

DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL CABINET

DATE OF DECISION 16 July 2019

DATE DECISION PUBLISHED 17 July 2019

DATE DECISION WILL COME INTO FORCE and implemented,
unless the decision is called in, in accordance with section 7.25 of
the Gwynedd Council Constitution **24 July 2019**

Cabinet Member: Councillor Ioan Thomas, Cabinet Member for Finance

SUBJECT

Local Full Fibre Network (LFFN)

DECISION

- That we support Denbighshire County Council as the Lead Council to run the LFFN project and to administer the finances provided by the Department for Digital, Culture, Media and Sport (UK Government).
- Agree to Gwynedd Council joining in the Collaboration Agreement with other partners in relation to the Local Full Fibre Network project.
- That the Cabinet directs permission to the Head of Legal Services to agree to the final terms of the Collaboration Agreement and to be provided with deputised authority in relation to any minor changes after its completion.

REASON WHY THE DECISION IS NEEDED

Please see attached officer report

DECLARATIONS OF PERSONAL INTEREST AND ANY RELEVANT DISPENSATIONS APPROVED BY THE COUNCIL'S STANDARDS COMMITTEE


none

ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION

Consultation with
Gwynedd Council Statutory Officers

The results of the consultations are reported upon in the attached report

**DECISION NOTICE OF AN INDIVIDUAL MEMBER OF GWYNEDD COUNCIL
CABINET – OFFICER REPORT**

Name and title of Cabinet Member/s:	Councillor Ioan Thomas, Cabinet Member for Finance
Name and title of Report Author :	Huw Ynyr (Assistant Head of IT)
Date of Decision:	16/7/19.
Signature of Cabinet Member/s:	

Subject : Local Full Fibre Network (LFFN)

The LFFN is a Programme to extend fibre network Infrastructure across North Wales bringing fibre connectivity to publicly serviced buildings.

The majority of Council buildings are already serviced by fibre connections, however bringing fibre to buildings in rural areas can incur high costs.

The Department for Digital, Culture, Media and Sport (UK Government) has awarded a sum of £8,086,000 (eight million and eighty six thousand pounds) to be spent in the North Wales region to address excess engineering costs.

Connectivity includes the standard cost of the hardware but can include additional engineering costs if the fibre run needs to be extended. Traditionally, Broadband connections were using the same copper lines that are used for telephone connections, but deliver relatively slow internet speeds. The use of fibre cabling to deliver ultra-fast Broadband is becoming more widespread, but is not available everywhere. The available funding means that we are able to introduce ultra-fast connections to the public sector without incurring the additional Financial burden to pay for new or to extend existing fibre runs, resulting in a consistent cost model to introduce fibre connections across the region regardless of their urban or rural location.

The Council's maintenance programme has identified 17 buildings that continue to be serviced by copper connections. The additional funding will allow us to upgrade these buildings within our current budgets.

Gwynedd Council is a partner in this venture along with North Wales' other five Authorities and the Health Board.

The LFFN project is a subsidiary of the North Wales Ambition Board.

The project will be administered by Denbighshire County Council and will be the custodians of the funding awarded by the Department for Digital, Culture, Media and Sport. Each establishment will contract directly with BT Global Services (GS) to order connections as part of the PSBA (Wales Public Sector Broadband

Aggregate). Invoicing and payment will also be direct with BT GS, with claims remunerated by Denbighshire County Council quarterly.

The LFFN project is expected to run for two years.

A full description of the project can be found in "Appendix 1 – LFFN Inter Authority Agreement".

Recommendation for the Decision:

- That we support Denbighshire County Council as the Lead Council to run the LFFN project and to administer the finances provided by the Department for Digital, Culture, Media and Sport (UK Government).
- Agree to Gwynedd Council joining in the Collaboration Agreement with other partners in relation to the Local Full Fibre Network project.
- That the Cabinet directs permission to the Head of Legal Services to agree to the final terms of the Collaboration Agreement and to be provided with deputised authority in relation to any minor changes after its completion.

Reason why Decision is needed: This is a golden opportunity for us to take positive steps through UK Government sponsorship to improve ultra-fast Broadband Connectivity in rural Gwynedd. Our aim is to introduce continuous improvements to our services and Technology is tantamount to those improvements.

Reason and justification behind the Decision: We can programme improvements to Council building's network connections from within our current budget, with funding from the Department for Digital, Culture, Media and Sport (UK Government) being used to meet all excess engineering costs.

Declarations of personal interest by any Cabinet Member consulted with and any relevant dispensations approved by the Standards Committee:

None

Any consultations undertaken prior to making the decision:

Head of Finance – *"There will be benefits to the Council and Gwynedd's citizens in implementing the Local Full Fibre Network project and receiving the UK Government's grant contributions. I understand that commitment is limited to our current budget and therefore support the recommendation for the Council to join in the regional agreement."*

Monitoring Officer – *"The report sums up the nature of the collaborative project that will provide access to resources to ensure that Digital provision is maximised"*

across North Wales. Legal input was shared across the 6 authorities to draft the agreement. No further comments from a propriety perspective.”

Local Member(s) - Not applicable



Dated

2019

COLLABORATION AGREEMENT RELATING TO THE LOCAL FULL FIBRE NETWORK PROGRAMME

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Schedule 1 - Definitions

Schedule 2 - Services

Schedule 3 – Funding

Schedule 4 - Governance

Schedule 5- Programme of Works

Schedule 6- Business Case

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Schedule 8- Grant Conditional Offer Letter

This Agreement is dated

2019

Between

Parties

- (1) Denbighshire County Council ("the **Lead Authority**")
- (2) Conwy County Borough Council ("**Conwy**")
- (3) Flintshire County Council ("**Flintshire**")
- (4) Gwynedd Council ("**Gwynedd**")
- (5) Wrexham County Borough Council ("**Wrexham**")
- (6) Isle Of Anglesey County Council ("**Ynys Mon**")
- (7) NHS Wales Informatics Service ("**NWIS**")
- (8) Betsi Cadwalader University Health Board ("**BCUHB**")

together the "Parties" and singularly the "Party" whose address are set out in clause 22 of this Agreement.

Background

- (A) The Department for Digital, Culture, Media and Sport has awarded the Lead Authority on behalf of the Parties the sum of £8,086,000 or as varied from time to time and notified to the Lead Authority by DCMS for the provision of a full fibre network across the administrative areas of the Parties.
- (B) The Parties wish to enter into an arrangement to govern the project relating to the Local Full Fibre Network programme and under which Denbighshire County Council will provide services as Lead Authority and which are set out in the Business Case.
- (C) The Parties agree that the arrangement shall be entered into on a collaborative basis for the pursuit of objectives in the public interest (having regard to their community strategies) and with a view to securing the economic, social and environmental well being of the area.
- (D) The Parties enter into this Agreement pursuant to the powers available to them under section 9 of the Local Government Wales Measure 2009, Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and all other enabling powers.

Operative clauses

Part 1 Parties and structures

1 Definitions

The provisions of Schedule 1 (Definitions) shall apply and have effect in relation to the words and expressions used in this Agreement and the interpretation and construction of this Agreement.

2 Obligation of collaboration

The Parties shall from the Commencement Date work together and individually in the spirit of trust, fairness and mutual co-operation in order to deliver and manage the Project.

3 Strategic Management Board

3.1 The Parties shall establish a Strategic Management Board to review the implementation and management of the Project in accordance with the Terms of Reference in Schedule 4 comprising the following individuals:

3.1.1 Barry Eaton - Chief Officer ICT (the Lead Authority);

3.1.2 Huw McKee - Head of Information Technology and Digital Transformation (Conwy);

3.1.3 Linda Astbury - IT Communications Manager (Flintshire);

3.1.4 Huw Ynyr - IT & Transformation Senior Manager (Gwynedd);

3.1.5 Dave Jacobs - ICT Lead (Wrexham);

3.1.6 Neil Summers - Technical Services Manager (Ynys Mon);

3.1.7 Chris Brown - Infrastructure Development Manager (NWIS)

3.1.8 David Slocombe - Data Communications Manager (BCUHB)

3.1.9 Helen Makin - Legal and Procurement Operations Manager (the Lead Authority) (non voting);

3.1.10 Stuart Whitfield - Project Manager (the Lead Authority) (non voting).

3.1.11 Steve Bayley - Senior Responsible Officer for the Project (Wrexham)

3.2 The Strategic Management Board is subject to changes in personnel agreed by the Parties.

3.3 Each Party shall ensure that any of its employees who are members of the Strategic Management Board shall attend Strategic Management Board meetings.

3.4 Meetings of the Strategic Management Board shall be convened by the Project Manager at the request of any member of the Strategic Management Board and otherwise held on a quarterly basis and upon not less than five (5) working days' notice to all Strategic Management Board members in which the agenda shall be set out.

3.5 The Chair of the Strategic Management Board will be selected annually. In their absence the meeting shall be chaired by the Vice Chair, appointed by the Strategic Management Board at the first meeting of the Strategic Management Board.

3.6 Decisions of the Strategic Management Board shall be by consensus of all Strategic Management Board members present at the meeting and the Parties shall be bound by any decision of the Strategic Management Board made within the scope of its agreed functions.

4 Early warning procedure

Each Party agrees to notify the others as soon as it is aware of any matter adversely affecting or threatening the Project or its own responsibilities under this Agreement and shall submit to the Strategic Management Board proposals for avoiding or remedying such matter.

5 Communications

Except as otherwise agreed in writing, all communications between the Parties shall be in writing by post or e mail although where a notice is required by any of the provisions of this Agreement, the provisions of clause 22 (Notices) shall apply.

6 Representatives

6.1 Each Party shall appoint the Authorised Representative to act in the name of the Party for the purposes of this Agreement. The Authorised Representative may be the same person as is referred to in clause 3.1 as being the representative on the Strategic Management Board.

6.2 The Lead Authority shall ensure that at all times from the Commencement Date the Project Manager (or duly authorised deputy) is available to be contacted by an Authorised Representative at all times during usual office hours in each working day.

6.3 An Authorised Representative shall be deemed to be empowered on behalf of the relevant Party for all purposes connected with the Project and in particular (but without limitation) any notice, information, instruction or other communication given or made by or to the Authorised Representative shall be deemed to have been given or made by or to the relevant Party.

6.4 Each Party shall throughout the period of the Agreement ensure that the Authorised Representative (or duly authorised deputy) is available for consultation with the Project Manager at all reasonable times.

6.5 The Project Manager or duly authorised deputy shall be empowered on behalf of the Lead Authority for all purposes connected with this Agreement. Any notice, information, instruction or other communication given or made to the Project Manager or deputy shall be deemed to have been given or made by or to the Lead Authority.

- 6.6** Each Party agrees that each may appoint a deputy to act as an authorised deputy of their respective representative, upon notification to the Lead Authority of that person. The deputy may only act in the absence of the Authorised Representative or Project Manager (as the case may be).

Part 2 Collaboration objectives

7 Objectives

- 7.1** The Parties shall establish, develop and implement their collaborative relationship with the objective of:
- 7.1.1 Delivery of the Project in accordance with the Business Case at Schedule 6 hereto;
 - 7.1.2 Delivery of the Project within the agreed timeframe;
 - 7.1.3 Completion of the Works by 31 March 2021;
 - 7.1.3 Effective management of the Project during its term; and
 - 7.1.4 Complying with the conditions of the Grant.

8 Collaborative Working

- 8.1** The objectives are to be kept under review through meetings and effective communication.
- 8.2** The Parties shall establish collaborative working and problem resolution which shall be based on:
- 8.2.1 achieving for the benefit of the delivery and management of the Project and for the mutual benefit and economic, social and environmental well being of each Party;
 - 8.2.2 trust, fairness, mutual co-operation, dedication to agree common goals and an understanding of each Party's expectations and values;
 - 8.2.3 seeking solutions without apportioning blame;
 - 8.2.4 mutually beneficial outcomes;
 - 8.2.5 treating the Parties as equals in the dispute resolution process;
 - 8.2.6 a mutual acceptance that adversarial attitudes wastes time and money;
 - 8.2.7 more and better discussion with less paperwork and more constructive correspondence.

- 8.3** Each Party shall warrant for themselves but not each other that each shall do nothing, nor fail to comply with an obligation or requirement of the Grant, such that an act or failure to act, shall, or shall be likely to, place the Lead Authority in breach of its obligations pursuant to the Grant.

Part 3 Implementation

9 Failure or delay and rectification

The Lead Authority shall continuously monitor and review the management of the Project and where it perceives that there are any defaults in that management process(as the case may be), it shall take such action as is necessary without waiting for agreement from the other Parties. Where a Party believes that the Project has not been delivered in accordance with the Business Case or the Specification or this Agreement, it may raise the issue with the Lead Authority in writing and request a response to the concerns it has.

10 Duty of care

- 10.1** The Lead Authority acknowledges to the other Parties that it is under a duty of care to them to provide the Services in a manner consistent with the Specification and will exercise all reasonable care, skill and due diligence in delivering the Project .
- 10.2** The Parties shall comply with the procedure set out at Annex B to Schedule 3 hereof and shall make claims for payment in accordance with Annex A to Schedule 3 hereof and shall warrant that claims made pursuant to Schedule 3 shall be accurate and made on a timely basis.

Part 4 Payment

11 Payment

- 11.1** The Lead Authority shall receive payment of the Grant retrospectively subject to making quarterly claims to DCMS on behalf of the Parties.
- 11.2** Each Party shall submit to the Lead Authority on a quarterly basis details of connections made during the previous quarter. A Party shall not be entitled to receive reimbursement of the costs of connections until the Lead Authority shall have received the relevant portion of the Grant from DCMS. Each Party shall have sole responsibility to submit timely returns to the Lead Authority and shall supply such information as is required by DCMS to enable the Lead Authority to comply with the conditions of the Grant.
- 11.3** The Parties shall submit a claim for reimbursement for the cost of connections using the form in Schedule 3 'Funding' hereof.
- 11.4** The Lead Authority shall process the claims made by the Parties in a timely manner and shall submit the claims to DCMS. The Lead Authority shall have no liability to make a payment in respect of a claim until the Lead Authority shall have received payment of the portion of the Grant relevant to the claim. The Lead Authority shall reimburse the

relevant Party within 30 days from the date of receipt of the portion of the Grant from DCMS.

- 11.5** There shall be a reconciliation of the payments at the end of the Term in accordance with the funding arrangements set out in Schedule 3 'Funding'.
- 11.6** Each Party shall ensure that the Works required by the relevant Party as identified in the Programme of Works shall be ordered and completed no later than 31 March 2021.
- 11.7** The Parties expressly agree that there can be no Works ordered or completed after 31 March 2021.

Part 5 Change control and variations

12 Change

- 12.1** If a Party wishes for there to be a variation in the Services the Strategic Management Board shall meet to discuss and agree the basis of any change to the Services and/or the payment.
- 12.2** Whenever a Change in Law occurs, the Strategic Management Board shall meet to discuss the impact of the Change in Law and agree the basis of any change to the Services and/or the payments.

Part 6 Indemnity

13 Indemnity

- 13.1** The Parties (apart from the Lead Authority) shall jointly indemnify and hold harmless in equal shares according to the formula in Clause 13.3 the Lead Authority, its employees, agents or officers with respect to all claims, demands, actions, costs, expenses, losses or damages incurred by reason of the actions of the Lead Authority and taken on behalf of the Parties in relation to the Project and this Agreement.
- 13.2** The indemnity and holding harmless set out in Clause 13.1 will not include any liability incurred by the Lead Authority through an act or omission that amounts to negligence, fraud or misrepresentation.
- 13.3** For the purpose of Clause 13.1 the contribution of all Parties including the Lead Authority will be in equal share as if the Lead Authority were included as a Council liable to contribute under Clause 13.1. Accordingly each Party (not including the Lead Authority) will be liable to the Lead Authority for the following proportion of the claims, demands, actions, costs, expenses, losses or damages set out in Clause 13.1:

Number of Parties (not including Lead Authority)	Contribution
Seven	one- eighth
Six	one- seventh
Five	One-sixth

Four
Three
Two
One

One-fifth
One-quarter
One-third
One-half

- 13.4** The Lead Authority shall have no liability to any of the Parties in respect of the Works or contract of each or any Party and each Party shall be responsible for putting in place such arrangements including insurance as is necessary to cover any such carrying out of the connection works or contract.
- 13.5** Whilst the Parties shall make all reasonable attempts to mitigate loss each Party shall indemnify each of the other Parties from any loss, action claims demands and expenses (including legal expenses on an indemnity basis) which may arise out of or in consequence of the performance or non performance by the Party of its obligations in respect of this Agreement.
- 13.6** Where one Party (the "**Indemnified Party**") suffers loss due to the actions of the other Party for which that Party has provided an indemnity (the "**Indemnifying Party**") pursuant to clauses 13.1 and 13.5 above, the Indemnifying Party shall pay to the Indemnified Party such amounts as are reasonably claimed by the Indemnified Party in respect of such actions.
- 13.7** Each Party shall hold and keep up to date the following insurances:
- 13.7.1 Public Liability Insurance for the minimum sum of £10,000,000 each and every claim;
- 13.7.2 Employer's Liability Insurance for the minimum sum of £10,000,000 each and every claim; and
- 13.7.3 Professional Indemnity Insurance for the minimum sum of £5,000,000 each and every claim.

Part 7 Employees

14 Employees

- 14.1** The Project Manager shall be employed by the Lead Authority, unless that person is employed by one of the other Parties (in this clause "the Employer"), in which case that person shall be seconded by the Employer to the Lead Authority for the duration of the Term.
- 14.2** The Lead Authority and the Employer shall agree the terms of the secondment between them.

Part 8 Term and termination

15 Term

This Agreement shall continue until the expiry of the Term or until action is taken to terminate the Agreement in accordance with the provisions of clause 16 (Termination).

16 Termination

16.1 This Agreement shall not be liable to termination for any reason unless the Parties shall unanimously agree to terminate the Project.

16.2 Subject to the Parties agreeing otherwise in accordance with clause 16.1 the Project shall terminate on or before 31 December 2021.

17 Consequences of Termination

17.1 If the Parties shall agree to terminate the Project, the Strategic Management Board shall meet to review the actions required, including without limitation, an adjustment to the costs of the Project and the payment provision and in particular in relation to the payment of the Grant and any claw back provisions.

17.2 Upon termination in accordance with clause 16.2 there shall be a reconciliation in accordance with clause 11.5.

18 Intellectual Property

18.1 The Parties agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by any of them before the Commencement Date or developed by any of them during the Term, shall remain the property of that Party.

18.2 Where one of the Parties has provided one or more of the other Parties with any of its Intellectual Property Rights for use in connection with the Project the receiving Party shall, upon termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the owning Party unless agreed otherwise by the relevant Parties.

Part 9 Problem solving, dispute avoidance and resolution**19 Notice of problem solving**

19.1 As soon as any of the Parties are aware of any difference or dispute arising under or out of or in connection with the Agreement, it shall give notice to the Lead Authority.

19.2 Upon receipt of a notice in accordance with clause 19.1, the Project Manager shall convene a meeting of the Strategic Management Board at no more than ten working days' notice, notifying it of all available information regarding the difference or dispute.

19.3 Where the Strategic Management Board does not resolve the difference or dispute or find a solution acceptable to all Parties, the Strategic Management Board shall agree on the procedure to be invoked to find a resolution to the difference or dispute and shall identify the individuals to be nominated to deal with the matter who shall work in good

faith and within a reasonable timescale to achieve an agreed solution to the difference or dispute.

19.4 If any difference or dispute is not resolved in accordance with clause 19.2 and 19.3, then the matter shall be referred to alternative dispute resolution in accordance with clause 20.

20 Alternative dispute resolution

20.1 If any difference or dispute arises in connection with this Agreement and is not resolved in accordance with clause 19 the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation at least one Party shall give notice in writing to the other Party or Parties to the dispute requesting a mediation. A copy of the request shall be sent to CEDR and to all Parties in accordance with clause 22 who are not a direct party to the dispute or difference. The mediation shall start not later than 14 days after the date of the Alternative Dispute Resolution notice. The outcome of the mediation shall be reduced to an agreement which shall be binding on the Parties to the difference or dispute who shall also bear the costs of the mediation equally between them.

20.2 Any Party may instead of following the procedure in clause 20.1 issue proceedings in a court of competent jurisdiction where in the view of that Party it is prudent expedient and necessary to do so in the circumstances.

20.3 Subject to clause 20.2 no Party shall commence any court proceedings or arbitration in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party or parties have failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

Part 10 General

21 No partnership

21.1 The Parties are separate entities and nothing in this Agreement shall be construed so as to imply that there is any relationship between them of joint committee, partnership or of principal/agent or of employer/employee nor that the Parties are engaging in any joint venture by participation in the Agreement (except as specially provided in this Agreement).

21.2 Neither the Lead Authority nor any of its employees shall in any circumstances hold itself or themselves out as:

21.2.1 being the servant or agent of another Party, otherwise than in circumstances expressly permitted in this Agreement;

21.2.2 hold itself or themselves out as being authorised to enter into any contract on behalf of a Party or in any way to bind a Party to the performance, variation,

release or discharge of any obligation otherwise than as expressly permitted in this Agreement.

22 Notices

22.1 Where a notice is sent to the Lead Authority under this Agreement, a copy shall be provided to the Project Manager, provided that in no circumstances shall a failure or delay in providing such a copy affect the validity of any such notice or service of it.

22.2 Where any information or documentation is to be expressly provided or submitted to an Authorised Representative or the Project Manager, it shall be provided or submitted by sending the same by first class post, or by hand, leaving the same at the following relevant addresses marked for the attention of the relevant personnel:

Denbighshire County Council
County Hall
Wynnstay Road
Ruthin
LL15 1YN

Conwy County Borough Council
Bodlondeb
Conwy
LL32 8DU

Flintshire County Council
County Hall
Mold
Flintshire
CH7 6NB

Gwynedd Council
Council Offices
Shirehall Street
Caernarfon
Gwynedd
LL55 1SH

Wrexham County Borough Council
The Guildhall
Wrexham
LL11 1AY

Isle of Anglesey County Council
Council Offices
Llangefni
Anglesey
LL77 7TW

NWIS

Tŷ Glan yr Afon
 21 Cowbridge Road East
 Cardiff
 CF11 9AD

BCUHB

Betsi Cadwalader University Health Board
 Ysbyty Gwynedd
 Penrhosgarnedd
 LL57 2PW

22.3 Any of the Parties may change its nominated address by prior notice to the Lead Authority in accordance with this clause 22.

22.4 Notices shall be effective:

22.4.1 by post, upon the earlier of actual receipt and two working days after mailing;
 or

22.4.2 by hand, upon delivery

and for the avoidance of doubt no notice served pursuant to this clause 22 shall be deemed effective if it is served by e mail notification.

22.5 Any notice, information, instructions or public communication given in accordance with this clause 22 (Notices) to:

22.5.1 the Project Manager shall be deemed to have been given to the Lead Authority; and

22.5.2 the Authorised Representative shall be deemed to have been given to the relevant Party.

23 **Entire agreement**

This Agreement and all documents referred to (including any future agreed variations made in accordance with clause 32) constitute the entire agreement between the Parties with respect to the subject matter covered by them and superseding replace all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the Parties.

24 **Costs and expenses**

Each Party shall bear its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

25 Exercise of statutory functions

Nothing in this Agreement shall fetter or constrain any Party from exercising its statutory powers or performing its statutory duties.

26 Waiver

No term or provision of this Agreement shall be considered as a waiver by either Party unless a waiver is given in writing by that Party.

27 Severability

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

28 Law and jurisdiction

This contractual Agreement and any obligations arising out of or in connection therewith, will be governed by the laws of England and Wales and subject to the provisions in clause 20 (Alternative Dispute Resolution) relating to dispute resolution, the parties submit to the exclusive jurisdiction of the courts of England and Wales.

29 Information and confidentiality

29.1 The Parties agree that the provisions of this Agreement shall, subject to clause 29.2, not be treated as confidential and may be disclosed without restriction.

29.2 Clause 29.1 shall not apply to any provision of this Agreement designated as Confidential Information.

29.3 The provisions in this clause 29 (Information and Confidentiality) are subject to the Parties' obligations under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

29.4 The Parties shall at all times comply with the Data Protection Act 2018 (and any predecessor legislation made in compliance with the EU General Data Protection Regulation ((EU) 2016/679) as regards Personal Data. The Parties shall enter into a data processing agreement if required upon terms agreed between them.

29.5 The provisions of Schedule 7 shall also apply to Confidential Information.

30 Assignment

No Party shall assign, subcontract or otherwise dispose of the benefit of this Agreement except with the agreement of the other Parties and as agreed by the Strategic Management Board.

31 Third party rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

32 Variations

This Agreement may be varied by express written agreement by the Parties at any time provided that any variations are approved initially by the Strategic Management Board and such variations shall then be incorporated and appended to this Agreement.

33. Counterparts

33.1 This Agreement may be executed in any number of counterparts and by the Parties on different counterparts.

33.2 Each counterpart shall constitute an original of this Agreement but all of the counterparts together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as a Deed the of 2019.

The Common Seal of Denbighshire County Council was hereunto affixed in the presence of:

Authorised Signatory

Executed as a Deed by affixing the Common Seal of Conwy County Borough Council in the presence of:

Authorised Sealing Officer:.....

The Common Seal of the Isle of Anglesey County Council was hereunto affixed in the presence of:

Authorised Sealing Officer:.....

The Common Seal of Flintshire County Council was hereunto affixed in the presence of:

Chairman:

Authorised Signatory:.....

Executed as a Deed by affixing the Common Seal of Gwynedd Council in the presence of:

.....

Authorised Signatory

The Common Seal of Wrexham County Borough Council was hereunto affixed in the presence of:

Authorised Signatory:.....

Signed as a Deed by NWIS

Authorised Signatory:.....

Signed as a Deed by BCUHB

Authorised Signatory:.....

Schedule 1**Definitions**

Agreement means this agreement governing the arrangements to implement the North Wales Local Full Fibre Network including the Schedules and Annexes to the Schedules.

Authorised Representative means the person appointed pursuant to clause 6 or their deputy

Business Case means the Business Case submitted to DCMS as part of the application for the Grant and attached hereto as Schedule 6.

Change in Law means

- (a) the coming into effect after the date of this Agreement of Legislation; or
- (b) Guidance; or
- (c) any applicable judgment of a relevant court of law which creates or changes a binding precedent.

Commencement Date means the date of this Agreement inserted following all Parties' signatories have executed this Agreement.

Confidential Information has the meaning given in Schedule 7.

DCMS means the Department for Digital, Culture, Media and Sport

Grant means the sum of £8,086,000 or as varied from time to time and notified to the Lead Authority by DCMS paid to the Lead Authority by the Department for Digital Media Culture and Sport as part of the Challenge Fund and identified in the the letter from DCMS in Schedule 8.

Guidance means any statutory guidance issued by a government department.

Intellectual Property Rights means all patents, copyright and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals or extensions.

Know-How means information, data, know-how or experience whether patentable or not and including but not limited to any technical or commercial information relating to research, design, development, manufacture, use or sale.

Lead Authority means Denbighshire County Council.

Legislation means any Act of Parliament or subordinate Legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom as applicable.

Personal Data means personal data as defined in the Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679)

Project means the Local Full Fibre Network funded by the Department for Digital Media Culture and Sport as part of the Challenge Fund.

Project Manager means the person appointed by the Lead Authority to manage and lead the delivery of the Project or their deputy.

Programme of Works means the programme approved by the Strategic Management Board and the list of sites read together and set out (as varied from time to time by approval of the SMB) in Schedule 5.

PSBA means Public Sector Broadband Aggregation

Services means the services as described in the Specification;

Senior Responsible Officer Steve Bayley Wrexham County Borough Council

Specification means the description of the Services as set out in Schedule 2.

Strategic Management Board (or “SMB”) means the board established by the Parties under clause 3 hereof.

Term means the period from the Commencement Date until 31 December 2021 unless terminated sooner.

Terms of Reference means the terms set out in the Schedule 4;

Works means the installation of full fibre infrastructure to the premises identified by the Parties in the Programme of Works.

Year means a continuous period of 12 months commencing upon the Commencement Date and upon each anniversary thereof.

Schedule 2

Services

1 General

1.1 The Lead Authority shall manage the Project via the Project Manager.

1.2 Wrexham shall provide the Senior Responsible Officer .

2. Principal Services – Senior Responsible Officer

2.1. Chairing Strategic Management Board meetings for the first Year.

2.2. Acting as senior point of contact with DCMS and with all other Project partners.

2.3. SRO will oversee work of Project Manager.

2.4 Reporting to the Digital Connectivity Sub-Committee of the North Wales Economic Ambition Board.

3 Principal Services – Project Manager

3.1 Providing day to day management and administrative support to the Strategic Management Board and to each Party.

3.2 Keeping the Project plan up to date and liaising with each Party to ensure changes to the Project Programme of Works are managed in accordance with the overall Project Plan. For the avoidance of doubt, no changes shall be made to the Project Programme of Work without notifying the Project Manager and any concerns differences or disputes over such changes shall be referred to the Strategic Management Board to be resolved.

3.3 Liaising with the supplier under the PSBA regarding the Project Programme of Works and managing their overall performance to ensure successful delivery of the Project. For the avoidance of doubt, each Party shall have responsibility for arranging the commissioning and completion of works for each premises and individual commissions shall not be the responsibility of the Project Manager.

3.4 Liaising with DCMS.

3.5 Collating and monitoring spending plans from each Party and identifying future works.

3.6 Monitoring total Project spend within the Grant.

3.7 Providing the first point of contact for disputes arising under the Agreement.

3.8 Receiving claims for reimbursement for the costs of connections incurred by the Parties.

3.9 Submitting claims for payment of the Grant to DCMS.

3.10 Reimbursing the relevant portion of the Grant to the Parties in respect of Works ordered by that Party.

- 3.11** Reporting to the Digital Connectivity Sub-Committee of the North Wales Economic Ambition Board.
- 3.12** Liaising with the PSBA managers and supplier on a Project wide basis and managing their overall performance to ensure successful delivery of the Project but this shall not include in relation to the commissioning of the Works.

Schedule 3

FUNDING

1.1 Reimbursement payments to a Party shall be made in accordance with clause 11 of the Agreement.

1.2 A Party wishing to make a claim for reimbursement shall complete a claim form substantially in the form of Annex A to this Schedule 3.

1.3 Upon receipt by the Project Manager of a completed claim form, the Project Manager shall verify the claim and once satisfied as to the claim and that it is in accordance with the Project Programme of Works, the claim shall be submitted to DCMS for approval and reimbursement.

1.4 The Lead Authority shall be under no obligation to make payment of a reimbursement to a Party until the Lead Authority has received payment of the relevant portion of the Grant from DCMS.

1.5 The Parties shall submit claims in accordance with the LFFN Ordering and Claims;Public Sector Upgrades (PSBU) document attached hereto in Annex B to this Schedule 3.

Annex A to Schedule 3

Claim form including proof of expenditure such as invoice from the supplier



LFFN Claim
Form.xlsx

Annex B to Schedule 3

LFFN Ordering and Claims;Public Sector Upgrades (PSBU)



LFFN Claims and
Ordering.docx

Schedule 4

Management and Governance

1.Strategic Management Board Terms (the “SMB”) of Reference

1.1 Role and Function:

The Strategic Management Board shall be represented by the Parties to provide strategic direction to the Project ensuring:

- Collaboration.
- Management of strategic issues and risks.
- Monitoring and review of the delivery of the Project within budget
- Compliance with the conditions of the Grant
- Delivery of the Project objectives
- Review annually the overall performance of the Project

2. Membership

2.1 Representation on the Strategic Management Board will be:

Helen Makin - Legal and Procurement Operations Manager (the Lead Authority) (non voting).

Stuart Whitfield - (the Lead Authority) Project Manager (non voting)

Barry Eaton - Chief Officer ICT (the Lead Authority) ;

Huw McKee - Head of Information Technology and Digital Transformation (Conwy);

Linda Astbury - IT Communications Manager (Flintshire);

Huw Ynyr - IT & Transformation Senior Manager (Gwynedd);

Steve Bayley - Head of Housing and Economy SRO (Wrexham) (Chair)(for the first Year)

Dave Jacobs - ICT Lead (Wrexham);

Neil Summers - Technical Services Manager (Ynys Mon);

David Slocombe - Data Communications Manager (BCUHB);

Chris Brown - Infrastructure Development Manager (NWIS);

2.2 Each member of the SMB may nominate an alternative representative of similar seniority and expertise to attend meetings in their absence. The nominee will be briefed and prepared prior to attending the SMB. The nominee will then debrief the SMB member following the SMB meeting.

2.3 Each member of the SMB will have voting rights except as set out above and this right will be transferred to the nominee if the representative is not present at the board meeting. Only one vote will be permitted per organisation.

2.4 Each Party shall ensure its SMB member or nominee will make all reasonable efforts to attend SMB meetings at which the board members attendance is required. Other public sector bodies, local authority officers/members or key stakeholders may attend the SMB as appropriate in order to assist the group in the conduct of its business.

3. Meetings

3.1 The administration and secretariat of the SMB will be provided by the Project Manager.

- Meetings will be quarterly or when decision are required.
- Agendas will be produced by the Project Manager.
- Agendas and associated documents will be forwarded to attendees at least a week before the meeting is scheduled.
- Minutes will be produced by the Project Manager

3.2 SMB meeting will be quorate as long as half plus one of the SMB members or their nominee, are present and include the Chair or Vice Chair.

Schedule 5 Programme of Works



LFFN Sites April
04.xlsx



Openreach North
Wales Theoretical de

Schedule 6 Business Case



LFFN Business Case
Dec 2018.pdf

Schedule 7 Confidentiality

In this schedule 7 Receiver shall mean the Party taking possession of the Confidential Information by howsoever means and the Discloser shall mean the Party disclosing the Confidential Information to the Receiver by howsoever means and Confidential Information shall mean:

- (a) any information that relates to the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of any Party or DCMS or their suppliers or sub-contractors or other applicants and their suppliers under the LFFN Programme; and
- (b) any information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential,

in each case in whatever medium or form (including information conveyed in writing, orally, visually or electronically).

and "FOI Legislation" shall mean The Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

- 1.1 In consideration of the Parties agreeing to the terms of this Agreement and to disclose Confidential Information, the Receiver undertakes to the Discloser that, with respect to any and all Confidential Information disclosed to the Receiver or to any person on behalf of the Receiver by the Discloser or by any person on behalf of the Discloser, the Receiver shall:
 - 1.1.1 treat all Confidential Information as strictly confidential and keep it in safe and secure custody (as is appropriate depending upon the form in which such information is recorded and stored and the nature of the Confidential Information);
 - 1.1.2 not disclose, copy, reproduce, publish or distribute the Confidential Information (or any part) to any person save to the extent expressly permitted under this Agreement or otherwise authorised by the Discloser in writing;
 - 1.1.3 respect any existing proprietary rights in the Confidential Information;
 - 1.1.4 subject to Clause 1.4, use the Confidential Information solely and exclusively for the Project; and
 - 1.1.5 inform the Discloser immediately upon becoming aware or suspecting any unauthorised access, copying, use or disclosure in any form of Confidential Information.

- 1.2 Clause 1.1 shall not, or shall cease to, apply to the extent that any Confidential Information:
 - 1.2.1 is or becomes generally known or available to the public (other than as a direct or indirect result of a disclosure in breach of this Agreement or any confidentiality undertaking given by any other person);
 - 1.2.2 is already known to the Receiver prior to disclosure by the Discloser or any other person on behalf of the Discloser and such prior knowledge can be evidenced by the written records of the Receiver;
 - 1.2.3 is or becomes known to the Receiver by disclosure from a third party (other than where such disclosure is itself subject to an obligation of confidentiality);

- 1.2.4 is not required to be treated as Confidential Information, as expressly confirmed by the Discloser in writing; or
 - 1.2.5 subject to clause 29.2 is required to be disclosed by any applicable law, governmental or regulatory authority, provided that shall apply in respect of disclosures required by the FOI Legislation
- 1.3 Each Party shall be entitled to disclose Confidential Information to its professional advisers (including consultants) to the extent necessary to enable it to take advice with respect to the Projectand/or to enforce its rights or obligations under this Agreement. The Receiver shall procure that any such professional adviser to whom Confidential Information is disclosed complies with the obligations of confidentiality and the terms and conditions of this Agreement as if such professional adviser were receiving such Confidential Information as a Receiver under this Agreement.
- 1.4 DCMS shall have the rights in respect of Confidential Information set out in Annex A to this Schedule 7.

2. **RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 2.2 Upon the Discloser's reasonable written request, the Receiver shall promptly:
- 2.2.1 return or destroy Confidential Information (including any copies), including any documents or other materials which incorporate Confidential Information; and
 - 2.2.2 provide written confirmation to the Discloser that the relevant Confidential Information has been destroyed and/or that no copies of any Confidential Information have been retained by the Receiver.

Annex A to Schedule 7: Disclosure of Information to DCMS

	CONFIDENTIAL INFORMATION	DCMS RIGHTS
1.	Confidential Information supplied by the Parties.	<p>Disclosure to other government departments for use in connection with the LFFN Programme, provided that DCMS informs the relevant government department of the confidential nature of the Confidential Information.</p> <p>Aggregation of relevant project information (including Confidential Information supplied by the Parties) provided by the Parties for disclosure on an aggregate anonymised basis (e.g. average km of new fibre to be built).</p>
2.	Any version of any contract or associated procurement document created by the Parties, excluding bidder tender submissions, evaluation results, personal data, charges and any other sensitive information that the Parties may agree in writing.	<p>Use in connection with :</p> <ul style="list-style-type: none"> • development of contract templates and other guidance under the LFFN Programme; • maintenance of a library of redacted contract and procurement documents created by the Parties and other applicants, <p>by DCMS and disclosure of the same to other applicants under the LFFN Programme.</p>
3.	Full details of the Parties' technical solution (including site lists and deployment plans).	Disclosure to the Superfast Programme team of DCMS for the purpose of informing Superfast Programme strategy and mapping decisions.

4.	<p>In respect of the signed contract:</p> <ul style="list-style-type: none">• Aggregate value of the charges.• Level of DCMS funding.• Number of sites to be connected.• Km of new fibre to be built.• Summary of the technical solution (including number and type of ducts and fibres).• A Party's approach to meeting LFFN Programme requirements (e.g. key commercial principles).	<p>Disclosure to other applicants under the LFFN Programme, provided each such applicant has entered into a non-disclosure agreement on terms substantially the same as this Agreement.</p>
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Schedule 8 Grant Conditional Offer



North Wales
Conditional offer let