referred to the then president of CEDR who shall decide such matters.
- 17.8 Except where this Agreement has terminated, the parties shall continue to perform their obligations under the Agreement, regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution pursuant to this clause 17.

17.9 WMR acknowledges and accepts that the decision of the Secretary of State in relation to this exercise of any of the Secretary of State Duties is final and binding.

18 Notices

18.1

(a) Any notice, notification or other communication under or in connection with clause 13 (Termination) or clause 17 (Disputes) of this Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party:

Name: The Department for Transport
Address: 33 Horseferry Road, London SW1P 4DR
Attention: Senior Commercial Manager, Midlands

Name: West Midlands Rail Limited
Address: 16 Summer Lane, Birmingham B19 3SD
Attention: Programme Director

(b) Any other notice, notification or other communication under or in connection with this Agreement shall be in writing and shall be delivered:

(i) in accordance with clause 18.1(a) (except that it shall be marked for the attention of the Contract Manager (in the case of notices being sent to the Secretary of State) or the Programme Director of the West Midlands franchise (in the case of notices being sent to WMR); or

(ii) by electronic data transfer to:

westmidlandsfranchisemanagement@dft.gsi.gov.uk ; or

malcolmholmes@westmidlandsrail.com

as appropriate.

18.2 Deemed Receipt

Any notice or other communication issued pursuant to clause 18.1 shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three Working Days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer under clause 18.1(b) above, upon sending, subject to receipt by the sender of a “delivered” confirmation (provided that the sender shall not be required to produce a “read” confirmation).

19 Waiver

- 19.1 Either Party may at any time waive any obligation of the other Party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.
- 19.2 No waiver by either Party of any default by the other Party in the performance of such Party's obligations under this Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

20 Partial Invalidity

If any provision in this Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of the Agreement shall not be affected.

21 Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

22 Rights of Third Parties

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

23 Variation

This Agreement may only be varied in writing signed by each of the Parties.

24 Cumulative rights

The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by Law.

25 No Partnership

Nothing in this Agreement and no action taken by the Parties under this Agreement shall constitute a partnership, association or other cooperative entity between any of the Parties or constitute any Party the agent of any other Party for any purpose.

26 Entire Agreement

- 26.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 26.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this

Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

27 Counterparts

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

28 Governing Law

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.

Executed as a deed by the Parties or their duly authorised representatives but not delivered until the date of this Agreement.

THE CORPORATE SEAL OF)
THE SECRETARY OF STATE FOR TRANSPORT)
is hereunto affixed:)

Authenticated by authority of the Secretary
of State for Transport

Executed as a deed by)
West Midlands Rail Limited)
acting by a director in the presence of) Director

.....
Signature of witness

Name

Address

.....

Schedule 1

The Objectives

- 1 Better for the economy – Support the current and predicted growth in jobs, housing, industry, leisure and tourism and retail with a distinct focus on each of the following markets:
 - West Midlands' local and regional services;
 - long-distance services along the West Coast Mainline from Liverpool to Birmingham and from Crewe to London; and
 - Services to/from London including branch lines.

Ensure there are the right services and capacity to cater for current users and future growth throughout the day and week.
- 2 Better for the passenger – Deliver high quality services and stations, reduce delays and cancellations, and achieve significant improvements in customer satisfaction. Provide affordable, easy to use services at the times and to the places that people want to travel both now and in the future supported by the provision of accurate and timely information.
- 3 Better for communities – Increase engagement between the operator of the new franchise and the communities it serves.
- 4 Better for staff – Deliver a franchise which demonstrates a genuine pride in developing staff over the long term, aiming to improve staff satisfaction, motivation and retention, and deliver best in class customer service.
- 5 Better for taxpayers – Make the most of the significant investment being made to make improvements to the rail network. Making sure the right level of service is provided to reflect travel patterns and demand, ensuring resources (funding, staff and trains) are used in the areas that need it most. Make improvements efficiently, providing value for money.
- 6 Maximising the benefits from investment in infrastructure – Supporting the development of a safe and accessible network to modernise and meet the requirements of a modern railway.
- 7 Supporting HS2 – Work with HS2 and Network Rail as a partner on relevant works to enable the delivery of the new high speed rail line between London, the Midlands and Crewe. Ensure that the foundations are in place for the West Midlands to be ready for the opening of HS2, supporting the HS2 Connectivity Programme being delivered through the recently announced West Midlands £8bn growth deal.
- 8 Both the DfT and WMR are also committed to ensuring that rail fully plays its part in supporting low carbon, environmental and wider sustainability objectives.

Schedule 2

Strategic Board Responsibilities

Subject to the Reserved Matters, the Strategic Board shall be responsible for:

- 1 overseeing franchise management activity in respect of the WMSBU and providing appropriate input into the WCSBU insofar as that input concerns rail services in the WMR Area;
- 2 preparing and approving the WMSBU annual business plans;
- 3 undertaking an annual (or more frequent if agreed by both parties) review of franchise management responsibilities which have been delegated by the Secretary of State to WMR;
- 4 developing and keeping under review investment options in respect of the WMSBU and providing appropriate input into the investment options for the WCSBU insofar as that input concerns rail services in the WMR Area;
- 5 keeping WMSBU performance under review and making recommendations to the Secretary of State as to the taking of enforcement action and providing appropriate input in relation to the performance of the WCSBU insofar as that input concerns rail services in the WMR Area;
- 6 making recommendations and providing guidance to the Secretary of State on the carrying out of other Secretary of State Duties and decisions on other Reserved Matters, to the extent relevant to WMSBU services;
- 7 discussing WMR's proposals and representations relating to passenger services and station services in the WMR Area that do not fall within the WMSBU (including any such services in the WCSBU and in franchises other than the 2017 WM Franchise) and where appropriate making recommendations or providing guidance thereon to the Secretary of State; and
- 8 consider proposals put forward by WMR pursuant to the matters referred to in clauses 10.1 and 10.2 of the Agreement.

Schedule 3

Management Team Responsibilities

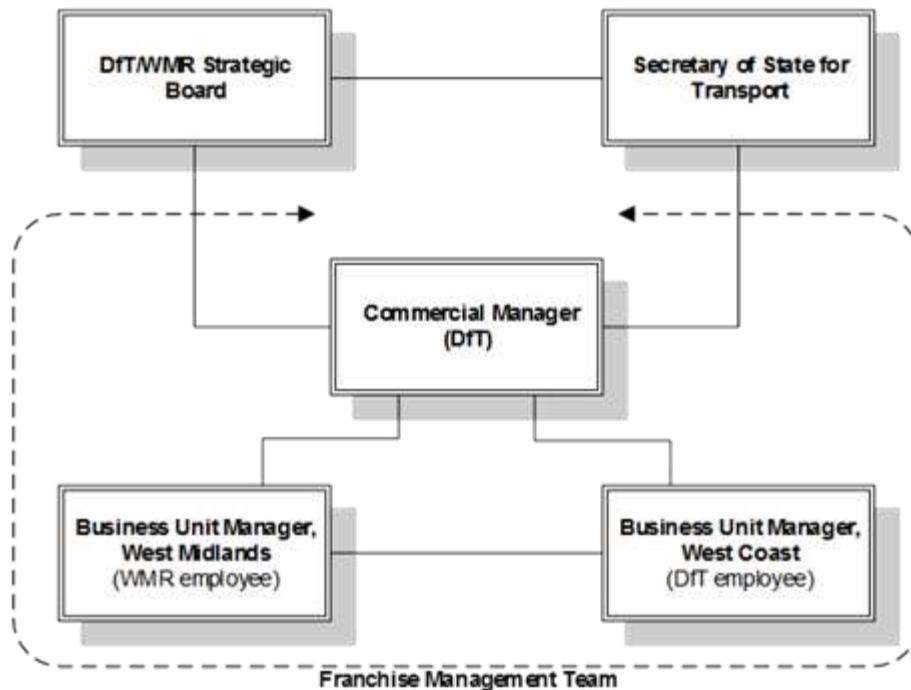
- 1 Subject to the Reserved Matters, the Management Team shall be responsible for:
 - (a) subject to the Reserved Matters, implementation of the Strategic Board business plans for the WMSBU;
 - (b) implementation of cost neutral or cost reducing changes in respect of the WMSBU in accordance with the delegated authority of the Strategic Board and the terms of the Agreement;
 - (c) save in respect of Reserved Matters, day-to-day contact and commercial management of the WMSBU (on behalf of the Strategic Board and the Secretary of State) including:
 - (i) appropriate contract administration;
 - (ii) performance monitoring (including any service quality regime); and
 - (iii) risk management and reporting.
 - (d) developing change proposals for consideration by the Strategic Board in conjunction with the Franchisee, WMR and other stakeholders including the changes referred to in clauses 10.1 and 10.2 of the Agreement;
 - (e) providing general briefing and support for ministers and the WMR partner authorities relating to the WMSBU and the operation of the Strategic Board and Management Team and in preparing for the annual reviews;
 - (f) in relation to rail investment in the WMR Area:
 - (i) developing proposals for the Government's HLOS for each Control Period, identifying related or necessary change proposals;
 - (ii) developing WMR funded investment proposals, identifying related or necessary changes pursuant to clauses 10.1 and 10.2 of the Agreement;
 - (iii) overseeing the development of output statements and metrics for Network Rail setting out in more detail what is sought from HLOS requirements and proposed changes having regard to the total HLOS funding available;
 - (iv) where the Strategic Board has been delegated HLOS Scheme Management by the Secretary of State, to act as Network Rail's 'Client' for such HLOS schemes, as agreed between Secretary of State and WMR, including finalising the detailed scheme output specifications and agreeing these with Network Rail and Secretary of State including budget provision and affordability;
- 2 Notwithstanding that the Strategic Board shall have primary responsibility for the WMSBU and the Secretary of State shall have primary responsibility for the WCSBU, the Parties shall work together in respect of the two business units. In particular the Secretary of State recognises that WMR has an interest in the Coventry Corridor and Stafford Corridor and the Secretary of

State shall have due regard to comments made by WMR in respect of the Coventry Corridor and the Stafford Corridor.

Appendix to Schedule 3

Franchise Management Structure

- 1 Designed to be dynamic and to facilitate the development of local leadership of the WMSBU, with responsibilities transferring to WMR incrementally over time
- 2 One full-time Business Unit Manager to be provided by each of DfT and WMR
- 3 DfT Commercial Manager on West Midlands franchise



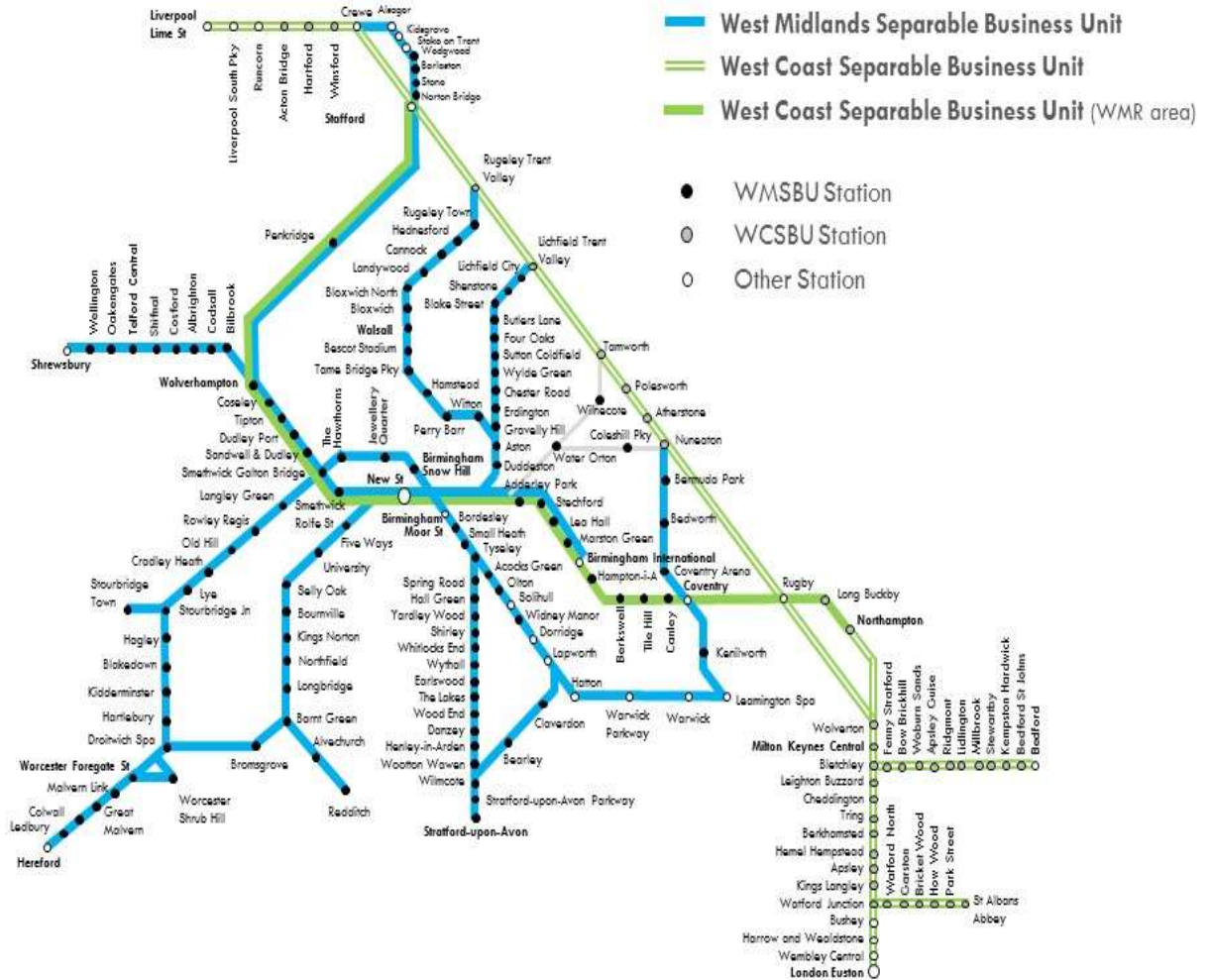
- 4 The WMSBU Manager shall be based predominantly in the West Midlands, with co-location at Great Minster House as required and as workload dictates
- 5 WCSBU Manager shall be based predominantly in Great Minster House but with regular travel to and time spent in the West Midlands as required and as workload dictates
- 6 Accommodation in the West Midlands to be provided by WMR – likely to be 16 Summer Lane, Birmingham

Reporting

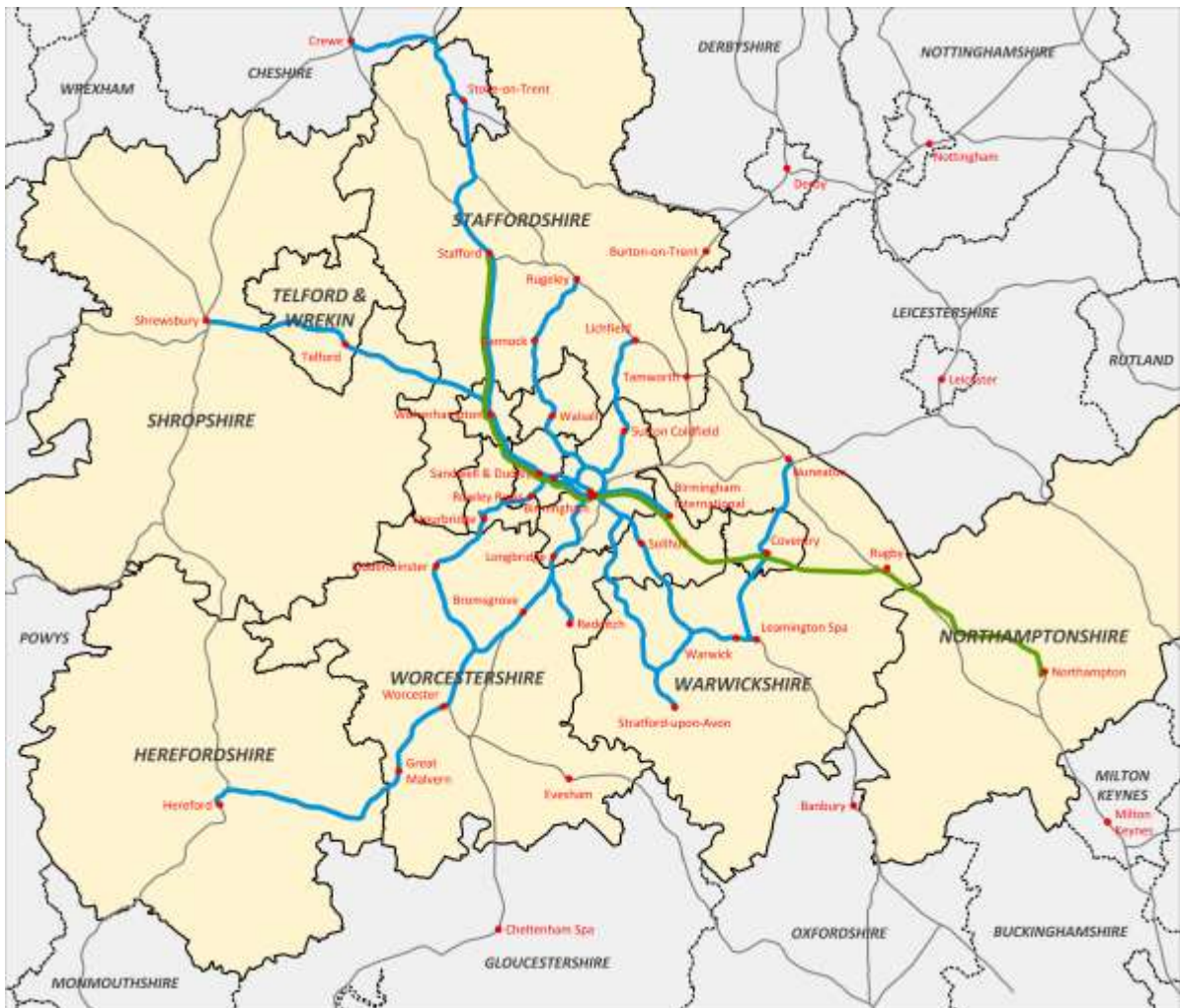
- 7 Quarterly franchise-wide report/meetings shall be held between the Commercial Manager, the WMR Director and both SBU Managers
- 8 Business unit reporting/meetings shall be held during each reporting period between both SBU Managers (each to lead for their SBU)

Schedule 4

Part 1 - Separable Business Units Map



Part 2 - WMR Area Map



Schedule 5

Funding Outputs

1 Year 1 Outputs

- 1.1 Recruit WMR Director, WMR Business Unit Manager and WMR Contract/Admin Support;
- 1.2 Establish WMR company structure, office space and support services;
- 1.3 By Q1 2018/19 prepare first version of the Business Plan and within this define the targets for marketing;
- 1.4 Establish relationship with the franchisee including regular attendance in shadow form at 2017 WM Franchise Agreement review meetings;
- 1.5 Support the set-up of the Separable Business Units and establish structures for formal West Midlands Separable Business Unit reporting by the date required in the 2017 WM Franchise Agreement; and
- 1.6 Attendance at the Strategic Board.

2 Year 2 and Future Years

- 2.1 Confirm staff (WMR Director, WMR Business Unit Manager and WMR Contract/Admin) are in-post;
- 2.2 Report progress against the Business Plan;
- 2.3 Update the Business Plan on an annual basis; and
- 2.4 Attendance at the Strategic Board.

3 General

- 3.1 Establish clear roles and responsibilities regarding the services to be provided under the 2017 WM Franchise Agreement and the Separable Business Unit monitoring and management;
- 3.2 Establish meeting structure to monitor the outputs of the Separable Business Units; and
- 3.3 Ensure that obligations are understood and processes in place to manage outputs and outcomes to be consistent with the Purpose and Objectives of this Agreement.